To: Carrie Juhasz Horton

From: Lynda A. Morris

Re: IRS Filing Requirements for Public Charities

Date: April 10, 2023

Dear Carrie,

You recently asked me about the annual filing requirements for public charities. As you know, I am a CPA licensed in Connecticut and employed by a big four public accounting firm as a Senior Tax Manager and Subject Matter Specialist. My area of specialty is tax and information reporting for tax-exempt organizations and charitable trusts. I have 25 years of experience in this specialty area. By virtue of my employment, I am prohibited from rendering tax services, advice or opinions about organizations that are not clients of my firm. I am, however, permitted to discuss the filing requirements for exempt organizations in general. What follows is a discussion of the general requirements and citations of the Internal Revenue Code ("IRC"), Treasury Regulations ("Reg.") and Revenue Procedures ("Rev. Proc.") that govern these requirements.

Organizations exempt from income tax under IRC 501(c)(3) and classified as public charities under IRC 170(b)(1)(A)(vi) are required to file annually either the Form 990-N (e-postcard), Form 990-EZ (short form) or Form 990 by the 15th day of the fifth month following the close of their tax year. The first step in determining which form is required to be filed is calculating gross receipts.

Gross Receipts is defined in Reg. 1.6033-2(g)(4) as including, but not limited to:

1. The gross amount received as contributions, gifts, grants, and similar amounts without the reduction for the expenses of raising and collecting such amounts,
2. The gross amount received as dues or assessments from members or affiliated organizations without the reduction for expenses attributable to the receipt of such amounts,
3. Gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990-T),
4. The gross amount received from the sale of assets without the reduction for cost of other basis and other expenses of sale, and
5. The gross amount received as investment income, such as interest, dividends, rents, and royalties.

Determining gross receipts correctly is critical to filing the correct annual return. If an incorrect return is filed, the return is deemed to have not been filed by the IRS and the organization may be subject to an automatic revocation of its tax-exempt status through an IRS examination. An auto revocation occurs when an organization fails to file a required return for three consecutive tax years per IRC 6033(j)(1)(B).

Form 990-N

An organization can file Form 990-N if its gross receipts (determined as described above) are not normally greater than $50,000 for the year. "Not normally more than $50,000" is defined in Rev. Proc.

2011-15 and is dependent on how long the organization has been in existence. Per Rev. Proc. 2011-15, an organization's gross receipts are not normally more than $50,000 if it has existed for:

1. One year or less and has received (or donors have pledged) gross receipts of $75,000 or less during the first tax year;
2. More than one year, but fewer than three, and the average gross receipts received in each of the first two tax years are $60,000 or less; or
3. At least three years, and the average gross receipts received in the immediately preceding three tax years (including the tax year the return would be filed) are $50,000 or less.

Form 990-N requires the organization to report to report its legal name and any other names used, address, website address (if applicable), tax identification number, the name and address of its principal officer, the organization's tax year end and to confirm that its annual gross receipts are less than $50,000. If applicable, a statement that the organization has terminated or is terminating.

Form 990-EZ

Organizations whose gross receipts are less than $200,000 for the year and have total assets less than $500,000 at the end of the tax year are not eligible to file Form 990-N and should file Form 990-EZ. This is a two-pronged test in that both the gross receipts and the asset thresholds must be met. For example, if the organization has gross receipts of $100,000 and total assets of $600,000, they are not eligible to file Form 990-EZ and must file Form 990 (discussed later).

- Gross receipts are calculated using the same formula as discussed above but note that only the current tax year is considered in the calculation. The computation for the asset threshold includes all assets owned by the organization at the end of the tax year without reduction for any liabilities associated with those assets. Per the Form 990-EZ Instructions and the Form 990 instructions, pages 17 and 47-48, respectively. assets include:
- Cash, Savings, and Investments – petty cash funds, checking accounts, savings accounts, money market funds, commercial paper, certificates of deposit, federal and state government obligations, the book value of securities held as investments and all other investment holdings including land, buildings, equipment, and leasehold improvements (cost or other basis reduced by accumulated depreciation) if the assets are held for investment.
- Land, Buildings, Equipment and Leasehold Improvements – the book value (cost or other basis less accumulated depreciation) of all land, buildings, equipment, and leasehold improvements owned by the organization and not held for investment.
- Other Assets – other assets include, but are limited to, accounts receivable (reduced by any allowance for doubtful accounts), loans and notes receivable, pledges and grants receivable, inventories for sale or use (whether purchased, manufactured by the organization, or donated), prepaid expenses, intangible assets, and the organization's share of any assets in any joint ventures, LLCs and other entities treated as a partnership for federal tax purposes.

