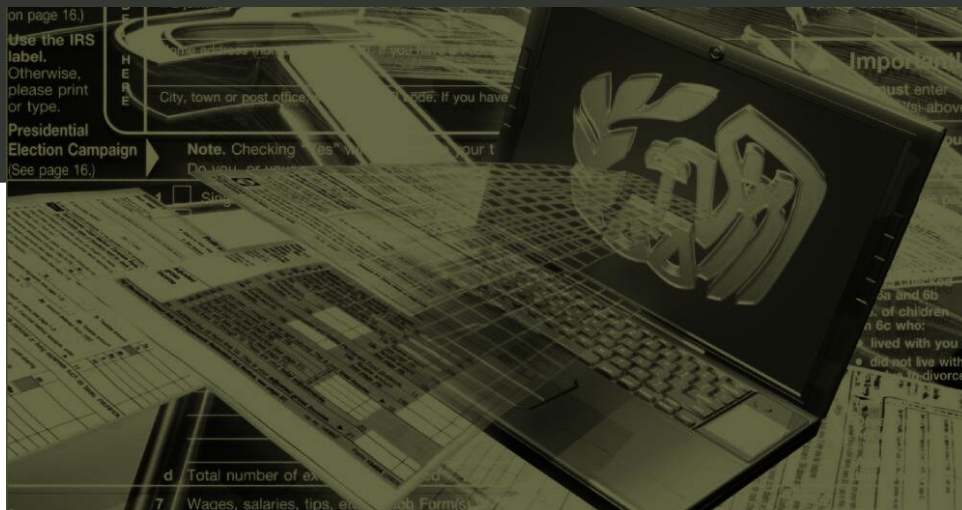


## Mandatory e-Filing for 990s on the Way

06.24.19 | Linda J. Rosenthal, JD



Pending legislation in Congress will, if passed, affect tax-exempt organizations in two ways: (1) it will make e-filing the mandatory method for all exempt organizations for filing any required information returns, including the Form 990 Series, and (2) it will require the Internal Revenue Service to send a notice to organizations which have missed filing two consecutive information returns before it's too late to avert the statutorily mandated revocation of tax exemption after three delinquent returns.

Representative John Lewis (D-GA) introduced the Taxpayer First of Act of 2019 (H.R. 1957) in the House of Representatives in late March 2019. Co-sponsored by Representative Mike Kelly (R-PA) It has sailed quickly through the House on a voice vote and is now in the Senate. While relatively easy passage is expected, it is waiting in line with lots of other bills.

*[Update: 7/1/19] The measure passed the Senate and was signed into law at the White House today.*

The House bill is much broader than the two specific provisions affecting tax-exempt organizations. It "aims to modernize and refine processes to make the IRS more efficient." H.R. 1957 includes proposed changes to the tax agency's "organizational structure, customer service, enforcement procedures, management of information technology, and use of electronic systems." Among other reforms, it will include alternative methods to resolve tax disputes outside court.

### *e-Filing Will Help Agencies and Organizations*

Under existing law, most exempt organizations must file an annual information or notice of some kind in the Form 990 series. Currently, only the largest and smallest organizations are required to file electronically. Generally, organizations with assets over \$10 million and meeting other criteria must file the annual 990 information return online. Since 2007, the smallest groups, with gross receipts



less than \$50,000 a year, have been filing a short-form 990-N, also commonly referred to as an “e-postcard.” The public can find and view electronic images of information returns or notices in the Form 990 series on the internet, or buy hard or soft copies from the Internal Revenue Service.

Under previously expressed Congressional policy, the goal is to reach 100% electronic filing. The proposed law extends the e-filing duty to all tax-exempt organizations that are otherwise required to file information returns in the Form 990 series. H.R. 1957 also requires the Internal Revenue Service to “make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104) ... in a machine-readable format as soon as practicable.”

According to the House Ways and Means Committee Report, this change “will improve efficiency, reduce costs and generally improve oversight of tax-exempt organizations.” In particular, it will “increase the transparency of, and enhance public access to information about, tax-exempt organizations, particularly charitable organizations.”

Currently, the IRS posts information in the “read-only format” whether the information return was filed electronically or in hard copy. The filing change will save the agency time and money in converting all returns to the same format; that is, the online-accessible one. It will also “enhance its usability by stakeholders attempting to exercise oversight of the tax-exempt organizations.” These stakeholders include members of the public as well as state and local charity regulators.

This extension of the e-filing requirement is a policy widely supported across the philanthropy sector as a way to improve reporting, research, transparency, and accountability for tax-exempt organizations.”

Generally, the effective date is set to be for taxable years following the date of enactment. There will also be transition relief, particularly for smaller organizations for whom the new requirement may be an “undue hardship.”

## *Advance Warning of Filing Delinquency*

Under existing law, an organization that received a determination letter that it is exempt from tax may generally rely on the continued validity of that status as long as “there are no substantial changes in the organization’s character, purposes, or methods of operation.”

Under certain circumstances, the IRS may revoke or modify that determination letter. In particular, there is a statutorily mandated automatic revocation for an organization that fails to file a required annual information return or notice for three consecutive years. Internal Revenue Code section 6033(j)(1). An organization caught up in this fairly draconian penalty situation may reapply for tax exemption which may, in the agency’s discretion, be reinstated if the group makes a sufficient showing of “reasonable cause” for missing these deadlines.

Under current law, there is no requirement for the IRS to notify an exempt organization about delinquency status. The proposed law is a common-sense change that should drastically reduce the number of these mandatory revocations. The IRS will be required to notify a nonprofit organization after the second year it fails to file a required annual information return so the group has sufficient time to avert a mandatory revocation a year later.



According to the Conference Report, “many of the affected organizations are small and poorly funded, yet face increasing demand for their services from the communities they serve. As a result, revocation can pose a significant financial burden on these organizations and their communities.” Not only will the IRS have a new notification duty, but it will also be directed to “provide information to help the organization prevent the loss of its tax-exempt status.”

If enacted, the new law will apply to failures to file if the notice or return for the second delinquent year is required to be filed after December 31, 2019.

## *Conclusion*

According to Independent Sector, a key proponent of these changes, the philanthropy sector can help address “...shortcomings and other needed updates to the new law in the same way it stepped up to advise Treasury and the IRS after it made comprehensive changes to the Form 990 series in 2008.

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