



How to Get Your Nonprofit Back in Good Standing

Texas nonprofits are subject to numerous complicated laws and regulations, filing and reporting requirements. Failure to comply with these requirements can lead to revocation of good standing as a Texas nonprofit corporation and loss of federal tax-exempt status.

This Guide was created to assist nonprofit directors, nonprofit executive management, attorneys and others working to bring a nonprofits back to life following loss of tax exempt status under federal law and revocation of corporate privileges under Texas law.

[Texas Community Building with Attorney Resources](#), a special project of [Texas RioGrande Legal Aid](#), provides free legal counsel, pro bono referrals, community education, and legal resources to eligible nonprofits and small businesses in the State of Texas. [Texas RioGrande Legal Aid](#) brings free legal services to low-income individuals and communities in 68 of Texas' 254 counties.

Special thanks to [Stephanie McDermott of Andrews Kurth Kenyon LLC](#), for her invaluable contribution in creating this Guide.

Date of last revision: 12.11.2017

Important: *The information in this document may not reflect the most current legal developments. Specific fact situations may result in different outcomes, conclusions, or answers. It is important to consult with an attorney to ensure that the laws described in this guide are appropriately applied to your organization's specific legal circumstances.*

Table of Contents

Introduction	4
I. Qualification for Corporate Privileges; Tax Exemptions	4
A. Texas Corporate Privileges	4
B. Texas Tax Exemption	4
C. Federal Tax Exemption	5
II. Reinstatement with Secretary of State - Texas Business Organizations Code	5
A. Annual Reports	5
B. Impact of Forfeiture	6
C. Revival of Right to Conduct Affairs; Reinstatement	6
III. Reinstatement with Comptroller - Texas Tax Code	7
A. Generally	7
B. Termination –Failure to Pay Taxes or File Returns	7
C. Failure to Pay Real Property Taxes	8
IV. Reinstatement with IRS - Internal Revenue Code	8
A. Federal Exemption - Annual Filing Requirement	9
B. Consequences - Loss of Tax-Exempt Status	9
C. Reinstatement after Revocation	10
V. Appendix	13
Reinstatement Checklist	13
Resources	15

Introduction

A Texas nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (the “Code”) and Sections 151.310 and 171.063 of the Texas Tax Code needs to be properly and currently qualified and registered as a nonprofit tax-exempt organization with the various federal and state agencies regulating its activities. Failure to comply with state and federal registration and reporting requirements may lead to a loss of its tax-exempt status or corporate privileges.

Depending on the agency or agencies with which the nonprofit organization is no longer in good standing, a nonprofit corporation may lose its exemption from state or federal income tax, bring a lawsuit, and/or no longer be able to engage in charitable activities. Moreover, donations contributed to the nonprofit during the period in which the nonprofit is out of compliance may not be tax deductible. In such case, a nonprofit organization may be required to inform donors and grant-making entities of the loss of tax exemption. Therefore, it is critical for a nonprofit that is out of compliance to rectify the situation immediately.

Although it is also possible to operate as an unincorporated nonprofit organization, it is often preferable to incorporate under the Texas Business Organizations Code (the “BOC”) so the organization can avail itself of limited liability. Note also that the rules of the BOC generally do not apply to charitable trusts, although requirements for tax exemption under state and federal law do apply. Depending on the nature of the trust, it may or may not qualify for tax exemption under Texas state and federal law.

I. Qualification for Corporate Privileges; Tax Exemptions

A. Texas Corporate Privileges

Texas nonprofit 501(c)(3) organizations must maintain good standing with the Texas Secretary of State and the Texas Attorney General, and comply with requirements of the Texas Comptroller. The nonprofit’s current registered agent and registered address should be on file with all three Texas government entities to ensure that it will receive notice of adverse actions such as potential revocation or suspension.

Loss of corporate privileges in Texas: A nonprofit that has forfeited its corporate privileges under the BOC may not maintain an action, lawsuit or proceeding in Texas courts (nor, generally, may its successors or assigns). It may nonetheless defend against an action, suit or proceeding in a Texas court.¹ A loss of corporate privileges will not impair contracts or prevent the nonprofit from defending an action brought in the state of Texas.²

Confirming status: An entity can confirm its status with the Comptroller through the SOSDirect feature on the Secretary of State website for a minimal administrative fee of one dollar (\$1.00) or by contacting the Secretary of State records team at corpcert@sos.texas.gov.

