

REVOCATION AND REINSTATEMENT OF TAX-EXEMPT STATUS

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On June 9, 2011, the Internal Revenue Service released its long-awaited list of approximately 275,000 exempt organizations whose status was automatically revoked for failure to file annual information returns. The current list represents only the first wave of automatic revocations required by Internal Revenue Code section 6033(j), added to the Code in 2006, which applies to any organization failing to file its required information returns (Form 990, 990-EZ, 990-PF, or the 990-N e-Postcard) for three consecutive years. This first wave includes those organizations the IRS found not to have filed returns for 2007, 2008, and 2009; organizations will be added to the list each month as future filing deadlines pass. Revocation is effective as of the date the third unfiled return was due, regardless of any available extensions.

Errors in the list. There have been reports of organizations appearing on the list in error. Because appearing on the list, even in error, may cause difficulties with future IRS filings and could also affect potential donors' willingness to make gifts to charitable organizations, we advise all exempt organization managers to confirm that their organization is not on the list. The list, organized by state, is available on the IRS website as a set of downloadable Excel spreadsheets: Go to www.irs.gov/charities and follow the link for Automatic Revocation of Exemption.

Reinstatement procedures. To have its exempt status reinstated, an organization whose status was automatically revoked must apply to the IRS with a new, complete application for recognition of exemption (Form 1023 for section 501(c)(3) organizations and Form 1024 for most other tax-exempt organizations). A new application is required, even if the organization, such as a subordinate in a group ruling, was not originally required to apply for exempt status. These applications require detailed information on the organization's purposes and activities, along with all relevant supporting documents. The organization must write "Automatically Revoked" at the top of the application form and on the envelope and pay the applicable user fee (\$850 or \$400, depending on the organization's gross receipts).

Reasonable cause. The IRS will reinstate an organization's exempt status retroactive to the date of revocation if the organization had reasonable cause for failing to file its annual returns. IRS guidance details how an organization can make this "reasonable cause" showing. Retroactive reinstatement will eliminate any gap period where the organizations is non-exempt – this will be important for organizations receiving revenue after their revocation

date, because such revenue could otherwise be subject to income tax. To receive retroactive reinstatement, an organization must file its application within fifteen months of the organization's posting on the list or the date the IRS sends a revocation letter to the organization, whichever is later.

Special rules for small organizations. The IRS will not require a showing of reasonable cause from certain "small organizations" – those whose annual gross receipts normally did not exceed \$50,000 in their most recently completed tax year and did not exceed \$25,000 in any earlier tax year. These small organizations will qualify for retroactive reinstatement provided they file their reinstatement application on or before December 31, 2012, regardless of when they are posted to the list. The IRS has also reduced the filing fee to \$100 for small organizations filing under this special procedure. Small organizations are thought to comprise a significant portion of the revocation list, so this favorable treatment is welcome assistance to many organizations.

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If your organization is on the list and you would like to discuss the applicable reinstatement procedure, please contact us. We are also available to counsel donors and grantors who have made, or would like to make, gifts to organizations on the list.

<p>Any tax advice contained in this client alert was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. A taxpayer may rely on our advice to avoid penalties only if the advice is reflected in a more formal tax opinion that conforms to IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.</p>
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