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IRS ISSUES

Exempt Organizations: What's New From the IRS

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The Internal Revenue Service has recently announced substantive changes to application forms and procedures for tax-exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. The IRS will reject applications on older – now obsolete – forms.

Form 1023

The changes to Form 1023 are fairly minor. They include revisions consistent with new IRS procedures on public-charity status and on retroactive recognition of tax exemption.

Form 1023-EZ

The Form 1023-EZ was introduced in mid-2014 to deal with a huge backlog in application processing. At that point, the wait time was as long as 18 months to 2 years. The new procedure was also designed to counter legitimate criticism that the 26-page-long Form 1023 was unnecessarily burdensome for many smaller and mid-sized groups.

Within a few months, the backlog problem was solved, but critics from many quarters have argued that it has been at too great a cost. Many observers, including government officials, acknowledge that it became much too easy to apply for tax-exemption. Too little information was required, and almost rubber-stamp approvals became the norm. Since 2014, there have been tweaks to the 1023-EZ. The newest version is titled *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*; there is an accompanying explanation by the IRS here.

The original user fee for the Form 1023-EZ was $400. Two years later, in mid-2016, that fee was reduced to $275. Under the newest form changes, the $275 fee remains in effect.

Key changes to the new Form 1023-EZ are:

- The applicant is asked to provide a brief description of its mission or key activities; a new text box is added to Part III.
- There are new questions about annual gross receipts, total assets, and public-charity classification. These items are also on the Form 1023-EZ Eligibility Worksheet in the Instructions to the form. Applicants must certify the worksheet has been completed.
- Form 1023-EZ Eligibility Worksheet, Question 29, relates to a requirement that an automatically revoked organization (i.e., for failure to file 990s for 3 years in a row) must seek the same foundation classification it had at the time of automatic revocation. That is a condition for eligibility to file the new Form 1023-EZ. An applicant that is not seeking the same foundation classification must file the regular Form 1023.

According to the IRS, the purpose of these revisions is to make form selection easier for applicants and help the agency with the approval process.

New Form 1024-A

The application procedure for 501(c)(4) social welfare organizations has changed significantly; there is an entirely new form: 1024-A. (The traditional Form 1024 that has been in effect for many non-501(c)(3) organizations continues to be the correct form for those categories – albeit the questions that previously applied to only 501(c)(4) organizations have been removed.)

On January 16, 2018, the Internal Revenue Service issued the final version of new Form 1024-A. Earlier drafts had been published in 2017 along with the required request for public comment.

The new 1024-A includes requests for information that are similar to the old Form 1024, including – for instance:

- Details about the organizational structure of the entity;
- Information about the organization's officers, directors, employees, and independent contractors, and whether such individuals are compensated;
- A narrative of the organization's past, present, and planned activities;
- Whether the organization will engage in electioneering activities;
- Information about the organization's membership, if any;
- Whether the organization has a relationship with or is connected to another exempt or nonexempt organization;
- Whether the organization receives payment for services;
- Whether the organization plans to lease property;
- Whether the organization plans to engage in foreign activities or grantmaking; and
- Information on finances.

Applicants should read the instructions to Form 1024-A carefully to determine if additional attachments are required. Applicants must also include Form 8718, *User Fee for Exempt Organization Determination Letter Request,* and the correct user fee, which is $600.

Conclusion

For several years, the issue of eligibility for 501(c)(4) status has been highly controversial, especially regarding organizations that are described as at least somewhat political in nature. It has caused serious problems for the IRS, itself, which came under years-long fire for its handling of these sensitive applications. It's unclear whether adoption of the new Form 1024-A will resolve any of the fallout associated with this issue.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director