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IRS CREATES STREAMLINED PROCEDURE FOR GRANTING TAX-EXEMPTION UNDER SECTION 501(C)(3) TO SMALL CHARITIES

July 02, 2014

On July 1, 2014, the IRS issued Form 1023-EZ (Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code), along with instructions and a detailed Revenue Procedure that sets forth the rules for the use of the form. Beginning immediately, certain smaller charities seeking tax exemption under Internal Revenue Code Section 501(c)(3) can use the three-page Form 1023-EZ to request tax exemption from the IRS rather than the lengthy and complicated Form 1023, which is a 26-page form that consists of a 12-page “core form” plus eight potentially-applicable schedules and a checklist. The IRS estimates that up to 70% of new charities will be able to use the Form 1023-EZ, and anticipates that the use of Form 1023-EZ for small charities and the existing Form 1023 for larger charities, will enable the IRS to more quickly process all exemption applications. In its news release accompanying the Form 1023-EZ, the IRS indicates that it currently has more than 60,000 exemption applications in its “backlog,” many of which have been pending for nine months or more.

In order to use the Form 1023-EZ, an organization must certify that it meets 26 criteria that are set forth in a “Form 1023-EZ Eligibility Worksheet” that accompanies the instructions to the Form 1023-EZ. While each organization will have to review all 26 criteria to make sure they are able to use the new form, the most relevant of these 26 factors for most organizations are:

- The organization must not project having annual gross receipts in excess of \$50,000 in any of the next three years (or the past three years, if the organization was in existence).
- And the organization does not have total assets in excess of \$250,000.

If the Form 1023-EZ may be used, the applicant organization must provide basic information about the organization, including:

- Contact information for the organization
- The names and mailing addresses of all directors, officers, and trustees
- Information about the structure of the organization, including date and state of incorporation as well as certification that the organization’s governing documents limit the organization’s purposes to those described in Internal Revenue Code Section 501(c)(3), require the organization to engage in activities that further its exempt purpose, and on dissolution of the organization, that any remaining assets will be used for 501(c)(3) purposes
- Classification of the organization as “charitable,” “educational,” “religious,” “scientific,” etc.

- Certain other information about the organization’s activities, including confirmation that the organization will not engage in political campaign activities
- Classification of the organization as a “public charity” or a “private foundation”

Unlike the Form 1023, there is no requirement that the organization submit a detailed narrative of its activities to support exemption.

The Form 1023-EZ can be filed electronically only through www.pay.gov, although the IRS does provide a sample of a paper Form 1023-EZ on its website. During the filing process, the Form 1023-EZ must be electronically signed under penalties of perjury by an individual authorized to sign for the organization. When filing Form 1023-EZ, organizations are required to pay a \$400 “user fee” by automatic debit from a bank account or by credit or debit card. Once tax exemption is granted to an organization filing Form 1023-EZ, the exemption will generally be retroactive to the date that the organization was formed if the Form 1023-EZ was filed within 27 months of the creation of the entity, or retroactive to the date that the Form 1023-EZ is filed, if it was filed more than 27 months after formation.

Organizations whose tax exemption has been automatically revoked for not filing Form 990, Form 990-PF, Form 990-EZ, or Form 990-N for three consecutive years can use the Form 1023-EZ to request retroactive reinstatement of exemption within 15 months of such revocation, if they were eligible to file Form 990-EZ or Form 990-N in each of the three years in which they failed to file. Because the Form 1023-EZ has lower filing thresholds than the Form 990-EZ (which can be used if the organization had gross receipts of less than \$200,000 and total assets of less than \$500,000), most organizations that will meet the filing thresholds for the Form 1023-EZ will be able to use it to request retroactive reinstatement of exemption. In addition, assuming all other Form 1023-EZ criteria are met, the Form 1023-EZ may be used by organizations whose exemption has been automatically revoked for not filing Form 990, Form 990-PF, Form 990-EZ, or Form 990-N for three consecutive years, if they do not require retroactive reinstatement, or if they are filing for reinstatement of exemption after the 15-month reinstatement period has elapsed. If granted, the exemption for such organizations will be retroactive to the date on which the Form 1023-EZ is filed with the IRS.

The IRS also reminds organizations that while the Form 1023-EZ creates a streamlined procedure for filing for federal tax exemption, it does not grant state or local tax exemption. As such, organizations that use the Form 1023-EZ must still follow applicable state and local procedures for filing for charitable registration, filing for exemption from state and local taxes, and registration for charitable solicitation.

Please contact a member of Dilworth Paxson’s Philanthropic & Nonprofit Group if you



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would like to discuss any aspect of Form 1023-EZ, or applying for tax exemption for your organization.