

Reliance on Recent IRS FAQs

ISSUE:

With myriad IRS “Frequently Asked Questions” (FAQs) issued, updates to FAQs, and further clarifications to FAQs swirling around in the wake of Coronavirus legislation/funding, what happens if a taxpayer relies on an FAQ – only to have it changed later? Will they be subject to penalties?

SITUATION:

Denali Christian College (DCC) is a private college exempt under Internal Revenue Code section 501(c)(3) and 170(b)(1)(A)(ii). They are required to file Form 990 annually.

The CFO at DCC called to ask us about some updates/changes to IRS FAQs on recently enacted legislation...

“What if we rely on FAQs that were promulgated by the IRS and then those rules are subsequently updated in a manner that contradicts the original guidance? Will we potentially be subject to penalties and interest if applicable?”

“That is a great question. As usual, documentation is key. The IRS issued a ‘News Release’ a few weeks ago to clarify that if a taxpayer relies on any FAQ in good faith and that reliance is reasonable, the taxpayer will have a “reasonable cause” defense against any negligence penalty or other accuracy-related penalty if it turns out the FAQ is not a correct statement of the law as applied to the taxpayer's particular facts. In addition, the IRS is systematically ‘cataloging’ all of their FAQs on their website in separate ‘Fact Sheets.’ These documents will be dated and sorted in order to make them easy to locate. This will allow taxpayers to find – in date order – the FAQs they might have relied upon.”

“That sounds great. How about the Department of Education? Have they issued similar information about their FAQs?”

“Not as of yet. But we hope that ED will be forthcoming with something like this in the near future.”

RULES:

From IRS News Release IR-2021-202 (October 15, 2021):

Significant FAQs on newly enacted tax legislation, as well as any later updates or revisions to these FAQs, will now be announced in a news release and posted on IRS.gov in a separate Fact Sheet. These Fact Sheet FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of Fact Sheet FAQs will be maintained on IRS.gov to ensure that, if a Fact Sheet FAQ is later changed, taxpayers can locate the version they relied on if they later need to do so. In addition to significant FAQs on new legislation, the IRS may apply this updated process in other contexts, such as when FAQs address emerging issues.

To address concerns about the potential application of penalties to taxpayers who rely on an FAQ, the IRS is [has released] a statement clarifying that if a taxpayer relies on any FAQ (including FAQs released before today) in good faith and that reliance is reasonable, the taxpayer will have a “reasonable cause” defense against any negligence penalty or other accuracy-related penalty if it turns out the FAQ is not a correct statement of the law as applied to the taxpayer's particular facts.

BOTTOM LINE:

- The IRS – and other governmental agencies – have released numerous FAQ documents regarding Coronavirus legislation/funding/rules
- Many, many of these FAQs have been updated – sometimes in ways that contradict previous guidance.
- There is concern that an institution that relies on previous FAQs might be subject to penalties and interest for accuracy-related and other violations when they relied on FAQs – in place at the time – in good faith.
- The IRS has issued News Release IR-2021-202 to clarify and mollify these concerns.