

NONPROFIT UPDATE ● ● ●



1023-EZ Form

In June 2014 the Internal Revenue Service published the Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

At only 2 ½ pages long, the Form 1023-EZ looks simple. The Form asks for very basic information, requests that the organization respond to various questions by checking a few boxes and then asks that the Form be e-filed with the IRS. What could be easier?

There is more to Form 1023-EZ than you would expect.

If an organization intends to use Form 1023-EZ, it must complete the Form 1023-EZ Eligibility Worksheet (the Worksheet) which consists of 26 “yes” or “no” questions. Answer “Yes” to any question and the organization is required to prepare and file Form 1023.

Factors that limit the organization’s use of Form 1023-EZ include the following:

Gross receipts:

- Gross receipts for any of the next three years, including the current year, cannot exceed \$50,000 or must not have exceeded \$50,000 in any of the past three years.

Total assets:

- If the organization has total assets in excess of \$250,000, it cannot file Form 1023-EZ. The Worksheet does not indicate when this determination must be made, whether the value of certain assets is determined at the date the Form is filed or at an earlier date if the organization’s assets exceeded \$250,000 in value at any time during the current year.

Retroactive reinstatement:

- The Worksheet and the Form indicate that the Form can be used if the organization is applying for reinstatement under the applicable IRC. An organization can apply for reinstatement if it was eligible to file Form 990-EZ.
- An organization is eligible to file Form 990-EZ if its gross receipts for tax years beginning in 2013 were less than \$200,000 for the year and its total assets at the end of the tax year were less than \$500,000. However, an organization that had annual gross receipts in excess of \$50,000 in any of its past three years or had total assets in excess of \$250,000 must answer “yes” to Worksheet questions 2 or 3, respectively. Answering “yes” to any of the Worksheet questions requires the organization to use Form 1023, rather than Form 1023-EZ, to apply for exempt status under IRC Sec. 501(c)(3).

Improperly drafted organizing documents:

- On Line 2, Part III of Form 1023-EZ, an organization must check the boxes that indicate its exempt purpose (i.e., charitable religious, educational, etc.) Unfortunately, an organization may believe that it has an appropriate exempt purpose when, in fact, it does not because its organizing document is improperly drafted.

Soliciting contributions from private foundations:

- A private foundation donor cannot rely on a determination letter issued in response to a Form 1023-EZ application if the application was based on incorrect critical information.
- A grant to another organization that is not a public charity generally requires that the foundation exercise *expenditure responsibility* (i.e., follow certain mandated administrative procedures) over the grant. Private foundations typically avoid grants that require expenditure responsibility and therefore, using Form 1023-EZ could hinder an organization's ability to secure foundation grants.

The final point to consider - the instructions to Form 1023-EZ do not currently indicate the consequences to the organization if it is granted Section 501(c)(3) status as the result of erroneously using Form 1023-EZ instead of Form 1023.

The bottom line is that if an organization decides to prepare Form 1023-EZ internally it may not be eligible to use the form due to the criteria mentioned above. It may believe that it is properly organized under Section 501(c)(3) when it is not because of flaws in its organizing documents, and it may incorrectly answer one or more questions concerning its activities.