From: Exempts@aol.com
To: OIRA_Submission@OMB.EOP.gov; PRA
Subject: Comments on Draft For 1023-EZ
Date: Tuesday, April 29, 2014 10:49:52 PM

Dear IRS and OMB,

Thank you for the opportunity to comment on the Draft Form 1023-EZ (Version A, Cycle 12).

I was an IRS Exempt Organizations Specialist in San Francisco, and then Seattle, from 1974 to 1986. I spent roughly half those years doing determinations and the other half doing examinations. I left the IRS in 1986, when the E.O. Key Districts were consolidated and my determinations job in Seattle was moved to southern California.

Since then, I have prepared most versions of Form 990, but I prefer preparing Form 1023. I have taught classes and lectured on Form 1023. In the late 1990's, I established a website to help folks with a Do-It-Yourself 501(c)(3) application (www.form1023help.com) and in 2002, I wrote a book called Prepare Your Own 501(c)(3) Application, which I have regularly revised, and continue to sell as an ebook.

I answer questions from the public about Form 1023 on an almost daily basis.

I hope my comments below are helpful as you ready Form 1023-EZ for public use.

Sandy Deja
exempts@aol.com
(907)457-1498

OMB Number

I am not familiar with OMB numbering procedures. Why does the Form 1023-EZ have the same OMB number as the "long form" 1023? I note that Forms 990 and 990-EZ have different OMB numbers.

Time Estimate

Naturally, since the form is not available for use, I do not base this on actual experience, but I do not believe 14 hours is a realistic estimate for completing Form 1023-EZ

Does this time estimate take recordkeeping into account? Recordkeeping is included in the time estimate in the Instructions for the long-form 1023. The IRS estimates nearly 43 hours of recordkeeping, on average, for an organization filing Form 990-EZ. Would it really take that much less recordkeeping for a similarly-sized organization to determine whether it has met the gross receipts and assets guidelines for 1023-EZ eligibility?

Does this time estimate take learning about the law into account? Learning about the law is included in the time estimate in the instructions for the long-form 1023. The 1023 EZ instructions recommend that applicants take these steps to learn about the law -

- read the "Life Cycle of an Exempt Organization" materials available on irs.gov
- read Publication 557 for further information and examples of how to limit purposes, for further information and examples of acceptable language for dedication of assets, for additional information about the public charity support tests, for acceptable 508(e) language, for additional information about the lobbying expenditure limit v. the no substantial amount lobbying limit, and for additional guidance on public inspection
- read Pub 578 for a definition of unrelated business income
- read both Pub 557 and Pub 598 for return information on filing requirements and exceptions

- read Pub 526 for more information on the deductibility of contributions

I believe it is likely to take applicants longer than 14 hours to complete Form 1023-EZ.

Eligibility

Please don't let small private foundations (including Private Operating Foundations) file the 1023-EZ! I believe the risk of non-compliance among these groups, going forward, is much greater than, for instance, the risk presented by small churches and schools, see below. (In the early 80's, when Form 1023 was shorter, and there was no User Fee, I spent about six months doing correspondence audits of Forms 990-PF. This work left me with the impression that many small 990-PF filers had not even heard of self-dealing or the minimum payout rules; I note that neither of those terms appears in the draft 1023-EZ instructions.) See other comments about private foundations and Form 1023-EZ below in my comments on Part IV of the EZ.

Please consider excluding folks who have non-partisan voter education, "get-out-the-vote," etc. activities, as well. In my experience, folks who do not have professional assistance in planning and executing such activities are apt to get it wrong. My gut feeling is that these organizations need the greater degree of scrutiny (and hopefully, taxpayer education) that would come with the long-form 1023.

Please consider making the Form 1023-EZ available to small churches and schools.

Churches are not required to file an exemption application in the first place. Requiring small churches to file the long-form 1023 will mean that many more churches will simply take advantage of the exception provided in Section 508(c)(1)(A). I hope that is not the intent? As I discuss in detail below, it should not be difficult to design a Streamlined Schedule A for these applicants to use.

The IRS has allowed small schools to certify that they have met the requirements of Revenue Procedure 75-50 for many years, via Form 5578. What reason could there be for not allowing small school applicants to do the same? I also discuss a Streamlined Schedule B below.

User Fee

The "placeholder" in the draft instructions suggests you have not decided what to do about User Fees and Form 1023-EZ. Basing the fee on the form used (1023 v. 1023-EZ) would pile an extra layer of unfairness onto those small churches, schools, etc. that have to file the long form, while using the existing gross receipts-based User Fees would mean multiple fees associated with each form: a step in the wrong direction, simplification-wise.

A couple of "Streamlined," attest-only, 1023-EZ Schedules seems to me to be a good solution. (I discuss streamlined schedules below.)

If the IRS decides to stick with the existing gross-receipts-based User Fees, you will need to add an area to Part I, Question 8 of Form 1023-EZ, which will allow those who pay the lower User Fee to "attest" that their gross receipts are low enough.

Foundation Status (Part IV of Form 1023-EZ)

I feel that this Part of Form 1023-EZ needs more work.

As mentioned above, I believe small churches and schools should be allowed to file Form 1023-EZ, and private foundations of any kind should not be allowed to file Form 1023-EZ.