B. Texas Tax Exemption

Texas nonprofit organizations that are exempt from tax under Internal Revenue Code Section 501(c)(3) are also exempt from state franchise taxes (Tax Code § 171.063), sales tax (Tax Code § 151.310(a)(2)), and, in some cases, real property taxes (Real Property Tax Code § 11.18). A Texas nonprofit federally exempt under Section

¹ BOC § 22.363.

² BOC § 22.363.

501(c)(3) can file for Texas franchise and sales tax exemption by filing Form AP-205-2, along with its IRS tax-exempt determination letter and for exemption from real property taxes by filing for exemption with the local appraisal district and any special districts (e.g. municipal taxing authority). Both are generally one-time applications that apply until terminated. These exemptions are **not automatic**- an organization exempt under federal law must separately apply for these exemptions to be exempt under Texas law. In general, an organization's failure to apply separately for exemption under Texas law can subject it to these taxes until an application for exemption is filed. In addition, the loss of federal tax exemption can cause these taxes to become due, hence the value of a retroactive reinstatement.

C. Federal Tax Exemption

Federal tax exemption under Code Section 501(c)(3) is sweeping and covers essentially all taxes imposed by the federal government. In order to maintain the exemption, nonprofits are required to file an annual return or notice with the IRS. A simplified form (990-N) is available for certain entities with gross receipts at or below \$50,000. Another simplified form (990-EZ) is available for taxpayers with gross receipts below \$200,000 and total assets at the end of the year equaling less than \$500,000. Otherwise, the full Form 990 must be filed.³

An organization files for tax exemption under Code Section 501(c)(3) by filing a Form 1023 or Form 1023-EZ with the IRS.

II. Reinstatement with Secretary of State - Texas Business Organizations Code

A. Annual Reports

The Texas Business Organizations Code ("BOC") generally requires for a nonprofit registered in Texas to file a report not more than once every four years upon request by the Secretary of State including:

1. The name of the corporation;
2. The state or country in which the corporation is incorporated;
3. The address of the registered office and registered agent of the corporation;
4. For a foreign (non-Texas) corporation, the address of the principal office of the corporation in the state or country in which it is incorporated; and
5. The names and addresses of the directors and officers of the corporation.⁴

The Secretary of State will send a notice requesting such report addressed to the corporation and mailed to the corporation's registered agent or the corporation at its last known address or any other known place of business of the corporation. The notice should generally include a report form (Form 802) to be prepared and

³ Note, private foundations have separate and additional filing requirements that are not addressed in the guide. In general, a private foundation must file a Form 990-PF and is subject to additional rules regarding fundraising and operations.

⁴ BOC § 22.357.

filed by the corporation.⁵ Such annual report must be filed with the Texas Secretary of State not later than the 30th day after the date notice from the Secretary of State is mailed.⁶

A nonprofit corporation that fails to file a report when it is due can forfeit its right to operate in Texas. No judicial action is necessary; forfeiture is effective when the Secretary of State enters the words “right to conduct affairs forfeited” and the effective date on its records.⁷

Notice of forfeiture is mailed to the corporation’s registered agent, registered office, or the corporation at its last known address, principal place of business, or any other known place of business.⁸

B. Impact of Forfeiture

Because of forfeiture of corporate privileges, the nonprofit, its successor or assignee may not maintain an action, suit, or proceeding in a court of Texas on a right, claim, or demand arising from the conduct of its affairs in Texas. The nonprofit’s rights 1) as an assignee of the corporation as a holder in due course of a check or note; 2) as the bona fide purchaser for value of certain negotiable instruments; and 3) to defend an action, suit or proceeding in Texas courts are not affected. The validity of contracts made by the corporation and its corporate acts are also not affected.⁹

C. Revival of Right to Conduct Affairs; Reinstatement

The corporation may be relieved from forfeiture by filing the required report with a revival fee not later than the 120th day after the date of mailing of the notice of forfeiture by the Secretary of State.¹⁰

Within the first 120 days, the revival fee is the original \$5 filing fee plus a late fee of \$1 per month (or part of a month), to equal at least \$6.¹¹

After 120 days has passed from the mailing of the notice of forfeiture, the revival fee increases to \$25. The nonprofit may be reinstated, however, by filing the required report together with a \$25 revival fee so long as it has paid all fees, taxes, penalties and interest due and accruing before the termination or revocation as well as any taxes that would have been payable if the corporation had not been terminated. The name of the corporation will not be protected during this time, however. Consequently, additional filings and fees may need to be submitted together with the periodic report when the name of the corporation is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration on file with the Secretary of State.¹²

After making the above filings and payments, the nonprofit should file Form 811 (Certificate of Reinstatement) with the Secretary of State.¹³ The nonprofit will generally check box 4B, Reinstatement of a Texas Entity

⁵ BOC § 22.358. Form 802 is also available online from the Texas Secretary of State website.

