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## New Developments affecting Private Foundation Confirmation of Grantee Charity Status

As has been publicized recently, the IRS has a new web search tool, “ [Exempt Organizations Select Check](#).” This tool allows users to search for organizations that are eligible to receive tax-deductible contributions (the Publication 78 data), as well as organizations that have been automatically revoked for non-filing (the “auto-revoke list”).

This data is, among other things, important for a private foundation wanting to confirm that a potential grantee is a valid charity described in Section 501(c)(3) of the Internal Revenue Code (“IRC”), and to determine the public charity classification of the charity under IRC Sections 509(a)(1), (2), or (3), for purposes of complying with the rules on distributions under IRC Sections 4942 and 4945. [Revenue Procedure 2011-33](#), issued before the IRS’s transition to Select Check, is the most recent formal IRS pronouncement on the reliance rules for private foundations. [Rev. Proc. 2011-33](#) clarifies that a private foundation can generally rely on the Publication 78 data at the IRS’s website or on the IRS’s Business Master File (“BMF”) to determine the status of a potential grantee. In addition, the Revenue Procedure indicates that the IRS can use its website to publish revocation of a charity’s exempt status.

As a result, a private foundation wanting to confirm the status of a potential grantee can now use the Select Check function to review Publication 78 data. For a while, Publication 78 was only updated quarterly, while the auto-revocation list was updated monthly, making it critical to check the auto-revocation list as well, in order to ensure a charity listed in Publication 78 had not been revoked. It appears the IRS is now updating both lists monthly, which should obviate the need to check both lists (see [IRS FAQ](#)), although, with all the recent changes, a thorough foundation may still want to include both steps. To add a further twist to the due diligence, the IRS does not remove organizations from the auto-revoke list once their exempt status is reinstated. Thus, if a charity does appear on the auto-revoke list but does not appear on the Select Check list as exempt, a foundation will need to do more due diligence to see if the charity has been reinstated, by requesting a current IRS determination letter or calling the IRS to confirm the entity’s status. See [IRS FAQ](#).

Finally, there is yet another list, which we will call the “non-auto revoke list.” This is the list of organizations that have had their status revoked for reasons other than non-filing. The IRS publishes the names of these organizations in the weekly Internal Revenue Bulletin (“IRB”), and they are reprinted in *Tax Notes*. As soon as an organization is listed in the IRB as revoked, foundations can no longer rely on the fact

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### AUTHOR



**Ingrid Mittermaier**  
Principal

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### EDITORS



**Stephanie L. Petit**  
Principal



**Eric K. Gorovitz**  
Principal

that it is listed in Pub. 78. The IRS has the [non-auto revoke list](#) on its website, but does not keep it up to date either. So, to be thorough, a foundation would need to check that list, check when it was last updated, and then check all the more recent IRBs to find the latest non-auto revoked organizations.

As becomes clear, the IRS has taken significant steps towards simplifying the due diligence process, by implementing the new Select Check tool and updating it monthly so that it is (almost) current with the auto-revoke information. Currently, a review of a potential grantee would appear to require:

- (1) checking the Publication 78 data on Select Check;
- (2) if the entity does not appear on Publication 78, checking the auto-revoke list and, if the entity appears there, doing further due diligence to see if the entity has been reinstated; and
- (3) checking the non-auto revoke list and any more recent IRBs to confirm no non-automatic revocation.

The reality is that many foundation grantors rely on third-party providers to check the status of potential grantees. Rev. Proc. 2011-33 confirms that grantors can rely on such third-party providers for BMF information on grantee status, as long as the provider's report includes:

- (1) the organization's name, EIN, foundation status, and whether contributions are deductible;
- (2) a statement that the information is from the most current update of the BMF extract and the BMF extract revision date, and
- (3) the date and time the information was provided to the grantor or contributor.

However, this helpful provision does not indicate that a third-party provider is required to include non-auto revoke information, which can be published in the IRB without immediately being updated in the BMF information. Thus, a foundation using a third-party provider should either check the non-auto revoke information as an additional step, or confirm with their provider that the provider is including that due diligence in their process.

One important take-away from all these developments is that private foundations should review their due diligence procedures for potential grantees, to make sure that they are up-to-date!