

财税[2009]123号

关于非营利组织免税资格认定管理有关问题的通知
各省、自治区、直辖市、
计划单列市财政厅
(局)、国家税务局、地
方税务局,新疆生产建设
兵团财务局:

根据《中华人民共和国企业
所得税法》(以下简称
《企业所得税法》)第二
十六条及《中华人民共和
国企业所得税法实施条
例》(以下简称《实施条
例》)第八十四条的规
定,现对非营利组织免税
资格认定管理有关问题明
确如下:

一、依据本通知认定的符
合条件的非营利组织,必
须同时满足以下条件:

(一)依照国家有关法律
法规设立或登记的事业单
位、社会团体、基金会、
民办非企业单位、宗教活
动场所以及财政部、国家
税务总局认定的其他组
织;

(二)从事公益性或者非
营利性活动,且活动范围

Caishui [2009] No. 123

The Circular on Management Issues Concerning NPOs'
Eligibility of Tax Deduction

The public finance departments (bureaus) and state taxation
departments (bureaus) of all provinces, autonomous regions,
municipalities directly under the Central Government, and
cities directly under separate state planning, and the Financial
Bureau of Xinjiang Production and Construction Corps,

According to §26 of the Law on Corporate Income Tax of
PRC and §84 of the Regulation for the Implementation of the
Law on Corporate Income Tax of PRC (the Registration),
hereby (we) clarify eligibility of NPOs for tax deduction by
their donors:

1. An Eligible NPO recognized by this Circular should meet
the following requirements:

(1) [It is a] public institution (*shiye danwei*), a social
organization, a foundation, a non-commercial unit (*min fei*), or
a religious site that has been established and registered
according to relevant law and regulations, or other
organization recognized by the Ministry of Finance and the
State Administration of Taxation as tax exempt;

(2) [It is] dedicated to public welfare or non-profit activities
within the People's Republic of China;

主要在中国境内；

(三) 取得的收入除用于与该组织有关的、合理的支出外，全部用于登记核定或者章程规定的公益性或者非营利性事业；

(四) 财产及其孳息不用于分配，但不包括合理的工资薪金支出；

(五) 按照登记核定或者章程规定，该组织注销后的剩余财产用于公益性或者非营利性目的，或者由登记管理机关转赠给与该组织性质、宗旨相同的组织，并向社会公告；

(六) 投入人对投入该组织的财产不保留或者享有任何财产权利，本款所称投入人是指除各级人民政府及其部门外的法人、自然人和其他组织；

(七) 工作人员工资福利开支控制在规定的比例内，不变相分配该组织的财产，其中：工作人员平均工资薪金水平不得超过上年度税务登记所在地人均工资水平的两倍，工作人员福利按照国家有关规定执行；

(3) Its incomes are all used for public welfare or non-profit activities according to its registration or charter except relevant reasonable organizational expenditures;

(4) Its assets and proceeds are not distributed except for reasonable salaries;

(5) According to its registration or charter, its surplus after the revocation (of its registration) should be used for public welfare or non-profit purposes, or be transferred to organizations of similar nature and missions as a gift upon public notices;

(6) The donating person does not have or preserve any property rights as to any assets of the organization. The term "donating person" refers to a legal person, a natural person, and an organization other than the people's governments at all levels and their bureaus;

(7) The employees' salaries and benefits should be within the required ratio without distributing the organization's assets in disguise. The employees' average salary should not exceed twice of the annual average salary of the preceding year at the locale where the organization pay its tax. The employee's benefits are subject to relevant state regulations.