⁶ BOC § 22.359.

⁷ BOC § 22.360.

⁸ BOC § 22.361.

⁹ BOC § 22.362.

¹⁰ BOC § 22.363.

¹¹ See instructions to Form 802, available at Texas Secretary of State website.

¹² <https://www.sos.state.tx.us/corp/nonprofitfaq.shtml#NCPR> (FAQs for Nonprofit Corporation Periodic Reports No. 6).

¹³ Available at Texas Secretary of State website

Following an Involuntary Termination, and an authorized person (e.g. a governing person or managerial official) will need to certify that the entity has corrected the circumstances giving rise to its involuntary termination, including the payment of fees, interest and penalties.¹⁴ If the application to reinstate is made before the third anniversary of the date of involuntary termination, reinstatement will be retroactive, i.e. it will be considered to have continued in existence without interruption.¹⁵ Note, as a nonprofit, the entity will generally not need to include a Tax Clearance Letter with respect to a termination by the Secretary of State. The filing fee for a nonprofit for Form 811 is \$5.

III. Reinstatement with Comptroller - Texas Tax Code

A. Generally

Tax-exempt Nonprofits that are tax exempt under Code Section 501(c)(3) are generally exempt from Texas franchise, sales, and real property tax (including filing of franchise taxes). Forfeiture under the Texas Tax Code generally occurs because of an organization failing to file for exemption with the Texas Comptroller. Once established, the exemption should be effective as of the date of the corporation's charter or certificate of authority so long as it is filed within 15 months after the last day of the calendar month in which the corporation's charter or certificate of authority is dated.¹⁶ As such, franchise taxes imposed during the time the entity had not yet filed for exemption are generally forgiven by the Comptroller because the exemption is retroactive to the entity's formation. If you receive a notice regarding failure to file or pay franchise or real property taxes, the first step should always be to confirm that your exemption has been received or accepted by the Comptroller or the local appraisal district and, if not, to immediately file the appropriate elections. Even if the fifteen-month deadline has passed, filing for exemption will put a halt on additional taxes that would otherwise be levied.

B. Termination –Failure to Pay Taxes or File Returns¹⁷

The Comptroller will forfeit a nonprofit's corporate privileges if the corporation: 1) fails to file franchise taxes within 45 days of mailing of the notice of forfeiture; 2) fails to pay franchise taxes and/or related penalties within 45 days of mailing of the notice of forfeiture; or 3) refuses to permit the comptroller to examine its records.¹⁸ Generally, notice is mailed to the nonprofit's address on file with the Comptroller. Upon forfeiture of a corporation's privileges, its officers and directors are generally liable for the corporation's debts (between the due date of the report, tax or penalty and the revival of corporate privileges, including any taxes that become due and payable during forfeiture), and the corporation loses the right to sue or defend against a lawsuit in Texas.¹⁹ A judicial proceeding is not required.²⁰

¹⁴ See Form 811 instructions.

¹⁵ Form 811, "Time Frames for Reinstatement"

¹⁶ Tex. Tax Code Sec. 171.051.

¹⁷ A charitable organization that sells items subject to sales tax may have additional tax issues if it fails to pay sales tax. Texas nonprofit entities must collect and remit sales tax on items sold, unless entity falls within certain sales tax exceptions. An analysis of sales tax Texas law generally puts the onus on a seller to collect sales tax and a charitable entity demonstrates its exemption by providing a tax exemption certificate, so this scenario is not addressed by this guide.

¹⁸ Tex. Tax Code Sec. 171.251.

¹⁹ Tex. Tax Code Sec. 171.252; 171.255.

