

IRS Warns Tax-Exempt Organizations: Last Chance to File New Required Forms

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The Pension Protection Act of 2006 has not been on the radar of hundreds of thousands of tax-exempt organizations, particularly smaller nonprofits unaccustomed to filing annual information returns with the Internal Revenue Service ("IRS"). There was nothing in the title of the act to alert Exempt Organizations that it carried major changes for them in disclosure and filing requirements.

As a result of this legislation, almost all Exempt Organizations ("EO's," in IRS parlance) must now file annual information returns with the IRS. Even the smallest EO's, whose annual gross receipts are normally \$25,000 or less, became responsible, for the first time, to file a return each year. **Beginning in 2010, failure to meet the filing requirements can cause an organization's tax exemption to be automatically revoked.** Revocation of the tax exemption can cause a nonprofit's receipts to be taxable income and can jeopardize donors' ability to deduct their charitable contributions to the organization.

The Form 990-N "E-Postcard"

With exceptions for churches and certain other limited categories of nonprofits, all EO's must now file annual information returns with the IRS. EO's under the \$25,000 gross receipts threshold can use Form 990-N.

Form 990-N, called an "e-postcard" by the IRS, is a web-only form that takes just seconds to fill out. The form asks for basic identifying information such as the organization's website and a name and address of a principal officer. There are two yes/no questions: 1) Are your gross receipts normally \$25,000 or less, and 2) Has your organization terminated or gone out of business? No attachments or additional documentation are required, there is no cost to file, and no special software is necessary.

The annual return is due by the 15th day of the 5th month following the close of the EO's tax year; for most small nonprofits operating on a calendar tax year, the return is due May 15. Although the form can be filed late with no penalty, there is a serious consequence for failure to file Form 990-N for three consecutive years: automatic loss of tax-exempt status.

The new filing requirement took effect for tax years beginning in 2007. For hundreds of thousands of small EO's that were unaware of the change, the three-strikes deadline already passed on May 17, 2010 (May 15th fell on a Saturday this year).

Nonprofits Must Act by October 15, 2010

In order to prevent large numbers of operating nonprofits from losing their tax-exempt status under these rules, **the IRS has granted a one-time extension to allow late filing of the Form 990-N e-postcard.** EO's with gross receipts below the \$25,000 threshold have until October 15, 2010 to file the form for 2009. If an organization meets this extended deadline, its tax-exempt status will remain intact and no fees or penalties will be imposed for the previous failures to file.

"We are doing everything we can to help organizations comply with the law and keep their valuable tax exemption," IRS Commissioner Doug Shulman said in a July 26 news release. "So if you do not have your filings up to date, now's the time to take action and get back on track."

The relief also extends to some larger nonprofits. EO's with gross receipts of less than \$500,000 and total assets at the end of 2009 of less than \$1,250,000 can file Form 990-EZ. If this form has not been filed for three consecutive years, these EO's have until October 15 to file back returns for 2007, 2008, and 2009, and pay a small fee for their noncompliance. EO's larger than this must file the full Form 990, and are not eligible for any relief.

The Form 990-N e-postcard may be found by going to <http://www.irs.gov> and entering "990-N" into the search box. Searching for the term "filing relief" provides links to IRS explanations and a state-by-state list of EO's whose tax exemptions will be revoked unless they file by October 15.

State Filing Requirements May Also Apply

Organizations taking steps to protect their federal tax exemption should also review whether state-level filing requirements apply. For example, beginning January 1, 2011, California will mirror the IRS procedures and automatically revoke the state tax exemption of any small EO that fails to file annual information returns for three consecutive years.

Recent Changes to Form 990 and Form 990-EZ

Larger tax-exempt organizations required to file the regular Form 990 also found significant changes caused by the Pension Protection Act of 2006, as did those organizations accustomed to Form 990-EZ, a version for EO's with gross receipts of less than \$500,000 and total assets at the end of 2009 of less than \$1,250,000.

These changes involve forms that are clearer (or at least that is the expressed intent of the IRS), and longer. Where the old Form 990 required a variety of information to be attached, the new form has more schedules to walk the filer through the required attachments. There are also several places in the form where EO's are invited to provide narrative accounts of their practices, which the IRS says was requested when they sought the input of the nonprofit community (the desire to write personal essays to the IRS is somehow not typical of our own clients).

In general, the increase in both structure and detail of these forms is due to more stringent requirements for transparency in those practices that justify and define tax-exemption. For example, a significant change or new addition to an organization's program services must now be reported on Form 990 or 990-EZ. EO's must also expect to provide greater detail in such areas as employee compensation and transactions with interested parties.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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