Current Federal Tax Developments

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LOSCALZO INSTITUTE
A KAPLAN COMPANY

SECTION: 72
NO TAXABLE IRA DISTRIBUTION WHERE TAXPAYER HAD FUNDS WIRED TO BUY STOCK THAT CUSTODIAN LATER REFUSED TO ACCEPT

Citation: McGaugh v. Commissioner, Case No. 13665-14, CA7, 6/26/17

In the case of *McGaugh v. Commissioner*, Case No. 13665-14, CA7 the taxpayer had wired funds from his IRA account to purchase stock which we expected to be held in his IRA account. However, the taxpayer's IRA custodian refused to accept the share certificate that was received. The IRS took the position that this resulted in a taxable distribution to the taxpayer from the IRA account.

The Tax Court decided that the taxpayer had not actually or constructively received a distribution from his IRA. (TC Memo 2016-28) The IRS, not happy with this result, appealed the case to the Seventh Circuit Court of Appeals.

The Tax Court summarized the facts of this case as follows:

> Since 2002 Mr. McGaugh has maintained a self-directed IRA with custodian Merrill Lynch, and the IRA held 10,000 shares of stock in First Personal Financial Corp. ("FPFC"). The Commissioner asserts, and we assume, that Mr. McGaugh is a member of the board of directors of FPFC, but the Commissioner has not denied that FPFC stock is permitted to be an asset in the IRA. In the summer of 2011, Mr. McGaugh requested that Merrill Lynch use funds from his IRA to purchase an additional 7,500 shares of FPFC stock. However, for reasons the record does not show, Merrill Lynch would not purchase the shares directly on Mr. McGaugh's behalf.
>
> Consequently, Mr. McGaugh requested that Merrill Lynch initiate a wire transfer of $50,000 directly to FPFC. On October 7, 2011, Merrill Lynch initiated and FPFC received the wire transfer. (There is no evidence that Mr. McGaugh requested an IRA distribution to himself.) On November 28, 2011, FPFC issued the stock certificate not in Mr. McGaugh's name but instead in the name of "Raymond McGaugh IRA FBO Raymond McGaugh", as Mr. McGaugh had requested. FPFC claims that the stock certificate was mailed to Merrill Lynch on or about the same day as the November 28, 2011, issuance date on the certificate; but because Merrill Lynch states that the stock certificate was not received until "early 2012", we treat the timing of the transmittal of the stock certificate to Merrill Lynch as being in dispute and assume it was in 2012. Thereafter Merrill Lynch attempted to mail the stock certificate to Mr. McGaugh, but it was returned by the postal service at least twice. The record does not show where the original stock certificate is currently located; but we assume (as the IRS asserts) that Mr. McGaugh holds it (an assertion he denies).

Merrill Lynch issued a Form 1099R for 2011 in the amount of the wire and, not surprisingly, the IRS took the position that Mr. McGaugh owed tax on that amount. However, the Tax Court found that he never had actual or constructive receipt of either the funds or the stock and, thus, no tax was due.

The Seventh Circuit looked at the case and came to the same conclusion. The Court noted that the IRS's position was that Mr. McGaugh had constructive receipt of the IRA proceeds in 2011. As the

Court notes, Mr. McGaugh clearly did not have actual possession of the stock in 2011, as Merrill Lynch did not receive the stock and begin trying to send the stock certificate to Mr. McGaugh until 2012.

The appellate panel outlines the requirements for constructive receipt as follows:

> Under the doctrine of constructive receipt, a person receives income "not only when paid in hand but also when the economic value is within the taxpayer's control." United States v. Fletcher, 562 F.3d 839, 843 (7th Cir. 2009). Constructive receipt thus occurs where income "is credited to [an individual's] account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions." 26 C.F.R. § 1.451-2(a).

