

## **Don't Lose It Before You Get It: A Guide to Filing Requirements Before 501(c)3 Recognition**

*A TLP Legal Alert*

**Are you legal counsel representing a nonprofit seeking recognition of income tax exemption or are you a founder of a nonprofit corporation planning to obtain recognition of income tax exemption? If so, you need to understand the 990 filing requirements even before you submit the application for 501(c)3 recognition.**

### **When are filings required?**

Nonprofits are required to file financial information with the IRS for every year they operate as a tax exempt organization. In general, nonprofits are given a 27 month window, starting from the date of the entity's formation, in which to file an application for 501(c)3 tax exempt status recognition (Form 1023) and receive retroactive recognition of exemption. However, whether or not Form 1023 has been submitted, whether or not the nonprofit is "on the radar" of the IRS, so to speak, nonprofits are expected to report their financial information.

### **Filing the 990-N e-Postcard**

Most small nonprofits (those with less than \$50,000 a year in gross receipts) are required to submit their financial information to the IRS electronically by completing Form 990-N, the e-Postcard. E-Postcards must be submitted every year an organization wishes to be treated as tax-exempt by the 15th day of the 5th month following the end of the nonprofit's tax year. Even if the nonprofit has been in existence for just a month, when the tax year ends, the IRS wants a report of that nonprofit's financial information.

A kink arises for organizations with pending or contemplated Form 1023 applications: in order to file the e-Postcard, the IRS must recognize the nonprofit's EIN (employer identification number). If the EIN is not in the IRS's system, the person attempting to file the e-Postcard will receive an error message and will not be able to complete the electronic filing.

If this happens to you, do not despair! The IRS knows that it is impossible to make the filing for unrecognized nonprofits; it expects a representative of the organization to call the phone number that appears along with the error message. That number, 1-877-829-5500, will direct the caller to the Exempt Organization Customer Account Services line.

The hold times can be long, but the call is necessary. The IRS agent will ask for the organization's EIN, the caller's name and phone number (the caller must be an officer of the organization or an individual with power of attorney for the organization, as authorized by IRS Form 2848). The agent will then ask if the organization's gross receipts are less than \$5,000 for the tax year. That question is for internal use only. Regardless of the answer to that question, the agent will process the caller's information through the IRS system. Within six weeks of the phone call, the organization's EIN number will be recognized by the IRS. At that point, Form 990-N e-Postcard can be filed electronically.

### **Filings Are Important!**

Please note, if an organization has been in existence for three years, as measured from the date of formation (the date of incorporation, in most instances) and no filing has been made, the required third year filing **MUST** be timely. If the filing is not timely, the organization's exempt status will be automatically revoked. Thus, a nonprofit expecting to receive retroactive recognition of exempt status may find its exempt status revoked before it has been officially granted! If this occurs, a new effective date for tax-exempt status—the postmark date of the organization's first filing with the IRS—will be applied to the account. The 27 month retroactive exemption recognition period will disappear. Do not let this happen to you!

**For more information on this topic, call The Law Project at 312/939-3638 and/or see the following IRS publications:**

Publication 4220: Applying for 501(c)(3) Tax-Exempt Status: <http://www.irs.gov/pub/irs-pdf/p4220.pdf>

Publication 4221-PC: Compliance Guide for 501(c)(3) Public Charities: <http://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

The Law Project is a project of the Chicago Lawyers' Committee for Civil Rights under Law, Inc. The Law Project matches eligible nonprofit organizations and small businesses with pro bono legal counsel. For additional questions, please contact us at [tlp@thelawproject.org](mailto:tlp@thelawproject.org) or 312.939.3638, or visit us online at [www.thelawproject.org](http://www.thelawproject.org).

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