

Many Small Nonprofits Risk Losing Tax Exempt Status

“Beware the Ides of May,” is the IRS warning to many small nonprofits. That is the day an estimated up to half a million may be hearing an IRS funeral dirge. On May 15, 2010, these nonprofits will automatically have their exempt status revoked for failure to make annual filings with the IRS. Donors are affected as well. Tax deduction for charitable contributions will cease as soon as the nonprofit loses tax exempt status.

2007 Change in Filing Requirement.

Historically, “small nonprofits,” those with annual gross receipts of less than \$25,000 did not have to file annually with the IRS. However, beginning with tax year 2007, the law was changed to require small nonprofits to submit an annual filing. This filing requirement was made to assist the IRS in maintaining current information on small tax exempt nonprofits. It also assists donors in knowing that their contributions are going to nonprofits recognized as tax exempt entities.

Form 990-N Annual Filing (“e-Postcard”).

The IRS introduced a new form in 2008 specifically for small nonprofits to satisfy the filing requirement – **Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ**. All nonprofits with gross receipts “normally” under \$25,000 must file Form 990-N. The requirement for “normally” will be met if the nonprofit’s annual gross income averages \$25,000 or less in the prior three consecutive tax years, including the year for which it is being filed. The threshold will be raised to \$50,000 beginning for tax year 2010.

Simple Filing Procedures for Form 990-N.

Filing Form 990-N is a simple online procedure, thus referred to as an “e-Postcard.” All a nonprofit needs is internet access and an email address. Click <http://epostcard.form990.org/> or go to www.irs.gov and search for “990-N.” An account must be created for the nonprofit using the nonprofit’s employer identification number. The form is completed online. The form asks for the nonprofit’s legal name, address, website address (if any), EIN name, address of a principal officer, and the tax year. Submit the form. You will receive a prompt response from the IRS, either an acceptance or questions to be resolved.

Effect of Not Filing Form 990-N.

The IRS has taken a strict enforcement approach for compliance with the filing requirement. The IRS will send a postcard notice each year a filing is not received from the nonprofit. Continued failure to file, however, will incur stricter enforcement. If the nonprofit is required to file Form 990-N but fails to do so for three consecutive years, it will automatically lose its tax-exempt status on the filing due date of the third year. For example, a nonprofit with fiscal year ending December 31, that was required to file since 2008 for tax years 2007, 2008, and 2009 will lose tax exempt status on the filing due date, May 15, 2010.

Once tax exempt status is automatically revoked, the IRS will not send any more notices. Obtaining tax exempt status after it has been automatically revoked is not simple. The nonprofit will have to apply for a federal tax exemption all over again, including filing Form 1023 and payment of the filing fee.

Make sure that your nonprofit is complying with this simple, but vital annual filing requirement. If you have not been filing Form 990 or Form 990-EZ, take the few minutes now to file Form 990N, so the Ides of May is not sounding its death knell.

© 2010 Gammon & Grange, P.C. For more information, contact Gammon & Grange, P.C. (info@gg-law.com; 703-761-5000), a law firm serving nonprofit organizations and businesses throughout the United States and abroad. Readers may freely copy and distribute this Memo so long as it is distributed in full without modification.

Disclaimer: This memo is provided for general information purposes only and is not a substitute for legal advice. The transmission of this memo does not create an attorney/client relationship. No recipients of this memo should act or refrain from acting on the basis of this memo without seeking professional legal counsel. Gammon & Grange, P.C. expressly disclaims all liability relating to actions taken or not taken based on the content of this memo.