The Court concluded that Mr. McGaugh did have such constructive receipt in 2011, noting:

> A review of the record reveals no evidence that McGaugh was in constructive receipt of assets from his IRA. First, as the IRS essentially conceded at oral argument, it is clear McGaugh did not constructively receive stock. The FPFC share certificate was never in his physical possession during the 2011 tax year. There is also no evidence that he had any control over those shares or the rights associated with them that could give rise to a finding of constructive receipt. See *Ancira v. Commissioner,* 119 T.C. 135, 138–39 (2002); *United States v. Fort*, 638 F.3d 1334, 1340–41 (11th Cir. 2011). Indeed, the share certificate was issued in the name of "Raymond McGaugh IRA FBO Raymond McGaugh" rather than McGaugh's own name. And when McGaugh requested a replacement share certificate, FPFC refused to issue one without first receiving indemnification from Merrill Lynch. Thus, this case is similar to Ancira, in which the Tax Court found no constructive receipt where the petitioner was not a holder of, and accordingly could not negotiate the check at issue.
>
> The IRS' primary argument is that McGaugh constructively received funds from his IRA when he directed Merrill Lynch to wire them at his discretion to FPFC. It notes that a party cannot circumvent the rules on taxable income simply by directing a distribution to a third party. We have recognized this commonsense proposition before. Fletcher, 562 F.3d at 843 ("a person who earns income can't avoid tax by telling his employer to send a paycheck to his college, or his son, rather than to his bank"); see also *Old Colony Trust Co. v. Commissioner,* 279 U.S. 716, 729 (1929) (finding that an employee received taxable income where his employer paid tax liability on his behalf).
>
> It is not, however, implicated in this case. McGaugh didn't direct a distribution to a third party; he bought stock. That is a prototypical, permissible IRA transaction. See *Ancira*, 119 T.C. at 137 (noting that there is unquestionably no distribution where a beneficiary merely directs his IRA custodian to purchase stock); *Hampshire Grp., Ltd. v. Kuttner,* No. 3607, 2010 WL 2739995, at *27 (Del. Ch. July 12, 2010) (noting that constructive receipt concerns not whether a deferred compensation plan participant "can participate in the plan's choice of investments" but whether "the funds were made currently available to the plan

> participant to meet immediate financial needs."). Further, there is no indication that McGaugh orchestrated this purchase for the benefit of FPFC or for any reason other than because he wished to obtain stock to be held in his IRA. Thus, there is no evidence that he constructively received funds, either in ordering Merrill Lynch to wire funds to FPFC, or in any other respect.

SECTION: 170
EIGHTH CIRCUIT AGREES WITH TWO OTHER CIRCUITS THAT FAILURE TO OBTAIN SUBORDINATION BEFORE DONATION DOOMS CONSERVATION EASEMENT DEDUCTION

Citation: RP Golf LLC v. Commissioner, Case No. 16-3277, CA8, 6/26/17

In the case of *RP Golf LLC v. Commissioner*, Case No. 16-3277, CA8 the taxpayer was hoping the Eighth Circuit Court of Appeals would override the Tax Court's ruling and go against two of its sister Circuits to find that a conservation easement deduction was not barred merely because a mortgage on the property was not subordinated to the rights of the charity prior to the date of the transfer.

The matter in question involved an attempt to donate a qualified conservation easement, as defined at IRC §170(b)(1)(E), for which a charitable contribution deduction is allowed despite the transfer of only the limited conservation easement interest. As the Court described the contribution and later actions to deal with the mortgage:

> In December 2003, RP Golf granted a permanent conservation easement to PLT, a Missouri not-for-profit corporation. The easement's purpose was to "further the policies of the State of Missouri designed to foster the preservation of open space and open areas, conservation of the state's forest, soil, water, plant and wildlife habitats, and other natural and scenic resources."
>
> On April 14, 2004, Great Southern and Hillcrest signed subordinations of their mortgages to PLT's right to enforce the easement. Both subordinations state an effective date of December 31, 2003. Also on April 14, RP Golf filed its 2003 partnership tax return claiming a $16.4 million tax deduction for the easement.

Under IRC §170(h)(5)(A) a conservation easement deduction will not be allowed unless the conservation purpose is "protected in perpetuity." Reg. §1.170A-14(g)(2) provides the following requirements for a property subject to a mortgage to have an easement transferred that is protected in perpetuity:

> … no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity.

Both the Ninth Circuit (in the case *Minnick v. Commissioner*, 796 F.3d 1156, 9th Circuit 2015) and the Tenth Circuit (in the case of *Mitchell v. Commissioner*, 775 F.3d 1243, 10th Circuit 2015) held that a subordination that took place after the date of the contribution was not sufficient to meet the "in pertuity" requirement, requiring a complete denial of the deduction. Both Courts noted that the

plain language of the regulations requires the subordination take place at the same time or before the transfer.

The taxpayer in this case argues that such a holding is in error, since it argued:

> RP Golf claims this is a technicality that posed no threat to the easement. It invokes the next provision, § 1.170-14(g)(3):
>
> > A deduction shall not be disallowed . . . merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible.

