

regulations might also require the reporting and payment to occur on the same calendar date regardless of the “policy year” or “plan year” of any individual issuer or plan sponsor. Comments are invited on this approach and possible alternatives.

#### *Other Issues That Should be Addressed in Guidance*

.09 In addition to comments on the topics described above, comments are invited on the following specific issues:

1. What transition rules, if any, would be appropriate for the first “policy year” or first “plan year” ending after September 30, 2012? For example, would any of the information necessary to determine the average number of lives covered be unavailable for the first year for which the fee is in effect?
2. Is guidance needed concerning the definition of “policy year” or “plan year” for purposes of §§ 4375 and 4376? If so, how should these terms be defined?
3. Are there circumstances under which an issuer or plan sponsor might not know whether a covered individual resides in the United States? If so, how should those circumstances be addressed? Is guidance needed on the application of §§ 4375 and 4376 to plans that cover expatriates?
4. Should future guidance permit all employers treated as a single employer under § 414 to be treated as a single employer for purposes of § 4376(b)? If so, under what conditions?
5. In the case of the fee imposed on self-insured health plans, what guidance is needed concerning the ability of a third-party administrator to act on behalf of a plan sponsor in complying with the § 4376 fee requirements?

.10 Comments will be considered if submitted in writing by September 6, 2011. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

1. By mail to CC:PA:LPD:PR (Notice 2011–35), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

2. Electronically to *Notice.Comments@irs.counsel.treas.gov*. Please include “Notice 2011–35” in the subject line of any electronic communications.
3. By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2011–35), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

#### DRAFTING INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Ms. Baxter at (202) 622–7117 (not a toll-free call).

## **Transitional Relief Under Internal Revenue Code § 6033(j) for Small Organizations**

### **Notice 2011–43**

This notice provides transitional relief for certain small organizations that have lost their tax-exempt status because they failed to file a required annual electronic notice (Form 990–N e-Postcard) for taxable years beginning in 2007, 2008 and 2009. A small organization — that is, one that normally has annual gross receipts of not more than \$50,000 in its most recently completed taxable year — that qualifies for the transitional relief under this notice and applies for reinstatement of tax-exempt status by December 31, 2012, will be treated by the Internal Revenue Service (“IRS”) as having established reasonable cause for its filing failures and its tax-exempt status will be reinstated retroactive to the date it was automatically revoked.

Organizations not described in this notice should consult Notice 2011–44, in this Bulletin, for guidance on how to apply for reinstatement of tax-exempt status and request retroactive reinstatement.

#### BACKGROUND

The Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780, § 1223 (2006), added sections 6033(i) and

(j) to the Internal Revenue Code (“Code”), both of which became effective for taxable years beginning after 2006. Section 6033(i) requires tax-exempt organizations excepted from filing annual information returns because they normally have annual gross receipts of not more than \$25,000 (increased to normally not more than \$50,000 for taxable years beginning on or after January 1, 2010) to annually file a Form 990–N e-Postcard. Section 6033(j) automatically revokes the tax-exempt status of any organization that fails to file a required annual return or Form 990–N e-Postcard for three consecutive years.

In order to obtain reinstatement of its tax-exempt status, an organization that has had its tax-exempt status automatically revoked under section 6033(j) must apply for reinstatement with the IRS, even if it was not originally required to submit such an application. I.R.C. § 6033(j)(2). If an organization applying for reinstatement of tax-exempt status can show reasonable cause for its consecutive filing failures, the organization’s tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of the automatic revocation. I.R.C. § 6033(j)(3).

#### ELIGIBILITY FOR TRANSITIONAL RELIEF

The IRS recognizes that many small organizations that have lost their tax-exempt status because they failed to file a Form 990–N e-Postcard for their 2007, 2008, and 2009 taxable years were never required to file an annual return or notice prior to their 2007 taxable year. The IRS also recognizes that many small organizations are operated by volunteers and may face unique challenges in meeting federal tax obligations. Accordingly, the IRS will treat a small organization (one that normally has annual gross receipts of not more than \$50,000 in its most recently completed taxable year) as having established reasonable cause for failing to file a Form 990–N e-Postcard or an annual return for its taxable years beginning in 2007, 2008, and 2009 if it meets each of the following criteria:

- The organization was not required to file annual information returns (such as Form 990, *Return of Organization Exempt from Income Tax* or Form

990-EZ, *Short Form Return of Organization Exempt from Income Tax*) for taxable years beginning before 2007.