(八) 除当年新设立或登记的事业单位、社会团体、基金会及民办非企业单位外，事业单位、社会团体、基金会及民办非企业单位申请前年度的检查结论为“合格”；

(九) 对取得的应纳税收入及其有关的成本、费用、损失应与免税收入及其有关的成本、费用、损失分别核算。

二、经省级（含省级）以上登记管理机关批准设立或登记的非营利组织，凡符合规定条件的，应向其所在地省级税务主管机关提出免税资格申请，并提供本通知规定的相关材料；经市（地）级或县级登记管理机关批准设立或登记的非营利组织，凡符合规定条件的，分别向其所在地市（地）级或县级税务主管机关提出免税资格申请，并提供本通知规定的相关材料。

财政、税务部门按照上述管理权限，对非营利组织享受免税的资格联合进行审核确认，并定期予以公

(8) The public institutions, social organizations, foundations, or non-commercial units should pass the annual inspection in the preceding year unless they are newly established or registered in the present year; and

(9) The NPO must accounts for its taxable income and its costs, fees, and losses separately from other costs, fees, and losses.

2. Eligible NPOs that were established or registered upon the approval of a provincial or higher level registration and management department should submit an application for eligibility of tax deduction to the provincial taxation authority in its locale, providing materials required by this Circular. Eligible NPOs that were established or registered upon the approval of a municipal (/local) registration management department should submit application for eligibility of tax deduction to the municipal (/local) or county taxation authority, providing materials required by this Circular.

The public finance departments and taxation departments should certify the NPOs' eligibility of tax deduction jointly according to the above jurisdictions, and issue regular public notices.

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三、申请享受免税资格的非营利组织，需报送以下材料：

- (一) 申请报告；
- (二) 事业单位、社会团体、基金会、民办非企业单位的组织章程或宗教活动场所的管理制度；
- (三) 税务登记证复印件；
- (四) 非营利组织登记证复印件；
- (五) 申请前年度的资金来源及使用情况、公益活动和非营利活动的明细情况；
- (六) 具有资质的中介机构鉴证的申请前会计年度的财务报表和审计报告；
- (七) 登记管理机关出具的事业单位、社会团体、基金会、民办非企业单位申请前年度的年度检查结论；
- (八) 财政、税务部门要求提供的其他材料。

四、非营利组织免税优惠资格的有效期为五年。非营利组织应在期满前三个月内提出复审申请，不提

3. The NPOs that are entitled to tax deduction should submit the following materials:

- (1) an application,
- (2) the charter of a public institution, a social organization, a foundation, or a non-commercial unit, or the management system of a religious site,
- (3) a copy of the registration of taxation,
- (4) a copy of the NPO registration,
- (5) the conditions placed on the resources and uses of its funds, public interest activities and non-profit activities prior to the application,
- (6) the financial statements and audit reports of the preceding year certified by qualified agencies,
- (7) the conclusion to the annual inspection of public institutions, social organizations, foundations, or non-commercial units of the preceding year provided by registration and management departments, and
- (8) Other materials that are required by the finance departments and taxation departments.

4. The eligibility of tax deduction lasts for five years. An NPO should reapply for a re-approval three months prior to the lapse of the eligibility. NPOs that do not reapply for a re-approval should lose their tax deduction status automatically.

出复审申请或复审不合格的，其享受免税优惠的资格到期自动失效。

非营利组织免税资格复审，按照初次申请免税优惠资格的规定办理。

五、非营利组织必须按照《中华人民共和国税收征收管理法》（以下简称《税收征管法》）及《中华人民共和国税收征收管理法实施细则》（以下简称《实施细则》）等有关规定，办理税务登记，按期进行纳税申报。取得免税资格的非营利组织应按照规定向主管税务机关办理免税手续，免税条件发生变化的，应当自发生变化之日起十五日内向主管税务机关报告；不再符合免税条件的，应当依法履行纳税义务；未依法纳税的，主管税务机关应当予以追缴。取得免税资格的非营利组织注销时，剩余财产处置违反本通知第一条第五项规定的，主管税务机关应追缴其应纳企业所得税款。

主管税务机关应根据非营

The reapplications are preceded under the rules that regulate the original applications.