A corporation receiving notice of forfeiture has 45 days from the mailing date of the notice to file the report or pay the taxes or penalties before corporate privileges will be forfeited. After the 120th day after the date that corporate privilege forfeiture takes effect, the Comptroller will certify the name of the corporation to the Texas Secretary of State and Attorney General.²¹

A corporation that fails to file reports or pay taxes or penalties before the 45th day after mailing of the notice will need to: 1) file all required reports (e.g. Annual Franchise Tax Reports and Public Information Reports) and make all necessary tax and penalty payments to the Comptroller; 2) file Form 05-391 (Tax Clearance Letter Request for Reinstatement)²² to request a Tax Clearance Letter from the Comptroller; 3) submit the Tax Clearance Letter (Form 05-377) once it is received from the Comptroller's office; and 4) submit Secretary of State reinstatement filings.

Filings with the Secretary of State under item 4) generally require filing Form 801 (Application for Reinstatement and Request to Set Aside Tax Forfeiture). On Form 801, an authorized person will generally need to certify that the entity has filed all delinquent reports and paid any taxes, penalties and interest imposed. There is no filing fee for a nonprofit entity with respect to Form 801.

In general, the Texas Comptroller and Secretary of State offices tend to be responsive and timely with respect to such filings but processing takes time and it never hurts to pick up the phone and call someone at the Comptroller's office with questions or concerns.

C. Failure to Pay Real Property Taxes

There is no statewide property tax in Texas. Real property taxes are levied and collected by the relevant appraisal district and potentially other special taxing districts or authorities in the area, e.g. municipal taxing authority. Exemption forms for real property must be filed with the relevant appraisal district authority.²³ Exemption forms for charitable organizations should generally be available at the website of the local appraisal district. Failure to pay property taxes will result in a lien against the real or personal property subject to those taxes.

IV. Reinstatement with IRS - Internal Revenue Code

Although a tax-exempt entity could lose its tax exempt status as a result of failure to comply with general rules for tax-exempt entities such as being operated other than for exempt purposes or private inurement, automatic revocation generally only occurs as a consequence of a failure to file the appropriate annual return with the IRS.

²⁰ Tex. Tax Code Sec. 171.257.

²¹ Tex. Tax Code Sec. 171.302.

²² Available at the Texas Comptroller website, see also resources listed below.

²³ Tex. Prop. Code Sec. 11.43.

A. Federal Exemption - Annual Filing Requirement

Nonprofits are required to file an annual return or notice with the IRS. If an organization's gross receipts are equal to or less than \$50,000,²⁴ it can file Form 990-N electronically. If its annual gross receipts are less than \$200,000 and it has less than \$500,000 in assets at year-end, it may generally file Form 990-EZ unless it engages in certain activities.²⁵ Otherwise it must generally file Form 990, which is a more comprehensive report.²⁶ Note, however, all private foundations, regardless of gross receipts, must file a Form 990-PF. These forms or notices must be filed on the fifteenth day of the fifth month after the organization's accounting period ends. If a nonprofit fails to file the required return or notice for three consecutive years, it will automatically lose its federal tax exemption on or after the date set for filing the third annual return. The IRS will treat an incomplete return or a return containing false information will be treated as not filed.²⁷

The IRS publishes and maintains a publicly accessible online database of revoked entities. Even after an entity has had its tax-exempt status reinstated, it will generally continue to be on such list but will also have an exemption reinstatement date. The IRS will send a letter to the nonprofit at its last known address informing it that it has lost its federal tax exemption.

Organizations that fail to file a complete Form 990 are also generally liable for a penalty of \$20 a day, not to exceed the lesser of \$10,000 or 5% of the organization's gross receipts for the year of any one return.²⁸ The organization can avoid penalties if it shows reasonable cause, as outlined below under the process for retroactive reinstatement.

B. Consequences - Loss of Tax-Exempt Status

In general, loss of federal tax-exempt status subjects the organization to federal income tax, meaning that its donations would be treated as revenue potentially resulting in taxable income. The organization will be required to pay tax and to file a Form 1120 (U.S. Corporation Income Tax Return) or a Form 1041 (U.S. Income Tax Return for Estates and Trusts). Additionally, donors will not be able to receive a charitable income tax deduction for their donations to the nonprofit after its tax-exempt status has been revoked, but the reinstatement of tax-exempt status can have retroactive effect with respect to donations, which will cause the charitable income tax deduction to be available again. It may be prudent for the organization to inform certain

²⁴ An organization's gross receipts are considered to be \$50,000 or less if the organization is either (a) up to a year old and has received, or donors have pledged to give, \$75,000 or less during its first tax year, (b) between one and three years old and averaged \$60,000 or less in gross receipts during each of its first two tax years, or (c) three years old or more and averaged \$50,000 or less in gross receipts for the current and immediately preceding two tax years. Rev. Proc. 2011-15 (available at IRS website).