However, the Eighth Circuit panel accepted the view of the Tenth Circuit in *Mitchell* noting:

> *Mitchell* rejected this argument: "[T]he remote future provision cannot reasonably be read as modifying the strict mortgage subordination requirement." *Mitchell*, 775 F.3d at 1254. Instead, it held that the subordination requirement "is evidence that in promulgating the rules, the Commissioner specifically considered the risk of mortgage foreclosure to be neither remote nor negligible, and therefore chose to target the accompanying risk of extinguishment of the conservation easement by strictly requiring mortgage subordination." *Id.* at 1253. See *Comm'r v. Nat'l Alfalfa Dehydrating & Milling Co.*, 417 U.S. 134, 148 (1974) ("The propriety of a deduction does not turn upon general equitable considerations. . . . Rather, it depends upon upon legislative grace; and only as there is clear provision therefore can any particular deduction be allowed." (internal quotation omitted)).
>
> The regulations "do not permit a charitable contribution deduction unless any existing mortgage on the donated property has been subordinated, irrespective of the likelihood of foreclosure." See *Mitchell*, 775 F.3d at 1255. In order to take the qualified conservation contribution deduction, Hillcrest and Great Southern must have subordinated their mortgages to PLT's interest before RP Golf conveyed the easement in December 2003.

The panel also did not find the Tax Court had arrived a "clearly erroneous" conclusion in determining that the taxpayer had not presented sufficient testimony or evidence of an alleged oral agreement that the taxpayer alleged they had with the lenders.

SECTION: 274
FULL DEDUCTION ALLOWED TO HOCKEY TEAM FOR MEALS PROVIDED TO PLAYERS AT AWAY GAMES

Citation: Jacobs v. Commissioner, 148 TC No. 24, 6/26/17

The Tax Court refused to go along with the IRS's view of strictly interpreting the provisions under IRC §274(n)(2)(B), allowing a full deduction for meals provided by the Boston Bruins NHL hockey team to players and employees traveling with the team at away games in the case of *Jacobs v. Commissioner*, 148 TC No. 24.

In order to get a 100% deduction for meals provided to employees, rather than only 50%, IRC §274(n)(2)(B) provides a full deduction is allowed "in the case of an expense for food or

beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes)…"

An item is excludable from an employee's wages under IRC §132(e) if it meets the following requirements:

> *(e) De minimis fringe defined For purposes of this section—*
>
> > *(1) In general*
> >
> > *The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.*
> >
> > *(2) Treatment of certain eating facilities The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—*
> >
> > > *(A) such facility is located on or near the business premises of the employer, and*
> > >
> > > *(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.*
> >
> > *The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.*

A meal not qualifying for this exclusion may still be excluded from the employee's wages if provided for the benefit of the employer under IRC §119(a)(2) on the employer's premises (whether or not it is an eating facility), but the employer faces a loss of 50% of the deduction under the general rule of IRC §274(n)(1).

In Chief Counsel Advice 201151020 the IRS asserted that an airline was required to give up of its deduction for meals paid for employees who remained on the plane while it was in transit, had meals delivered to the plane and ate such meals on the plane. In the IRS's view the meals served to the crew on the plane failed the "eating facility" test noted above, since the meals were prepared by a third party and the plane itself failed to qualify as an eating facility.

The IRS was asserting much the same position against the hockey team in this case. As the opinion notes:

> Each away city hotel prepares pregame meals (i.e., breakfast, lunch, or brunch) and snacks that meet the players' specific nutritional guidelines to ensure optimal performance for the upcoming game and throughout the remainder of the season. The Bruins contract in advance with each away city hotel for the provision of pregame meals and snacks, and the

> food is made available to all traveling hockey employees. The Bruins initiate the meal contracting process by providing a custom meal menu to the prospective away city hotel requesting specific types and quantities of food. The Bruins tend to keep food options consistent at each away city hotel to avoid players' having gastric problems during the game. The Bruins always order the same quantity of food to feed all traveling hockey employees. Using this custom meal menu the hotel prepares and sends to the Bruins a banquet event order (BEO) which sets forth the date, time, meal room, number of guests, menu, and pricing for each pregame meal. The BEOs typically list fewer anticipated meal attendees than the actual number of meal attendees for cost reduction reasons. If the BEO deviates from the custom meal menu, the Bruins contact the hotel to have the discrepancy corrected. Once the BEO meets the Bruins' needs, the team accepts the offer set forth in the BEO by executing the document and returning it to the hotel for a countersignature.
>
> The meal room is provided to the Bruins at no extra cost, and the meal rooms are set up similarly at each hotel — usually round tables with chairs and buffet stations where food and beverages are available for self-service. For privacy reasons, the Bruins request that the location of the meal room not be disclosed to the public, and the meal room is accessible only to traveling hockey employees, waiters, waitresses, and dining captains.