5. NPOs should require taxation registration and file tax returns regularly under the Law on Taxation Collection of the PRC and the Detailed Rules for the Implementation of the Law of the PRC on Taxation Collection. NPOs that have achieved eligibility of tax deduction should go through the tax deduction procedures with the supervisory taxation authority. When a change occurs as to the tax deduction status, the NPO should report to the supervisory taxation authority within 15 days after the change occurs. NPOs which are not qualified for tax deduction should pay tax under the law. The taxes that are not paid under the law should be recovered by the supervisory taxation authority in a timely manner.

When an NPO distributes its surplus in violation of Section 1(5) upon revocation of its registration, the supervisory taxation authority should recover the corresponding corporate income taxes.

The supervisory taxation authority should inspect [the taxation

利组织报送的纳税申报表及有关资料进行审查，当年符合《企业所得税法》及其《实施条例》和有关规定免税条件的收入，免予征收企业所得税；当年不符合免税条件的收入，照章征收企业所得税。主管税务机关在执行税收优惠政策过程中，发现非营利组织不再具备本通知规定的免税条件的，应及时报告核准该非营利组织免税资格的财政、税务部门，由其进行复核。

核准非营利组织免税资格的财政、税务部门根据本通知规定的管理权限，对非营利组织的免税优惠资格进行复核，复核不合格的，取消其享受免税优惠的资格。

六、已认定的享受免税优惠政策的非营利组织有下述情况之一的，应取消其资格：

(一) 事业单位、社会团体、基金会及民办非企业单位逾期未参加年检或年度检查结论为“不合格”的；

status of the NPO] based on the tax returns submitted by the NPO. The incomes that are deductible under the Law on Corporate Income Tax, the Regulation for the Implementation of the Law on Corporate Income Tax, and other regulations should be deducted. The unqualified incomes are subject to corporate income taxes under the law. If the supervisory administration of taxation finds that the NPOs are not entitled to tax deduction any more, it should report to the finance department and taxation department which approved the tax deduction status for reexamination in a timely manner.

The finance department and the taxation department which approved the tax deduction status should reexamine the NPOs' eligibility of tax deduction within the scope of authority under this Circular. The NPOs which cannot pass the reexamination are not entitled to tax deduction.

6. An NPO's previously approved tax deduction status should be disqualified upon one of the following conditions:

(1) As a public institution, a social organization, a foundation, or a non-commercial unit, it does not take part in the annual inspection after the lapse of the period or fails the annual inspection;

(二) 在申请认定过程中提供虚假信息的；

(三) 有逃避缴纳税款或帮助他人逃避缴纳税款行为的；

(四) 通过关联交易或非关联交易和服务活动，变相转移、隐匿、分配该组织财产的；

(五) 因违反《税收征管法》及其《实施细则》而受到税务机关处罚的；

(六) 受到登记管理机关处罚的。

因上述第(一)项规定的情形被取消免税优惠资格的非营利组织，财政、税务部门在一年内不再受理该组织的认定申请；因上述规定的除第(一)项以外的其他情形被取消免税优惠资格的非营利组织，财政、税务部门在五年内不再受理该组织的认定申请。

七、本通知从2008年1月1日起执行。

财政部国家税务总局

二〇〇九年十一月十一日

(2) It provides false information during the application process,

(3) It evades its tax liabilities or assist others in evading tax liabilities,

(4) It transfers, conceals, or distributes its organizational assets in disguise through related party transactions or un-related party transactions or services,

(5) It has been punished by a taxation department for violating Law on Taxation Collection and the Registration,

(6) It has been punished by a registration and management department.

The finance departments and the taxation departments would not accept applications from NPOs which are disqualified under section (1) within one year of the disqualification. Administration of finance and taxation would not accept applications from NPOs which are disqualified under other sections within 5 years after the disqualification.

7. The Circular shall be implemented as of 1/1/2008.

Ministry of Finance, State Administration of Taxation

11/11/2009