

IRS Reporting Compliance for 501(c)(3) Organizations

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Compliance under 501(c)(3) Status

- Must be organized and operated exclusively for an exempt purpose
- Cannot be involved in political activities
- Cannot distribute earnings to private shareholders or individuals
- Limited in its participation in lobbying (legislative) activities

Compliance under 501(c)(3) Status

- Not required to pay federal income tax
- Not required to submit federal income tax return
- May have to submit federal tax return for unrelated business income tax (UBIT)
- May have to submit annual information return or notice to IRS
- Must always substantially operate in furtherance of organization's exempt purpose



Purpose of the Reporting Requirement

- If tax exempt, why are there required IRS filings?
 - To provide the IRS and the public with a transparent picture of the organization
 - To promote compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance
 - To evidence good governance which usually indicates compliance with tax exempt purpose



Categories of Required IRS Filings

- Annual Returns (990, 990 EZ, 990-PF)
- Annual Notice (990-N)
- Unrelated Business Income Tax Return (990-T)
- Not IRS related, but be sure to meet any tax or information requirements for any state or local jurisdictions



Filing Thresholds

- If gross receipts up to \$50,000 then file a 990-N
- If gross receipts less than \$200,000 AND total assets less than \$500,000 then file a 990-EZ or 990
- If gross receipts equal or exceed \$200,000 OR total assets equal or exceed \$500,000 then file a 990
- If organization is a private foundation, then must file a 990-PF regardless of gross receipts or total assets



Reporting Deadlines

- Typically on the 15th day of the 5th month following the end of the organization's tax year
 - E.g. If end of tax year is December 31, then reporting deadline is May 15
- Can request up to two extensions (Form 8868)
 - First extension moves deadline to 15th day of 3rd month after initial deadline date
 - Second extension moves deadline to 15th day of 6th month after initial deadline date
 - Must show reasonable cause



What is reported on the 990?

- 12 Parts
- Information about the organization's:
 - Exempt and non-exempt activities
 - Finances
 - Governance
 - Compliance with federal requirements
 - Compensation to certain persons
 - Other information depending on type of organization

Overview of the Core Form 990

- Part I – Summary information on Activities & Governance, Revenue, Expenses, Net Assets
- Part II – Signature
- Part III – Information on program service activities
- Part IV – Yes/No questions designed to help you determine which additional schedules to complete
- Part V – Questions on IRS filings and tax compliance
- Part VI – Questions about the governance, management and disclosure



Overview of the Core Form 990

- Part VII – Questions about compensation to Officers, Employees and Independent Contractors
- Part VIII – Information about Revenue
- Part IX – Information about Expenses
- Part X – Information about the Balance Sheet
- Part XI – Information about Net Assets
- Part XII – Information about the organization’s financial reporting

Checklist of Required Schedules

- A. Public Charity Status
- B. Schedule of Contributors
- C. Political and Lobbying
- D. Supplemental Financial
- E. Private School
- F. Foreign Activity
- G. Professional Fundraising and Gaming
- H. Hospitals
- I. Grants
- J. Compensation Detail
- K. Bonds
- L. Transactions with Interested Persons
- M. Non-Cash Contributions
- N. Terminations and Major Dispositions
- O. Supplemental Information
- R. Related Organizations and Certain Joint Ventures



Consequences of not filing 990

- Automatic Revocation of Tax Exempt Status
- Possible monetary penalties to the organization and its managers
- Must reapply for tax exempt status if it is revoked
 - That means paying IRS application fee (\$400 or \$850)
- May have to file income tax returns and pay income tax
- Charitable contributions to the organization are not tax deductible once tax exempt status is revoked



Automatic Revocation

- Failure to file annual information returns for three consecutive years
- Organization's name is published on the IRS Auto-Revocation List (**once published your name never leaves the list**)
- Once revoked, organization will have to file federal income tax returns and pay income taxes
- Organization can no longer receive tax-deductible contributions



Reinstatement

- Revenue Procedure 2014-11
- Determined by eligibility and length of time since revocation
- Four ways:
 - Streamlined Retroactive Reinstatement
 - Retroactive Reinstatement within 15 months of being revoked
 - Retroactive Reinstatement after 15 months of being revoked
 - Post-mark Date Reinstatement

Streamlined Retroactive Reinstatement

- For first time offenders or 990-EZ/990-N users
- Cannot have been automatically revoked before this particular instance
- Easiest and most efficient method (but still time consuming and potentially costlier than if organization had complied with reporting requirements)
- Must complete another application for tax exemption (Form 1023, 1023-EZ, 1024)
- Must submit no later than 15 months after revocation
- Retroactive so no 6652(c) penalties



Retroactive Reinstatement < 15

- Must be filed within 15 months of revocation
- Have been automatically revoked before or was required to file 990 or 990-PF
- Must reapply for tax exempt status
- Must show reasonable cause for failure to file for at least one of the years
- Must file all required 990's for prior periods
- Retroactive so no 6652(c) penalties



Reasonable Cause

A cause is reasonable if it establishes that the organization exercised ordinary business care and prudence in determining and attempting to comply with its annual reporting requirement.



IRS Section 6652(c) Penalties

- For organizations under \$1 million in gross receipts:
 - \$20 a day for each day failure to file a return continues up to a maximum of \$10,000 for any one return
- For organizations over \$1 million in gross receipts:
 - \$100 a day for each day failure to file a return continues up to a maximum of \$50,000 for any one return
- For managers who fail to comply with a written demand by IRS to file returns by a certain date
 - \$10 a day for each day failure to comply continues up to a maximum of \$5,000 for any one return
- Also penalties for failure to allow public inspection



Retroactive Reinstatement > 15

- If filing after 15 months of revocation
- Have been automatically revoked before or was required to file 990 or 990-PF
- Must reapply for tax exempt status
- Must show reasonable cause for failure to file for **all three years** which were not filed
- Must file all required 990's for prior periods
- Retroactive so no 6652(c) penalties



Post-Mark Reinstatement

- **Try to get retroactive reinstatement first!**
- Available to anyone
- Not retroactive
- Must reapply for tax exempt status
- Subject to penalties
- Must file income tax returns for periods organization was not tax exempt
- Don't need to provide justification for not filing 990



501(c)(3) Tax Exemption Summary

- **Forming a nonprofit organization does not result in automatic tax exemption**
- Federal tax exemption
 - Must meet requirements set forth in the Internal Revenue Code
 - Act in accordance with tax exempt purpose
 - File annual return or notice
 - Automatic for all but 501(c)(3) charities but can be revoked
 - Must apply to get IRS determination letter as proof

Federal Tax Exemption Resources

■ Resources

- Publication 557
- Form 8868
- Revenue Procedure 2014-11
- IRS Form 990
- IRS Web site: www.irs.gov



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