

Part III

Administrative, Procedural, and Miscellaneous

26.CFR ~~X.XXXX-X~~: Offer to resolve issues arising from certain tax and reporting obligations of Exempt Organizations

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Offer to resolve issues arising from certain tax and reporting obligations of Exempt Organizations.

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SECTION 1 GENERAL

.01 Purpose. This revenue procedure describes and sets forth procedures for participation in the Exempt Organization Voluntary Compliance Program (EOVCP or Program). The Program is open to certain entities exempt from Federal Income tax under section 501(a) to redress noncompliance with respect to certain obligations under the Internal Revenue Code (Code). The objective of the Program is to enhance voluntary compliance with respect to the reporting and filing obligations under sections 6033 and 6011 of the Code. For purposes of this revenue procedure, the specific filings contemplated include Forms 990, 990-EZ, 990-PF, and 990-T, collectively referred to herein as the “990 Series Returns.” See section 2 of this revenue procedure for more information on entities that are eligible for participation in EOVC. See section 3 of this revenue procedure for more information on the tax and information reporting noncompliance issues that may be resolved through the EOVC.

.02 Background and summary. Currently, short of the imposition of penalties and closing agreements, there are no established procedures for redressing past noncompliance with the annual tax and information return filing requirements listed in the paragraph above. For noncompliant organizations, the threat of significant penalties and interest may actually serve as a deterrent for fulfilling past and current filing obligations. The EOVC is being implemented to help aid in the resolution of prior noncompliance and to facilitate future compliance with respect to the annual return filing requirements listed above. The Program will address an exempt organization’s failure to file:

- Form 990, 990-EZ, or 990-PF, as required by section 6033; or
- Form 990-T, as required by section 6011.

In addition, if an organization has not complied with the 990 Series Returns filing requirements *and* has not filed employment tax returns required under section 6011 (Forms 940, 941, 945 and 1099) or required Forms W-2, the organization may also submit those employment tax returns in connection with the relevant Forms 990, 990-EZ, 990-PF or 990-T for the corresponding tax year. Employment tax returns and Forms W-2 will *not* be accepted under the EOVC unless they are for the same tax years for which 990 Series Returns were not filed. Submission of previously unfiled employment tax returns is not mandatory for participation in the EOVC.

With respect to returns filed under the EOVC, no penalties will be assessed for late filing (sections 6651(a)(1) and 6652(c)), late payment (section 6651(a)(2)), failure to deposit (section 6656), or failure to pay estimated tax (section 6655), although no relief is conferred with respect to any other issues. With respect to

the obligations described in Section 3, the IRS reserves the discretion to accept or reject any request for acceptance into the EOVC.

There is a compliance fee associated with the EOVC, and a sliding scale will be utilized to determine the applicable amount. See Section 6 for an explanation of the compliance fee.

.03 Applicable law. Generally, organizations recognized as exempt under Code Section 501(a) with gross receipts of \$25,000 or greater are required to file an annual information return with the IRS. This requirement is typically satisfied by the timely filing of Form 990 or 990-EZ. Private foundations must file Form 990-PF, regardless of the organization's gross receipts. Organizations with gross income from an unrelated trade or business of greater than \$1,000 must file a Form 990-T. Furthermore, new Section 6033(j), enacted by the Pension Protection Act of 2006 (PPA), imposes an obligation on most small tax-exempt organizations (excluding organizations included in a group return and churches, their integrated auxiliaries, and conventions or associations of churches) with gross receipts that are normally \$25,000 or less. Such organizations must file an electronic notice, Form 990-N. An organization that fails to file a required return or notice under section 6033 for three consecutive years will have their tax-exempt status revoked automatically.

.04 No effect on or applicability to other obligations. The EOVC applies to tax, withholding, and reporting obligations with respect to 990 Series Returns as well as, where applicable, Forms 940, 941, 945, 1099, and W-2 for the same years. The EOVC described in this revenue procedure does not apply to and does not affect any other tax or reporting obligation or any other obligations of the taxpayer or the IRS that are not within the scope of this revenue procedure.

