United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
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SUBJECT: Tax Exempt Status for Private Nonprofit Organizations and Churches in the Child and Adult Care Food Program and Summer Food Service Program

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum provides updated guidance and clarification regarding the eligibility of private nonprofit organizations and churches seeking participation as sponsors in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). This memorandum supersedes the September 29, 1999, policy memorandum: *Guidance on Tax Exempt Status for Churches in the Child and Adult Care Food Program and Summer Food Service Program.* Please note that all nonprofit organizations, including churches, must fulfill all application requirements and demonstrate financial and administrative capability for CACFP and SFSP operations in order to participate in the Programs. This memo addresses only the requirement relating to tax exempt status.

CACFP authorities in Section 17 of the Richard B. Russell National School Lunch (NSLA) (42 USC 1766) and Program regulations at 7 CFR 226.2 and 226.15(a) require that private nonprofit organizations must have Federal tax exempt status under the Internal Revenue Code of 1986 (IRC) in order to be eligible to participate in CACFP.

Recently, Section 111 of the Healthy, Hunger-Free Kids Act of 2010 amended Section 13 of the NSLA (42 USC 1761) by clarifying the definition of "private nonprofit" in SFSP to specify that private nonprofit organizations must now *have*, rather than simply be eligible for, tax exempt status under the IRC. This provision was implemented through SFSP 02-2011, *Child Nutrition Reauthorization 2010: Eligibility Requirements and Site Limits for Private Nonprofit Organizations in the Summer Food Service Program*, January 14, 2011, (http://www.fns.usda.gov/cnd/summer/Administration/Policy/SFSP-02-2011.pdf). A final regulation implementing this change will be published soon.

For purposes of CACFP and SFSP participation by private nonprofit organizations, only Federal tax exempt status pursuant to the IRC is relevant. Generally, the IRC requires private nonprofit organizations to apply for and receive documentation of tax exempt status. However, Internal Revenue Service (IRS) guidance provides that under certain circumstances, a church is considered automatically tax exempt under the IRC and is not required to apply for the IRS document verifying that it has tax exempt status (Form 1023). Therefore, for purposes of participation in CACFP and SFSP, churches are not required to provide the State agency with IRS Form 1023 as documentation of tax exempt status.

When determining whether an organization qualifies as a church, the State agency should refer to IRS Publication 557, “Tax Exempt Status for Your Organization” (http://www.irs.gov/pub/irs-pdf/p557.pdf) and “Tax Guide for Churches and Religious Organizations” (http://www.irs.gov/pub/irs-pdf/p1828.pdf) for guidance. Should there be concerns regarding the legitimacy of an organization’s claim of tax exempt status based on being a church, State agencies are encouraged to contact a local or regional IRS office or their State agency counsel.

State agencies are reminded to distribute this information to Program operators immediately. 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/cnd/Contacts/StateDirectory.htm. State agencies should direct questions to the appropriate Food and Nutrition Service Regional Office.

Original Signed

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