

IRS Trims Tax Exempt Rolls by 275,000

As reported in previous G&G Law Alerts (see Alerts from [April](#) and [August](#) 2010), tax exempt organizations that fail to file a required IRS Form 990 annual report (including the Form 990-N applicable to small organizations) for three consecutive years face automatic revocation of their exempt status. This statutory requirement went into effect with the 2007 annual report filing requirement, and is now affecting organizations that failed to file the applicable Form 990 for the 2007, 2008, and 2009 tax years. The IRS recently released a [list](#) of 275,000 organizations that have been trimmed from the tax exempt rolls, with revocation retroactive to the 2010 due date of the third consecutive unfiled 990.

Impact of Revocation. Although most of the 275,000 organizations are likely no longer in business, the impact of loss of tax exempt status for those that are still active is significant. Among other potential ramifications are the following:

- Organizations are now liable for corporate income tax.
- Contributions to these organizations are no longer tax-deductible under IRC §170. The list published by the IRS serves as notice to donors, potential donors, and others of this change.
- Each organization is removed from Publication 78, Cumulative List of Organizations eligible for IRC §170 contributions.
- Any state and local tax exemption dependent on federal tax exempt status may also be lost.
- Organizations may face potential liability for back taxes and penalties from the date of revocation.

Potential Erroneous Revocation. All 501(c)(3) organizations should double check their status against the [list](#) posted by the IRS. If an organization feels it has been incorrectly listed, it may contact the IRS Customer Account Services (877-829-5500). The organization will need to provide evidence that the revocation was erroneous, such as a prior letter from the IRS stating the organization had no annual filing requirement (for instance, because it is recognized as a church or integrated auxiliary of a church) or documentation verifying that it filed an annual information return for one of the prior three years.

Reinstatement of Exempt Status. An organization with revoked status that wishes to restore its status must apply for reinstatement by filing the Form 1023 application for recognition of tax exemption and paying the requisite filing fees (\$400 or \$850). The organization must also write "Automatically Revoked" at the top of the application so it can be handled by a specialist for this matter. Recognition of tax exempt status will be effective the date of filing of the application unless the organization qualifies for a retroactive effective date by showing reasonable cause for failure to file or meets the small organization criteria for transitional relief explained below.

Transitional Relief Available. As explained in its recently issued [Notice 2011-43](#), the IRS has provided a mechanism for relief for certain small organizations whose exemptions have been revoked. An organization with "normally" not more than \$50,000 revenue in its most recent fiscal year may request retroactive reinstatement to the date of revocation if the organization was not required to file a Form 990 prior to 2007; was eligible to file a Form 990-N for tax years 2007, 2008, and 2009; did not "normally" have more than \$25,000 in revenue during those three years; and submits a properly completed and executed application for reinstatement with a specifically worded attestation by December 31, 2012. (An organization does not "normally" have revenue exceeding a specified threshold if its annual gross receipts for that taxable year and the two immediately preceding taxable years do not exceed the threshold). An organization qualifying for transitional relief is also eligible for a reduced filing fee of \$100 for its reinstatement application.

Given that the IRS has now announced the first major purge of its tax exempt roll, it is now up to those revoked organizations that are still in existence to take action as quickly as possible. To avoid the continuing consequences that loss of exemption can bring, legal counsel should be sought and an application for reinstatement promptly submitted.

© 2011 Gammon & Grange, P.C. For more information, contact Gammon & Grange, P.C. (GGAAlert@gg-law.com; 703-761-5000), a law firm serving nonprofit organizations and businesses throughout the United States and abroad. Readers may freely copy and distribute this Alert **in full without modification**.

Disclaimer: This memo is provided for general information purposes only and is not a substitute for legal advice. The transmission of this memo does not create an attorney/client relationship. No recipients of this memo should act or refrain from acting on the basis of this memo without seeking professional legal counsel. Gammon & Grange, P.C. expressly disclaims all liability relating to actions taken or not taken based on the content of this memo.