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## Tax Information for Very Small Nonprofit Organizations

by Michael E. Malamut, JD, PRP

Since the passage of the Pension Protection Act of 2006 (PPA) all organizations that qualify as tax exempt are required to file an annual return with the Internal Revenue Service (IRS), regardless of size, unless specifically exempt by statute or IRS interpretation. Small organizations (those with less than \$25,000 in annual gross receipts through the 2009 tax year and those with less than \$50,000 in annual gross receipts starting in the 2010 tax year) are required to file the simplified Form 990-N or “e-postcard” unless they are exempt from filing (e.g., churches) or are covered by another required filing (subordinate units covered by a group determination letter and a group filing, entities otherwise required to file a different annual report). A recent IRS clarification indicates that political nonprofits, recognized under Section 527 of the Internal Revenue Code are covered by a different filing regime and organizations exempt from annual filing as political entities are not required to file the Form 990-N either. Another *National Parliamentarian* article provides more information on the background and requirements of the e-postcard (“New IRS Nonprofit ‘E-postcard’ Filing Requirements,” *NP*, First Quarter 2008, at p. 36). Entities required to file the Form 990-N face automatic revocation of their tax-exempt status for three years’ consecutive failure to file.

The initial IRS “e-postcard” regulations failed to provide guidance on how “small, small” tax exempt organizations (those with less than \$5,000 in annual revenues) were to file their Form 990-Ns. For tax purposes, 501(c) (3)-qualified entities with under \$5,000 in annual income are statutorily exempt from the requirement of filing a Form 1023 determination request for recognition of their charitable status. Although there is no specific statutory exemption for other 501(c) entities (noncharitable tax-exempt organizations) with under \$5,000 in annual income, as a rule of thumb IRS does not expect most very small tax-exempt organizations to file a Form 1024

determination request, the form applicable to most tax-exempt categories other than 501(c)(3)s.

Because “small, small” organizations with annual income under \$5,000 are not required to request a formal determination of their status from the IRS, many (if not most) have not done so and are therefore not listed in the IRS tax-exempt database. Some “small, smalls” that have obtained an IRS Employer Identification Number (EIN; actually simply an entity identification number) to open a bank account have never been required to file anything else with the IRS, so will be listed as “inactive” entities. Other small tax-exempts that have obtained determination letters have been placed on “inactive” status because they have not been required to file Form 990 or Form 990-EZ annual returns because their revenues have been below \$25,000 per year. None of these types of organizations will be able to file the e-postcard until they are included as active entities in the IRS tax-exempt database, as only entities included in the database are recognized by the online filing program. Subordinate organizations within a larger organization that has obtained a group determination letter, but is not filing a group return, will also have to file the Form 990-N (if below \$25,000 in annual revenues), but should be listed in the IRS tax-exempt database because their EINs are required to be reported in the group’s annual update letter.

The IRS has now given some guidance about how “small, small” non-profits can file their Form 990-Ns. They need to call the IRS’s tax-exempt customer account services number, 1 (877) 829-5500, to be entered as a tax-exempt organization on the IRS database or to provide information necessary to remove the organization from “inactive” status. For background information on how to enter a “small, small” into the IRS tax-exempt database through the telephone system, look at <http://www.irs.gov/charities/article/0,,id=180866,00.html>. Because there can be long hold times, and there is no other way to contact the IRS about these issues, it is helpful to have as much information as possible beforehand, to save the trouble of calling back.

To file the Form 990-N, the entrant will need an EIN for the entity, a putative tax status (which category of tax-exemption is claimed), current contact information for the entity and a current officer (preferably one authorized to act for the organization in this regard), assurances that the entity is a 990-N qualified entity with gross annual receipts under \$25,000 (as opposed to one required to file the Form 990-EZ or full Form 990), and the entity’s Web site, if it has one (it is not required to). If the organization is a subordinate organization of a group that has obtained a group exemption determination, but is not filing a group return, the organization should also have the group’s 4-digit group identification number available. Entry of a “small, small” organization into the tax-exempt database does not mean that the IRS has recognized it as a tax-exempt entity. It simply

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means that the IRS recognizes the organization's claim to be tax-exempt so that it can file the Form 990-N.