²⁵ For purposes of the Form 990 filing thresholds, "gross receipts" is defined as gross amounts received from all sources during the annual accounting period. Gross receipts include, but are not limited to: (1) gross contributions, gifts, grants, and similar amounts (without reduction for expenses related thereto); (2) gross dues and assessments from members and affiliated organizations (without reduction for expenses attributable thereto); (3) gross sales or receipts from business activities, including income from a unrelated taxable business (without reduction for the cost of goods or assets sold); (4) gross receipts from the sale of assets (without reduction for cost or other basis or the expenses of sales); and (5) gross investment income (e.g., interest, dividends, rents, or royalties). Treas. Reg. 1.6033-2(g)(4).

²⁶ Certain entities exempt under Section 501(c) are not required to file a Form 990, including instrumentalities of the United States, subordinate organizations included on a group return, political subdivisions and certain religious organizations.

²⁷ Code Sec. 6652(c)(1)(A)(ii).

²⁸ Code Sec. 6652(c)(1)(A).

donors or grant-making organizations of an automatic revocation as well as efforts being made for reinstatement in the interest of preserving relationships with such persons.

How do I check if there is an issue with my exemption with the IRS? A nonprofit should receive notification of any revocation of status from the IRS in written form. Federal tax-exempt status also can be confirmed through an IRS online tool called EO Select Check at <http://apps.irs.gov/app/eos>. The database is searchable by Employee Identification Number (EIN) as well as other criteria. This free resource not only allows donors to determine whether a nonprofit is eligible to receive tax-deductible donations, it also allows the nonprofit to monitor its filing history and status.

C. Reinstatement after Revocation

There are four ways for organizations whose tax-exempt status was automatically revoked for failure to file annual returns with various eligibility requirements: 1) streamlined retroactive reinstatement within 15 months of revocation, 2) standard retroactive reinstatement within 15 months of revocation, 3) retroactive reinstatement more than 15 months after revocation, and 4) post-mark date reinstatement. These options are generally listed in order of ease and favorability.

1. Streamlined Retroactive Reinstatement within Fifteen (15) Months of Revocation²⁹

To be eligible for streamlined retroactive reinstatement, the IRS generally requires the entity to have filed Form 990-EZ or 990-N for the three years preceding automatic revocation, in addition to filing within 15 months of revocation.

The entity must submit and complete a Form 1023 (Application for Recognition of Exemption under Section 501(c)(3)) with the appropriate fee no later than 15 months after the *later* of 1) date of the IRS Revocation Letter and 2) the date on which the IRS posted the organization's name on the IRS Revocation List. The entity should write "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement" on top of the return. Mail Form 1023 to: Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.

If the entity was required to file a Form 990-EZ but not a Form 990-N for any of the years for in which it failed to file an annual return, it should file a Form 990-EZ for those tax years to avoid penalties for failure to file annual returns. For any years in which the entity was eligible to file Form 990-N, it does not need to file a Form 990-EZ or Form 990-N to avoid penalties for failure to file.³⁰ Mail annual returns to: Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

Benefits of Streamlined Retroactive Reinstatement

- Retroactive reinstatement - the entity will be treated as having been tax-exempt since inception despite the automatic revocation.
- No reasonable cause statement is required - the entity does not need to include a statement of reasonable cause for its failure to file the required annual return.
- The IRS will not impose the penalty for failure to file annual returns.

²⁹ Rev. Proc. 2014-11, Section 4.

³⁰ Rev. Proc. 2014-11, Section 4.03.

2. Standard Retroactive Reinstatement within Fifteen (15) Months of Revocation³¹

Any entity that files for retroactive reinstatement within 15 months is eligible for the standard retroactive reinstatement procedure. The entity must complete and submit a Form 1023 application and filing fee no later than 15 months after the *later of* 1) date of the IRS Revocation Letter and 2) the date on which the IRS posted the organization's name on the IRS Revocation List. "Revenue Procedure 2011-14, Retroactive Reinstatement" should be written on the Form 1023. In addition, the entity must include a "reasonable cause statement" for at least one of the three years it failed to file the annual returns. This is a written statement attesting that the organization exercised ordinary business care and prudence in attempting to comply with its reporting requirements under Section 6033. It is signed under penalty of perjury by the individual responsible for filing (or, in his or her absence, an officer, director, or trustee).³² It must include a detailed description of all facts and circumstances that led to the failure, the discovery of the failure, and the steps that have been taken or will be taken to avoid or mitigate future failures.³³ Mail Form 1023 to: Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.

