

## UPDATE ON GROUP EXEMPTIONS

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### BACKGROUND

The group exemption process allows a “central organization” that is itself exempt under Code Sec. 501(c) to obtain a group exemption for its “subordinates”.<sup>1</sup> The subordinates must satisfy certain requirements, including that: (i) they must be subject to the “general supervision or control” of the central organization; (ii) they must all be exempt under the same subsection of Code Sec. 501(c) (which can be different than the central organization’s); and (iii) they may not be private foundations. Once a group ruling is obtained, the central organization has the authority to add or remove subordinates (and must provide annual notice to the IRS of such changes) and the central organization may file a group Form 990 return to cover subordinates (in addition to the central organization’s own Form 990). According to the Advisory Committee on Tax Exempt and Government Entities (“ACT”), there are over 4,300 group exemptions covering approximately 500,000 subordinates; this does not include church group exemptions, some of which cover tens of thousands of subordinates.

### ADVISORY COMMITTEE REPORT

In June 2011, ACT issued a report that raised concerns with group exemptions and recommended certain changes (though it did recommend retaining the group exemption in general). First, a group return aggregates information on subordinates, so there is not transparency regarding individual subordinates (including whether each satisfies a public support test, if applicable); ACT recommended eliminating group returns—which would require each subordinate to file its own Form 990. Second, there is no guidance regarding what constitutes “general supervision or control”; ACT recommended that the IRS provide such guidance. Third, there is currently no publicly available list of a central organization’s subordinates; ACT recommended that central organizations each be required to file Form 990 (even if they would otherwise qualify to file Form 990-EZ or 990-N) and report on Schedule O a list of its subordinates and how the central organization maintains general supervision or control. Fourth, subordinates are currently not listed on IRS Publication 78 (which otherwise lists 501(c)(3)s to which tax deductible donations can be made); ACT recommended that the IRS revise Publication 78 or develop some other method to permit donors to confirm exempt status of subordinates. Fifth, ACT recommended that so-called “Type III”

supporting organizations be excluded from group exemption participation because of their similarities to private foundations. Lastly, ACT recommended that whatever changes are made to the group exemption procedures, a significant transition period should be provided by the IRS.

## QUESTIONNAIRE

In October 2012, the IRS mailed a questionnaire to over 2,000 randomly-selected central organizations. According to the IRS website, the questionnaire's purpose is to help the IRS better understand the relationship between central organizations and their subordinates and how they satisfy their exemption and filing requirements. Completion of the questionnaire is optional (and is part of a voluntary compliance check, not an audit). The questionnaire is 12 pages long and asks questions that seem designed to gather information,<sup>2</sup> determine current compliance<sup>3</sup> and determine whether further IRS guidance is needed.<sup>4</sup>

## CONCLUSION

At this point, it is not clear whether any changes will be made to the group exemption process. But it is clear that the IRS is considering whether changes should be made. Central organizations and subordinates should confirm that they are in compliance with the existing IRS procedures; and they and practitioners should be aware that changes, like those proposed by ACT, may be in the offing.

1 Rev. Proc. 80-27; IRS Publication 4573 (2007).

2 For example, Part II Question 7 asks how many subordinates are in the group.

3 For example, Part II Question 8 asks whether any of the subordinates are private foundations.

4 For example, Part III Question 34 asks whether the central organization holds in-person meetings with directors or officers; and Part IV Question 39 asks whether the central organization elects or appoints directors or officers.

## MEET THE TEAM



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