The key question was whether the hotel qualified as an "eating facility" of the Bruins, thus causing the meals to be treated as a fringe benefit. The Tax Court found that while the arrangement with the hotel was not labeled a "lease" the arrangement was essentially equivalent to a lease so this requirement is satisfied in this case.

The opinion points out:

> Although the BEOs and hotel contracts entered into between the Bruins and the away city hotels are not specifically identified as "leases", the substance of these contracts indicates that the Bruins are paying consideration in exchange for "the right to use and occupy" the hotel meal rooms. The Bruins' execute BEOs and hotel contracts with each away city hotel to occupy meal rooms and determine what types of food are served, and the BEOs specify the dates and times of the meals and the anticipated number of attendees. The Bruins do not provide separate consideration for the rental of the meal rooms; however, the meal rooms are essential to the Bruins' away city business operations, and the hotels agree to provide the meal rooms free of charge because the Bruins spend money for lodging and food. The Bruins dictate several aspects regarding the setup of the meal rooms, such as the furnishings and the presence of audiovisual equipment or a whiteboard. The Bruins also require the hotel to keep the location of the meal room private from the general public by refraining from posting any identifying information about the Bruins' use of the room. The evidence establishes that the Bruins contract with away city hotels for the right to "use and occupy" meal rooms to conduct team business, and therefore these agreements are substantively leases.

Additionally, the regulations under IRC §132 require that the eating facility must be operated by the employer. Specifically, Reg. §1.132-7(a)(3) provides:

> *(3) Operation by the employer. — If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.*

The Tax Court determined this requirement was also met. The Court found:

> The Bruins contract with each away city hotel regarding the operation of the meal rooms as well as food preparation and service. Several weeks before the Bruins travel to the away city hotel they provide meal requirements to the hotel. The away city hotel then prepares a BEO setting forth the date, time, designated meal room, number of guests, menu, and per-person pricing for each meal ordered. The Bruins will either (1) contact the hotel if changes to the BEO are needed or (2) accept the offer set forth in the BEO by executing the BEO and returning it to the hotel for a countersignature. The BEOs also typically provide for the furnishings and setup of the meal room and the hotel staff that will assist in preparing and serving the food. The Bruins agree to pay a fee for each meal and a service fee of up to 22% of the cost of the meals. We find that by engaging in this process with away city hotels the Bruins are "contract[ing] with another to operate an eating facility for its employees".11 See sec. 1.132-7(a)(3), Income Tax Regs.

The eating facility must also be at or near the employer's "business premises" for this exception to qualify. [Reg. §1.132-7(a)(2)(iii)] The IRS argued that the Bruins could not meet this requirement in this case, arguing that while the Bruins may perform some business activities at away city hotels, the activities are insignificant.

As the opinion notes:

> Respondent acknowledges that the Bruins perform business activities at away city hotels; however, respondent argues that the traveling hockey employees' activities at away city hotels are insignificant because: (1) the activities at away city hotels are qualitatively less important than playing in the actual hockey game and (2) the Bruins spend quantitatively less time at each away city hotel than they do at the team's Boston facilities.

But the Court refused to accept this view, holding rather:

> Although we agree with respondent that playing in hockey games is important to the Bruins' business, it seems that the quality of play is directly related to the team's preparation. This preparation includes business activities that occur at away city hotels, such as: eating nutritious meals, obtaining adequate rest, meeting with coaches individually or in small groups to strategize, reviewing game film, receiving athletic treatments and massages, and completing strength and conditioning workouts. The evidence at trial further indicates that the strength and conditioning workouts performed by the players at away city hotels provide important benefits to the players, not just for the immediate game but throughout the remainder of the season. Without the preparatory activities that occur at away city hotels the

