

## 501(c)(3) – Special Meeting & Expenditure

- Were ready to hit the ground running this year, but have arrived at a roadblock
- Has taken weeks to sort out & understand ramifications.
- Now that we have a clear understanding, are presenting what we know.

### Facts for Reference

- Why a nonprofit?
- “Once a nonprofit,” (per IRS website) need to file annual return 990
- For organizations with <\$50K in annual revenue, it is a 990N (e-postcard) – 7 brief questions
- Failure to file for 3 consecutive years = automatic revocation. Have been aware of this from the beginning. Process was established to do away with defunct organizations.
- Our fiscal year is July 1 – June 30
- Our 990 is due the 15<sup>th</sup> of the 5<sup>th</sup> month after year end (i.e., November 15<sup>th</sup>)
- Our Articles of Incorporation with NYS were dated May 6, 2010 (<8 weeks before end of FY10)
- We submitted our Form 1023 application for nonprofit status in late June, 2012 (days before end of 26<sup>th</sup> month). The IRS acknowledged receipt on July 23, 2012 (days before end of 27<sup>th</sup> month) during our FY 13.
- We received notice of our nonprofit status in September 2012, dated August 31, 2012, during our FY13. The effective date of exemption was date of formation.
- We planned in good faith to file our first, FY13 taxes in November 2013.

### Discovery of Errors Made

- Upon attempting to establish credit card processing, learned that the **IRS had erroneously failed to list our organization in the Exempt Organizations Registry.** Could not reach them to resolve until after government shut-down. (Without being listed, do not appear in Guidestar and can't get started on NYCharities.org for credit cards, Crowdrise, Amazon Smile, etc., but hadn't come up prior)
- When reached, IRS apologized for their mistake and set about fixing. During conversation, woman asked, “Why haven't you filed any returns yet?”
- Explained to her that had only just been approved during FY13 and were preparing to file. How should we – could we – have filed a nonprofit return for a period prior to nonprofit status?
  - Not clear in any IRS info. (note, compliance guide, application instructions)
- She explained that since effective date was May 6, 2010, we had already exceeded three years. As soon as properly logged into the system, would most likely be automatically revoked.
- The only update the online Exempt Registry about once per month.
- Provided us with an “affirmation letter” of status & good standing to suffice in the meantime
- She advised that if revoked, the process for reinstatement involved submitting a new application.
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- After a great deal of research and a series of calls, got through to the IRS Northeast Area Region office in Brooklyn. Over the course of a few weeks, a representative there tried to help us find a solution with the higher powers at the IRS, with adjustments unit in Cincinnati, had us fax a letter, etc.
- He advised that the IRS knows this system is flawed, it is not working the way it was intended, and numerous organizations are getting unwittingly trapped.
- He clarified that the only way we could have avoided would have been to file at FY12 return (for a period of time that pre-dated our pending application) between our receipt of notification in September 2012 and November 15, 2012.
- No penalty for filing late, but also “can't go backwards”
- Essentially, the three-year automatic revocation clock *had all but expired by the time we learned of our new nonprofit status.*
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- By mid-November, we did finally show online in exempt registry as an eligible organization. Revoked orgs were updated 11/12/13 and eligible orgs were updated 11/13/13, and we still showed as fine.
- Our rep in Brooklyn thought perhaps this was a positive sign that things were being controlled behind the scenes in anticipation of an adjustment/resolution. Lots of back & forth conversations.
- We immediately and successfully filed 990-N epostcard
- Once the IRS finally, properly listed us in the registry database, it triggered an automatic notification regarding the need to promptly file a 990 – received letter in the mail. **Had the IRS properly processed us in the first place, we would have received this notification in September-October of 2012,** and would have had the opportunity to clarify our obligations regarding filing for a prior period.

- Finally were notified that, despite acknowledgement of a broken system and errors made on the part of the IRS, the only 'fix' was to re-file the application for nonprofit status, along with the \$850 application fee. N.B.: This is really filing for reinstatement, not truly like starting over. More below.
- In the process of beginning to prepare for re-application:
  - Noticed that new, supporting info available – but still says "once you are approved, you will need to file..."
  - Discovered the 27-month rule:
    - If applying within 27 months of formation, determination date / effective date is the date of formation (for us, 5/6/10)
    - If applying after, effective date = postmark date of application
    - Probably exactly for this reason!
    - Our application: Q: Under 27 months? A: Yes
    - Arrived in <27 months, but while in their hands and by the time approved, was >27 months.
    - Understanding the implications, the **IRS could/should have reached out to recommend our effective date of nonprofit status be the postmark date of our application.**
    - Our contact even said, "I don't understand why they didn't do that."

#### The upshot: "Perfect storm" of coincidences

- 3-year failure-to-file clock expired 10 weeks after they approved us as a nonprofit, and 6-8 weeks after we received the approval.
- We did not receive the notice of need to file, and the IRS materials are not clear on the need to file for a period of time prior to a pending application.
- All this over a 7-question, 10-minute electronic postcard filing.
- IRS admitting failures (but saying we could have filed for FY12 and avoided).

#### Lessons learned – how could we have avoided?

- We could have known to file retroactively a nonprofit return for a period of time that pre-dated our application to be a nonprofit, despite the fact that we had no standing anywhere but NYS, where we are exempt from filing as a PTA. (N.B., we couldn't have even accessed the 990N had we tried, because we weren't properly processed by the IRS! But had we tried and been unable, we could have reached out to them then.)
- The IRS could have processed us properly, which would have triggered a notification of the need to file a 990, which would have caused us to ask the question regarding FY12.
- The IRS could have reached out during the review of our application and recommended a more recent effective date AND/OR the narrow window to file.

#### So, where does that leave us now?

- As of Thurs, we are still showing as active and eligible in the online Exempt Organizations Registry.
- Trigger for revocation has been put into motion by the computer (seems to have more power than the people). At some point (mid-Dec?) we will receive a letter/notice of revocation.
- To be reinstated must submit new application "under notice of revocation 2011-44" – different queue.
- Must include the \$850 fee
- Review window is supposed to be 90 days (backlog of other orgs in this situation notwithstanding).
- Preparing new application – big lift, but not as bad this time.
- Will request application be expedited and the fee be refunded to us, on the basis of IRS errors, broken system not working as intended, coincidence of dates, and hardship this is causing. Have been advised that we should be eligible for refund.
- System will revoke our nonprofit status as of 11/15/12 (last day to file for third year)
- Upon successful review of application, we will be reinstated as of 11/15/2012. This would leave only the 2.5 month period 9/1/12 – 11/14/2012 that we were not in status.
- Will suggest/request as an alternative that they reinstate us with an effective date of the postmark date or intake of the original application, which is what they should have done in the first place.
- There will be no penalty for donors. (Contributed vs. earned revenue.)
- Loss is mainly that of time/fundraising time.
- Will continue to write discretionary & capital grants for the school – had gotten Jen Spence independent, but will go back to it now that she's moved on. RECEIVED \$35K for tech FY14!