

# TaxViews

**A tax periodical for the non-profit community**

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## **The Importance of Board Review and Timely Filing of Form 990**

From time to time, we receive inquiries from tax-exempt organizations asking, “[w]hat’s the big deal if we do not file our federal Form 990, Return of Organization Exempt from Tax (“Form 990”), on time or at all?” As outlined below, a late filing or complete failure to file can have a significant and lasting impact on a tax-exempt organization. Moreover, as the Form 990 is a document which is open to public inspection, it is critically important that those charged with governance implement a official review process prior to filing with the Internal Revenue Service (“IRS”). Therefore, we urge tax-exempt organizations to take appropriate steps to ensure tax returns are not only filed on a timely basis, but undergo an appropriate review process.

### **Importance of Board Review**

Does your tax-exempt organization answer “Yes” to Form 990, Part VI, Governance, Management, and Disclosure, Section B. Policies, which asks, “[h]as the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form? If the answer is “No”, those charged with governance should take action to establish a review process to ensure the tax-exempt organization may answer yes in a future period.

While the Form 990 does not actually require board review, a tax-exempt organization may answer “Yes” only if a complete copy of the organization's Form 990 (*including all required schedules*), as ultimately filed with the IRS, was provided to each person who was a voting member of the governing body at the time the Form 990 was provided. Being that the Form 990 is open to public inspection, it may benefit the tax-exempt organization to advise the public that those charged with governance performed a review of the Form 990 prior to filing.

### **Late Filing and the Applicable Penalties (as of November 2024)**

If a tax-exempt organization whose gross receipts are less than \$1,208,500 for its tax year files its Form 990 after the due date (including any extensions), and the organization doesn't provide reasonable cause for filing late, the IRS will impose a penalty of \$20 per day for each day the return is late. The maximum penalty is \$12,000, or 5 percent of the organization's gross receipts, whichever is less. The penalty increases to \$120 per day, up to a maximum of \$60,000, for an organization whose gross receipts exceed \$1,208,500.

Please note that late filing penalties may also apply to the late filing of Form 990-T, Exempt Organization Business Income Tax Return, and any state filings, as applicable.

### **Failure to File for Three Consecutive Years**

Tax-exempt organizations that fail to file the required information return (Form 990, Form 990-EZ, or Form 990-PF) or e-Postcard (Form 990-N) for three consecutive tax years will automatically lose their tax-exempt status. An automatic revocation is effective on the original filing due date of the third annual return.

### **Effect of Losing Tax-Exempt Status**

If a tax-exempt organization's tax-exempt status is automatically revoked, it is no longer exempt from federal income tax. Consequently, it may be required to file a corporate or trust return and pay applicable income taxes.

An important point not to overlook is that an automatically revoked tax-exempt organization is not eligible to receive tax-deductible contributions and will be removed from the cumulative list of tax-exempt organizations, Publication 78, published by the IRS.

Further, the Internal Revenue Code prohibits the IRS from undoing an automatic revocation and does not provide for an appeal process unless such revocation was a mistake by the IRS. Therefore, an automatically revoked organization must re-apply to have its status reinstated, even if the organization was not originally required to file an application for exemption. This process can take a significant amount of time to rectify with the IRS and may prove to be very costly.

In closing, we urge tax-exempt organizations to implement a review process for the Form 990 at the board level and ensure such filings are made on a timely basis with the IRS. By undergoing such process, a tax-exempt organization may avoid unnecessary penalties, expense, and the embarrassment of losing its tax-exempt status.

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