

Articles

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IRS Announces First Round of Revocations for Nonprofits That Failed to File Form 990

Related Topic Area(s): Tax and Employee Benefits

On June 10, 2011, the Internal Revenue Service ("IRS") released the complete list of approximately 275,000 nonprofit organizations that have lost their tax-exempt status for failure to file Form 990, Form 990-N, Form 990-EZ, or Form 990-PF for three consecutive years. The list of revoked entities is available on the [IRS website](#). The list includes the organization's name, Employer Identification Number, last known address, and effective date of revocation of exempt status; it will be updated monthly. In its announcement, the IRS indicated that it believes most of these organizations are likely defunct, however, it has issued guidance regarding the steps such organizations must take to apply for reinstatement of their tax-exempt status.

This is the first group of revocations resulting from the passage and implementation of the Federal Pension Protection Act (the "Act"), passed by Congress in 2006. The Act mandated annual filing requirements for virtually all tax-exempt organizations, including tax-exempt organizations with gross receipts of \$25,000 or less that were not previously required to file an annual return with the IRS. The Act also provided for the automatic revocation of any tax-exempt organization that does not file the required returns or notices for three consecutive years, and requires the IRS to publish and maintain a list of all such organizations that are so revoked.

In conjunction with its recent publication of the names of the first wave of organizations with revoked tax-exempt status, the IRS also issued guidance regarding the impact that the revocations have on charitable contributions to revoked organizations, and the manner in which organizations may seek reinstatement of tax-exempt status, including retroactive reinstatement. The IRS also announced transition relief for certain small tax-exempt organizations.

In connection with the announcement and publication of revocations of exempt status, the IRS issued the following guidance:

Revenue Procedure 2011-33 (Contributions to Revoked Organizations) states that where an organization listed in Publication 78 ceases to qualify as an organization to which contributions are deductible under Section 170 of the Internal Revenue Code (the "Code"), as a result of loss of exempt status due to failure to file annual reports for three consecutive years, grants and contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable if made on or before the date of publication of the list of revoked organizations. The IRS may disallow a deduction for any contribution made after revocation of exempt status but prior to the published notice of the revocation where the grantor had knowledge of the revocation prior to publication, was aware that revocation was imminent, or was, in part, responsible for the revocation. Publication on the list of organizations whose tax-exempt status has been revoked is intended to serve as a notice to donors and others that they may no longer rely on a prior listing in Publication 78.

Revenue Procedure 2011-36 (Reduced Fee for Reinstatement) reduces to \$100 the user fee charged for the reinstatement of exempt status of small exempt organizations that normally have annual gross receipts of not more than \$50,000 whose exemption was automatically revoked pursuant to Code Section 6033(j).

Notice 2011-43 (Transitional Relief) provides transitional relief for small organizations that had their exempt status revoked because they failed to file a required annual electronic notice for the last three consecutive years. An organization with annual gross receipts of less than \$50,000 that qualifies for transitional relief pursuant to the criteria set forth in this Notice, and applies for reinstatement of exempt status by December 31, 2012, will be treated as having established reasonable cause for failure to file annual returns and exempt status will be reinstated retroactive to the date it was revoked.

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Notice 2011-44 (Process for Reinstatement) sets forth the steps that an organization must take to apply for reinstatement of exempt status and request retroactive reinstatement after an organization's tax-exempt status was automatically revoked under Code Section 6033(j). An organization must use the same form filed by other applications for recognition of tax exemption to seek reinstatement, and must pay the applicable user fee. If an organization is seeking retroactive reinstatement, it must submit information demonstrating reasonable cause for failure to file an annual report, among other supporting materials.

The Treasury Department and the IRS intend to issue regulations under Section 6033(j) of the Internal Revenue Code, implementing rules regarding the application for reinstatement of tax-exempt status and the request for retroactive reinstatement. Comments are currently being solicited on the materials and issues addressed in Notice 2011-44. Comments are due August 19, 2011.