

Revocation Blues for the Nonprofit Sector

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Let's just say that the nonprofit community has another ... "situation" ... on its hands.

Long story short: The Internal Revenue Service is required by statute to automatically revoke the tax-exempt status of any nonprofit that is subject to a duty to file an annual information return (Form 990 series), but fails to comply for three years in a row.

The tax agency sent revocation notices to over 31,500 nonprofits that (for the third year) hadn't filed a required Form 990 by May 15, 2020 – even though the agency had earlier granted a pandemic-related, across-the-board, filing extension until July 15, 2020. And there's something else, the IRS "is still processing millions of pieces of unopened mail that accumulated during the pandemic, some of which could contain the missing forms."

Congress has demanded answers – right away – as well as an immediate fix.

Automatic Revocations

Now on to the longer story, beginning with a primer on these "automatic revocations."

More than ten years ago, Congress passed a law that mandates the automatic revocation of the tax exemption of any nonprofit that is required to file an information return (Form 990 series) but is delinquent for three consecutive years.

Under section 6033(j) of the Internal Revenue Code, the "... automatic revocation is effective on the original filing due date of the third annual return or notice." See [Revoked? Reinstated? Learn More](#) on the IRS website. There is a published [list](#) of organizations whose tax-exempt status has been revoked under section 6033(j). "An automatically revoked organization is not eligible to receive tax-deductible contributions and will be removed from the cumulative list of tax-exempt organizations, [Publication 78](#). The IRS will also send a letter informing the organizations of the revocation."

When that's done, it's done. There's no appeal, and this law "prohibits the IRS from undoing a proper automatic revocation" The only recourse for an automatically revoked organization is to go through one of four routes for reinstatement, even if it is one of a small subset of organizations that was not required to file an application for tax exemption in the first place. Bottom line: This is a huge hassle.

In 2019, Congress enacted bipartisan legislation to modernize IRS recordkeeping and operations. A small part of that new law included two points directly related to the annual information return filing requirements of nonprofits. See *Mandatory E-Filing For 990s On The Way* (June 24, 2019).

First, Congress broadened the requirement to e-file any required Form 990s (beyond only the largest and smallest of nonprofits) to *every* organization. Second, there is a new duty-to-warn imposed on the IRS. The purpose of enacting section 6033(j) in 2006 was *not* to impose a draconian penalty on unsuspecting nonprofits but rather to clear up the IRS records; that is, to weed out those groups that, truly, "have wafted off into nonexistence." So the legislators in the 2019 session imposed on the IRS a new obligation to notify delinquent organizations in the second year of noncompliance so they can get up to date before the automatic-revocation trigger occurs at the end of year three.

But these new requirements don't take effect until the 2021 due dates for the 2020 information returns. So the mandated warning letters hadn't gone out, and some delinquent-filer organizations may have tried to submit the returns, but in hard-copy form.

Congress Informed About Revocations

In the spring of 2020 when COVID-19 struck, there was chaos for everyone including the nonprofit sector. Many organizations suspended or limited on-site operations and were otherwise confronted with difficult decisions. The IRS also halted most operations until July 1, 2020, making an existing shortfall of personnel and funds much worse, and leaving an already notorious mail backlog to accumulate into a tsunami of unopened documents extending months beyond the July 1st reopening date.

In response to the pandemic, in April 2020, the Treasury Department issued a broad-ranging extension of time to file lots of different documents with due dates ranging from April 1st until July 14th, to July 15, 2020. This filing extension included information returns in the Form 990 series. Many nonprofits operate on a calendar-year fiscal period so the due date for the annual information return is ordinarily May 15.

Here's where this situation went south. The section 6033(j) automatic revocation notices were churned out of the IRS computer system beginning who-knows-when and continuing until early October. All of these revocations listed May 15, 2020 as the effective date. Some 31,500 nonprofit-organization revocations were processed over the summer including about 28,000 public charities. Meanwhile, that mountain of unprocessed mail likely included some hard-copy Form 990s (still allowed) that were filed during the extension period in time to shut off that revocation trigger.

David L. Thompson, Vice President of Public Policy at the National Council of Nonprofits explains that "[n]onprofits from around the country reached out to our network complaining that their tax-exempt

status had been revoked unjustly. Looking into the facts, we found a troubling spike in revocations.” The data showed that the figure was about 20% higher than for the corresponding period from 2019.

His organization then alerted members of Congress in about early October. It’s unclear whether or when anyone at the highest levels of the IRS or Treasury had become aware of this problem before Congress blew the whistle.

Wrongful Revocations: Fix Demanded

On October 19th or 20th, the chair of the House Ways and Means oversight subcommittee, Rep. Bill Pascrell (D-NJ), sent a letter to Treasury Secretary Steven Mnuchin. It was co-signed by all of the Democratic members of the subcommittee who helpfully pointed out exactly how many nonprofits in their (blue) states had their exemptions wrongfully revoked. These lawmakers asked for an explanation of (and an immediate fix to) this serious problem that “leaves many 501(c)(3) organizations without the ability to solicit tax-deductible donations during this critical time. Specifically, they demanded a response by October 27, 2020, and the “situation to be remedied by the end of the month.”

Suffice it to say, that subcommittee letter to the Secretary of the Treasury did not pull any punches, including characterizing the problem not as an “error” or a “computer glitch” but as an “apparent error.” Nor did Chair Bill Pascrell, tweeting on October 21, 2020, while waiting for a response from the IRS: “My @WaysMeansCmte colleagues and I are trying to figure out why the hell the IRS suddenly cut off the tax-exempt status of 28,000 charities during a pandemic. So far, crickets.”

Neither were any words minced in the press release from Rep. Pascrell’s office issued the same day as the Mnuchin letter: “Chairman Pascrell and Ways and Means Oversight Subcommittee members highlight cruel threat to nonprofits by Trump and Mnuchin, seek immediate reversals.”

IRS Response

The Internal Revenue Service responded on October 26, 2020, acknowledging the problem by “blaming a programming glitch”; that is, “their inability to change the due date within their systems.” The agency confirmed that filing extensions had indeed been issued, but “[d]ue to systemic limitations,” IRS workers “were unable to update this deadline in the program that automatically issues notices of revocation. This caused some revocation notices to be issued prematurely.” But, adds the IRS, the agency “nevertheless ... prevented eligible organizations that attempted to file electronically by July 15 from being listed as automatically revoked on IRS.gov, where they are still shown as tax exempt. At the same time, [... the agency is ...] processing paper filings which allow the reversal of auto-revocation for those filers. The IRS is reviewing the cases and corresponding with organizations that received the premature notice.”

The Internal Revenue Service has made available a “dedicated fax number (855) 247-6123 to receive correspondence from organizations in this situation that wish to present documentation of their applicable filing.”

Conclusion

Any number of commentators have taken notice of the distinctly frosty tone and message of the Oversight subcommittee's letter to Secretary Mnuchin. See, for example, comments by Ruth McCambridge, editor-in-chief of *The Nonprofit Quarterly* in *It's Almost November ... Has Your Tax Exemption Been Revoked?* (October 22, 2020): "The fact that revocations are up so significantly is, indeed, cause for the kind of alarm expressed by the House Committee...." She urges that the "... process be reviewed quickly, possibly suspending all the revocations in question until that is done."

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