> Bruins' performance during games would likely be adversely affected. Furthermore, respondent provides no precedent to support the argument that business premises are limited to the location where the most qualitatively significant business activity occurs.
>
> We also disagree with respondent's argument that away city hotels cannot constitute the Bruins' business premises because the team spends quantitatively less time at each individual away city hotel when compared to the team's time spent at its Boston facilities. Although the Bruins do spend quantitatively less time at each individual away city hotel than they do in Boston, this goes to the unique nature of a professional hockey team that is required to play one-half of its games away from home. It is therefore illogical for respondent to ignore the nature of the Bruins' business and the NHL and analyze the amount of time spent at each away city hotel in isolation. See *Vanicek v. Commissioner*, 85 T.C. at 739-740; *Lindeman v. Commissioner*, 60 T.C. at 615. Respondent also provides no precedent to support the proposition that a quantitative comparison of time is critical to determining business premises. See *Adams*, 585 F.2d at 1066 (stating that determinations of business premises "limited to the geographic contiguity of the premises or to questions of the quantum of business activities on the premises are too restrictive"). Accordingly, we hold that the away city hotels constituted part of the Bruins' business premises for the years in issue.

The regulations also require that the revenue derived from an employer-operated eating facility must equal or exceed the direct operating costs of the facility. [IRC §132(e)(2)(B)] But, IRC §132(e) also provides that "an employee entitled under section 119 (the convenience of the employer exclusion) to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal." As was noted earlier, the §119 exclusion requires that:

- The meal was furnished for the convenience of the employer (as opposed to the employee) and
- The meal was furnished on the premises of the employer.

The Court has previously concluded the hotels were business premises of the employer, so the only question was whether the meals were for the convenience of the employer. The Court found they were, noting:

> The evidence establishes that the pregame meals at away city hotels are provided to the Bruins' traveling hockey employees for substantial noncompensatory business reasons. The Bruins provide pregame meals to traveling hockey employees at away city hotels first and foremost for nutritional and performance reasons. Meals are selected by the Bruins to meet the exacting nutritional needs of professional athletes, and menus are kept consistent from city to city to avoid players' experiencing unexpected gastric problems during games. The Bruins also provide pregame meals to the traveling hockey employees at away city hotels because they are subject to a busy schedule and have only limited time to prepare for an upcoming game. The Bruins play 82 regular season games, which include 41 away games at locations throughout the United States and Canada. The record establishes that the traveling

> hockey employees arrive at away city hotels the day before the game (or sometimes the morning of the game) and spend most of their time with preparation activities, such as: ensuring players get adequate rest; reviewing game film, strategizing, and making roster adjustments; conducting player-coach meetings; preparing for public relations inquiries; providing remedial or preventative athletic treatments; and completing strength and conditioning workouts to maintain player health and optimize performance. Providing meals to traveling hockey employees at away city hotels enables the Bruins to effectively manage a hectic schedule by minimizing unproductive time (e.g., finding and obtaining appropriate meals from restaurants in each city) and maximizing time dedicated to activities that help achieve the organization's goal of winning hockey games. Petitioners have provided credible evidence establishing the business reasons for furnishing pregame meals to traveling hockey employees at away city hotels, and we will not second-guess their business judgment. *See id*.

The final requirement is that the employer must provide meals must be provided "during, or immediately before or after, the employer's workday" in order to be excluded. [Reg. §1.132-7(a)(2)(iv)] The IRS conceded that the Bruins met this test. So, as the Court notes, the taxpayers "are entitled to deduct the full cost of the meals without regard to the 50% limitation imposed by section 274(n)(1)."

What is not clear is whether this is a "unique facts" case whose result is triggered by the special and details agreements and arrangements the hockey team has with its hotels, or whether it could apply more broadly to any situation where a business requires that certain employees must be out of town. Presumably the IRS will attempt to narrow the applicability of this case, so likely this will not be the last time this matter will be in dispute between taxpayers and the IRS.

SECTION: 501
IRS ISSUES FINAL REGULATIONS ON STREAMLINED APPLICATIONS FOR §501(C)(3) EXEMPT ORGANIZATION STATUS

Citation: TD 9819, 6/29/17

The IRS has adopted as final regulations the proposed regulations issued in June of 2014 that allowed for a streamlined application for tax-exempt status under IRC §501(c)(3) in T.D. 9819. These same regulations were issued in 2014 as temporary regulations which, with the issuance of the same regulations in final form, are now withdrawn.