To avoid penalties, the entity should file all past due annual returns (Forms 990/990-EZ) for all taxable years in the consecutive three-year period for which the organization failed to file, along with returns for taxable periods since then. The entity should write "Retroactive Reinstatement" on these returns and a statement that such returns have been filed should be included with the Form 1023. Annual returns should be mailed to Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

Benefits of Standard Retroactive Reinstatement:

- Retroactive reinstatement - the entity will be treated as having been tax-exempt since inception despite the automatic revocation.
- Reasonable cause statement is required only for one of the three years in which the entity failed to file annual returns.

³¹ Rev. Proc. 2014-11, Section 5.

³² Format for reasonable cause signature under penalties of perjury: I, (Name), (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroactive reinstatement on behalf of [Name of Organization], and I further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts of the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete. (Rev. Proc. 2014-11. Section 8.06)

³³ Examples of relevant factors for finding reasonable cause given by the IRS in Rev. Proc. 2014-11 include:

- (1) The organization's failure was due to its reasonable, good faith reliance on erroneous written information from the IRS, stating that the organization was not required to file a return or notice under section 6033, provided the IRS was made aware of all relevant facts;
- (2) The failure to file the return or notice arose from events beyond the organization's control ("impediment") that made it impossible for the organization to file a return or notice for the year;
- (3) The organization acted in a responsible manner by undertaking significant steps to avoid or mitigate the failure to file the required return or notice and to prevent similar failures in the future, including, but not limited to—(a) Attempting to prevent an impediment or a failure, if it was foreseeable; (b) Acting as promptly as possible to remove an impediment or correct the cause of the reporting failure, once the failure was discovered; and (c) After the failure was discovered, implementing safeguards designed to ensure future compliance with the reporting requirements under section 6033; and
- (4) The organization has an established history of complying with its reporting requirements (if any) under section 6033 and/or any other applicable reporting or other requirements under the Code.

- The IRS will not impose the penalty for failure to file annual returns.

3. Retroactive Reinstatement more than Fifteen (15) Months after Revocation³⁴

Entities that fail to file for reinstatement within 15 months of automatic revocation for failure to file are nonetheless able to qualify for retroactive reinstatement, regardless of which Form 990 they file.

The entity must complete and submit a Form 1023 application, with the applicable filing fee. “Revenue Procedure 2011-14, Retroactive Reinstatement” should be written on the Form 1023. In addition, the entity must include a “reasonable cause statement” for ALL of the three years it failed to file the annual returns. Mail Form 1023 to Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.

To avoid penalties, the entity should properly complete, execute and file annual returns (Forms 990/990-EZ) for the consecutive three-year period for which the organization failed to file, along with taxable years since that time). The entity should write “Retroactive Reinstatement” on these returns and a statement that the returns have been filed and should be included with the Form 1023. Mail annual returns to Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

Benefits of Retroactive Reinstatement more than 15 months after Revocation:

- Retroactive reinstatement - the entity will be treated as having been tax-exempt since inception despite the automatic revocation.
- The IRS will not impose the penalty for failure to file annual returns.

4. Post-Mark Date Reinstatement³⁵

If the entity cannot satisfy the reasonable cause requirement set forth in options 2 or 3 and is not eligible to file under option 1, the entity can nonetheless file for reinstatement but it will not be retroactive. Instead, the entity’s tax-exempt status will be reinstated effective as of the postmark date of the Form 1023 application.

The entity must complete and submit a Form 1023 application, with the applicable filing fee. “Revenue Procedure 2011-14, Reinstatement Post-Mark Date” should be written on the Form 1023.

The IRS may impose failure to file penalties regardless of whether the entity files annual returns for the years for which its tax-exempt status was revoked.

³⁴ Rev. Proc. 2014-11, Section 6.

³⁵ Rev. Proc. 2014-11, Section 7.

