



BDO KNOWLEDGE

Webinar Series

Nonprofit Tax Update

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PRESENTERS



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AGENDA

- IRS Activity
- Targeted Exams
- Priority Guidance
- Some State Issues
- Legislative Focus
- Questions and Answers

IRS ACTIVITY



REPORT OF THE ADVISORY COMMITTEE ON TAX EXEMPT AND GOVERNMENT ENTITIES (ACT) (JUNE 8, 2016)

Objectives:

- Give EOs tools they need to be tax compliant
- Assure cyber integrity
- Release and share data where appropriate for public use
- Foster two-way communication between EO and nonprofit sector
- Revise the Determination Letter content to educate EOs on their tax obligations

APPLICATIONS FOR EXEMPTION—FIRST BITE

- IRS will now return your application package and user fee ([Rev. Proc. 2016-5](#)) if do not have everything required
- Must provide additional information within 28 days or case will be closed
- Sample questions and FAQs on IRS website
- Form 1023--Traditional
- Form 1023--Interactive
- Form 1024--1998 version being revised
- Form 1023-EZ

FORM 1023-EZ

Short form eligibility Worksheet has 26 questions starting with the following size limitations:

1. Do you project that your annual gross receipts will exceed \$50,000 in any of the next 3 years?
 2. Have your annual gross receipts exceeded \$50,000 in any of the past 3 years?
 3. Do you have total assets the fair market value of which is in excess of \$250,000?
- The 1023-EZ only asks organizations to assert they meet organizational and operational tests of 501(c)(3) status - no documentation required to substantiate
 - The Taxpayer Advocate reviewed 408 organizations that filed Form 1023-EZ and found that 37% failed organizational test
 - IRS is evaluating the Form 1023-EZ process to determine potential improvements to the application and review process.
 - NEW—User fee for Form 1023-EZ reduced from \$400 to \$275, effective 7/1/16

SOME NEW IRS RULINGS OF NOTE

- CCA- 201634021--Employees of a Single-Member LLC Disregarded Entity are permitted to participate in the §403(b) plan and the §457(b) plan of the §501(c)(3) organization member
- Rev. Proc. 2016-44--Updated Revenue Procedure Sets Forth Management Contract Safe Harbors for tax exempt bonds
- TAM 201633032--organization's sale of stated product through its online store, printed catalog, and at various unrelated retail outlets is unrelated trade or business under IRC 513



TE/GE KEY AREAS OF FOCUS FOR FY 2016 AND ONGOING

- Working smarter—Data Analytics from Form 990
- Open public sources
- Identify the highest potential organizations for non-compliance
- Also working on data from Forms 990-PF and 990-EZ
- Whistleblowers
- Focus on the Tax Gap

Tax-Exempt Organization Complaint (Referral) Form



1. NAME OF REFERRED ORGANIZATION: _____
Street Address: _____
City/State/Zip Code: _____
Date of Referral: _____

2. ORGANIZATION'S EMPLOYER IDENTIFICATION NUMBER (EIN): _____

3. NATURE OF VIOLATION:

- Directors/officers/persons are using income/assets for personal gain
- Organization is engaged in commercial, for-profit business activities
- Income/assets are being used to support illegal or terrorist activities
- Organization is involved in a political campaign
- Organization is engaged in excessive lobbying activities
- Organization refused to disclose or provide a copy of Form 990
- Organization failed to report employment, income, or excise tax liability properly
- Organization failed to file required federal tax returns and forms
- Organization engaged in deceptive or improper fundraising practices
- Other (describe): _____

4. DETAILS OF VIOLATION:

Name(s) of Person(s) Involved: _____
Organizational Title(s): _____
Date(s): _____
Dollar Amount(s) (if known): _____
Description of activities: _____

5. SUBMITTER INFORMATION:

Name: _____
Occupation or Business: _____
Street Address: _____
City/State/Zip Code: _____
Telephone: _____

I am concerned that I might face retaliation or retribution if my identity is disclosed.

6. SUBMISSION AND DOCUMENTATION: The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to eoaclass@irs.gov



IRS EXAMS FOCUSING ON THE TAX GAP

▪ Calendar 2014 EO returns processed	787,339
▪ EO returns examined in FY 2015	6,392
Types of returns examined	
▪ Forms 990, 990-PF	2,831
▪ Employment tax returns	2,056
▪ Form 990 -T	787
▪ Other, e.g. 1120, 1040, etc.	718

TARGETED EXAMS

TARGETED EXAMINATIONS FIVE STRATEGIC ISSUE AREAS

TE/GE Priorities

- Exemption
- Protection of Assets
- International
- Tax Gap
- Emerging issues



EXEMPTION: NON-EXEMPT PURPOSE ACTIVITY AND PRIVATE INUREMENT

- What does application for exemption say they were going to do?
- What are they doing now?
- Are unrelated activities substantial?
- Are activities (c)(3) activities or (c)(6) activities?
- IRS will revoke organizations and not permit reclassification
- Private inurement existence

