The Issue

Interim leaders at the IRS inherited a backlog of applications for recognition as 501(c)(3) tax exempt entities. In an attempt to reduce the backlog, the IRS quietly developed an alternative application form – a two-page checklist instead of the traditional proven protocols of requiring applicants to submit materials showing they are prepared for the responsibilities of tax-exempt status. “And that’s about it: check the boxes, sign and send in the form, and presto, you’re a 501(c)(3), ready to accept tax-deductible contributions and foundation grants.” Jonathan Spack, “An Ill-Advised "Solution" to a Serious Problem” (Third Sector New England blog; April 2014) (anticipating “chaos ensuing with respect to fundraising and foundation grantmaking if the field is suddenly flooded with hundreds of thousands if not millions of newly minted (c)(3)’s”).

“The streamlined 1023-EZ is likely to exacerbate the proliferation of nonprofits and result in a marked increase in the number of applicants who are not prepared to run a nonprofit.” Carter Ellis, “IRS Introduces Form 1023-EZ” (Charity Lawyer; April 28, 2014) (see posted comment thereto: “This is going to be train wreck if it goes through”).

The proposed mini-checklist will radically change how to obtain status as a charity or foundation. Although nominally available only to “small” applicants (income of less than $200,000, assets less than $500,000, and other limitations), most applicants start out small. The checklist format will attract bad actors claiming to be “small” to escape a more thorough review. It will shift oversight to the more expensive back-end.

State charity officials have united to “uniformly oppose” the Form 1023-EZ, because it “will increase opportunity for fraud and heighten the burden on state regulators.” See Comments in Opposition filed by the National Association of State Charity Officials. The National Council of Nonprofits also filed extensive Comments in opposition to the proposed Form 1023-EZ Form, warning “that the proposed new Form 1023-EZ and related streamlined approval process for tax-exemption will:

1. Decrease, rather than improve, the quality of information the IRS needs to make informed decisions;
2. Reduce public trust; and
3. Inappropriately shift the IRS’ obligations onto others – foisting burdens on the public, existing charitable nonprofits, the funding community, and state charity regulators.”

Major Flaws

- **Substance**: see above and Comments filed in opposition
- **Process**: ignored own Advisory Committee; failed to seek public input; information not shared equally across the country, but at exclusive conferences for attorneys and CPAs
- **Fails to Address the Two Real Problems**: existing 1023 needs work; lack of IRS staffing

Learn More

- “Express lane to more trouble for the IRS?” Tim Delaney (The Hill; June 2, 2014)
- “Is the 1023-EZ a Step Backward for Regulators and Nonprofits?” Michael Wyland (Nonprofit Quarterly; June 4, 2014)
- “Critics Say New Short Form for Tax-Exempt Status Will Draw ‘Cheats’,” Alex Daniels (Chronicle of Philanthropy; May 18, 2014)
- “Live From AICPA: IRS Readying Shorter Application Form,” Mark Hrywna (NonProfit Times; June 13, 2014)