SECTION 2 ELIGIBLE EXEMPT ORGANIZATIONS

.01 Eligible exempt organizations. Except as provided in section 2.02, an exempt organization is eligible for the EOVC if it:

- is an organization that is exempt from Federal income tax under section 501(a),
- has an obligation to file any 990 Series Return, and
- has failed to satisfy that requirement for any (or all) of the previous three tax years.

An eligible organization may make a submission under the EOVC on or before December 31, 2010.

.02 Organizations currently under examination or subject to enforcement activity. An otherwise eligible organization is not eligible to participate in the EOVC if enforcement or collection activity (including the active pursuit of

delinquent taxes or penalties) or an examination has commenced with respect to the organization prior to the organization's submission of the information required by section 4.02 of this revenue procedure. For this purpose, an examination is treated as commencing on the date the organization receives notification from the IRS of an impending examination or of an impending referral for examination. This program also is not available to any organization that is subject to potential criminal referral or that has a case pending in Appeals or in litigation on issues involving tax, withholding, or reporting obligations described in section 3 of this revenue procedure, for any tax year for which the organization contemplates making a submission under the EOVC.

SECTION 3 OBLIGATIONS SUBJECT TO THE EOVC

.01 Failures subject to the EOVC. The failures for which an eligible organization may make a submission under the EOVC are:

- (1) Failure to file any 990 Series Returns as required (specifically, Form 990, 990-EZ, 990-PF, or 990-T) for any (or all) of the previous three tax years; and,
- (2) Where an organization has failed to file one or more required Forms 990, 990-EZ, 990-PF, or 990-T, failure to file Forms 940, 941, 945, 1099 or W-2 for the corresponding tax year.

02 Limitations. The IRS may in its discretion reject any submission in the interest of sound tax administration, based upon relevant facts and circumstances. In order to participate in the EOVC, the organization must ensure that its reporting obligations for the 990 Series Returns are satisfied with respect to each of the prior three years, either as a result of having previously filed the requisite Forms, or via the EOVC. For example, if an organization has not satisfied its filing obligation for any of the prior three years with respect to any 990 Series Return, submission of only one or some of the required 990 series returns for the prior three years will be rejected. Similarly, where an organization satisfied its filing obligation for one tax year but not for the other two years in the three-year period, the filing obligations for those other two years must *also* be satisfied via the EOVC, or the submission will be rejected.

Furthermore, while not required for participation in the EOVC, an organization choosing to make a submission with respect to Forms 940, 941, 945, 1099 or W-2 under the circumstances described in section 3.01(2) of this revenue procedure must also correct any failures described in that section for the prior three years or the submission will be rejected. The Service, at its discretion, *may* accept previously non-filed 990 Series Returns for up to six years, along with the returns described in section 3.01(2) for the same tax years.

With respect to returns filed under the EOVC, no penalties will be assessed for late filing (sections 6651(a)(1) and 6652(c)), late payment (section 6651(a)(2)),

failure to deposit (section 6656), or failure to pay estimated tax (section 6655), although no relief is conferred with respect to any other issues.

If an organization previously filed an *incorrect* Form (for example, the organization filed a Form 990 when it should have filed a Form 990-PF), the Program will be available to such organization in order to file the *correct*, previously non-filed Form. If an organization initially filed the correct Form but subsequently became aware of errors that were reported on that Form, the organization must follow established procedures for filing an *amended* return. The EOVCPC is not available for the filing of amended returns. This applies to both 990 Series submissions as well as employment tax filings contemplated under the EOVCPC.

The EOVCPC applies to tax, withholding, and reporting obligations with respect to 990 Series Returns as well as, where applicable, Forms 940, 941, 945, 1099, and W-2 for the same years. The EOVCPC described in this revenue procedure does not apply to and does not affect any other tax or reporting obligation or any other obligations of the taxpayer or the IRS that are not within the scope of this revenue procedure.

SECTION 4 SUBMISSION PROCEDURES

.01 In general. To participate in the EOVCPC, an eligible organization must submit a request via letter transmitting the information requested in Section 4.02, below, to the EOVCPC Coordinator at the address in section 4.06 of this revenue procedure. The IRS will not accept anonymous submissions under the EOVCPC.

