

## FORM 990N ALERT

Congress amended the tax code to require, beginning in 2008, that exempt organizations that don't have to file the Form 990 or Form 990 EZ had file an informational form, the Form 990N. Form 990N is a simple one page form that can be found on the IRS website and can only be filed electronically. If your organization fails to file this form (or any other Form 990 or 990EZ return due from you), for three years, the IRS will automatically revoke your exemption. This applies to virtually all organizations exempt under §501(c), not just the (c)(3)s.

Here's the latest twist on what is becoming a nightmare for the IRS as well as for many nonprofits.

If your client is a nonprofit that has filed for tax exemption but your application is still in process, the IRS requires that you file the Form 990N or you can lose your exemption. This applies even though the IRS has not ruled on your exemption application.

Occasionally, the IRS grants your exemption after your three years has gone by. This is most likely to happen if you filed your application some considerable time after you incorporated, or you filed your application and the IRS held it up for a long time. In either case, you are in the odd position of getting an exemption but then finding out you already lost it. An IRS agent told me that the service is dealing with this by issuing the letter agreeing you are exempt but stating that there was a period between when you automatically lost your exemption and the date of the exemption letter in which you were not exempt. This means if you received donations or grant money during that period, your donors/funders may have problems with the IRS.

Alternatively, if the IRS period of recognition is going to hurt your client, you could consider asking the IRS to backdate your exemption to a period within the three year period to file the Form 990N, rather than to backdate the exemption to the date of incorporation and then have a window period without the exemption. This would work if your client had no donations in its early days but some within the last three years. This will require extra review time while the IRS decides if they will do this.

The best answer is to instruct your clients to file the Form 990N (or whatever Form 990 is due) before you hear from the IRS that you are exempt and this is what the IRS wants you to do. However, the IRS doesn't seem to want it enough. The system can only take Form 990Ns if the organization has created a file with this branch of the IRS. Eventually, your exemption letter would create a file, but you can't wait for this. Your client can go to the IRS website to see if it will accept its Form 990N filing. If it doesn't recognize your client, here is what you or your client needs to do:

1. Create a file by calling the IRS at 1.877.829.5500. The IRS may ask for this info:

- Your employer identification number (EIN);
- Your tax year;
- Your organization's legal name and address;
- A statement about what your gross receipts were for the tax year in question.

Get some confirmation about your file--the name of the agent, badge number and anything else he

or she can give you and keep a written record of the call.

2. This call gets your file set up but is NOT your Form 990N filing. You won't be able to file the Form 990N until your file gets into the system. Be sure you go back online and file the Form 990N before your three year deadline passes.