

## Critics' Concerns About Form 1023-EZ: Spot On

03.08.16 | Linda J. Rosenthal, JD



The Internal Revenue Service's own Taxpayer Advocate Service (TAS) has confirmed that the worst fears about the new [Form 1023-EZ](#) launched in mid-2014 were well-founded.

In its recent 2015 Annual Report to Congress, the "highlights" section on the cover includes this headline: "Recognition as a Tax-Exempt Organization is Now Virtually Automatic for Most Applicants."

### ***Troubled Form 1023-EZ Procedure***

The Taxpayer Advocate Service "is an independent organization within the IRS." Its job is "to ensure that every taxpayer is treated fairly and ...[knows and understands its] ...rights."

Each year, the TAS issues a report to Congress that "analyzes the most serious problems facing taxpayers, recommends tax law changes to Congress, and presents original research studies into issues affecting taxpayers."

The rebuke about the tax-exemption application process is one of 9 selected areas of concern. It is a "stinging indictment of the IRS's 'absurd' handling of applications for tax exemption, especially the recently introduced 1023-EZ 'short form' designed for use by small new charities."

### ***Worries About Form 1023-EZ***

Back in 2014, we published a 3-part series on the introduction of the Form 1023-EZ as a remedy for what had become an intolerable backlog in the tax-exemption application process. It was taking at least 18 months or more for an organization filing for exempt status to have even a fairly straightforward application approved. By 2013, the wait list topped 66,000 requests.

At that time, there was a single application form, the Form 1023, a 26-page monster, that was – many agreed – too complex for small organizations. In addition, budget cuts and hiring freezes had left the Exempt Organizations Branch with too few workers for the high volume of applicants.

The chosen emergency remedy to wipe out this backlog was adoption of a 3-page short-form application form and process that would apply to many small- and medium-sized organizations. There were a few questions to answer along with representations from applicants that their documents are, or would be, in order. The actual documents (including articles of incorporation and bylaws) do not have to be submitted.

While acknowledging that the new Form 1023-EZ would likely be successful in reducing the backlog, many in the philanthropic community predicted that the new Form 1023-EZ process would lead to many unqualified organizations receiving summary approval. A related concern was that this so-called fix would “cause more work” after the fact for both the IRS and state charity regulators.”

#### ***Findings on Form 1023-EZ***

The Annual Report links to the PDF text of the Taxpayer Advocate Service’s full discussion on the exemption- applications problems. Key points described in the summary are:

- The Form 1023-EZ “invites noncompliance, diverts tax dollars and taxpayer donations, and harms organizations later determined to be taxable.
- The approval rate for 1023-EZ applications is 95%, but when the agency does a pre-determination review on a sampling basis, the approval rate is just 77% when documents or basic information are reviewed, “rather than relying only on the attestations contained in the form.”
- In the same pre-determination samplings, almost 20% of applicants, “despite their attestations to the contrary, did not qualify for exempt status as a matter of law.” These results are consistent with the Taxpayer Advocate Service’s own representative sample of 1023-EZ applications: “37% of the organizations ... did not satisfy the legal requirements for exempt status.”

The National Taxpayer Advocate recommends that the agency revise Form 1023-EZ to –

*require applicants to submit their organizing documents, unless they are corporations in states that make articles of incorporation publicly available online at no cost. Form 1023-EZ should also require applicants to submit a description of their actual or planned activities and financial information such as past and projected revenues and expenses. The IRS should make a determination only after reviewing the application and these supporting materials, and when there is a deficiency in an applicant’s organizing documents, the IRS should require the applicant to submit a certified copy of reformed articles before it confers exempt status.*

#### ***Conclusion***

We earlier reported the frustration expressed in 2014 by Tim Delaney, the President and CEO of the Council of Nonprofits: “It’s easier to get tax-exempt status under Form 1023EZ than it is to get a library card.”

Seems he was right, after all.

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