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Treasury Reg. § 1.1441-9 provides that withholding is not required under section 1441 with respect to amounts paid to a foreign organization described in section 501(c), to the extent the amounts are not unrelated business taxable income.

Jan. 16, 2017

The [American Institute of CPAs](#) (AICPA) has requested that the Internal Revenue Service (IRS) permit qualified tax practitioners to perform foreign equivalency determinations for the purpose of Internal Revenue Code section 1441 as is currently permitted for the purpose of section 4945.

Treasury Reg. § 1.1441-9 provides that withholding is not required under section 1441 with respect to amounts paid to a foreign organization described in section 501(c), to the extent the amounts are not unrelated business taxable income. A foreign organization is considered a section 501(c) organization if it has a favorable determination letter issued by the IRS or an opinion from a United States counsel (or any other person as the IRS may prescribe in published guidance). The favorable determination letter or opinion must conclude that the foreign organization is described in section 501 (c).

Treasury Reg. § 53.4945-5(a) (5) provides that in relation to the determination of whether a private foundation has made a taxable expenditure when making a grant to a foreign organization which does not have an IRS determination letter, the foundation may rely on written advice from a qualified tax practitioner.

In a December 16 [letter](#) to IRS officials, Annette Nellen, CPA, CGMA, Esq., chair of the AICPA Tax Executive Committee, wrote that, "The AICPA suggests that the IRS issue guidance which clarifies that a foreign organization may rely upon a written opinion provided by a qualified tax practitioner (using the definition provided for section 4945 purposes) for the purpose of determining the foreign organization's equivalency under section 1441, as an organization described in section 501(c). We

believe this type of guidance is consistent with existing regulations and in the best

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