

Henderson & Caverly Purn LLP

NONPROFIT ORGANIZATIONS NEWSLETTER

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AUTOMATIC EXEMPTION RECOVATION FOR NON-FILING: Reinstating Tax Exempt Status

All exempt organizations required to file an annual return or submit an annual electronic notice are subject to automatic revocation for failure to file for three consecutive years. Exempt organizations not required to file an annual return or notice are not subject to automatic revocation.



Organizations whose tax exempt status was automatically revoked because they did not file required IRS Form 990 series returns or notices for three consecutive years can apply for reinstatement of their tax exempt status. This automatic revocation happens by operation of law - there are no exceptions. An automatic revocation is effective on the original filing due date of the third annual return or notice. (Section 6033(j) of the Internal Revenue Code (the "Code")).

Automatic Revocation of Exemption List

The IRS publishes an [Automatic Revocation of Exemption List](#) which contains the list of organizations whose tax exempt status was automatically revoked because of failure to file a required Form 990, 990-EZ, 990-PF or Form 990-N (e-Postcard) for three consecutive years.

The list gives the name, employer identification number (EIN), organization type, last known address the organization provided to the IRS, effective date of revocation and the date the organization was added to the list. For organizations that applied for and received reinstatement, the list gives the date of reinstatement. The IRS updates the list monthly.

Effect of Losing Tax Exempt Status

If an organization's tax exempt status is automatically revoked, it is no longer exempt from federal income tax. Consequently, it may be required to file one of the following federal income tax returns and pay applicable income taxes.

- Form 1120, U.S. Corporation Income Tax Return, due by the 15th day of the 3rd month after the end of the organization's tax year.
- Form 1041, U.S. Income Tax Return for Estates and Trusts, due by the 15th day of the 4th month after the end of the organization's tax year.
- An automatically revoked organization is not eligible to receive tax-deductible contributions and will be removed from the cumulative list of exempt organizations, [Publication 78](#). The IRS will also send a letter informing the organization of the revocation.

- The organization is liable for all income, excise or other taxes and penalties that may have been owed at the time it was automatically revoked. The organization will also be responsible for any future tax liabilities that accrue as a result of the organization's loss of exemption.
- Revocation may also mean that any state tax exemptions that your nonprofit received - such as exemptions for income tax, property tax, and sales/use tax - that are dependent on federal tax-exempt status, may also be revoked now.

Donors can deduct contributions made before an organization's name appears on the Automatic Revocation List. State and local laws may affect an organization that loses its tax exempt status as well.

Reinstating Tax Exempt Status

The law prohibits the IRS from undoing a proper automatic revocation and does not provide for an appeal process. An automatically revoked organization must apply to have its status reinstated, even if the organization was not originally required to file an application for exemption.

Revenue Procedure 2014-11 explains the four procedures an organization may use to apply for reinstatement. The four ways to be reinstated are as follows:

1. Streamlined retroactive reinstatement

Organizations that were eligible to file IRS Form 990-EZ or 990-N (ePostcard) for the three years that caused their revocation may have their tax exempt status retroactively reinstated to the date of revocation if they:

- Have not previously had their tax exempt status automatically revoked.
- Complete and submit Form 1023, Form 1023-EZ or Form 1024 with the appropriate user fee no later than 15 months after the later of the date of the organization's Revocation Letter (CP-120A) or the date the organization appeared on the Revocation List on the IRS website.

These organizations should write on the top of the Form 1023 or Form 1024, "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement," and mail the application and user fee to: Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.

In addition, the IRS will not impose the Code Section 6652(c) penalty for failure to file annual returns for the three consecutive taxable years that caused the organization to be revoked if the organization is retroactively reinstated under this procedure and files properly completed and executed paper Forms 990-EZ for all such taxable years. (For any year for which the organization was eligible to file a Form 990-N, the organization is not required to file a prior year Form 990-N or Form 990-EZ to avoid penalties.) The organization should write "Retroactive Reinstatement" on the Forms 990-EZ and mail them to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0027.

2. Retroactive reinstatement process (within 15 months)

Organizations that cannot use the Streamlined Retroactive Reinstatement Process (such as those that were required to file Form 990 or Form 990-PF for any of the three years that caused revocation or those that were previously auto-revoked) may have their tax exempt status retroactively reinstated to the date of revocation if they:

- Complete and submit Form 1023 or Form 1024 with the appropriate user fee not later than 15 months after the later of the date on the organization's revocation letter (CP-120A) or the date the organization appeared on the Revocation List on the IRS website.
- Include with the application a statement establishing that the organization had reasonable cause for its failure to file a required annual return for at least one of the three consecutive years in which it failed to file.
- Include with the application a statement confirming that it has filed required returns for those three years and for any other taxable years after such period and before the postmark

date of the application for which required returns were due and not filed.

