

September 15, 2020

NONPROFIT AND CHARITABLE ORGANIZATIONS 2020 UPDATE

On December 20, 2019, the Further Consolidated Appropriations Act, 2020, (the “Act”) was enacted into law. The Act reforms the decade-long debate over excise tax rates for private foundations. Previously the determination of the excise tax for a private foundation was a two-tiered approach. By default, the private foundation would be subject to a 2% excise tax rate, but the rate could be subsequently reduced to a 1% rate for any year in which the private foundation’s distributions to public charities exceeded the private foundation’s average payout rate over the preceding 5 years by an amount at least equal to the tax savings that would result from the 1% lowered rate. This complex formula resulted in wasted time and resources of private foundation administrators who were required to closely monitor investments and grant-making to ensure that the lower rate could be achieved. To simplify this approach, the Act blended the two-tiered rate for a flat rate of 1.39% to be applied to all private foundations. The flat excise tax rate of 1.39% will go into effect in the 2020 tax year.

The turn of the new decade also brought changes to filing requirements for forms filed by nonprofit and charitable organizations with the Internal Revenue Service (“IRS”). On July 1, 2019, the Taxpayer First Act was enacted into law with a goal to redesign and reform the IRS to provide better customer service and modernized technology. One important change was the requirement of electronic filing for Form 990 (Return of Organization Exempt from Income Tax), Form 990-PF (Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation), Form 8872 (Political Organization Report of Contributions and Expenditures), and Form 1065 (U.S. Return of Partnership Income). The required electronic filing will go into effect for all tax periods after July 1, 2019.

On January 31, 2020, the IRS announced that Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) would be revised to mandate electronic filing. The IRS hopes that, like other IRS forms that transitioned to mandated electronic filing, the time for form completion and processing by the IRS will be more accurate, reduce errors, and overall provide a simple and efficient process for seeking tax exempt status. The IRS will continue to accept paper filings for a 90-day grace period, but following such grace period, all filings must be submitted electronically.

The attorneys at Johnston Allison Hord assist with tax related questions and planning and guide organizations through the preparation and filing of required IRS and other government forms.