



Automatic Revocation of Tax-Exempt Status: A New Streamlined Process for Retroactive Reinstatement

by Benjamin L. Rackliffe, Esq.

Volume 3, Issue 6: July 2014

Federal law mandates that most tax-exempt organizations file annual returns with the Internal Revenue Service (IRS). Following the enactment of the Pension Protection Act of 2006, and commencing in the 2007 tax year, tax-exempt organizations which fail to file requisite annual returns for three consecutive years are subject to automatic revocation of their tax-exempt status as of the due date of the third filing. Among other consequences, auto-revocation causes tax-exempt organizations to be ineligible to accept tax-deductible contributions and places once exempt organizations onto the IRS's publicly available Auto-Revocation List.

With the expiration of the 2009 tax year, the effects of the implementation of auto-revocation became visible. Repeat non-filing organizations scrambled to determine options for reinstatement and to ascertain whether retroactive reinstatement was viable. In response, the IRS implemented IRS Notice 2011-43, which established temporary procedures for auto-revoked organizations to seek reinstatement. To the unpleasant surprise of many, the process

“The exact mechanism for reinstatement depends upon the annual return that the organization was eligible to file for the three years leading up to its automatic revocation of exempt status.”

was an onerous one which required not only reapplication for exempt status, but formal requests for reinstatement, statements of the facts and circumstances setting forth the reasonable cause for the failure to file, submissions of all then due annual returns, written statements describing safeguards instituted to ensure organizations would not fail to file its annual returns going forward, and all evidence supporting requisite certifications. The process was bungling and inefficient.

In 2014, the IRS adopted [Revenue Procedure 2014-11](#), which attempts to streamline the process by which auto-revoked organizations may apply for retroactive reinstatement of their tax-exempt statuses. The exact mechanism for reinstatement depends upon the annual return that the organization was eligible to file for the three years leading up to its automatic revocation of exempt status. For organizations eligible to file the short form annual return,

known as the Form 990-EZ or the further abbreviated Form 990-N (ePostcard), and so long as such organizations have not previously lost their exempt statuses to auto-revocation, the process is quite simple. Under the new revenue procedure, organizations must simply re-file the appropriate application for tax-exempt status and [application fee](#) no later than 15 months after the later of the date on the organization's Revocation Letter or the date on which the organization appeared on the IRS' Revocation List, and it must identify on the application that it is being filed pursuant to Revenue Procedure 2014-11. As an added benefit to Form 990-EZ filers, so long as a reapplying organization's exempt status is reinstated, and its missed annual filings have been submitted to the IRS, the per diem IRS penalties for failure to file will also be waived. Form 990-N filers receive this penalty waiver simply upon retroactive reinstatement.

For organizations that have had their tax-exempt status revoked for failing to file for three years the full Form 990 or Form 990-PF, the process is similar. Such organizations must refile the appropriate application for tax-exempt status and fee within 15 months from the latter of the date of the organization's Revocation Letter or the date on which the organization appeared on the IRS' Revocation List and identify on the application that it is being filed pursuant to Revenue Procedure 2014-11. In addition to these basic requirements, however, the application must include a statement establishing reasonable cause for failure to file for at least one of the three consecutive years it failed to file, with an additional certifying statement that the organization has remediated this issue by filing past-due returns.

For organizations seeking reinstatement of their exempt status more than 15 months after the latter of the date on the organization's revocation letter or the date the organization appeared on the IRS' Revocation List, the process is the same, except that the reasonable cause statement the organization includes with its application must establish reasonable cause for its failure to file a required annual return for all three consecutive years in which it failed to file. Per diem penalties assessed by the IRS for failure to file will also be waived if the organization is retroactively reinstated under this procedure.

Revenue Procedure 2014-11 appears to be an effective solution to its burdensome predecessor Notice 2011-43.

Benjamin L. Rackliffe, Esq.
Associate
Pannone Lopes Devereaux & West LLC