



Food and
Nutrition
Service

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Center

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SUBJECT: Automatic Revocation of Tax-Exempt Status – Revised

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to clarify guidance to State agencies on procedures for reviewing the nonprofit status of organizations applying to participate in the Summer Food Service Program (SFSP). In addition, this memorandum clarifies the corrective actions required by organizations whose tax-exempt status has been revoked. This revision supersedes the June 30, 2011 policy memorandum, SFSP 17-2011: *Automatic Revocation of Tax Exempt Status*.

In 2001, the Internal Revenue Service (IRS) changed its filing requirements for some tax-exempt organizations. Failure to comply with the requirements may result in the revocation of an organization's tax-exempt status by the IRS. Section 13(a)(7) of the Richard B. Russell National School Lunch Act (NSLA) allows the participation of a private nonprofit organization in the Summer Food Service Program (SFSP) if, among other things, it is an organization "described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code...." [42 USC 1761(a)(1) and (7)].

SFSP regulations at 7 CFR 225.2 and 7 CFR 225.14(b)(5) require private nonprofit organizations to be tax-exempt in order to be eligible to sponsor the SFSP. As a result, SFSP sponsors that are not tax-exempt or that have had their tax-exempt status automatically revoked by the IRS are not eligible for participation in SFSP.

To ensure that all SFSP sponsors meet the tax exempt requirements, all SFSP State agencies must review *annually* the IRS Automatic Revocation of Exemption List (List) and determine whether any of the State agencies' approved SFSP sponsors are listed. The List, which is organized by State, may be found at:

<http://www.irs.gov/charities/article/0,,id=240099,00.html>. Additionally, State agencies must check the List for any sponsor whose application to participate in SFSP is pending. Applicant sponsors appearing on the IRS list may not be approved.

Most tax-exempt organizations are required to file an annual return or notice with the IRS. Exceptions to this requirement include governmental and many faith-based organizations. Pursuant to authority in Section 6033(j) of the Internal Revenue Code of 1986, the IRS must automatically revoke the tax exemption of any private nonprofit organization that fails to satisfy its filing requirement for three consecutive years. The IRS has in place an application process in which organizations may seek reinstatement of tax-exempt status after automatic revocation. Such reinstatements are generally effective on the date of the IRS determination, but retroactive reinstatement may be requested. Additional information about automatic revocation of tax-exempt status may be found at: <http://www.irs.gov/charities/article/0,,id=239696,00.html>.

As most tax-exempt organizations are required to submit the relevant documentation to retain their status on an annual basis, current SFSP sponsors that fail to file the necessary forms could have their tax-exempt status automatically revoked. Section 13(q) of the NSLA [42 USC 1761(q)] and SFSP regulations at 7 CFR 225.11(c) require State agencies to terminate the SFSP agreement with any sponsor determined to be seriously deficient. Since a private nonprofit sponsor must be tax-exempt under the Internal Revenue Code of 1986 in order to be eligible for SFSP participation, the revocation of a sponsor's tax-exempt status is a failure by the sponsor to meet a fundamental SFSP eligibility requirement and constitutes a serious deficiency. In these instances the State agency is required to terminate its agreement with the affected sponsor.

If a State agency determines that an approved SFSP sponsor has had its tax-exempt status automatically revoked, the State agency must inform the sponsor that it is seriously deficient and its SFSP participation will be terminated in accordance with 7 CFR 225.11(c). Initial guidance regarding automatic revocation of tax-exempt status detailed corrective action procedures for existing sponsors. However, because this is an annual process and the only required action for sponsors who no longer qualify as tax-exempt is termination from the Program, there is no longer a corrective action process for existing sponsors. If an organization had their tax-exempt status automatically revoked at some point, but it has since been reinstated, then the organization has met that requirement for participation.

Termination of SFSP participation based on automatic revocation of a sponsor's tax-exempt status is subject to appeal under the procedures described in Section 13(q) of the

NSLA and 7 CFR 225.13. If a sponsor appeals its termination, the sponsor may continue to operate the SFSP during the pendency of the appeal process. If the State agency's termination is overturned or otherwise rescinded; a sponsor will be eligible for reimbursement for valid claims for meals served during the appeal process [7 CFR 225.13(b)(11)].

State agencies should direct any questions concerning this guidance to the appropriate Food and Nutrition Service Regional Office. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <http://www.fns.usda.gov/sfsp/sfsp-contacts>.

Original Signed

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