- File properly completed and executed paper annual returns for the three consecutive years that caused the revocation and any following years. The organization should write "Retroactive Reinstatement" on these returns and mail them to: Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

These organization should write on the top of the Form 1023 or Form 1024, "Revenue Procedure 2014-11, Retroactive Reinstatement," and mail the application and user fee to: Internal Revenue Service, P.O. Box 12192 Covington, KY 41012-0192.

In addition, the IRS will not impose the Code Section 6652(c) penalty for failure to file annual returns for three consecutive taxable years that caused the organization to be revoked if the organization is retroactively reinstated under this procedure.

3. Retroactive reinstatement (after 15 months)

Organizations that apply for reinstatement more than 15 months after the later of the date on the organization's revocation letter (CP-120A) or the date the organization appeared on the Revocation List on the IRS website may have their tax exempt status retroactively reinstated to the date of revocation if they:

- Satisfy all of the requirements described under the "Retroactive reinstatement (within 15 months)" procedure EXCEPT reasonable cause for its failure to file a required annual return for all three consecutive years in which it failed to file.

In addition, the IRS will not impose the Code Section 6652(c) penalty for failure to file annual returns for the three consecutive taxable years that caused the organization to be revoked if the organization is retroactively reinstated under this procedure.

4. Postmark date reinstatement

Organizations may apply for reinstatement effective from the postmark date of their application if they:

- Complete and submit Form 1023, Form 1023-EZ or Form 1024 with the appropriate user fee.

These organizations should write on top of the Form 1023 or Form 1024, "Revenue Procedure 2014-11, Reinstatement Postmark Date," and mail the application and user fee to: Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.

What's a reasonable cause statement?

A reasonable cause statement establishes that an organization exercised ordinary business care and prudence in determining and attempting to comply with its annual reporting requirement. The statement should have a detailed description of all the facts and circumstances about why the organization failed to file, how it discovered the failure, and the steps it has taken or will take to avoid or mitigate future failures. For a detailed explanation, see Section 8 of Revenue Procedure 2014-11.

Pending reinstatement applications and previously granted applications

The reinstatement processes above apply to pending reinstatement applications to the extent they benefit an organization's ability to be retroactively reinstated. For organizations that have been previously reinstated from the postmark date but would have satisfied the streamlined retroactive reinstatement process requirements, they will be retroactively reinstated with no further action. They should keep their reinstatement determination letters and a copy of Revenue Procedure 2014-11.

Avoid being automatically revoked again - file annual returns

An organization can be automatically revoked again if it fails to file required returns for three consecutive years beginning with the year in which the IRS approves the application for reinstatement. Organizations seeking reinstatement of tax exempt status after a subsequent revocation are not eligible to use the Streamlined Retroactive Reinstatement Process. You may

wish to visit the IRS' website to obtain tips on [How to Stay Exempt](#).

If your nonprofit organization needs assistance in reinstating its tax exempt status with the IRS or requires assistance in maintaining its tax-exempt status, please [contact](#) our office.

TREASURY DEPARTMENT AND IRS ANNOUNCE SIGNIFICANT REFORM TO PROTECT PERSONAL DONOR INFORMATION TO CERTAIN TAX EXEMPT ORGANIZATIONS



On July 16, 2018, the Treasury Department and IRS announced that the IRS will no longer require certain tax-exempt organizations to file personally-identifiable information about their donors as part of their annual return. The revenue procedure released today does not affect the statutory reporting requirements that apply to tax-exempt groups organized under section 501(c)(3) or section 527, but it relieves other tax-exempt organizations of an unnecessary reporting requirement that was previously added by the IRS.

Nearly fifty years ago, Congress directed the IRS to collect donor information from charities that accept tax-deductible contributions. That statutory requirement applies to the majority of tax-exempt organizations, known as section 501(c)(3) organizations, receiving contributions that can be claimed by donors as charitable deductions. This policy provided the IRS information that could be used to confirm contributions to those organizations.

By regulation, however, the IRS extended the donor reporting requirement to all other tax-exempt organizations—labor unions and volunteer fire departments, issue-advocacy groups and local chambers of commerce, veterans groups and community service clubs. These groups do not generally receive tax deductible contributions, yet they have been required to list the names and addresses of their donors on Schedule B of their annual returns (Form 990).

“Americans shouldn’t be required to send the IRS information that it doesn’t need to effectively enforce our tax laws, and the IRS simply does not need tax returns with donor names and addresses to do its job in this area,” said U.S. Treasury Secretary Steven T. Mnuchin. “It is important to emphasize that this change will in no way limit transparency. The same information about tax-exempt organizations that was previously available to the public will continue to be available, while private taxpayer information will be better protected. The IRS’s new policy for certain tax-exempt organizations will make our tax system simpler and less susceptible to abuse.”

