

Nonprofit News for the New Year

by Mark E. Chopko and Jennifer A. Gniady

Many organizations emerge from the holiday season, relieved to have completed another year, but with an eye on how to make the organization more successful in its mission in the next. To help you get a running start, here are some news and housekeeping items you may have missed at the end of last year or in early 2020. As always, our nonprofit practice group is available to help answer questions and navigate any significant changes you may have planned for the new year.

Parking & Foundation Tax Legislation

Two sections of tax legislation passed in late December will affect tax-exempt organizations. The bill retroactively repealed the section 512(a)(7) provision that created taxable unrelated business income for nonprofit organizations offering parking and transit benefits to employees, whether or not the benefits were paid for by the employees. Many nonprofits paid the 21% tax while it was in effect, and the retroactive repeal of the tax means that amounts paid in 2018 and 2019 are refundable, pending further IRS guidance. The same bill also replaces the tiered (1% and 2%) excise tax on private foundation investment income with a single 1.39% tax rate. This should make the administration of foundation investments and grants simpler and alleviate concerns that greater needs for grants in a given year might trigger the higher-tier excise tax.

IRS Exemption Approvals

The IRS Taxpayer Advocate Report released on Jan. 8, 2020, indicates there continue to be problems with compliance for organizations using the electronic Form 1023-EZ. A 2019 study determined that, based on articles of incorporation alone, an estimated 40% of the approved organizations did not qualify for 501(c)(3) status, usually because of inadequate charitable purpose and dissolution clauses. An earlier study with similar results led to the addition of a required description of the organization's activities on the electronic form. However, the latest study shows this request for additional information has not kept the number of erroneous approvals from increasing over the past year.

New 990 Filing Requirements

IRS reporting forms for exempt organizations are shifting to mandatory electronic filing. For organizations that file the 990 or 990-PF, electronic forms are required for tax years ending July 31, 2020. However, the IRS will accept paper filings for tax years ending on or before June 30, 2020, and in cases where an organization has a short tax year that cannot be reported through the electronic filing system. Small organizations that file the 990-EZ have a longer lead time to make the transition and can file either paper or electronic forms for tax years through July 31, 2021.

Arrival of Electronic 1023 Forms

After beginning almost a decade ago to plan for electronic applications, the IRS now expects to introduce an electronic Form 1023 to replace the paper version in the first part of 2020. Early guidance indicates the electronic form will be released for comments soon, and the transition process is expected to take place over 90 days, during which the paper applications will be phased out. Applicants will be able to download an exact copy of the submitted

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Form 1023 for their records through the payment portal for the application fees, ensuring they can comply with public disclosure requirements. For attachments and additional narrative information that exceeds the capacity of the online text boxes, organizations will be able to upload supplemental materials as a PDF file. The release date is undetermined at this time but could be as early as late January.

Mailing Address Updates for Form 1023

In the meantime, the addresses for mailing paper Form 1023 applications to the IRS have been corrected again in December. If your organization has a draft application started last year, make sure you use the updated addresses:

Regular U.S. Postal Service mail:

Internal Revenue Service
P.O. Box 12192
TE/GE Stop 31A Team 105
Covington, KY 41012-0192

Deliveries by private delivery service:

Internal Revenue Service
7940 Kentucky Drive
TE/GE Stop 31A Team 105
Florence, KY 41042

Ministerial Exception Cases

For religious agencies, determining the parameters of First Amendment protections in the workplace has been a source of real confusion, as we have discussed previously here (<https://www.stradley.com/insights/publications/2019/09/nonprofit-alert-september-2019>) and here (<https://www.stradley.com/insights/publications/2016/07/nonprofit-alert-july-2016>).



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The First Amendment applies to “ministerial positions,” but who precisely occupies that position is not always clear. Help may be on the way: The U.S. Supreme Court will consider the scope of the ministerial exception in two cases involving teachers with religious duties as part of their employment at California Catholic schools. The cases accepted for argument this spring are *Our Lady of Guadalupe School v. Morrissey-Berru* (<https://www.supremecourt.gov/qp/19-00267qp.pdf>) and *St. James v. Biel* (<http://cdn.ca9.uscourts.gov/datastore/opinions/2019/06/25/17-55180.pdf>). The cases are expected to provide further clarification on how to determine which employees serve a ministerial exception. Both schools located in California have fallen under the Ninth Circuit’s approach, which narrowly tracks the facts of the decision in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* and diverges from the function-focused approach taken by the majority of circuit courts.

We wish all of our nonprofit and religious clients the very best for a safe and successful 2020.