It is easy to obtain an EIN. The applicable form is IRS Form SS-4. The form has a special check-off box for nonprofit organizations with a blank line for the specific type of organization. For a listing of the various types of tax-exempt organizations, see IRS Publication 557, available at <http://www.irs.gov/pub/irs-pdf/p557.pdf>. Typical tax-exempts that a parliamentarian would deal with are 501(c)(3) (charities), 501(c)(4) (civic leagues and social welfare organizations), 501(c)(5) (labor and agricultural organizations), 501(c)(6) (business leagues), 501(c)(7) (social and recreational clubs), and 501(c)(8) or (10) (fraternal organizations). The applicant should know both the relevant paragraph of the Internal Revenue Code (the number after "501(c)") and the specific type of entity if there are more than one listed under that paragraph (e.g., whether a civic league or a social welfare organization under 501(c)(4)). This information about type of entity will also be needed to fill out the Form 990-N and to re-activate the entity, if necessary, so the individuals contacting the IRS on behalf of the entity should always be consistent. The Form SS-4 also requests the reason for applying, and an appropriate reason would be "to comply with IRS filing requirements for small tax-exempt organizations." The Form SS-4 can be filed online, by telephone, by facsimile, or by traditional hard copy through the mail. The online application process portal can be found at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>. The hard copy form can be obtained online at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. The instructions can be obtained online at <http://www.irs.gov/pub/irs-pdf/iss4.pdf>. The telephone number for telephonic "filing" is 1 (800) 829-4933. Fax numbers vary, depending on the state, and are listed in the instructions.

If an organization has an EIN, but is not listed on the tax-exempt database, the EIN may be listed as "inactive" with the IRS. Similarly, an organization that obtained a tax-exemption determination letter many years ago, but that historically never had to file with the IRS because its annual income (gross receipts) was under \$25,000, may be listed as "inactive." To re-activate the entity, an officer with authority to act in regard to IRS communications should call the IRS tax-exempt information number, 1 (877) 829-5500, with all the information necessary to file the Form 990-N, plus the most recent contact information that the entity supplied to the IRS.

The caller should also be able to verify that the entity's organizing documents are in order, as described in Publication 557. For entities that are not required to register with the state, the organizing documents must meet some formality requirements in order to qualify. Many subordinate units and other small organizations, for example, are organized as voluntary associations, with only internal bylaws as a governing document. For such a document to qualify as an organizing document, it must be in writing, include the name and purpose of the entity (the purpose must

qualify for one of the tax-exempt categories) and a statement of intent to form an organization, and be signed by the appropriate officers (typically, the president and secretary).

Typically, if the IRS representative can re-activate the entity over the telephone, he or she can then process the inputting of the entity into the tax-exempt database in the same phone call. For some entities, however, the historical contact information may be difficult to obtain, because there are no accurate internal records of the last contact with the IRS, or there may be some other missing requirement. The IRS representative will then walk the officer through the process required to re-activate the organization, which may include mailing copies of organizing documents (articles of incorporation or similar document evincing intent to organize formally), any available prior correspondence with the IRS, current bylaws, minutes, bank account statements, or other indicia of current activity and continuity with the same entity that initially obtained the EIN and/or exemption determination. Only after the entity has been re-activated can an authorized officer then call 1 (877) 829-5500 again to be listed on the tax-exempt database.

After the “small, small” organization has been entered into the IRS database, it should be able to file the Form 990-N online. It will, however, take several months for the information to be updated to the online version of the tax-exempt database, and the only way to check is to try to file the Form 990-N and see if the application is accepted, or to call back the IRS customer account services number. The IRS representative who enters the entity into the database over the telephone should be able to provide an approximate date that the information will be updated online.

Once the entity’s EIN is listed with the online tax-exempt database, the Form 990-N can be filed electronically at <http://epostcard.form990.org>. It cannot be filed in hard copy form by mail. The person doing the entry first needs to register with the Web site, by providing a login ID and password before entering data on behalf of an organization. Anyone who is authorized can do so, including a lawyer or accountant for the entity. Entities included in the tax-exempt database can use a variation of their EIN as a login ID. The site walks the entrant through the registration and the filing processes. At the end of the process, the entrant will be notified either that the Form 990-N has been successfully filed, or that he or she needs to call the IRS customer account services number to straighten out any problems.

Once an organization is actively included in the online version of the IRS tax-exempt database, the annual Form 990-N e-postcard process is not difficult. Someone (typically, an officer should be designated with this authority) just needs to remember to file by the 15th day of the fifth month after the close of the organization’s fiscal year. ★

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