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Small Organizations Seeking Charitable Status Can Use Short Form.

Small organizations seeking tax-exempt status as charitable entities can now use a shorter, simpler application introduced by the IRS July 1, although some practitioners who raised questions when the IRS released the draft form in spring remain concerned.

Form 1023-EZ, "Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," is about 2 1/2 pages long, compared to the standard Form 1023, which runs 26 pages. Unlike the standard form, the streamlined application does not require applicants to provide detailed statements of their planned activities.

"We believe that many small organizations will be able to complete this form without creating major compliance risks," IRS Commissioner John Koskinen said in a release. "Rather than using large amounts of IRS resources up front reviewing complex applications during a lengthy process, we believe the streamlined form will allow us to devote more compliance activity on the back end to ensure groups are actually doing the charitable work they apply to do."

But some practitioners expressed misgivings about the fact that filers will not have to provide details about their activities. "I still think the IRS ought to be asking for some information about their activities and their proposed budgets," said Charles M. Watkins of Webster, Chamberlain & Bean LLP, who expressed similar reservations when the draft was released. He said charities that want to register with the states for fundraising purposes may face questions about their activities from state charity regulators because that information will not be available on the Form 1023-EZ.

Arthur Rieman of The Law Firm for Non-Profits, who criticized the draft in comments earlier this year, said the release of the form was premature and possibly wrongheaded. "Clearly there is a need to streamline the exemption application review process," he said. "However, doing so in this manner has the potential to open the floodgates to people who will use the relaxed requirements for exemption to game and abuse the system to reap profit and private gain at the expense of the trusting public. Ultimately, the entire charitable sector may be tarnished."

The form's eligibility requirements ameliorate, but do not eliminate, the potential for abuse compared to the requirements promulgated in the draft, Rieman said. Because exemption for Form 1023-EZ applicants apparently will be all but automatic, anyone who attests to meeting the requirements — whether legitimately or not — can obtain section 501(c)(3) status, he said, adding that "once they obtain their determination letter, fraudsters will be able to use and abuse that status with impunity for several years."

Rieman also said that although the IRS could revoke exemption if an organization misstates information on the form, neither the form nor its instructions inform applicants that inaccurate information can lead to revocation. "Apparently any revocations will follow the same procedure as applies to other 501(c)(3) organizations," he said. "This will give an abusive Form 1023-EZ applicant years to rip off the public before it is shut down."

The IRS also said most organizations with gross receipts of $50,000 or less and assets of $250,000 or less can use the new form. Those figures are less than those in the draft, in which the gross receipts threshold was $200,000 or less and the total assets figure was $500,000 or less.

Eve Rose Borenstein of Borenstein and McVeigh Law Office LLC said she was pleased with limiting the form "to the very smallest organizations." She said the new form is "akin to a self-registration process" that will provide the IRS with "a known pool of new, now-recognized 501(c)(3)s who can be provided targeted education. The originally proposed limits would have injected much more risk for abuse."

Benjamin Takis of Tax-Exempt Solutions PLLC said the IRS's decision to reduce the thresholds is a positive development. He wondered, though, whether the agency will be able to follow through with increased enforcement on the "back end," as it has promised.

"Unless the Service is able to hold organizations accountable for inaccurate financial projections or misrepresentation of their purpose or activities, the risk of fraud and noncompliance remains significant," Takis said.

In addition to organizations with receipts and assets above the thresholds, entities ineligible to use the form include those formed under the laws of foreign countries; successors to for-profit entities; churches or conventions or associations of churches; schools, colleges, or universities; hospitals or medical research organizations; supporting organizations described in section 509(a)(3); credit counseling organizations; and organizations that maintain or plan to maintain donor-advised funds. Organizations that are successors to or controlled by entities whose exempt status has been suspended because they have been identified with terrorism also may not use the short form.

Applicants must fill out an eligibility checklist before completing the form, which must be filed using pay.gov, with a $400 user fee due at filing. Revenue Procedure 2014-40, 2014-30 IRB 1 has more information about the new form, which also was accompanied by the publication of final and temporary regulations on the streamlined application process.

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