The streamlined application process takes place entirely online, with the organization filling in Form 1023-EZ online at http://www.pay.gov. As the IRS described the process in the preamble to the final regulations:

> The Treasury Department and the IRS have considered how the process of meeting the notice requirement of section 508 in seeking recognition of tax-exempt status may be made more efficient for certain smaller organizations. The IRS developed Form 1023-EZ to provide a simplified application form that relies more heavily on attestations by the organization that it meets the section 501(c)(3) organizational and operational requirements, which are explained in the accompanying form instructions. The new form was made

available for use by eligible small organizations in July 2014, following the issuance of the temporary regulations and a revenue procedure describing the streamlined application process. The streamlined application process generally allows eligible small organizations to receive IRS determinations of tax-exempt status more quickly and allows the IRS to focus resources on more complex exemption applications and on compliance programs. This Treasury decision adopts the 2014 proposed regulations by amending §§ 1.501(a)-1, 1.501(c)(3)-1, and 1.508-1 to authorize the continued use of the IRS' streamlined process by eligible organizations to meet the notice requirements of section 508.

On July 2, 2014, final and temporary regulations (TD 9674) authorizing the Commissioner to adopt a streamlined application process that eligible organizations may use to apply for recognition of tax-exempt status under section 501(c)(3) were published in the Federal Register (79 FR 37630). The final and temporary regulations were effective and applicable on July 1, 2014. The 2014 final regulations removed and reserved certain paragraphs of the longstanding final regulations addressed by corresponding paragraphs of the new temporary regulations. Under the temporary regulations, the IRS instituted the streamlined application process on Form 1023-EZ, "Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," the detailed procedures for which have been provided in annual revenue procedures, most recently in Rev. Proc. 2017-5, 2017-1 IRB 230, and in the instructions for Form 1023-EZ.

Generally, the following organizations qualify to use the "streamlined" process (Rev. Proc. 2017-5, Section 6.05(1)):

- The organization has projected annual gross receipts of $50,000 or less in the current taxable year and the next 2 years;
- The organization had annual gross receipts of $50,000 or less in each of the past 3 years for which the organization was in existence; and
- The organization has total assets the fair market value of which does not exceed $250,000. For purposes of this eligibility requirement, a good faith estimate of the fair market value of the organization's assets is sufficient.

However, even if an organization meets those requirements, the use of Form 1023-EZ will not be available for the following organizations. (Rev. Proc. 2017-5, Section 6.05(2))

- Organizations formed under the laws of a foreign country (United States territories and possessions are not considered foreign countries);
- Organizations that do not have a mailing address in the United States (territories and possessions are considered the United States for this purpose);
- Organizations that are successors to, or controlled by, an entity suspended under § 501(p) (suspension of tax-exempt status of terrorist organizations);
- Organizations that are not corporations, unincorporated associations, or trusts, such as a limited liability corporation (LLC);

- Organizations that are formed as for-profit entities or are successors to for-profit entities;
- Organizations that were previously revoked or that are successors to a previously revoked organization (other than an organization the tax-exempt status of which was automatically revoked for failure to file a Form 990 series return or notice for three consecutive years under § 6033(j));
- Churches or conventions or associations of churches described in § 170(b)(1)(A)(i);
- Schools, colleges, or universities described in § 170(b)(1)(A)(ii);
- Hospitals or medical research organizations described in § 170(b)(1)(A)(iii) or § 501(r)(2)(A)(i) (cooperative hospital service organizations described in § 501(e));
- Cooperative service organizations of operating educational organizations described in § 501(f);
- Qualified charitable risk pools described in § 501(n);
- Supporting organizations described in § 509(a)(3);
- Organizations that have as a substantial purpose providing assistance to individuals through credit counseling activities such as budgeting, personal finance, financial literacy, mortgage foreclosure assistance, or other consumer credit areas;
- Organizations that invest, or intend to invest, five percent or more of their total assets in securities or funds that are not publicly traded;
- Organizations that participate, or intend to participate, in partnerships (including entities or arrangements treated as partnerships for Federal tax purposes) in which they share profits and losses with partners other than § 501(c)(3) organizations;
- Organizations that sell, or intend to sell, carbon credits or carbon offsets;
- Health Maintenance Organizations (HMOs);
- Accountable Care Organizations (ACOs), or organizations that engage in, or intend to engage in, ACO activities (such as participation in the Medicare Shared Savings Program (MSSP) or in activities unrelated to the MSSP described in Notice 2011-20, 2011-16 I.R.B. 652);
- Organizations that maintain, or intend to maintain, one or more donor advised funds;
- Organizations that are organized and operated exclusively for testing for public safety and that are requesting a foundation classification under § 509(a)(4);
- Private operating foundations;
- Organizations that are applying for retroactive reinstatement of exemption under sections 5 or 6 of Rev. Proc. 2014–11, 2014–3 I.R.B. 411, after being automatically revoked (see the annual EO revenue procedure for additional information);
- Agricultural research organizations described in § 170(b)(1)(A)(ix); and
- Organizations that are currently or were previously exempt under another subsection of § 501(c).