.02 Requirements. The request for consideration under EOVCPC must contain the following information:

1. The name, address and taxpayer identification number of the eligible organization;
2. The name of a contact person at the organization, or an authorized representative with a valid Power of Attorney (Form 2848), along with the contact person's address, telephone number and fax number;
3. Complete, accurate returns within the scope of Section 3 filed on the correct form, signed by an individual authorized to sign the returns on behalf of the organization;
4. Payment of all the tax due shown on the filed returns and required statutory interest;
5. Computation of statutory interest;

6. A written statement acknowledging that for all years for which a filing is being submitted and to the best of the organization's knowledge, the organization is not under examination or the subject of examination activity or any enforcement activity by the IRS, in Appeals or engaged in litigation with respect to any issue relating to the jurisdiction of the IRS;
7. In the case of late tax payments, a statement that the exempt organization agrees to waive all defenses to the assessment and collection of the tax shown on the filed returns as well as the applicable statutory interest;
8. In the case of Forms 940, 941, 945, 1099 and W-2, a calculation of the total amount of taxes the eligible organization failed to withhold, pay and/or report, including required interest, for tax periods open for assessment or collection;
9. In cases involving the failure to withhold or to pay the correct amount of Social Security or Medicare taxes imposed on employees with respect to wages paid, submission of the completed and/or corrected Forms W-2 and an affirmation that they will be provided to affected employees;
10. A statement indicating how or why the noncompliance occurred and a description of the controls or procedures implemented to ensure that the organization's reporting obligations are satisfied in the future. This should include a detailed description of the method proposed for correcting non-compliant activities and an explanation of how the organization will achieve future compliance;
11. The Appropriate Compliance Fee as described in section 6. Submission of the compliance fee *must* be performed electronically via the Department of the Treasury's www.pay.gov website. After clicking on the link entitled "EOVCP," the site will require certain identifying information about the organization and selection the appropriate compliance fee amount. Once payment has been submitted, via credit or debit card, the organization will be assigned a transaction number. This transaction number *must* be included with the submission package delivered to Dallas so that the payment may be verified.

.03 Penalty of Perjury Statement. The following declaration must accompany an EOVC P submission and any factual information submitted after the original submission or any change in the submission at a later time: **"Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the EOVC P request are true, correct, and complete."** The declaration must be signed by an officer of the eligible organization.

.04 Marked Letter and Marked Envelope. The letter which transmits the submission must be marked "EOVCP" in the upper right hand corner of the letter and the envelope containing the submission must be marked "EOVCP" in the lower left-hand corner of the envelope.

.05 Mailing Address. The submission must be mailed to the address shown below:

Internal Revenue Service
EOVCP Coordinator
1100 Commerce Street – 4920 DAL
Dallas, TX 75242

SECTION 5 PROCESSING OF EOVCPC REQUESTS

.01 Inadequate or incomplete submissions or requests for additional information. If a submission fails to comply with the provisions of this revenue procedure or the IRS requires additional information, the IRS representative assigned to the case will contact the eligible organization or its representative and explain what is needed to complete the submission. The organization will have 30 calendar days from the date of this contact to provide the requested documents and/or information. Any request for an extension of the 30-day response period must be made prior to expiration of the period, and must be approved by the EOVCPC Coordinator. If the requested documents and/or information are not received within 30 calendar days (plus any extensions), or an agreement cannot be reached on issue(s), correction or administrative procedures, the matter will be closed and the compliance fee will not be returned.

.02 Determining tax liability. Once the IRS receives a submission under EOVCPC, the IRS will issue an acknowledgement letter. The IRS will then verify that the submission requirements under section 4.02 are satisfied. If necessary, the IRS will ask the organization to provide any clarification or additional documentation necessary.

The IRS generally will apply the following approach to determine the liability of an eligible organization:

- (1) The determination of tax liability will be based on the organization's disclosures and representations. The issuance of Compliance Letter, as described in section 5.04 of this revenue procedure, is not a determination of the substantive validity of the representations made with the EOVCPC submission, the accuracy of which remain subject to subsequent examination.
- (2) Barring a subsequent discovery of fraud, misrepresentation of a material fact, or omission of material facts, the IRS will not assert any penalties on the

eligible organization for late filing, late payment, failure to deposit, or failure to pay estimated taxes.

