

JUNE 13, 2011

Our Exempt Organizations Practice Group

Raymond J. Casella
rcasella@goodwin.com
(860) 251-5808

Alan E. Lieberman
alieberman@goodwin.com
(860) 251-5801

Coleman H. Casey
ccasey@goodwin.com
(860) 251-5112

www.shipmangoodwin.com

IRS Revokes Tax-Exempt Status of Hundreds of Thousands of Organizations and Provides Guidance on Reinstatement Process

On **June 8th** the Internal Revenue Service published a listing of approximately 275,000 organizations that automatically lost their tax-exempt status for failing to file required annual reports (Forms 990, 990-EZ, 990-PF or 990-N) for three consecutive years. That list can be found at <http://www.irs.gov/charities/article/0,,id=240099,00.html>. The IRS expects to update the list monthly as additional organizations lose their tax-exempt status.

Inclusion on the list serves as notice to donors that a listed organization may no longer receive tax-deductible charitable contributions. However, inclusion on the list will not impact a donor who previously made a contribution because donations made before the publication of an organization's name on the list remain tax-deductible. The organization may, however, become subject to federal, state and local taxes if it does not apply for, and receive, retroactive reinstatement of its tax-exempt status.

In addition to publishing the list of revoked organizations, the IRS (i) issued general guidance on how an organizations can

apply for retroactive reinstatement of its tax-exempt status and (ii) created a special relief program for certain small tax-exempt organizations (those with 2010 annual gross receipts of \$50,000 or less).

General Guidance.

The general guidance, which can be found in IRS Notice 2011-44 at <http://www.irs.gov/pub/irs-drop/n-11-44.pdf>, provides that an organization seeking reinstatement of its tax-exempt status must complete an application form (IRS Form 1023 or 1024 depending upon whether the organization is seeking exemption under 501(c)(3) or under another subsection of Code section 501(c)) and pay the applicable application fee (typically \$850) regardless of whether the organization was originally required to file such an application. Organizations seeking reinstatement should write "automatically revoked" on the top of the application form and on the envelope and submit it in accordance with the filing instructions accompanying the appropriate application form (Form 1023 or 1024).

In addition, if the organization is seeking to have its tax-exempt status reinstated

retroactively to the date of the automatic revocation, the organization must submit with its application (Form 1023 or 1024):

1. A written statement describing the organization's reasonable cause for failing to file the required return in each of the three consecutive years and over the entire three-year period. The description must identify the circumstances that led to each of the failures, the discovery of the failures, and the steps taken to avoid or mitigate the failures.
2. A written statement describing the safeguards the organization has put into place to ensure that it will not fail to file returns in the future.
3. Evidence to substantiate all material aspects of these written statements.
4. Properly completed and executed paper annual information returns for all taxable years during and after the consecutive three-year period of noncompliance.
5. An original declaration signed under penalties of perjury that the signor is authorized to sign the request and that all submitted information is true, correct and complete.

Special Relief Program for Small Exempt Organizations.

The IRS acknowledges that many small organizations that lost their tax-exempt status for failing to file a Form

990-N (electronic postcard) for 2007, 2008, and 2009 were never required to file a return prior to 2007. The IRS also recognizes that many small organizations are operated by volunteers and may face unique challenges in meeting federal tax obligations. To assist them with reinstatement, the IRS announced a special relief program for small organizations. The special relief program is described in IRS Notice 2011-43 and can be found on the IRS's website at <http://www.irs.gov/pub/irs-drop/n-11-43.pdf>.

The special relief program enables a small organization to obtain retroactive reinstatement of its tax-exempt status without submitting the burdensome written request for retroactive reinstatement articulating reasonable cause for failing to file the Forms 990-N that is required by larger organizations in accordance with the general guidance described above.

Instead, small organizations need only file the appropriate application form (Form 1023 or 1024). In addition, these organizations qualify for a reduced user fee of \$100 in lieu of the standard \$850 user fee. To obtain retroactive reinstatement of its tax-exempt status under the special relief program, an organization must satisfy each of the following criteria:

1. The organization was not required to file an annual information return (such as Form 990 or 990-EZ) for taxable years beginning before 2007.
2. The organization was eligible in 2007,



One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1133 Connecticut Avenue NW
Washington, DC 20036-4305
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com

2008, and 2009 to file a Form 990-N electronic postcard, rather than an annual information return such as Form 990 or Form 990-EZ (i.e. it had gross receipts of \$25,000 or less in 2007, 2008, and 2009).

3. On or before December 31, 2012, the organization submits to the IRS a properly completed and executed application for tax-exempt status (Form 1023 or 1024).
4. The organization pays the application fee - which has been reduced to \$100 for small organizations that qualify for this special relief program.
5. The organization writes "Notice 2011-43" on the top of its application (Form 1023 or 1024) and on the envelope in which it submits its application form to the IRS.
6. The organization attaches to its application the following statement:

[Name of Organization] was not required to file annual information

returns for taxable years beginning before 2007; was eligible in each of its taxable years beginning in 2007, 2008 and 2009 to file a Form 990-N e-Postcard; and had annual gross receipts of normally not more than \$25,000 in each of its taxable years beginning in 2007, 2008 and 2009.

An organization that loses its tax-exempt status and does not obtain retroactive reinstatement of that status may be required to file federal, state and local income tax returns. The organization also may lose the benefit of exemptions from other state and local taxes such as sales and use and property taxes.

Questions or Assistance?

The members of our Exempt Organizations Practice Group, as listed on page 1 of this alert, are available if you have any questions regarding these matters or their impact on you and your organization's activities.

This communication is being circulated to Shipman & Goodwin LLP clients and friends and does not constitute an attorney client relationship. The contents are intended for informational purposes only and are not intended and should not be construed as legal advice. This may be deemed advertising under certain state laws. © 2010 Shipman & Goodwin LLP.



SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW