

I.R.S. ISSUES NEW FORM 1023-EZ: STREAMLINED EXEMPTION FOR SMALL CHARITIES

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Tags

§501(c)(3)

1023-EZ

Charitable Organizations

Non-Profits

Tax-Exempt Status

On July 1, 2014, the Internal Revenue Service (“I.R.S.”) introduced a new, shorter application form to help small public charities apply for recognition of tax-exempt status, under §501(c)(3) of the Internal Revenue Code (“the Code”), more easily.

Ruchelman P.L.L.C. used the new Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, for a client and received recognition of tax-exempt status in less than three weeks. Recognition of tax-exempt status ordinarily can take months, if not years (in the case of charities operating abroad). Prior to the introduction of Form 1023-EZ, expedited processing was available only under certain circumstances, generally in the case of a mass disaster (e.g., terrorist attack, hurricane, etc.).

The new procedures may reduce the need for small charities to engage in fiscal sponsorships with larger public charities. Under a fiscal sponsorship, the larger charity agrees to sponsor the start-up charity, receiving and administering charitable contributions on behalf of the sponsored organization, for a fee.

The new Form 1023-EZ, is three pages long, compared with the standard 26-page Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Most small organizations (which the I.R.S. estimates to be as many as 70% of all applicants) qualify to use the new streamlined form. Most organizations with gross receipts of \$50,000 or less and assets of \$250,000 or less are eligible. These are the same organizations that are eligible to file an “e-Postcard” annual return on Form 990-N.

The Form 1023-EZ must be filed using pay.gov (the secure electronic portal for making payments to Federal Government Agencies) and a \$400 user fee is due at the time the form is submitted.

A charity must complete a worksheet⁵⁵ to determine eligibility to use the new streamlined procedure.

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Form 1023-EZ Eligibility Worksheet is available under the *Instructions to Form 1023-EZ*, <http://www.irs.gov/pub/irs-pdf/i1023ez.pdf>.

A charity must be able to answer **NO** to each of the following questions:

4. Do you project that your annual gross receipts will exceed \$50,000 in any of the next three years?
5. Have your annual gross receipts exceeded \$50,000 in any of the past three years?
6. Do you have total assets in excess of \$250,000?
7. Were you formed under the laws of a foreign country (United States territories and possessions are not considered foreign countries)?
8. Is your mailing address in a foreign country (United States territories and possessions are not considered foreign countries)?
9. Are you a successor to, or controlled by, an entity suspended under §501(p) (suspension of tax-exempt status of terrorist organizations)?
10. Are you a limited liability company (“L.L.C.”)?
11. Are you a successor to a for-profit entity?
12. Were you previously revoked or are you a successor to a previously revoked organization (other than an organization the tax-exempt status of which was automatically revoked for failure to file a Form 990-series return for three consecutive years)?
13. Are you a church or a convention or association of churches described in §170(b)(1)(A)(i)?
14. Are you a school, college, or university described in §170(b)(1)(A)(ii)?
15. Are you a hospital or medical research organization described in §170(b)(1)(A)(iii) or a hospital organization described in §501(r)(2)(A)(i)?
16. Are you applying for exemption as a cooperative hospital service organization under §501(e)?
17. Are you applying for exemption as a cooperative service organization of operating educational organizations under §501(f)?
18. Are you applying for exemption as a qualified charitable risk pool under §501(n)?
19. Are you requesting classification as a supporting organization under §509(a)(3)?⁵⁶

⁵⁶ Supporting organizations are organizations that have established certain relationships in support of other public charities.

20. Is a substantial purpose of your activities to provide assistance to individuals through credit counseling activities such as budgeting, personal finance, financial literacy, mortgage foreclosure assistance, or other consumer credit areas?
21. Do you or will you invest 5% or more of your total assets in securities or funds that are not publicly traded?
22. Do you participate, or intend to participate, in partnerships (including entities treated as partnerships for federal tax purposes) in which you share profits and losses with partners other than §501(c)(3) organizations?
23. Do you sell, or intend to sell carbon credits or carbon offsets?
24. Are you a Health Maintenance Organization (“HMO”)?
25. Are you an Accountable Care Organization (“ACO”), or do you engage in or intend to engage in ACO activities?
26. Do you maintain or intend to maintain one or more donor advised funds?⁵⁷
27. Are you organized and operated exclusively for testing for public safety and requesting a foundation classification under §509(a)(4)?
28. Are you requesting classification as a private operating foundation?⁵⁸
29. Are you applying for retroactive reinstatement of exemption under §§5 or 6 of Rev. Proc. 2014-11, after being automatically revoked?⁵⁹

If a charity qualifies for the streamlined procedure, other information is required to be furnished. In Part II of Form 1023-EZ, the charity must make certain attestations concerning the charity’s organizational documents to ensure that there is compliance with §501(c) of the Code. Part III requires disclosures concerning the charity’s specific activities. Part IV is designed to classify the organization as either a public charity or a private foundation, a determination which is generally dependent on the sources of the charity’s funding.

⁵⁷ A donor advised fund is a fund or account that is owned and controlled by the organization but that is separately identified by reference to contributions of a donor or donors and with respect to which a donor (or any person appointed or designated by the donor) has or expects to have advisory privileges concerning the distribution or investment of amounts held in the fund or account by reason of the donor’s status as a donor.

⁵⁸ A private operating foundation actively conducts its own charitable, religious, educational, and similar activities (as opposed to indirectly carrying out these activities by providing grants to individuals or other organizations) but is not publicly supported.

⁵⁹ The streamlined process is not available if the application is later than fifteen months after the later of the date of the charity received its Revocation Letter or the date on which the I.R.S. posted the organization’s name on the Revocation List.

Small charities must continue to be mindful of State registration requirements. New York State generally requires registration with the New York State Charities Bureau, although some exceptions apply (e.g., religious organizations). A separate application must be made to New York State if a charity seeks a sales tax exemption.

The new procedures remove a very real and costly impediment for small start-up charities that seek tax-exempt status and will enable the I.R.S. to use its limited resources in a more effective manner.