The PDF versions of the Form 1023-EZ, made available for information purposes only but which cannot be directly filed with the agency, are provided below. Note that the actual submission of information must be online via http://www.pay.gov, along with the required payment.

You must complete the Form 1023-EZ Eligibility Worksheet in the Instructions for Form 1023-EZ to determine if you are eligible to file this form. Form 1023-EZ is filed electronically **only** on Pay.gov. Go to www.irs.gov/form1023ez for additional filing information.

Form **1023-EZ**
(June 2014)
Department of the Treasury
Internal Revenue Service

Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

▶ **Do not enter social security numbers on this form as it may be made public.**
▶ **Information about Form 1023-EZ and its separate instructions is at *www.irs.gov/form1023*.**

OMB No. 1545-0056

Note: *If exempt status is approved, this application will be open for public inspection.*

☐ **Check this box to attest that you have completed the Form 1023-EZ Eligibility Worksheet in the current instructions, are eligible to apply for exemption using Form 1023-EZ, and have read and understand the requirements to be exempt under section 501(c)(3).**

Part I Identification of Applicant

1a Full Name of Organization

b Address (number, street, and room/suite). If a P.O. box, see instructions.	**c** City	**d** State	**e** Zip Code + 4

2 Employer Identification Number	**3** Month Tax Year Ends (MM)	**4** Person to Contact if More Information is Needed

5 Contact Telephone Number	**6** Fax Number (optional)	**7** User Fee Submitted

8 List the names, titles, and mailing addresses of your officers, directors, and/or trustees. (If you have more than five, see instructions.)

First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:

9 a Organization's Website (if available):
b Organization's Email (optional):

Part II Organizational Structure

1 To file this form, you must be a corporation, an unincorporated association, or a trust. **Check the box** for the type of organization.
☐ Corporation ☐ Unincorporated association ☐ Trust

2 ☐ **Check this box** to attest that you have the organizing document necessary for the organizational structure indicated above. (See the instructions for an explanation of **necessary organizing documents**.)

3 Date incorporated if a corporation, or formed if other than a corporation (MMDDYYYY): _____

4 State of incorporation or other formation: _____

5 Section 501(c)(3) requires that your organizing document must limit your purposes to one or more exempt purposes within section 501(c)(3).
☐ **Check this box** to attest that your organizing document contains this limitation.

6 Section 501(c)(3) requires that your organizing document must not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.
☐ **Check this box** to attest that your organizing document does not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

7 Section 501(c)(3) requires that your organizing document must provide that upon dissolution, your remaining assets be used exclusively for section 501(c)(3) exempt purposes. Depending on your entity type and the state in which you are formed, this requirement may be satisfied by operation of state law.
☐ **Check this box** to attest that your organizing document contains the dissolution provision required under section 501(c)(3) or that you do not need an express dissolution provision in your organizing document because you rely on the operation of state law in the state in which you are formed for your dissolution provision.

You must complete the Form 1023-EZ Eligibility Worksheet in the Instructions for Form 1023-EZ to determine if you are eligible to file this form. Form 1023-EZ is filed electronically **only** on Pay.gov. Go to www.irs.gov/form1023ez for additional filing information.

Part III Your Specific Activities

1 Enter the appropriate 3-character NTEE Code that best describes your activities (See the instructions): _____

2 To qualify for exemption as a section 501(c)(3) organization, you must be organized and operated exclusively to further one or more of the following purposes. By checking the box or boxes below, you attest that you are organized and operated exclusively to further the purposes indicated. **Check all that apply.**

- ☐ Charitable
- ☐ Religious
- ☐ Educational
- ☐ Scientific
- ☐ Literary
- ☐ Testing for public safety
- ☐ To foster national or international amateur sports competition
- ☐ Prevention of cruelty to children or animals

3 To qualify for exemption as a section 501(c)(3) organization, you must:

- Refrain from supporting or opposing candidates in political campaigns in any way.
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals (that is, board members, officers, key management employees, or other insiders).
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially.
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s).
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in section 501(h).
- Not provide commercial-type insurance as a substantial part of your activities.