V. Appendix

Reinstatement Checklist

1. Check Status at Federal and State Agencies

2. Secretary Of State Reinstatement (BOC)

- File annual return(s) requested by Secretary of State on Form 802
- Pay revival fee of \$6-\$25 (depending on how late it is) with annual returns
- File Form 811 with \$5 filing fee

3. Texas Tax Reinstatement (Comptroller)

- File each delinquent report as required by Section 171 of the Tax Code
- Pay any tax, penalty and interest owing under the Tax Code and due at the time the request to set aside forfeiture is made
- File Form 05-391 (Tax Clearance Letter Request for Reinstatement) with the Comptroller
- When you receive Form 05-377 (Tax Clearance Letter), submit it to the Comptroller's office with Form 801 (Application for Reinstatement and Request to Set Aside Tax Forfeiture) (no filing fee for nonprofits) certifying under penalties of perjury that the entity has corrected the circumstances giving rise to its involuntary termination and taken all other actions required for reinstatement, including the payment of any fees, interest or penalties

4. IRS/ Federal Reinstatement

Retroactive Reinstatement within Fifteen (15) Months of Revocation (Streamlined) - Eligibility generally requires that the entity was able to file Form 990-EZ or 990-N for the three years that cause their revocation

- Complete and submit a Form 1023 application no later than 15 months after the *later of* 1) date of the IRS Revocation Letter and 2) the date on which the IRS posted the organization's name on the IRS Revocation List (note, no reasonable cause statement required)
- Include the appropriate fee (check IRS website, generally \$400 or \$850 depending on organization's receipts)
- Write "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement" on top of the return

Retroactive Reinstatement within Fifteen (15) Months of Revocation (Standard) - Generally, this method is for entities revoked for failing to file Form 990-EZ or 990-N for a three-year period.

- Complete and submit a Form 1023 application no later than 15 months after the *later of* 1) date of the IRS Revocation Letter and 2) the date on which the IRS posted the organization's name on the IRS Revocation List

- Include the Reasonable Cause Statement – detailed written description of facts and circumstances in attempting to comply with IRC Section 6033 reporting requirements, failure to do so and steps to rectify for ALL **THREE YEARS** it failed to file the annual returns
- Include the appropriate fee (check IRS website)
- File properly completed and executed annual returns (Forms 990/990-EZ) for all taxable years in the consecutive three-year period for which the organization was required, and failed, to file such annual returns (as well as taxable years since such time)
- Write “Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement” on top of Form 1023 and Forms 990

Retroactive Reinstatement more than Fifteen (15) Months after Reinstatement - Generally, for entities unable to file Form 990-EZ or 990-N for the three years as cause for their revocation

- Complete and submit a Form 1023 application
- Include the Reasonable Cause Statement – detailed written description of facts and circumstances in attempting to comply with IRC Section 6033 reporting requirements, failure to do so, and steps to rectify, for **ALL THREE YEARS** it failed to file the annual returns
- Include the appropriate fee (check IRS website)
- File properly completed and executed annual returns (Forms 990/990-EZ) for all taxable years in the consecutive three-year period for which the organization was required, and failed, to file such annual returns (as well as taxable years since such time)
- Write “Revenue Procedure 2014-11, Retroactive Reinstatement” on top of Form 1023 and Forms 990

Post-Mark Date Reinstatement - NOTE, *reinstatement will be as of post-mark date of application, if it is accepted, and IRS may impose penalty under section 6652 for failure to file annual returns*)

- File Form 1023
- Write “Revenue Procedure 2014-11, Reinstatement Post-Mark Date” on top of Form 1023
- Include the appropriate fee (check IRS website)

Resources

Internal Revenue Service

- <https://www.irs.gov/>
- <https://www.irs.gov/charities-non-profits/charitable-organizations/automatic-revocation-how-to-have-your-tax-exempt-status-retroactively-reinstated> (overview of process for federal tax reinstatement)
- https://www.irs.gov/irb/2014-3_IRB/ar08.html (link to Revenue Procedure 2014-11, detailed instructions for outlining process for federal tax reinstatement)
- <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>

Texas Comptroller

- <https://comptroller.texas.gov/>
- <https://comptroller.texas.gov/taxes/franchise/reinstate-terminate.php> (web page outlining process for reinstating an entity in Texas when revoked under the Tax Code)
- <https://comptroller.texas.gov/forms/05-391.pdf> (Comptroller Form 05-391, tax clearance letter for franchise tax)

Texas Secretary of State

- http://www.sos.state.tx.us/corp/boc_presentation/X_reinstatement.shtml (web page outlining process for reinstating an entity in Texas when revoked under the BOC)

Texas Attorney General

- <https://www.texasattorneygeneral.gov/cpd/charities-nonprofits-registration-filings>

Date of last revision: 12.6.2017