(3) In certain cases, based upon facts and circumstances, the IRS will consider the eligible organization's proposal for payment of the liability in more than one installment. Applicants may also wish to avail themselves of the procedures for making a deposit in the nature of a cash bond as contained in Rev. Proc. 84-58, 1984-2 C.B. 501.

.03 Review of eligible organization's compliance procedures. The eligible organization must demonstrate to the satisfaction of the IRS that it has implemented controls or procedures to ensure that the organization's reporting obligations within the scope of Section 3 will be satisfied in the future. The IRS may recommend suggested actions and/or administrative procedures to conform with the relevant reporting requirements where necessary. Where the current procedures, or proposed future procedures, are inadequate for complying with the relevant tax law and/or reporting requirements, the IRS reserves the right to deny relief under EOVC and impose any and all penalties applicable. The IRS will issue appropriate notification to the organization in this situation.

.04 Compliance letter. If the organization satisfies all obligations subject to the EOVC for the prior three tax years and the organization has implemented controls or procedures to ensure that the organization's reporting obligations are satisfied in the future, upon completion of the EOVC submission's processing, the IRS will issue to the taxpayer a Compliance Letter indicating that the organization has satisfied the tax, withholding, or reporting obligations described in section 3 of this revenue procedure with respect to, and *limited to*, the specific returns filed under the organization's EOVC submission. The Compliance Letter, however, will indicate that the substance and accuracy of the returns or information submitted through the EOVC is subject to examination within the period prescribed in the applicable statute of limitation. The organization should keep a copy of the Compliance Letter for future reference. If the organization's submission does not satisfy all obligations subject to the EOVC for the prior three years, or fails to implement the controls or procedures to ensure future compliance with the obligations under the Code, the IRS will reject the organization's submission and send notification of that fact. The IRS may in its discretion reject any submission in the interest of sound tax administration, based upon relevant facts and circumstances.

.05 Applicability of IRC section 6103 and 6110. Except to the extent that section 6104 applies to the public disclosure of certain information returns, the information received or generated by the IRS under the EOVC is subject to the confidentiality requirements of section 6103 of the Code. The Compliance Letter is not a written determination within the meaning of section 6110 of the Code.

.06 Conferences. If the IRS initially determines it cannot issue a Compliance Letter because the parties cannot agree upon some correction or administrative issue, the organization or the organization’s representative may be granted a conference with the Service, at the Service’s discretion and upon request by the organization or the organization’s representative. The conference can be held either in person or by telephone. If a conference is offered, the organization or its representative will be contacted by the IRS representative.

SECTION 6 COMPLIANCE FEE SCHEDULE

.01 The payment of a compliance fee is required with the submission for consideration under the EOVC. The fee will be determined on a sliding scale with total gross receipts or total assets as a determining factor. If multiple years are involved then the compliance fee will be determined using the year with the greatest amount of total gross receipts or total assets.

.02 Compliance Fee Schedule (Sliding Scale).

Organization’s Gross Receipts or Assets	Compliance Fee
0 to <\$250,000	\$0
\$250,000 to < \$1,000,000	\$250
\$1,000,000 to < \$10,000,000	\$750
\$10,000,000 to < \$50,000,000	\$2,000
\$ 50,000,000 to < \$ 100,000,000	\$3,000
\$100,000,000 to < \$250,000,000	\$4,000
\$250,000,000 +	\$5,000

SECTION 7 PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number **XXXX-XXXX**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information contained in this revenue procedure are in section 4. This information will enable the IRS to determine whether an exempt organization qualifies for the EOVC. The collections of information are voluntary. The likely respondents are exempt organizations.

The estimated total annual reporting burden is 30,000 hours.

The estimated average annual burden per respondent is 10 hours. The estimated number of respondents is 3,000.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 8 CONTACT INFORMATION

For further information regarding the EOVCPC, contact the EOVCPC coordinator at **(XXX) XXX-XXXX** (not a toll free number).