

New Filing Requirements for Nonprofits

Q Can you explain the IRS's new filing requirements for tax-exempt organizations?

A As of Jan. 1, every business entity with an employee identification number (EIN) is now required to report changes to its "responsible party" to the IRS. To do that, organizations should use Form 8822-B, the same form used for advising the IRS of address changes. The new requirement applies to all businesses that have an EIN, including all nonprofit, tax-exempt organizations.

Every tax-exempt organization and other business must have an EIN for tax reporting and filing purposes. Getting an EIN is often done at the same time an organization incorporates, since the EIN allows the new corporation to get a bank account and start handling other financial and tax matters. An organization applies for an EIN using Form SS-4, Application for Employer Identification Number. Organizations that have been in business for many years originally would have applied using a paper form by mail or facsimile; Form SS-4 now may be obtained and completed electronically on the IRS website.

After Jan. 1, all changes in an organization's responsible party must be reported within 60 days of the change. If a change in the identity of an organization's responsible party occurred before 2014, and the organization did not

previously notify the IRS of the change, the organization must report the identity of the most current responsible party before March 1.

The term "responsible party" did not appear on the Form SS-4 application for an EIN until Jan. 1, 2010. Before then, the Form SS-4 asked only for the name and social security number of the "principal officer, general partner, grantor, owner or trustee" (Form SS-4, lines 7a-7b). A new tax-exempt organization typically used the name and social security number of the president or another principal officer of the organization. Starting January 2010, the IRS changed Form SS-4 to require the name and social security number of the organization's "responsible party."

According to the IRS, the "responsible party" for a nonprofit organization or other non-publicly-traded company is "the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets." The IRS has clarified that the ability to fund the entity or receive property alone without control authority does not make the individual a responsible party (e.g., a minor beneficiary of a trust is not considered a "responsible party" since the minor does not control the funds).

For nonprofit organizations, the "responsible party"

may not be clear since there often is no single "owner" or other individual that, alone, controls the organization. Determining the responsible party under the IRS definition will depend on the facts and circumstances surrounding decision making in each organization and should be carefully considered in consultation with legal counsel. In many cases, the chief staff executive or chief financial officer is likely to be the appropriate "responsible party" for tax reporting and filing purposes.

The IRS indicated this change is being made in an effort to update its records, since it believed the person originally reported on the EIN application as the principal officer (general partner, grantor, owner, or trustee) or responsible party no longer may be acting on behalf of the entity. That is likely the case. In fact, it also is likely that many organizations no longer even have a record of the original Form SS-4 application or remember who originally was listed on the form as the principal officer or responsible party. For that reason, it is a good idea to obtain the Form 8822-B from the IRS and complete the relevant portions indicating the new responsible party, unless the originally reported principal officer (or other individual) or responsible party is still with the organization and that individual meets the definition of "responsible party" under the IRS definition.

Unless the organization

also needs to report a change of mailing address and/or business location, only lines 8 through 10 of the Form 8822-B need to be completed. Forms must be filed with the IRS based on the organization's old address if an address change is being reported as well. See the following link to Form 8822-B, Change of Address or Responsible Party — Business:

<http://www.irs.gov/pub/irs-pdf/f8822b.pdf>. See the following link to Form SS-4, Application for Employer Identification Number: <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. 

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.