Whoever is ultimately allowed to use this form, I think, for the sake of clarity, you need to list all options in the form as well as in the instructions. I believe it will be confusing to applicants to find only three types of public charity status in the form, when there are six listed in the instructions. I can even imagine publicly supported applicants willing to accept less-favorable private foundation status,

believing that is the price they pay for using the easier Form 1023-EZ.

I suggest that you list the same categories of foundation status that are listed on the long-form 1023. After each, there should be either a box, allowing the applicant to "attest" that they belong to that category, or a message that refers back to the Eligibility Checklist and reminds the applicant they must file the long-form 1023. (If you ultimately allow small churches and schools to file the EZ application, Part IV of Form 1023-EZ can direct these groups to complete the appropriate Streamlined Schedule, where they will attest to the appropriate circumstances.)

According to Section 1.170A-9(f)(4)(v) of the Income Tax Regulations, a new organization will receive a 170(b)(1)(A)(vi) determination if it "can reasonably be expected to meet" the appropriate test. Section 1.509(a)-3 of the Regs has similar wording for 509(a)(2), even saying, "regardless of the public support [the organization] in fact receives." [Section 1.509(a)-3(e)(3) Example 1]

In view of this, I do not believe it is appropriate to ask new organizations to attest that they normally receive the needed public support.

Instead, may I suggest using the wording that appears in the Regulations?

[] Check this box to attest that you <u>reasonably expect</u> to receive at least 1/3 of your support from public sources. (Wording that covers the 10% Facts & Circumstances test seems unnecessary to me. The 10% F & C is a fall-back position, to be used only when an organization fails the 1/3 test. No one knows in advance that they are going to be relying on it.)

[] Check this box to attest that you <u>reasonably expect</u> to receive more than one third of your support from a combination of gifts, grants, contributions, membership fees and gross receipts from activities related to your exempt function and not more than one third of your support from investment income and unrelated business income.

I really like Part X, Question 5, box (i) in the long-form 1023, where the applicant lets the IRS decide the correct foundation status. I'm not quite sure how that can be made into an "attest" box, though.

<u>Automatic Revocations</u>

Since the Eligibility Worksheet makes it clear that automatically revoked small organizations (who are not otherwise ineligible) may use the 1023-EZ, I was relieved to see Part V added to the Form 1023-EZ.

Unfortunately, this section also needs work. You must add another box to check, for "small" automatically revoked organizations that cannot receive streamlined retroactive recognition because they are not filing within 15 months, but who want to try for retroactivity by presenting three years' worth of reasonable cause. If this box is added, the explanatory heading for Part V needs to be changed.

If you do not think these applicants should be filing Form 1023-EZ, you need to add another category of ineligibility to the Worksheet.

I could not find any instructions pertaining to Part V of Form 1023-EZ. Do you want automatically revoked applicants to write "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement" or one of the other messages prescribed by Rev. Proc. 2014-11 at the top of Form 1023-EZ as well?

<u>Streamlined Schedule A</u>

You can simply list the 14 "characteristics generally attributed to churches" from the long-form instructions, and ask applicants to attest to them one by one.

If more streamlining is desired, skip, "A distinct legal existence," which folks have already attested to in Part II, Question 1 of Form 1023-EZ.

For even more streamlining, choose the characteristics which are most emblematic of church status and have folks attest to those. (I would choose creed/statement of faith, regularly scheduled worship services, a congregation, and sacraments/rituals. When I learned E.O. tax law in the early 70's, we were taught to look for "sacerdotal functions," a characteristic not on the list of 14, although it is alluded to in Question 9 of the long-form Schedule A.) You could lump the remaining characteristics together for a blanket attestation, or ignore them altogether.

To be really streamlined, maybe have only one box allowing applicants attest to "most of" or "a majority of" of the church characteristics. Or, since the current instructions for Form 1023 seem to elevate the "congregation" above other characteristics, maybe you will want to have applicants attest to that one separately first, and then attest to most of/a majority of.

Perhaps, since some IRS materials suggest that churches with fewer than 20 members are less likely to be compliant, you might want to ask about the number of members? (A standard paragraph could be designed to follow-up with the >20 churches.)

Streamlined Schedule B

The long-form Schedule B has two parts. In the first, applicants provide information showing that they are, indeed, a school. In the second, they show their compliance with Revenue Procedure 75-50.

A streamlined Schedule B would rely on applicants "attesting" that they have a curriculum, faculty, student body and facility (either separately, or as a group) and then attesting that they have adopted a racially non-discriminatory policy, that they have properly publicized that policy, and that they have a system for collecting racial statistics to show their compliance (again, either, separately, or as a group).

(For comparison, here is the very brief RP 75-50 wording in Form 5578: "I hereby certify that I am authorized to take official action on behalf of the above school and that to the best of my knowledge and belief the school has satisfied the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, for the period covered by this certification.")

Address

The address in the instructions where to send the completed Form 1023-EZ is wrong. Although it is the same address as the one that appears on page 4 of the "current" Form 1023 instructions, that address has been out of date for more than five years.

Since at least January of 2009, the IRS has been publishing a corrected address in Notice 1382, known as "Changes for Form 1023."

Old address: P. O. Box 192
New address: P. O. Box 12192

Appendix B

The instructions refer folks to Appendix B for a list of states that have enacted statutory provisions that satisfy the requirements of section 508(e), but there is no Appendix B in those instructions.