

Legal Alert: IRS Automatic Revocation of Exemption for Organizations that Failed to File for Three Years

Beginning 2007, all tax-exempt organizations are required to file a Form 990, Form 990-EZ, or Form 990-N,¹ and failure to file for three consecutive years will lead to automatic revocation of exempt status. In June 2011, the Internal Revenue Service (IRS) announced that it had revoked the tax-exempt status of 275,000 organizations for failure to file a return. Revocation is effective as of the original due date of the third filing, disregarding any extensions. Organizations that have had their exemption revoked are subject to federal income tax² and may have to file a Form 1120 (Corporation Income Tax Return) or Form 1041 (Income Tax Return for Estates and Trusts). Additionally, donors may not deduct contributions to these organizations and the organizations should not hold themselves out as exempt. The organizations must also notify donors who contributed after the effective date of the revocation that their contributions are no longer considered deductible.

In order to have its tax-exempt status reinstated, a nonprofit organization *must* reapply by filing either Form 1023 (for applications under section 501(c)(3) of the Internal Revenue Code) or Form 1024 (for applications under a different section) with the IRS, accompanied by the required filing fee. The application and fee are required even if the organization was not originally required to file for exemption with the IRS. The organization should write “Automatically Revoked” on the envelope and at the top of its application. In general, the effective date of the reinstated exemption will be the date the organization submitted its new application to the IRS. An organization may request retroactive reinstatement to have its exempt status reinstated to the effective date of revocation if it meets the high bar of showing, among other things, reasonable cause for its failure to file for three consecutive years. The IRS will send a determination letter granting or denying the organization tax exemption.

Transitional relief is available for small exempt organizations that are applying for reinstatement. These organizations must have annual gross receipts of \$50,000 or less for fiscal year 2010 and must have been eligible to file Form 990-N in the years 2007, 2008, and

¹ The amount of an organization’s gross receipts and the value of its assets impact which return it is required to file. The thresholds for most tax-exempt organizations for tax years 2010 and later are as follows:

Form	Gross Receipts	Assets
990-N	≤ \$50,000 <i>and</i>	≤ \$500,000
990-EZ	< \$200,000 <i>and</i>	< \$500,000
990	≥ \$200,000 <i>or</i>	≥ \$500,000

For thresholds for the transitional tax years 2007 through 2009, see <http://www.irs.gov/charities/article/0,,id=184445,00.html>. Private foundations must instead file Form 990-PF.

² State tax exemptions, contracts, grants, and other things dependent upon federal tax exemption may also be in jeopardy.

2009.³ The relief allows eligible organizations to pay a reduced application fee of \$100 and obtain retroactive reinstatement of their exempt status. These organizations should write “Notice 2011-43” at the top of their applications.

The IRS publishes a list of all automatically revoked organizations on its website, available at www.irs.gov/autorevocationlist. The list is updated monthly and includes the name, address, employer identification number (EIN), effective date of revocation, and the date the organization’s name was added to the Automatic Revocation List. Additionally, the IRS will send a letter to each automatically revoked organization at its last known address in order to notify the organization of the revocation.

This alert is meant to provide general information only, not legal advice. Please call Legal Director Linda Manley at Lawyers Alliance at (212)-219-1800 x 239 or visit our website www.lawyersalliance.org for further information.

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³ For additional information on Form 990-N, see the August 2011 Lawyers Alliance Legal Alert on IRS Filing Requirement For Small Tax-Exempt Organizations, available at www.lawyersalliance.org/news_legal_alerts.php#3.