Summary of New IRS Policy

- Tax-exempt organizations described by section 501(c), other than section 501(c)(3) organizations, are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ.
- These organizations must continue to collect and keep this information in their records and make it available to the IRS upon request, when needed for tax administration.
- Form 990 and Schedule B information that was previously open to public inspection will continue to be reported and open to public inspection.
- The Internal Revenue Code expressly governs the tax-return reporting of donor information by charities that primarily receive tax-deductible contributions (under section 501(c)(3)) and political organizations (under section 527). The IRS action today does not affect those organizations.

After careful review, Treasury and the IRS have decided to relieve these tax-exempt organizations (other than organizations described in section 501(c)(3) or section 527) of a requirement that Congress never imposed for several reasons:

- First, the IRS makes no systematic use of Schedule B with respect to these organizations in administering the tax code. Donor information for many of these organizations was once relevant to the federal gift tax, but Congress eliminated that need in 2015 by making gifts to many of these tax-exempt organizations tax-free. The IRS has no tax administration need for continuing the routine collection of donor names and addresses as part of an exempt organization's annual tax return. If the information is needed for purposes of an examination, the IRS will be able ask the organization for it directly.
- Second, the new policy will better protect taxpayers by reducing the risk of inadvertent disclosure or misuse of confidential information—an especially important safeguard for organizations engaged in free speech and free association protected by the First Amendment. Unfortunately, the IRS has accidentally released confidential Schedule B information in the past. In addition, conservative tax-exempt groups were disproportionately impacted by improper screening in the previous Administration, including what the Treasury Inspector General for Tax Administration concluded were inappropriate inquiries related to donors. Ending the unnecessary collection of sensitive donor information will reinforce the reforms already implemented by the IRS in the wake of the political targeting scandal and enhance public trust in the agency.
- Third, the new policy will save both private and government resources. On the taxpayer side, the previous policy added needless paperwork. On the government side, the IRS has been forced to devote scarce resources to redacting donor names and addresses (as required by federal law) before making Schedule B filings public. Now, the IRS will no longer require personally-identifiable donor information that the IRS does not regularly need and the public does not see. The public information will continue to be available, just as before.

The IRS's new policy will relieve thousands of organizations of an unnecessary regulatory burden, while better protecting sensitive taxpayer information and ensuring appropriate transparency.

The IRS guidance, Revenue Procedure 2018-38, is available [here](#). The revised reporting requirements of this revenue procedure will apply to information returns for taxable years ending on or after December 31, 2018. Thus, the revised reporting requirements generally will apply to returns that become due on or after May 15, 2019.

CALIFORNIA FRANCHISE TAX BOARD Nonprofit Seminars and Webinars

Throughout the year, the Franchise Tax Board presents webinars and seminars for nonprofit organizations. The FTB discusses tax laws, exemptions, and reporting requirements as they apply to nonprofit, exempt, and faith-based organizations. The FTB designs the presentations to cover the basic and necessary information you need from experts from the following state and federal agencies:



- State Board of Equalization
- Franchise Tax Board
- Employment Development Department
- Office of the Attorney General
- Internal Revenue Service

Upcoming nonprofit tax seminars:

- August 8, 2018. The California Endowment, 1000 Alameda Street, Los Angeles, CA 90012. 8:30 a.m. - 12:30 p.m. Click [here](#) to register.
- September 12, 2018. The Centre, 20880 Centre Pointe Parkway, Santa Clarita, CA 91350. 8:00 a.m. - 12:30 p.m.. Click [here](#) to register.

- September 18, 2018. Rancho Cordova City Hall, 2729 Prospect Park Drive, Rancho Cordova, CA 95670. 8:00 a.m. - 12:30 p.m. Click [here](#) to register.
- September 20, 2018. Arcadia Public Library, Cay Mortenson Auditorium, 20 West Duarte Road, Arcadia, CA 91006. 8:30 a.m. - 1:00 p.m. Click [here](#) to register

NEW AND IMPROVED CALIFORNIA BUSINESS PORTAL



The [California Business Portal](#) was recently updated and provides a comprehensive resource for your business needs. The Portal was created by [The Governor's Office of Business and Economic Development](#) (GO-Biz) and provides businesses with tools and information on financial assistance, relocation services, international trade and investment guidance, tax incentive information, registration and permit requirements, information about California regulations, and much more.

One section that is frequently updated is the [Business Quick Start Guides](#). This is an easy-to-use list of frequently established business types and the necessary requirements to register and get started. A quick start guide is included for [Nonprofit Organizations](#).

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San Diego (Main office): 12750 High Bluff Drive, Suite 300, San Diego, CA 92130

Rancho Santa Fe (by appointment): 16236 San Dieguito Road, Suite 3-10, Rancho Santa Fe, CA 92067

Los Angeles (by appointment): US Bank Tower, 633 W. 5th Street (26th Floor), Los Angeles, CA 90013

Phone: (858) 755-3000 | Email: JGrissom@hcesq.com | Fax: (858) 755-9900

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