

Form 990: Important Processing Changes

05.16.18 | Linda J. Rosenthal, JD



For many nonprofit organizations that operate on a calendar fiscal year, the due date for the annual Form 990, *Return of Organization Exempt From Income Tax*, was yesterday – May 15, 2018. Of course, an organization may choose to file [Form 8868](#), *Application for Automatic Extension of Time to File an Exempt Organization Return*, to obtain an automatic extension for six months to file a Form 990.

In light of some dramatic new changes in the way the Internal Revenue Service will handle the processing of these annual information returns, more than a few organizations may be happy they've taken that option this time around.

New Form 990 Processing Method

Form 990 is generally the same as in recent years, with a few small changes. What is also the same is the penalty for failing to file a return by the due date: The organization must pay a penalty of \$20 per day for each day the Form 990 is late. The maximum penalty for failing to file a return is the lesser of \$10,000 or 5% of the organization's gross receipts. If an organization has gross receipts of over \$1 million for the year, the penalty is \$100 per day up to a maximum of \$50,000.

What has changed is that these same penalties will now apply – also – if a Form 990 is incomplete or the wrong return is filed. That won't happen immediately or automatically. The agency will return the Form 990 with a specific letter indicating the nature of the organization's noncompliance. The organization must remedy the problem within a stated period of time and also explain why there was "reasonable cause" that the insufficient Form 990 was filed.

The Internal Revenue Service publishes the *EO Update*, a periodic newsletter for exempt organizations and their legal and accounting advisers. In the [March 27, 2018, EO Update](#), the IRS wrote:

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As of January 8, the IRS is returning Form 990 series returns filed on paper – and rejecting electronically filed returns – when they are incomplete or the wrong return. IRS.gov answers the question What happens if my Form 990 is missing information or a schedule, or is the wrong return?

On its website, the IRS adds: “If we send back your organization’s return, follow the instructions in the accompanying letter and on [this page](#).”

The Letter and Response

The IRS will send back the information return (or reject one that is electronically-filed) with a letter:

- Letter 2694C Returning Form 990 due to Missing Information
- Letter 2695C Returning Form 990-EZ due to Missing Information
- Letter 2696C Missing Information Request to Process EO Return

If a nonprofit receives one of these letters indicating a particular problem, it must do all of the following within the stated time period – generally 10 days:

- Provide the missing or incomplete information, or proceed to file the complete and accurate return and sign the return;
- Attach a copy of the letter that the IRS sent; *and*
- Include a written “reasonable cause” explanation of why the organization did not provide the incomplete or missing information in the first place.

The instructions on the IRS website include this chilling warning: “Be sure to follow the instructions to provide the missing or incomplete information. We may not have identified everything. It’s your responsibility to file a complete and accurate return.” (There is a separate page on the website titled *Filing Tips for Exempt Organization Returns – Tax Years After 2007* that has useful information.)

According to the IRS, the “most common errors” are omitting required schedules.

The Reasonable Cause Requirement

What is “reasonable cause” within the meaning of this new procedure? The federal tax code includes that phrase in many places. Generally, it means that a decision is made on the specific facts and circumstances of each particular case. That is the method used for this particular “reasonable cause” determination as well.

The “reasonable cause” explanation must “set forth all of the facts supporting a determination that the noncompliance was due to reasonable cause” which includes submitting any “available supporting documentation to address how the organization exercised ordinary business care and prudence.”

This statement must be made as an attachment to the Form 990, as submitted late or resubmitted with the corrections.

The second prong – that is, the explanation – should address:

- If the organization did not request an extension, why not; that is, “what prevented the organization from requesting an extension of time”;
- How the organization was not neglectful or careless but exercised ordinary business care and prudence; and
- What steps the organization has taken to prevent the same problem from happening again.

The IRS “may charge you a penalty if you fail to provide both the missing or incomplete information and a reasonable cause explanation.” The agency adds: “The date we receive a complete and accurate return is the date we consider your return filed.”

Conclusion

The response by an organization to one of these letters must be made “by the appropriate person under penalties of perjury.” Needless to say, the filing of Form 990 – now more than ever – is a matter where care must be taken to cross every “t” and dot every “i.”