

Transitional Relief for Small Organizations Seeking Retroactive Reinstatement of Exempt Status Set to Expire Soon

November 26, 2012

As a result of legislation passed in 2006, any organization exempt from tax under Section 501(a) of the Internal Revenue Code (the "Code") that fails to file a required annual information return (i.e., Form 990, 990-EZ, or 990-PF) or annual notification (i.e., Form 990-N e-Postcard) for three consecutive years will have its federal tax-exempt status automatically revoked effective as of the due date for the third annual return or notice. In order for the organization to obtain reinstatement of its tax exemption, the organization must reapply for exemption with the IRS by filing the appropriate tax exemption application (either on Form 1023 or Form 1024) with the IRS. This application is required regardless of whether the organization was originally required to apply for recognition of its tax exemption. If approved, the reinstatement will be effective as of the date the organization filed its application for reinstatement, unless the organization is granted retroactive reinstatement.

Retroactive Reinstatement, In General

The IRS has the discretion to grant retroactive reinstatement of an organization's tax exemption, effective as of the date of revocation, if the organization can provide satisfactory evidence showing reasonable cause for the failure to file the required information returns or notifications. Because no regulations have yet been issued in connection with the 2006 statutory changes, the IRS has issued temporary guidance explaining the procedure for obtaining retroactive reinstatement, including an explanation of the reasonable cause standard. This temporary guidance can be found in IRS Notices 2011-44 and 2011-43.

Most organizations seeking retroactive reinstatement will be subject to the procedure described in IRS Notice 2011-44. Under this procedure, the organization must reapply for exemption by submitting a new application on Form 1023 or Form 1024, as applicable, to the IRS within 15 months of the later of (i) the date of its IRS revocation letter or (ii) the date on which the IRS posted the name of the organization on the revocation list maintained on the IRS website. In addition to submitting a new application, the organization must attach a written request for retroactive reinstatement. The request for retroactive reinstatement must include completed and executed information returns for the periods in which the organization failed to file, a written statement setting forth the facts supporting the organization's claim for reasonable cause for failure



to file, a written statement describing safeguards that have been put in place in order to prevent future failures, and evidence to substantiate the organization's statements regarding reasonable cause and implementation of safeguards.

**Transitional Relief for Certain Small Organizations (Set to Expire
December 31, 2012)**

A simplified procedure for certain "small organizations" (i.e., organizations that normally have annual gross receipts of not more than \$50,000 in their most recently completed taxable year) is provided in IRS Notice 2011-43. The simplified procedure still requires a small organization to submit a new tax exemption application with the IRS. However, a small organization will not be required to submit a written request for retroactive reinstatement or prepare information returns for the periods in which it failed to file. In order for an organization to qualify for this transitional relief it must meet the following criteria:

- The organization must not have been required to file annual information returns for taxable years beginning before 2007;
- The organization must have been eligible to file a Form 990-N e-Postcard in each of its taxable years beginning in 2007, 2008, and 2009. Generally this would include any organization (excluding private foundations and most 509(a)(3) supporting organizations) that had annual gross receipts that were normally not more than \$25,000; and
- On or before December 31, 2012, the organization submits to the IRS a properly completed and executed Form 1023 or Form 1024, as applicable.

Note that an organization that filed a Form 990-N e-Postcard, Form 990, or Form 990-EZ for 2007 and then failed to file for three consecutive years is not eligible to use IRS Notice 2011-43. Any small organization failing to take advantage of this special transitional relief before December 31 will be required to follow the more strenuous procedure of IRS Notice 2011-44 in order to obtain retroactive reinstatement of its tax-exempt status.

If you have any questions about the information presented in this alert, please contact one of the attorneys, or Government Relations Coordinator Mary Birch, listed above.