

March 2014

AUTOMATIC REVOCATION & REINSTATEMENT OF TAX-EXEMPT STATUS

Section 6033(j)(1) of the Internal Revenue Code (“IRC”) automatically revokes the tax-exempt status of any organization that fails to file a required Form 990, *Return of Organization Exempt from Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*, Form 990-PF, *Return of Private Foundation or Form 990-N, e-postcard* (the “Annual Return(s)”) for three consecutive years. Revocation is generally effective as of the due date for the filing of the third Annual Return or notice and results in an organization being placed on a public revocation list (the “List”). (See <http://www.irs.gov/Charities-&Non-Profits/Exempt-Organizations-Select-Check>). The Internal Revenue Service (“IRS”) updates the List monthly and also mails a notification letter to the organization’s last known address. Unfortunately, once status is revoked, the organization will no longer be exempt from federal income tax and will have to pay corporate income tax on annual revenue. It will no longer be listed on the IRS’ website as an organization eligible to receive tax-deductible charitable contributions. (See <http://www.irs.gov/Charities-&Non-Profits/Search-for-Charities>). In addition, donors will not be able to receive a tax deduction for donations made after the revocation date. An organization will, therefore, want to have its tax-exempt status reinstated as expeditiously as possible. Revenue Procedure 2014-11 explains the procedures that an organization may use to apply for reinstatement and is effective for applications, namely Forms 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Forms 1024, *Application for Recognition of Exemption Under Section 501(a)*, or any other prescribed form or procedure regularly used to apply for tax-exempt status (the “Application”), submitted after January 2, 2014.

Organizations with annual gross receipts of less than \$200,000.00 and total assets of less than \$500,000.00 can apply for the streamlined retroactive reinstatement procedure. To qualify, the organization must not have previously had its tax-exempt status revoked and it must submit a new Application no later than fifteen (15) months after the later of the date of the revocation letter or the date on which the IRS has posted the organization’s name on the List and pay an appropriate user fee. Organizations whose applications are filed and approved are deemed to have reasonable cause for its failures to file and will be reinstated retroactively to the date of automatic revocation. The IRS will not apply any penalty for failure to file Annual Returns, as long as the organization files properly completed and executed paper Forms 990-EZ for the three consecutive taxable years. For any year that the organization was eligible to instead file a Form 990-N (had annual gross receipts of \$50,000.00 or less), the organization is not required to file a prior year form.

Organizations with annual gross receipts of greater than \$200,000.00 and total assets of greater than \$500,000.00 are ineligible for streamlined retroactive reinstatement; however, they can still apply for reinstatement. Such organizations must submit a new Application no later than the fifteen (15) month period stated above and also establish reasonable cause for their failures to file for at least one of the three consecutive years in which they failed to file. In the past, these

ALERT

Moritt Hock & Hamroff LLP is a broad based commercial law firm with more than 55 lawyers and a staff of paralegals. The firm's practice areas include: alternative dispute resolution; commercial foreclosure; construction; corporate, securities & financial services; creditors' rights & bankruptcy; cybersecurity; employment; equipment & vehicle leasing; healthcare; landlord & tenant; litigation; marketing, advertising & promotions; not-for-profit; real estate; surety; tax; trademarks, patents & other intellectual property; trusts & estates; and white collar defense, government investigations, compliance & internal investigations.

This Alert was written by Michelle E. Espey.

Ms. Espey, an associate with the firm, is a member of the firm's tax and trust and estates group where she represents countless individuals and businesses in audits and collection matters before the Internal Revenue Service and New York State Department of Taxation and Finance. She frequently publishes and speaks on issues concerning tax related matters and is involved in many aspects of tax law, business tax planning, state and local taxation, and tax controversy matters.

Any questions concerning the matters raised in the Alert should be addressed to Ms. Espey. She can be reached at (516) 873-2000 or by email at mespey@moritthock.com

organizations had to establish reasonable cause for all three years.¹ To establish reasonable cause, an organization must establish that it exercised ordinary business care and prudence in determining and attempting to comply with its reporting requirements. The IRS will take into account all pertinent facts and circumstances relating to the filing failures such as reliance on erroneous information from the IRS, events beyond the organization's control, the organization's history of compliance, and the organization's efforts to promptly correct the cause of the reporting failure. The organization must pay an appropriate user fee and also issue a statement confirming that it has filed the Annual Returns for all three years for which the organization was required and failed to do so. If approved, the penalty for failure to file Annual Returns will not apply.

In addition to the above, Revenue Procedure 2014-22 provides procedures for organizations that fail to request reinstatement within fifteen (15) months and those that apply for reinstatement on a prospective basis only. Each of these procedures provides a more forgiving means for organizations to seek reinstatement.

If you or your organization has any questions or concerns regarding a revoked tax-exempt status and/or the applicability of Revenue Procedure 2014-11, please do not hesitate to contact us. We will be more than happy to assist you.

Coming soon...

Our next Client Alert will address the impact of the loss of tax-exempt status on an organization's donors, officers, directors and management, including the tax consequences and potential personal liability relating thereto.



This Alert is published solely for the interests of friends and clients of Moritt Hock & Hamroff LLP for informational purposes only and should in no way be relied upon or construed as legal advice.

¹ The three year reasonable cause requirement does still apply to organizations that seek reinstatement more than fifteen (15) months after the later of the date of the revocation letter or the date on which the IRS has posted the organization's name on the list.