
What Automatic Revocation of Nonprofit Tax Exemptions Means for You

A Review for Nonprofits, Grantmakers, and Donors

Prepared by GuideStar USA, Inc.

What has long been anticipated is about to come to pass: The U.S. Internal Revenue Service (IRS) is preparing to publish the Nonfiler Revocation List. This initial publication may include as many as 321,000 nonprofits whose tax-exempt status has been revoked for failure to file an annual information return.

Why Is the IRS Revoking Tax Exemptions?

The Pension Protection Act of 2006 directs the IRS to revoke the tax exemption of any nonprofit that is required to file an annual information return (at that time, Form 990, 990-EZ, or 990-PF) but fails to do so for three consecutive years. Revocation is automatic and mandatory under the law.¹

Before the act was adopted, most exempt organizations with annual revenues of \$25,000 or less were not required to file an annual return. The act required these organizations to begin filing, and the IRS created Form 990-N, or e-Postcard, for these nonprofits to use.² The revocations clock started ticking.

May 17, 2010, was the first filing deadline that triggered revocations. On May 18, when it became apparent that many smaller nonprofits had missed the deadline, the IRS announced it would help them retain their exemptions.³ Two months later,

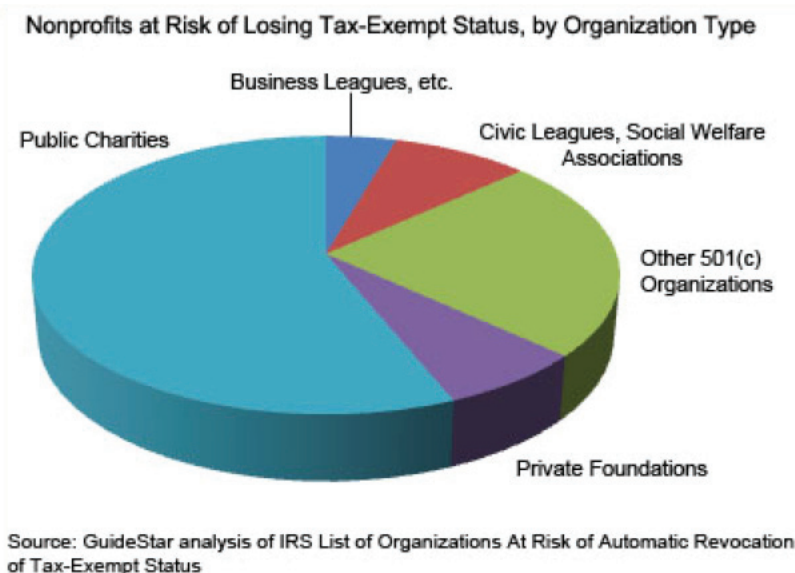
the IRS launched a one-time filing relief program. That program expired October 15, 2010,⁴ and the exemptions of organizations whose filings were three or more years in arrears technically were revoked. The IRS stated, however, that it expected to publish the Nonfiler Revocation List in 2011 and specified that charitable gifts and distributions could still be made to a revoked organization before that nonprofit's name appeared on the list.⁵

The IRS will publish the list on its Web site, www.irs.gov.⁶ Once the IRS has begun publishing the list, it will update it monthly.⁷

Which Nonprofits May No Longer Be Exempt?

In December 2010, the IRS published a list of nonprofits whose annual filings were at least three years in arrears.⁸ The list comprised 321,091 organizations. GuideStar's analysis shows that a substantial number may be defunct; 122,450, or 38 percent, do not appear in the February 2011 IRS Exempt Organizations Master Listing.

The vast majority—82 percent—of the remaining organizations were small nonprofits not required to file an annual return before passage of the Pension Protection Act. Over half—56 percent—were 501(c)(3) public charities.



How Might the Revocations Affect Me?

The answer to that question depends on who you are.

Nonprofit whose exemption has *not* been revoked. If you are associated with a nonprofit whose exemption has *not* been revoked, technically you don't have to do anything, except keep up the good work. The publication of the Nonfiler Revocation List will, however, be a good time to reach out to your donors, funders, and other constituents and assure them that your nonprofit is in good standing with the IRS. You may also wish to suggest that your supporters consult the revocation list to ensure that the other organizations they give to are still exempt.

Nonprofit whose exemption *has* been revoked. If your organization has had its tax exemption revoked for failure to file an annual return (or for any other reason, for that matter), it now must file a federal income tax return and pay federal income taxes. If it previously could accept tax-deductible contributions, it is no longer eligible to do so.⁹

It would be wise to check with your state charity office to determine whether the loss of federal tax exemption requires you to take action with the state as well.¹⁰

If you wish to regain tax-exempt status for your organization, you must apply for it by filing the appropriate form with the IRS and paying the required fees.¹¹ Your application will be reviewed with all other applications for exemption. Although you can request expedited processing, you will need to provide justification; automatic revocation of tax-exempt status does not of itself merit fast-tracking an application.¹²

Private foundations, donor-advised funds, federated giving campaigns, and other institutional funders. Publication of the Nonfiler Revocation List will add another requirement to

your due diligence. You will need to confirm that a grantee or gift recipient does *not* appear in the list, in addition to verifying charitable status in IRS Publication 78 and establishing whether a grantee is a supporting organization in accordance with IRS Revenue Procedure 2009-32. Failure to do—and document—this additional research may cause the IRS to disallow a payout as a charitable distribution and make your organization liable for excise taxes.