The organization is required to report significantly more information on Form 990-EZ than Form 990-N. Form 990-EZ is a 4-page form and is comprised of the following parts and schedules:

- Part I *Revenue, Expenses, and Changes in Net Assets or Fund Balances*. "Revenue" includes contributions, gifts, grants, and similar amounts received.

- Part II *Balance Sheets* - beginning and ending balances for assets, liabilities, and net assets.
- Part III *Statement of Program Service Accomplishments* - the organization's primary exempt purpose and a description of their 3 largest program service accomplishments along with the amounts spent on those accomplishments.
- Part IV *List of Officers, Directors, Trustees and Key Employees* - any compensation and benefits paid by the organization must also be reported.
- Part V *Other information* - in this section the organization answers a series of questions which determines whether additional schedules or returns are required to be filed. This is how the IRS exercises oversight over tax-exempt organizations and ensures they are complying with the requirements for maintaining their tax-exempt status. For example, all organizations recognized as public charities under IRC 170(b)(1)(A)(vi) must file Schedule A, *Public Charity and Public Support*. This schedule contains a public support test the organization must show they pass. If the organization has contributions from any one person or entity exceeding $5,000 during the tax year, they must complete Schedule B, *Schedule of Contributors*. This schedule discloses the name and address of the organization's substantial donors. There are 8 possible schedules that must be filed with Form 990-EZ depending on organization type, the sources of the organization's funds, and the activities they engage in.
- Part VI *Section 501(c)(3) Organizations Only* – in this section, all 501(c)(3) organizations must disclose any political lobbying activities, any transfers of assets made to a related non-exempt organization and identify any employees or independent contractors who were paid more than $100,000.

Form 990

Organizations not eligible to file Form 990-N or 990-EZ due to the gross receipts and asset thresholds must file Form 990. Form 990 is a 12-page form and requires more detailed information about the organization's operations, investments, and activities than Form 990-EZ. In addition, to the information required on Form 990-EZ, the organization must report information about its governance and internal controls and policies and information about its financial statements and reporting.

There are 16 possible schedules that must be filed with Form 990 depending on organization type, the sources of the organization's funds, the types of assets they own and the activities they engage in.

Public Inspection Requirements

Form 990-N is made available to the public on the IRS website. Form 990-EZ and Form 990 filers must make their annual returns available to any member of the public who wants to inspect their return. It should be noted that Schedule B, *Schedule of Contributors* is not open to public inspection, but all other schedules are open to public inspection.

Late Filing Penalties

There is no penalty for late filing Form 990-N. The late filing penalty for Form 990-EZ or Form 990 (as of the 2022 filing year) is $20 per day, not to exceed the lesser of $11,000 or 5% of the gross receipts for the organization for any one return. Organizations with gross receipts exceeding $1,129,000 are subject to a late filing penalty in the amount of $110 per day, not to exceed $56,000 for any one return.

In summary, I hope I've adequately shown that the level of IRS oversight over tax-exempt organizations increases based on the size of the organization as measured by an organization's gross receipts and total assets. In addition to IRS oversight, the IRS encourages taxpayers who have complaints about tax-exempt organizations to use Form 13909, *Tax-Exempt Organization Complaint (Referral) Form* (available on IRS.gov) or to send them the complaint in letter format.

Form 13909 or a complaint letter can be submitted via email to eoclass@irs.gov or mailed to:

TEGE Referrals Group

1100 Commerce Street, MC 4910 DAL

Dallas, TX 75242

Tax exempt organizations are also subject to oversight by state charity regulators. In Connecticut, the Department of Consumer Protection/Public Charities Unit has oversight. They can be reached at (860) 713-6100. Their fax number is (860) 707-1971. Their email address is: dcp.charitiesenforcement@ct.gov. Their mailing address is:

Charity Enforcement

Department of Consumer Protection

450 Columbus Blvd., Ste. 901

Hartford, CT 06103

Please let me know if you have any further questions.

Sincerely,

Lynda A. Morris

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