

How to reclassify a private foundation as a public charity



Brian J. Jereb | Friday, August 9, 2019

Both positive and negative lifetime events inspire people to form private foundations to achieve charitable goals. Whether honoring the memory of a loved one or giving back to the community after suddenly acquiring wealth, most people do not anticipate that their private foundations will attract support from the general public. Consequently, those running the foundations often ask the IRS to classify it as a private foundation rather than a public charity when they file their application for tax-exempt status (Form 1023 or Form 1023EZ). While donations to private foundations are generally deductible, the available deduction is subject to lower deductibility limits. Private foundations are also subject to certain excise taxes and restrictive rules that public charities do not have to contend.

From time to time though, the energy and enthusiasm of a foundation's founder and the foundation's inspiring goals result in levels of public support that qualify the foundation to be treated as a public charity rather than a private foundation. Those involved suddenly realize that they have created something much bigger than was originally anticipated and that requesting private foundation status was an error.

When a foundation's request to be treated as a private foundation appears to have been in error, the foundation may ask the IRS to retroactively reclassify it as a public charity back to its date of incorporation. This process is sometimes successful and if so, avoids the more lengthy process of terminating private foundation status and converting the foundation to a public charity. To ask for retroactive qualification as a public charity, the foundation can file a Form 8940 (Request for Miscellaneous

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Determination of the IRS) and demonstrate that it has continuously qualified as a public charity. Working with your attorney and accountant, you can determine if it would be beneficial to request a retroactive reclassification.

In the Form 8940, the foundation must include either a copy of its Form 990 with a completed Schedule A filed with the IRS for the immediately preceding tax year or support information for the past five years using the accounting method adopted to complete its Form 990 or Form 990EZ. The foundation also needs to include a list of certain donors whose donations exceeded certain thresholds. The current user fee for such a request is \$400.

Filing a Form 8940 may be a viable alternative to the longer process of terminating private foundation status and converting to public charity status. If you believe that your private foundation may qualify as a public charity, contact the attorney listed below.



Brian J. Jereb

[Team member bio](#)