

Taxpayer First Act Requires All Tax-Exempt Organizations to E-File

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Client Advisory

July 17, 2019 by Pamela A. Mann, Ahsaki E. Benion and Jeremy S. Steckel

On July 1, 2019, the President signed into law the [Taxpayer First Act](#) (the "Act"), which aims to improve taxpayer rights, redesign the organizational structure of the Internal Revenue Service ("IRS"), and enhance IRS customer service. Among its many provisions, the Act includes changes to the Internal Revenue Code (the "Code") that significantly impact tax-exempt organizations.

- **Mandatory E-Filing:** Tax-exempt organizations required to file an annual return must submit an IRS Form 990 series form (i.e., Form 990, Form 990-PF, Form 990-EZ, or Form 990-N) each year. Small tax-exempt organizations with annual gross receipts of \$50,000 or less satisfy their annual reporting obligation by submitting Form 990-N *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*, via the [IRS website](#). Prior to the Act, only (a) Form 990-N filers, (b) Form 990-PF filers filing at least 250 returns per year (including income, excise, employment tax and information returns), and (c) Form 990 filers filing at least 250 returns per year with assets over \$10 million, were required to file electronically. Other Form 990 series filers had the option to file electronically, but were also permitted to file paper copies by mail or private delivery service.

Now, with the enactment of the Act, all exempt organization annual returns, including the Form 990-T *Exempt Organization Business Income Tax Return* used to report unrelated business income, must be filed in electronic form. This new mandatory electronic filing requirement also applies to any Form 8872 *Political Organization Report of Contributions and Expenditures* filed by an exempt political organization organized under Code § 527; prior to the Act, electronic filing was required only for those § 527 political organizations with contributions or expenditures exceeding \$50,000 in the applicable year. Tax-exempt organizations that are required to file electronically but do not are deemed to have failed to file the return, even if they submit a paper return.

The mandatory e-file provisions of the Act are effective for taxable years beginning after July 1, 2019, but the IRS may delay application of the Act for up to two years for small organizations (those with annual receipts of less than \$200,000 and assets of less than \$500,000) and certain other organizations if immediate application of the Act would cause an undue burden, as well as for Form 990-T filers.

Currently, tax forms may be filed electronically using an [authorized e-file provider](#), and large organizations may be authorized to file their own electronic returns. We expect e-file options to be updated soon in light of the new requirements.

The mandatory electronic filing requirement will enable the IRS to make annual exempt-organization returns available to the public in machine readable (i.e., computerized) format. Indeed, the Act requires that the IRS make all such returns available to the public in machine readable format as soon as practicable.

- **Notice of Impending Revocation of Exempt Status:** If a tax-exempt organization fails to file a required annual return or notice for three consecutive years, such organization's tax exemption is considered revoked as of the due date of the third annual return or
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notice. The IRS maintains a [public list](#) of organizations whose exempt status has been so revoked but, prior to the Act, the IRS did not notify organizations in advance that they were at risk of such revocation. Now, under the Act, the IRS must (a) notify any organization if the IRS has not received an annual return from such organization for two consecutive years; (b) inform the organization that its exemption will be automatically revoked after three years of non-filing; and (c) provide the organization with information about how to comply with the annual filing requirements. The new notice provision should be welcome news for nonprofits, as it will help to ensure that organizations are aware of the annual filing obligations, alert them to any delinquent filings, and afford them the opportunity to come into compliance before automatically losing their tax-exempt status.

Nonprofits should work closely with their legal and accounting advisors to comply with the new e-filing requirements and ensure that required filings are submitted on a timely basis to avoid jeopardizing their tax-exempt status.

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