☐ **Check this box** to attest that you have not conducted and will not conduct activities that violate these prohibitions and restrictions.

4 Do you or will you attempt to influence legislation? . . . . . ☐ **Yes** ☐ **No**
(If yes, consider filing Form 5768. See the instructions for more details.)

5 Do you or will you pay compensation to any of your officers, directors, or trustees? . . . . . ☐ **Yes** ☐ **No**
(Refer to the instructions for a definition of **compensation**.)

6 Do you or will you donate funds to or pay expenses for individual(s)? . . . . . ☐ **Yes** ☐ **No**

7 Do you or will you conduct activities or provide grants or other assistance to individual(s) or organization(s) outside the United States? . . . . . ☐ **Yes** ☐ **No**

8 Do you or will you engage in financial transactions (for example, loans, payments, rents, etc.) with any of your officers, directors, or trustees, or any entities they own or control? . . . . . ☐ **Yes** ☐ **No**

9 Do you or will you have unrelated business gross income of $1,000 or more during a tax year? . . . . . ☐ **Yes** ☐ **No**

10 Do you or will you operate bingo or other gaming activities? . . . . . ☐ **Yes** ☐ **No**

11 Do you or will you provide disaster relief? . . . . . ☐ **Yes** ☐ **No**

Part IV Foundation Classification

Part IV is designed to classify you as an organization that is either a private foundation or a public charity. Public charity status is a more favorable tax status than private foundation status.

1 If you qualify for public charity status, check the appropriate box (**1a – 1c** below) and skip to **Part V** below.

a ☐ **Check this box** to attest that you normally receive at least one-third of your support from public sources or you normally receive at least 10 percent of your support from public sources and you have other characteristics of a publicly supported organization. **Sections 509(a)(1) and 170(b)(1)(A)(vi)**.

b ☐ **Check this box** to attest that you normally receive more than one-third of your support from a combination of gifts, grants, contributions, membership fees, and gross receipts (from permitted sources) from activities related to your exempt functions and normally receive not more than one-third of your support from investment income and unrelated business taxable income. **Section 509(a)(2)**.

c ☐ **Check this box** to attest that you are operated for the benefit of a college or university that is owned or operated by a governmental unit. **Sections 509(a)(1) and 170(b)(1)(A)(iv)**.

2 If you are not described in items **1a – 1c** above, you are a private foundation. As a private foundation, you are required by section 508(e) to have specific provisions in your organizing document, unless you rely on the operation of state law in the state in which you were formed to meet these requirements. These specific provisions require that you operate to avoid liability for private foundation excise taxes under sections 4941-4945.

☐ **Check this box** to attest that your organizing document contains the provisions required by section 508(e) or that your organizing document does not need to include the provisions required by section 508(e) because you rely on the operation of state law in your particular state to meet the requirements of section 508(e). (See the instructions for explanation of the section 508(e) requirements.)

You must complete the Form 1023-EZ Eligibility Worksheet in the Instructions for Form 1023-EZ to determine if you are eligible to file this form. Form 1023-EZ is filed electronically **only** on Pay.gov. Go to www.irs.gov/form1023ez for additional filing information.

Part V **Reinstatement After Automatic Revocation**

Complete this section only if you are applying for reinstatement of exemption after being automatically revoked for failure to file required annual returns or notices for three consecutive years, and you are applying for reinstatement under section 4 or 7 of Revenue Procedure 2014-11. (Check only one box.)

1 ☐ **Check this box** if you are seeking retroactive reinstatement under section 4 of Revenue Procedure 2014-11. By checking this box, you attest that you meet the specified requirements of section 4, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future. (See the instructions for requirements.)

2 ☐ **Check this box** if you are seeking reinstatement under section 7 of Revenue Procedure 2014-11, effective the date you are filling this application.

Part VI **Signature**

☐ **I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, and to the best of my knowledge it is true, correct, and complete.**

(Type name of signer) (Type title or authority of signer)

PLEASE SIGN HERE ▶ (Signature of Officer, Director, Trustee, or other authorized official) ▶ (Date)