

Reminder: Automatically Revoked Small Nonprofits Have Until December 31, 2012 To Apply For Retroactive Reinstatement of Exempt Status.

In 2011, the IRS announced the automatic revocation of exempt status for approximately 275,000 nonprofit organizations. The revocations were the result of the Pension Protection Act of 2006 (“PPA”), which, among other new requirements for exempt organizations, (1) eliminated the small organization exemption from filing periodic IRS returns by instituting a minimal filing requirement (the Form 990-N e-Postcard) for small tax-exempt organizations,¹ and (2) mandated revocation of exempt status for any organization required to file a return (whether Form 990, 990-EZ, or 990-N) that fails to file for three consecutive years. After passage of the PPA, those exempt organizations that failed to file a Form 990 for fiscal years 2007 through 2009 had their tax-exempt status automatically revoked. However, the IRS announced transitional relief for small organizations wishing to reinstate their tax-exempt status, providing a process for retroactive reinstatement of exemption for those that apply for reinstatement by December 31, 2012.

According to IRS guidance, any organization whose status was automatically revoked may apply for reinstatement of tax-exempt status and, if the organizations can show “reasonable cause” for its failure to file IRS Form 990 for the three years in question, may be reinstated retroactive to the effective date of the revocation. Recognizing that many small tax-exempt organizations face unique challenges in complying with the PPA requirements, however, the IRS announced transitional relief to allow retroactive reinstatement of certain small tax-exempt organizations without having to convince the IRS of its “reasonable cause” for failure to file. Specifically, a tax-exempt organization with “normally” not more than \$50,000 in gross annual receipts in its most recent fiscal year that applies for reinstatement will automatically be treated as having established “reasonable cause” for failing to file in fiscal years 2007 through 2009 so long as the organization: (1) was not required to file IRS Form 990 before 2007, (2) was eligible to file a Form 990-N e-Postcard in the years it failed to file, and (3) submits an application for reinstatement of tax-exempt status (containing a specifically worded

¹ Other Form 990 filing exemptions, such as for churches and their integrated auxiliaries, were not eliminated.

declaration) to the IRS **before December 31, 2012**. The IRS will retroactively reinstate the exempt status of small organizations that meet all three of these criteria and otherwise continue to qualify for recognition of tax exemption. Small exempt organizations seeking transitional relief must write “Notice 2011-43” at the top of its exemption application form and on the envelope in which it mails the required forms.

All other revoked organizations seeking retroactive reinstatement of exemption must submit a retroactive reinstatement request along with the application. The request must include: (1) a written statement (and supporting evidence) detailing the facts and circumstances surrounding the organization’s failure to file for three consecutive years, (2) a written statement (and supporting evidence) explaining the procedures the organization has implemented to ensure future filing compliance, (3) completed and executed annual information filings for the years during and after the consecutive three-year period that the organization failed to file, and (4) a specific declaration required by the IRS. Based on the information provided, the IRS will determine whether “reasonable cause” for failure to file has been established.

Has your organization’s exempt status been automatically revoked? For assistance with filing your reinstatement application and retroactive request, contact [Steve King](#) or [Steve Kao](#) at (703) 761-5000.

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