- The organization was eligible in each of its taxable years beginning in 2007, 2008, and 2009 to file a Form 990-N e-Postcard (rather than an annual information return). Generally organizations (other than private foundations and most section 509(a)(3) supporting organizations) with annual gross receipts that were normally not more than \$25,000 in such taxable years would have been eligible to file a Form 990-N e-Postcard.
- On or before December 31, 2012, the organization submits to the IRS a properly completed and executed application for reinstatement of tax-exempt status.

An organization's annual gross receipts are "normally not more than" \$25,000 or \$50,000 in a taxable year if its average annual gross receipts for that taxable year and the two taxable years immediately preceding it are not more than \$25,000 or \$50,000, respectively. See Rev. Proc. 2011-15, 2011-3 I.R.B. 322, section 4.

The IRS will reinstate the tax-exempt status of a small organization that meets the above criteria retroactive to the date it was revoked.

#### APPLICATION FOR REINSTATEMENT OF TAX-EXEMPT STATUS

An organization seeking reinstatement of tax-exempt status under section 6033(j)(2) must use the same forms that are filed by all other applicants for tax-exemption. Thus, an organization seeking reinstatement of tax-exempt status under section 501(c)(3) must submit Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Most other organizations seeking reinstatement of tax-exempt status must submit Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Any organization that seeks reinstatement of tax-exempt status must submit the appropriate application regardless of whether the organization was originally required to apply with the IRS for recognition of tax-exemption.

A small organization seeking the transitional relief described in this notice must

write "Notice 2011-43" on the top of the form it uses to apply for reinstatement of tax-exempt status and on the envelope.

A small organization seeking the transitional relief described in this notice must also attach to its application for reinstatement of tax-exempt status the following statement:

[Name of Organization] was not required to file annual information returns for taxable years beginning before 2007; was eligible in each of its taxable years beginning in 2007, 2008 and 2009 to file a Form 990-N e-Postcard; and had annual gross receipts of normally not more than \$25,000 in each of its taxable years beginning in 2007, 2008 and 2009.

Small organizations that are eligible for the transitional relief described in this notice are also eligible for a reduced user fee of \$100 for the application of reinstatement of tax-exempt status. See Rev. Proc. 2011-36, this Bulletin, *modifying* Rev. Proc. 2011-8, 2011-1 I.R.B. 237, section 6.07. For information on where to mail the application for reinstatement of tax-exempt status, see the Instructions for Form 1023 or Form 1024 (whichever is applicable).

#### SUBSEQUENT AUTOMATIC REVOCATIONS

An organization whose tax-exempt status has been automatically revoked and reinstated may have its tax-exempt status automatically revoked a second time under section 6033(j)(1) only if it fails to file returns or notices for another three consecutive taxable years, beginning with the taxable year the IRS approves its application for reinstatement of tax-exempt status. For example, if an organization reporting on a calendar year basis has its tax-exempt status automatically revoked for failing to file required returns or notices for 2007, 2008, and 2009 and receives a determination letter recognizing the reinstatement of its tax-exempt status dated September 1, 2011, the organization's tax-exempt status will not be automatically revoked a second time for failing to timely file a return or notice for 2008, 2009, and 2010. However, the organization's tax-exempt status will be automatically revoked a second time if the organization fails to timely file a return or notice for 2011, 2012, and 2013.

#### DRAFTING INFORMATION

The principal authors of this notice are Monice Rosenbaum and Preston Quesenberry of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Matthew Giuliano of the Tax Exempt and Government Entities Division of the IRS. However, other personnel from the IRS and Treasury Department participated in developing this notice. For further information regarding this notice, contact Ms. Rosenbaum at (202) 622-6070, Mr. Quesenberry at (202) 622-1124, or Mr. Giuliano at (202) 283-8917 (not toll-free numbers).

### Application for Reinstatement and Retroactive Reinstatement for Reasonable Cause Under Internal Revenue Code § 6033(j)

#### Notice 2011-44

##### SECTION 1. PURPOSE

This notice provides guidance with respect to applying for reinstatement of tax-exempt status and requesting retroactive reinstatement under sections 6033(j)(2) and (3) of the Internal Revenue Code ("Code") for an organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) of the Code. The Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") intend to issue regulations under section 6033(j) that will prescribe rules relating to the application for reinstatement of tax-exempt status under section 6033(j)(2) and the request for retroactive reinstatement under section 6033(j)(3). To assist in the drafting of these regulations, Treasury and the IRS solicit comments on the issues addressed in this notice.

In this Bulletin, the IRS has also published Notice 2011-43, which provides transitional relief for certain small organizations (those that normally have annual gross receipts of not more than \$50,000 in their most recently completed taxable year) that have lost their tax-exempt status because they failed to file an annual electronic notice for taxable years beginning