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## Form 8940 Requests and Other Recent Dealings with the IRS

For several months now, the new IRS Form 8940 has been available for use by Section 501(c)(3) charities (and nonexempt charitable trusts) in filing a variety of requests with the IRS. The form can be used to request (a) advance approval of certain set-asides described in Section 4942(g)(2) of the Internal Revenue Code, (b) advance approval of voter registration activities described in Section 4945(f), (c) advance approval of scholarship procedures described in Section 4945(g), (d) exemption from Form 990 filing requirements, (e) advance approval that a potential grant or contribution constitutes an “unusual grant,” (f) a change in Type (or initial determination of Type) of a Section 509(a)(3) supporting organization, (g) reclassification of foundation status, (h) an advance ruling for termination of private foundation status, and (i) termination of private foundation status at the end of a 60-month termination period.

Some of the request types have been issues for Section 501(c)(3) charities for years, such as needing to request advance approval for scholarships or requesting an advance ruling for termination of private foundation status. Other types of requests reflect more recent legal developments, such as the request for change in Type of or initial determination of Type of supporting organization status, an important issue post [Pension Protection Act](#). Whether for requests that we have filed repeatedly in the past, or for these newer and less familiar request types, we appreciate the effort of the IRS to provide a more uniform and clear procedure.

One request that we needed to take a closer look at was the option of requesting exemption from Form 990 filing requirements (see [2010 Instructions for Form 990](#), p. 6). While certainly an issue in the past, the fact that tax-exempt entities with Form 990 filing requirements will lose exempt status for failure to file three annual returns in a row has put a premium on clarifying with the IRS when a charity does not have a filing requirement. Unfortunately, due to a variety of data glitches, it does not appear to be uncommon for charities to incorrectly have their exemption revoked because the IRS thought they had a Form 990 filing obligation that was not met. What we confirmed for one such client, a church, is that once the entity has received such a revocation letter, the Form 8940 is not the appropriate form to use to correct the problem. Rather, if the organization has documentation showing it met the filing requirement, or an IRS letter showing it did not have a filing requirement, it can submit that information to the IRS with a cover letter (see <http://www.irs.gov/charities/article/0,,id=221600,00.html>, Questions 10 and 11). For organizations without such documentation, it appears that they need to submit a full new exemption application (<http://www.irs.gov/charities/article/0,,id=221600,00.html>, Questions 5 and 6).

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### AUTHOR



**Ingrid Mittermaier**  
Principal

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

### EDITORS



**Stephanie L. Petit**  
Principal



**Eric K. Gorovitz**  
Principal

However, the IRS website also lists [special options for churches](#).