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Legal Alert: New IRS Form 1023-EZ Makes Applying for 501(c)(3) Tax-Exempt Status Easier for Small Organizations

The Internal Revenue Service (IRS) recently released Form 1023-EZ, a shorter application form to help small organizations apply for 501(c)(3) tax-exempt status. Revenue Procedure 2014-40 sets forth procedures for Form 1023-EZ applications and discusses its effect on related IRS Revenue Procedures.

Overview and Effective Date for Form 1023-EZ

Starting July 1, 2014, the new Form 1023-EZ is available to be completed online only and can be found at www.irs.gov/form1023 or www.pay.gov. The new Form 1023-EZ consists of only three pages, compared to the 26 page Form 1023. The Form 1023-EZ must be filed using www.pay.gov and a \$400 user fee is due at the time the form is submitted. Most small organizations, up to 70% of all applicants, qualify to use this new form¹. Most organizations with gross receipts of \$50,000 or less and assets of \$250,000 or less are eligible. The creation of this new short form allows the IRS to shorten the approval process time for small organizations and allocate more resources to the review of applications from larger, more complex organizations. In addition, the IRS anticipates the new Form 1023-EZ will lead to the reduction of the backlog of Form 1023 applications which is currently more than 60,000 applications, with many pending for nine months or more.

Procedures for Ensuring Eligibility and Filing of Form 1023-EZ

In order to ensure that an organization is eligible to file Form 1023-EZ, the Form 1023-EZ instructions contain an eligibility checklist. This checklist has a series of 26 questions to which an organization must check “Yes” or “No”. If you answer “Yes” to any of the worksheet questions, you are not eligible to apply for exemption under section 501(c)(3) using Form 1023-EZ. You must apply on Form 1023. If you answer “No” to all of the worksheet questions, you may apply using Form 1023-EZ. If you meet the eligibility requirements, you must check the box at the top of Form 1023-EZ to attest that you are eligible to file the form. By checking the box, you are also attesting that you have read and understand the requirements to be exempt under section 501(c)(3). You are not required to submit the eligibility worksheet with your form.

¹ A few examples of organizations that are not eligible to complete Form 1023-EZ are organizations formed outside of the United States; organizations that are not corporations, unincorporated associations, or trusts; organizations that are successors to for profit entities; churches or conventions or association of churches; hospitals or medical research organizations; schools, colleges or universities; and supporting organizations. For a complete list of organizations that are not eligible to complete Form 1023-EZ, please see Section 2 of Revenue Procedure 2014-40.

Eligibility for Small Organizations Applying for Reinstatement of Tax Exemption After Automatic Revocation

Small organizations (organizations with gross receipts of less than \$200,000 and total assets of less than \$500,000 at the end of their tax year) applying for reinstatement of tax exemption may use Form 1023-EZ if the small organization applies for reinstatement within 15 months of revocation. Organizations with gross receipts over \$200,000 and total assets over \$500,000 or organizations that are applying for reinstatement more than 15 months after revocation may not use Form 1023 –EZ, these organizations must use Form 1023.

The New Form 1023-EZ

The IRS simplified Form 1023-EZ down to six sections: Identification of Applicant, Organizational Structure, Your Specific Activities, Foundation Classification, Reinstatement After Automatic Revocation, and Signature. The instructions to Form 1023-EZ provide guidance on responding to the questions posed in the Form 1023-EZ, provides definitions of certain terms, helpful tips, and annual filing requirements.

Effective Date of Exemption

Generally, if you file Form 1023-EZ within 27 months of incorporation or formation, and the IRS approves the application, the date of incorporation or formation will be the effective date of your tax exempt status. If you do not file Form 1023-EZ within 27 months of formation, the effective date of your tax exempt status will be the date you filed Form 1023-EZ.

Form 1023-EZ from an Organization with a Pending Form 1023 Application

The IRS will not accept for processing a completed Form 1023-EZ from an eligible organization that has a Form 1023 pending with the IRS if the Form 1023 has already been assigned for review. If this occurs, the organization will be notified of the non-acceptance of the Form 1023-EZ and any user fee that was paid with the Form 1023-EZ will be refunded.

If an organization has a pending Form 1023 application and it has not been assigned for review, the Form 1023-EZ may be submitted and will be treated as a written request for withdrawal of the pending Form 1023. The user fee paid for the Form 1023 will generally not be refunded. It is important to note that the IRS will use the filing date of Form 1023-EZ (not the filing of the Form 1023) for purposes of determining the effective date of tax exemption.

Revenue Procedure 2014-40 is available online at <http://www.irs.gov/pub/irs-drop/rp-14-40.pdf>

Form 1023-EZ is available online at <http://www.irs.gov/pub/irs-pdf/f1023ez.pdf>

Instructions for Form 1023-EZ are available at <http://www.irs.gov/pub/irs-pdf/i1023ez.pdf>

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