Donors. If you wish to deduct a charitable gift on your taxes, you will need to confirm before you make the contribution that the organization receiving it is still in good standing with the IRS. Otherwise, the IRS may disallow the deduction, and you may be required to pay a penalty.

Conclusion

It's difficult to predict the impact that publication of the initial Nonfiler Revocation List will have on the nonprofit sector. On the one hand, more than 300,000 organizations may have lost their exemptions. On the other hand, a substantial number of those nonprofits may have already ceased operations. On the third hand, the revocations will probably create confusion among some donors and recipients of nonprofits' services and increase public suspicion about nonprofits in general. Organizations that retain their exemptions may find that they have to field inquiries about their status.

Ultimately, however, weeding out defunct and noncompliant organizations will increase public trust in the sector; people will know that the remaining nonprofits are active and in good standing with the IRS. Nonprofits, the donors and funders who support them, and the recipients of their services will all benefit. As GuideStar president and CEO Bob Ottenhoff told the *New York Times* in April 2010, "This is a good thing for the nonprofit sector, even though it will no doubt create a hardship for a pretty significant number of organizations."¹³

Additional Resources

Start with our revocation resource center, <http://www2.guidestar.org/rxg/update-nonprofit-report/nonprofit-resource-center-automatic-revocation-of-tax-exempt-status.aspx>.

You may also find the following GuideStar articles helpful. They're listed from oldest to most recent.

"Half a Million Nonprofits Could Lose Their Tax Exemptions," January 2009, <http://www2.guidestar.org/rxa/news/articles/2009/half-a-million-nonprofits-could-lose-their-tax-exemptions.aspx>.

"For Thousands of Nonprofits, May 17 Is the IRS Deadline to Worry About," May 2010, <http://www2.guidestar.org/rxa/news/articles/2010/for-thousands-of-nonprofits-may-15-is-the-irs-deadline-to-worry-about.aspx>.

"May 17, 2010, Filing Deadline Reveals Confusion, Leads IRS to Offer Relief to 990-N Filers," June 2010, <http://www2.guidestar.org/rxa/news/articles/2010/may-17-2010-filing-deadline-reveals-confusion.aspx>.

"IRS Releases Guidance for Small Nonprofits at Risk of Losing Tax-Exempt Status," August 2010, <http://www2.guidestar.org/rxa/news/articles/2010/irs-releases-guidance-for-small-nonprofits-at-risk-of-losing-tax-exempt-status.aspx>.

"How to Find Out if Your Nonprofit Is in Danger of Losing Tax-Exempt Status," August 2010, <http://www2.guidestar.org/rxa/news/articles/2010/how-to-find-out-if-your-nonprofit-is-in-danger-of-losing-tax-exempt-status.aspx>.

"IRS Toolkit Helps Public Reach Out to Small Nonprofits in Danger of Losing Tax-Exempt Status," October 2010, <http://www2.guidestar.org/rxa/news/articles/2010/irs-toolkit-helps-public-reach-out-to-small-nonprofits.aspx>.

"Nonfiler Revocation List Coming Soon," March 2011, <http://www2.guidestar.org/rxa/news/articles/2011/nonfiler-revocation-list-coming-soon.aspx>.

"How Automatic Revocation of Tax-Exempt Status Could Affect You as a GuideStar Customer," March 2011, <http://www2.guidestar.org/rxa/news/articles/2011/revocations-and-guidestar-customers.aspx>.

- 1 Pension Protection Act of 2006, sec. 1223, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h4enr.txt.pdf.
- 2 Ibid.; Annual Electronic Filing Requirement for Small Exempt Organizations—Form 990-N (e-Postcard), <http://www.irs.gov/charities/article/0,,id=169250,00.html>.
- 3 Statement of IRS Commissioner Doug Shulman on the Filing Deadline for Small Charities, May 18, 2010, <http://www.irs.gov/newsroom/article/0,,id=223609,00.html>.
- 4 One-Time Filing Relief for Small Organizations That Failed to File for Three Consecutive Years, <http://www.irs.gov/charities/article/0,,id=225705,00.html>.
- 5 One-Time Filing Relief Program for Small Tax-Exempt Organizations: Contributions to Organizations on At-Risk List, <http://www.irs.gov/charities/article/0,,id=226816,00.html>.
- 6 Ibid.
- 7 Format for Upcoming Nonfiler Automatic Revocation List, <http://www.irs.gov/charities/article/0,,id=236554,00.html>.
- 8 List of Organizations At Risk of Automatic Revocation of Tax-Exempt Status, December 2010, <http://www.irs.gov/charities/article/0,,id=225889,00.html>.
- 9 Format for Upcoming Nonfiler Automatic Revocation List, <http://www.irs.gov/charities/article/0,,id=236554,00.html>.
- 10 See <http://www.nasconet.org/agencies> for a list of state charity offices.
- 11 Automatic Exemption Revocation for Non-Filing: Reinstating Tax-Exempt Status, <http://www.irs.gov/charities/article/0,,id=221591,00.html>.
- 12 One-Time Filing Relief Program for Small Tax-Exempt Organizations: No Special Expedite Procedure for Applications to Reinstate Tax-Exempt Status, <http://www.irs.gov/charities/article/0,,id=225978,00.html>.
- 13 Stephanie Strom, "One-Fourth of Nonprofits Are to Lose Tax Breaks," *New York Times*, April 22, 2010, <http://www.nytimes.com/2010/04/23/us/23exempt.html>.