

Has the New Form 1023-EZ Made it Easier?

02.26.15 | Linda J. Rosenthal, JD



Easier?

To receive a speedy “determination letter” back from the IRS? Probably, yes.

To be sure that your small organization’s approval for 501(c)(3) tax-exempt status is on firm ground, and will be recognized in the foreseeable future by grantmakers, supporters, and the IRS, itself? The jury’s still out on that one.

A Recap

It’s been no secret that the Exempt Organizations Division of the Internal Revenue Service has had a problem in the past few years getting backlogged tax-exemption applications through a severely clogged pipeline. Many more applications combined with significant budget cutbacks combined to set the stage for an inevitable crisis that was only getting worse over time.

Most start-up nonprofits were waiting 18-24 months for word they had officially qualified for the most coveted federal tax-exemption status that would open the doors to major funding and tax-deductible contributions.

It’s also been the consensus that the 26-page Form 1023 is a complex behemoth that is especially burdensome and bewildering for smaller, simpler organizations.

Immediate action was needed. It was clear that Congress was not planning any time soon to add gobs of money to hire more examiners. For some time, the EO Division hasn’t been a particular favorite of the GOP-led House of Representatives; the recent election will certainly not ease the huge target on the tax-agency’s back.

So the Treasury Department proposed a fairly radical solution: a much-streamlined exemption-application form for organizations expecting annual gross receipts under \$50,000 and assets under

\$250,000.

Effective July 1, 2014, the new Form 1023-EZ came into being. It is just 3 pages long, and requires eligible applicants to supply and certify answers to fewer than 10 basic identification questions. Government officials estimated that perhaps 70% of all new organizations seeking tax exemption may qualify to use the streamlined application process.

Unofficially, they were also hoping that the timeframe from receipt to approval would be drastically cut and might be as short as 2-3 weeks. “This is a common-sense approach that will help reduce lengthy processing delays for small tax-exempt groups and ultimately larger organizations as well,” said IRS Commissioner John Koskinen.

Seven Months Later

Now that we’re over seven months into this experiment, the anecdotal (and otherwise unverified) evidence from several online sources is that Form 1023-EZ applications are now generally being processed in the projected timeframe of 2-3 weeks. See, for example, here, here, and here.

Two of these sources cite purported information from IRS officials confirming this quick turnaround and an apparent unclogging of the overall backlog of both the long- and short-form pending 1023s.

Our own office experience to date also confirms the apparent trend toward much quicker turnaround times, including in as little as a few weeks.

But see, for example, here. This practitioner has seen longer approval timeframes for the new Form 1023-EZ, including up to 3 months in some cases. These longer situations, he notes, were also accompanied by follow-up questions from the IRS.

At a November 2014 exempt-organizations tax conference, Treasury official Ruth Madrigal reportedly told conferees that the approval time has improved, but still noted a 3-month turnaround might be expected. She also pointed out, however, that part of the compliance review for the new 1023-EZ applications is that a “sample of 1023-EZ applications would be subject to additional questions in a pre-determination process.” This could account for reports from the trenches that certain short-form applications faced greater scrutiny and longer approval timeframes.

What About The Second Issue?

Earlier, we wrote two additional blog posts here and here about the criticisms by practitioners, organizations, and other experts and commentators of the proposed Form 1023-EZ.

There were many concerns about the skimpiness of the Form 1023-EZ, and warnings – including on the IRS instructions – that, if the limited information requested was inaccurate or would change in any material way, that funders and donors may not be entitled to rely on the validity of the issued “determination letter.” Also, the new short-form application process drastically curtails the up-front review of applicants, but organizations can expect some in-depth, back-end review sometime reasonably soon after initial approval.

Whether the new short-form 1023-EZ turns out to be a short-term, band-aid fix masking a more severe problem down the road – for organizations as well as the government – remains to be seen.

What are Your Experiences?

What are your experiences with the new Form 1023-EZ? We'd love to hear.