



Legal Minute

Spring 2007

Missing a Filing Deadline: What Nonprofits Need to Know about IRS Form 990

By Vanessa L. Johnson, Texas C-BAR staff attorney*

What is IRS Form 990?

Form 990, *Return of Organization Exempt from Income Tax*, is the annual information return, which the IRS requires tax-exempt organizations to file. This form is basically a financial report, which provides the IRS with information about the organization's gross income, expenses, disbursements, assets, liabilities, net worth, contributions, gifts, lobbying expenditures, and other corporate information.

Why is Form 990 important?

The IRS reviews this information to determine whether the organization is operating in accordance with the law, paying reasonable compensation, avoiding conflicts of interest, or engaging in activities that could result in the loss of tax-exempt status. In addition, organizations must make this information available for inspection or copying to anyone who submits a written or in-person request to view the return. Tax-exempt organizations must make this document available for public inspection for a three-year period beginning on the due date of the return (including any extension). Failure to disclose this information may result in a penalty of \$20 per day for as long as the failure continues. The maximum penalty for each failure to provide a copy of an annual information return is \$10,000.

Which tax-exempt organizations are not required to file Form 990?

Certain governmental and church-affiliated organizations are not required to file returns. Organizations with gross receipts of less than \$100,000 and assets of less than \$250,000 at the end of the year may file Form 990-EZ, *Short Form Return of Organizations Exempt from Income Tax*. Private Foundations must file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation*. Beginning in 2008, organizations whose annual gross receipts are normally less than \$25,000 will now be required to file an electronic Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required to File Form 990 or 990-EZ*. The e-Postcard will require organizations to provide the following information:

- Name,
- Other names the organization uses,
- Mailing address,
- Website address (if applicable),
- Employer identification number (EIN),
- Name and address of a principal officer,
- Annual tax period,
- A statement that the organization's annual gross receipts are still normally \$25,000 or less, and
- If applicable, indicate if the organization is going out of business.

Which tax-exempt organizations are required to file Form 990?

Organizations exempt from income tax under Internal Revenue Code section 501(a), which includes all 501(c) (3) organizations that normally have more than \$25,000 in gross receipts, must file Form 990.

However, an organization's gross receipts are considered *normally* to be less than \$25,000 if the organization meets the following requirements:

- The organization is less than a year old and has received, or donors have pledged to give, \$37,500 or less during its first tax year.
- The organization is between one and three years old, and it has averaged \$30,000 or less in gross receipts during each of its first two tax years; or
- The organization is three years or older and its average gross receipts for the last three years (including the year of the return) is \$25,000 or less.

When must an organization file Form 990?

Organizations required to submit Form 990 or Form 990-EZ must file by the 15th day of the 5th month after the organization's accounting period ends. For example, if the organization's accounting period is the calendar year (December 31st), the due date is May 15th.

Does the IRS allow extensions of time to file?

Yes, the IRS allows organizations to apply for an Automatic 3-Month Extension by filing Form 8868, *Application for Extension of Time to File an Exempt Organization Return*. An organization can also use Form 8868 to file for one, additional 3-Month Extension. Therefore, the maximum time allowed for an extension, beyond the original filing date, is six months.

What happens if Form 990 is filed late, is incomplete, or the organization completely fails to file?

The IRS can assess penalties against organizations and against responsible persons. The penalties against organizations for late, incomplete, and incorrect forms are the same. The penalty for organizations with gross receipts of \$1,000,000 or less is \$20 per day for each day after the due date (including any extensions), and the maximum penalty is the lesser of \$10,000 or 5% of the organization's gross receipts. However, the IRS penalty for organizations whose gross receipts exceed \$1,000,000 is \$100 per day up to a maximum penalty of \$50,000.

If an organization furnishes incorrect information or does not file a complete return, the IRS will send the organization a letter that includes a deadline to fulfill these requirements. The letter requesting additional information or correction of information is typically directed to the person who signed the form. If the responsible person fails to comply, he or she will be charged a penalty of \$10 a day. The maximum penalty on all persons per return is \$5,000.

Finally, beginning in 2008, the IRS must revoke the tax-exempt status of any organization that fails to meet its annual filing requirement for three consecutive years.

What should an organization do if the IRS assesses penalties for filing Form 990 late?

The IRS may reduce or eliminate penalties if it finds that the organization had reasonable cause for filing the return late. Generally, the IRS considers all the relevant facts and circumstances on a case-by-case basis. To request a waiver of the penalties, the appropriate representative of the organization (e.g. Executive Director or Chief Financial Officer) should submit a signed and notarized statement, which details all the reasons the organization did not file Form 990 on time, did not ask for extension, and what steps the organization has taken to ensure that the same situation will not occur in the future. The letter should include supporting documentation, address the reason the penalty was charged, and explain what prevented the organization from complying with the law. The statement should demonstrate that the organization exercised ordinary business care and prudence and that it was not neglectful or careless. *Quick rule of thumb: Be honest. Say you're sorry. Ask forgiveness. Say it won't happen again.*

Where do tax-exempt organizations file Form 990? Which IRS office manages penalties resulting from Form 990 violations?

Tax-exempt entities generally file reports and returns at the Internal Revenue Service Center, Ogden, UT 84201-0027. This is the same office that manages penalties resulting from Form 990 violations.

Phone assistance with questions about Form 990 is available Monday through Friday at 1-877-829-5500, and a wealth of information is available on the Charities and Non-Profits section of the IRS website at <http://www.irs.gov/charities/index.html>. However, all communication about penalties is conducted in writing, and the IRS representatives will not address specific questions about penalties via telephone.

* This Legal Minute is not intended to be legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information only. Application of the information reported herein to particular facts or circumstances should be analyzed by legal counsel.