

2020 TAX-EXEMPT ORGANIZATIONS UPDATE

Hodgson Russ Tax-Exempt Organizations Alert
February 13, 2020

With 2020 well underway, this alert contains some updates and reminders for tax-exempt organizations.

New Form 1023 Filing Requirements

On January 31, 2020, the Internal Revenue Service (IRS) released IR-2020-25, which contained an important change in the filing requirements for Form 1023. Form 1023 “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code” is used by entities seeking to apply for recognition of exemption from federal income tax under section 501(c)(3). Previously, organizations could file Form 1023 by sending a paper copy to the IRS.

As of January 31, 2020, the IRS is now requiring that Form 1023 applications be submitted electronically online. Although the effective date of the change is January 31, 2020, there is a 90-day grace period during which the IRS will accept paper-filed copies of Form 1023 (Rev. 12-2017) that are postmarked April 30, 2020 or earlier. As such, organizations seeking to file paper versions of a Form 1023 should expedite the process to ensure that their applications are received by the IRS within the 90-day transition period. After that time, organizations will be required to electronically file such applications.

Other facets of the application process (including the \$600 user fee) continue to be the same for the most part, although some updates have been made. Specifically, the revised Form 1023 has been reorganized and reformatted, including the relocation of certain questions and the addition of various inquiries. For example, Form 1023 now includes a new Part IX, “Annual Filing Requirements,” which is designed to apprise organizations of their filing requirements and give them a chance to assert that they are not responsible for such filings due to an exemption. Previously, this portion of the application was contained in the middle of Part I, “Identification of Applicant,” making it easier to miss. Such changes are designed to help organizations ensure that they are completing the Form 1023 correctly and completely, and on balance should make the process easier for organizations.

Reminder – Ensuring Private Foundation Contribution Deductibility

As tax filing season approaches, it is crucial to remember that in order for a contribution to a private foundation to be tax deductible for the donor, a no “goods or services” receipt must be sent to the donor, just the same as with a donation to a

Attorneys

Andrew Besch
Catherine Eberl
Kenneth Friedman
Elizabeth Holden
Kenneth Hunt
Adam Perry
Patricia Sandison
Valerie Stevens
William Turkovich
Marla Waiss
Sujata Yalamanchili

Practices & Industries

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public charity. This is the case even if the donor is a trustee or director of the foundation. For 2019 gifts, the receipt needs to be given to the donor before he or she files their 2019 individual income tax return.

As such, it is *imperative* that both public charities and private foundations are certain that each of their donors receives a “no goods or services” receipt to memorialize their donations. This will help to ensure that the donor is able to successfully show their donation as a deduction when filing their 2019 individual income tax return. A donor can deduct a charitable contribution of \$250 or more only if the donor has a written acknowledgment from the charitable organization. The donor must get the acknowledgment by the earlier of: the date the donor files the original return for the year the contribution is made or the due date, including extensions, for filing the return. While the donor is responsible for requesting and obtaining the written acknowledgement from the organization, it is best practice for organizations to proactively offer the substantiation letters to its donors.

Public charities and private foundations may structure such a receipt in a variety of ways. For more information on how to properly structure such receipts, please contact any member of our Tax-Exempt Organizations practice.

Private Foundation Excise Tax Reduced

After many years of debate over the application of the historical two-tiered excise tax on private foundations, the Further Consolidated Appropriations Act, 2020 was passed on December 20th, 2019, which creates a flat 1.39% tax rate on private foundations. Before this change, under the two-tiered excise tax, a 2% percent tax was imposed on the net investment income of most private foundations, but could be reduced to 1% percent in certain cases. The new flat tax rate applies to taxable years beginning after the date of enactment. Therefore, for calendar-year foundations, the change will not affect 2019 filings, but will impact filings for 2020 and subsequent tax years.

Please contact any member of our Tax-Exempt Organizations practice if you have any questions.

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