



May 21, 2010

Deborah Dakin, Senior Deputy Chief Counsel
Department of the Treasury
Office of the Chief Counsel
1700 G Street, NW
Washington, DC 20552

R. Joseph Durbala
Internal Revenue Service
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20224

Emily M. Lam, Tax Legislative Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ms. Dakin, Ms. Lam and Mr. Durbala:

The American Institute of Certified Public Accountants (AICPA) submits for your consideration the following proposal to allow tax-exempt organizations an automatic 6-month extension of time to file all required returns.

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. Our members advise clients on federal, state and international tax matters, and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, tax-exempt organizations, small and medium-sized businesses, as well as America's largest businesses.

BACKGROUND

Currently, exempt organizations must file a Form 8868, Application for Extension of Time to File an Exempt Organization Return, to request an automatic extension of time to file their returns. Exempt corporations are permitted an automatic 6-month extension to file Form 990-T. For all other returns, the automatic extension period is 3 months. Under Treas. Reg. § 1.6081-9(a), "A corporation required to file a return on Form 990-T will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the corporation files an application in accordance with paragraph (b) of this section. In any other case, an exempt organization required to file a return on Form 990 (series, except for Form 990-C), 1041-A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section."

If an exempt organization that has received an automatic 3-month extension needs additional time to complete its tax return, the organization must file another Form 8868 to request an additional (not

Deborah Dakin, Senior Deputy Chief Counsel
Emily M. Lam, Tax Legislative Counsel
R. Joseph Durbala
May 21, 2010
Page 2 of 4

automatic) 3-month extension. Such additional extension is permitted under Treas. Reg. § 1.6081-1(a), which states “The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months...”

An exempt organization cannot apply for both the automatic extension and the additional extension at the same time. Under Treas. Reg. § 1.6081-9(e), “No extension of time will be granted under § 1.6081-1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.”

For the IRS to grant the organization an additional 3-month extension of time, the organization must provide an adequate explanation of why the return cannot be filed by the first extended due date. The organization must describe in detail the reasons causing the additional delay in filing the return. If a request for an extension is made for no reason but to gain time, the IRS can deny the request.

Generally, taxpayers and practitioners file Form 8868 electronically to request an automatic extension. However, Form 8868 cannot be filed electronically to request the additional (not automatic) 3-month extension; a paper Form 8868 explaining why an additional extension is needed must be prepared, signed, and submitted.

RECOMMENDATION

We propose that tax-exempt organizations also be allowed an automatic 6-month extension of time to file Form 990s (series), 4720, 5227, 6069 and 8870. Specifically, we recommend that Treas. Reg. § 1.6081-9(a) be amended as follows:

~~“An exempt organization corporation required to file a return on Form 990 (series), 4720, 5227, 6069, 8870 or 990-T will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the exempt organization corporation files an application in accordance with paragraph (b) of this section. In any other case, an exempt organization required to file a return on Form 990 (series, except for Form 990-C), 1041-A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section.”~~

Complying with the tax law should be straightforward so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner. The principles of tax simplification would be advanced by one automatic extension as opposed to two extensions (one of which requires a detailed disclosure of the reason(s) why additional time is requested to file) to achieve the same result.

Deborah Dakin, Senior Deputy Chief Counsel
Emily M. Lam, Tax Legislative Counsel
R. Joseph Durbala
May 21, 2010
Page 3 of 4

Good tax policy also suggests that similarly situated taxpayers should all receive fair and equitable treatment. Current law allows individuals and corporations an automatic 6-month extension of time to file their tax returns. See Treas. Reg. §§ 1.6081-3(a) and 1.6081-4(a). Tax exempt corporations, many of which are organized exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, should not be subjected to a heightened administrative burden compared to for-profit corporations.

Allowance of an automatic 6-month extension would also promote efficiency and effectiveness of tax administration. A single automatic extension would save processing time at the IRS and eliminate the need for IRS approval of a second extension request. According to the Treasury Inspector General for Tax Administration Semiannual Report to Congress for the period ending September 30, 2009, “The IRS has experienced workforce challenges over the past few years, including recruiting, training and retaining employees, as well as an increasing number of employees who are eligible to retire.” It has been our experience as practitioners that second extensions are rarely denied on returns for exempt organizations and, therefore, the underlying concern for requiring a second extension request apparently is not warranted. The small benefit derived from the second extension process, if any, does not justify the burden to the IRS and taxpayers. As such, any reduced administrative burden on the IRS should be heavily considered since it would promote a more efficient use of its already limited resources.

Furthermore, implementation of one automatic extension would result in an immediate cost savings for both the Federal government and taxpayers. The elimination of the second extension request, and the acceptance or denial of the request, would decrease the preparation and processing costs for all parties involved. As discussed under the “Background” section above, you cannot file an additional extension request electronically. You must submit a paper version of the fully completed and signed form. The IRS also replies to a taxpayer’s request on paper and via the U.S. mail service.

One argument that might be made in opposition to the proposed revision to the regulations is that the public desires to view completed returns for exempt organizations as soon as possible after the organization’s year-end. However, many government and non-government organizations require a copy of an exempt organization’s Form 990 as a condition of making a grant. As such, there is an incentive not to delay filing in such instances.

In addition to working with board and audit committee schedules to review and/or approve financial statements and the Form 990, organizations with alternative investment portfolios are also at the mercy of the release of Form K-1s by investment partnerships. The final extended due date of the partnership returns is September 15th. Therefore, tax-exempt investors are often waiting until September 15th to receive their Form K-1s, compute their unrelated business taxable income and assess other tax information reporting requirements. They have no choice but to file for a second extension in order to comply with the law. This is a significant issue for calendar year tax-exempt organizations.

Many of the large tax-exempt organizations simply need additional time to complete financial statement audits and correctly report amounts reported on investment Form K-1s. We are unaware of any evidence that requiring the filing of a second form would encourage taxpayers to file any sooner.

Deborah Dakin, Senior Deputy Chief Counsel
Emily M. Lam, Tax Legislative Counsel
R. Joseph Durbala
May 21, 2010
Page 4 of 4

SUMMARY

We propose that tax-exempt organizations be allowed an automatic 6-month extension of time to file all information, excise and income tax returns. The single extension approach would promote tax simplification, IRS efficiency, a decrease in preparation and processing costs, and a reduction in the administrative burden on taxpayers.

* * * * *

If you have any questions about this matter, please contact Debra C. Cook, Chair of Exempt Organizations Tax Technical Resource Panel at (405) 239-6411 or dcook@kpmg.com or Melissa Labant, AICPA Technical Manager at (202) 434-9234 or mlabant@aicpa.org.

Sincerely,



Alan R. Einhorn
Chair, Tax Executive Committee

cc: Nancy J. Marks, IRS Associate Chief Counsel (Tax Exempt & Government Entities)
Lois G. Lerner, IRS Director (Exempt Organizations)
Nina Olson, National Taxpayer Advocate