PROTECTION OF ASSETS

- Self-dealing
- Excess benefit transactions
- Loans to disqualified persons

Schedule L is a roadmap

INTERNATIONAL

- Oversight on funds spent outside the U.S.
- Expenditure responsibility
- Terrorist activities—OFAC
- Foreign conduits—Does the board have control?
- FBAR
- Forms required for foreign investments

TAX GAP: EMPLOYMENT TAXES

- Approximately \$875 million of payroll and related tax debt owed by EOs
- There are employment tax specialists in each IRS division and payroll taxes will be targeted in exams
- Employment tax issues can carry personal liability to responsible officers
- Worker Classification Review recommended
 - At stake—back pay, overtime, back taxes
 - Varying definitions at federal and state level
 - Be sure 1099s are filed for all applicable payees
 - Keep W-9 files for all vendors- without an EIN or SSN, IRS will assess backup withholding at 28%

TAX GAP: UBIT ISSUES

- Related party transactions—512(b)(13)—Schedule R is roadmap
- Rental--Personal property, services, rent based on net income
- Debt-financed income
- Alternative Investments
- Joint ventures
- Sponsorship versus advertising
- NOLs
- Allocation of expenses

EMERGING ISSUES

- Non-exempt charitable trusts
- Section 501(r) and hospital compliance
- Organizations that obtained exemption using Form 1023-EZ



Enforced through compliance reviews, correspondence audits and field examinations.

PRIORITY GUIDANCE

IRS PRIORITY GUIDANCE FY 2016-2017-CARRYOVERS

- Grantor and contributor reliance criteria
- EO Select Check
- Political campaign intervention
- §509(a)(3) supporting organizations
- Methods of allocating expenses relating to dual use facilities
- Qualified ABLE Programs (Achieving a Better Life Experience—qualified disability expenses)
- PF's investment in a partnership with disqualified person partners
- Excise taxes on donor advised funds and fund management
- Reporting of contributions
- Final regs under §6104(c)
- Final regs under §7611 relating to church tax inquiries and exams

IRS PRIORITY GUIDANCE-NEW

- Update to Rev. Proc. 92-94 on §§4942 and 4945 reliance standards and good faith determinations
- Final regs for streamlined 501(c)(3) application process. Final and temporary regs were published 7-2-14
- Update Rev. Rul. 67-390 regarding requirements for new applications for exemption when org moves to another state and reincorporates
- Regs and other guidance for changes made by the PATH Act of 2015 (signed into law on December 18, 2015)

PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015 "PATH" ACT

- Makes permanent:
 - Tax Free Distributions from IRA's for charitable purposes
 - Exception from UBIT for payments from controlled entities
 - Qualified conservation contributions
 - Contributions of food inventory
- Charitable contributions to Agricultural Research Organizations and public charity status
- No gift tax on gifts to certain exempt organizations
- Section 501(c)(4) Notice of Formation and New Exemption Application
- Declaratory judgments for all 501(c) orgs
- Propose revocation for orgs audited and not meeting 501(c) specific section exemption



SECTION 501(C)(4) ORGANIZATIONS MUST GIVE NOTICE

- Organizations must notify IRS of intent to operate as 501(c)(4)
- Must submit Form 8976 Electronic Notice—one time notice
- Must still file annual information returns (Form 990)
- In addition to Form 8976, 501(c)(4) applicants may also choose to file a complete Form 1024. Submission of a Form 1024 does not relieve an organization of the requirement to submit a Form 8976.

NEW DEFERRED COMPENSATION REGS

New regulations create opportunities to design plans that will promote recruitment and retention of key executives

Sec. 457(f) requires the immediate taxation of nonqualified deferred comp upon vesting. Proposed regs contain features that effectively delay vesting.

Changes specific to:

- Risk of forfeiture
- Salary deferrals
- Noncompete agreements
- Short-term deferrals
- Severance pay

SOME STATE ISSUES

STATE AND LOCAL TAX ISSUES

- Activity of organization in other states
- Alternative investments—states becoming more aggressive in pursuing organizations that have received K-1s for income in their states
- Property tax exemptions being challenged especially hospitals and universities
- Sales taxes
- Unclaimed property

UNCLAIMED PROPERTY

- Tangible and intangible items that an organization owes to its employees, customers, vendors or creditors. Examples include uncashed checks, credits, deposits and refunds.
- States have recently been enforcing unclaimed property laws more strictly. Audits can go back 20 years or more. Most of these audits are multi-state in nature, and are conducted by third party, contingency-based firms (fees up to 12% of escheat assessment value imposed on the audit).
- More than ever, organizations must comply with the wide range of complicated state laws and local reporting requirements, and meet the related deadlines.

LEGISLATIVE FOCUS



CHARITIES HELPING AMERICANS REGULARLY THROUGHOUT THE YEAR (CHARITY) ACT

- Introduced in the Senate with bi-partisan support in 2016
- Make donor-advised funds an eligible charity for the IRA rollover
- Reduce private foundation excise tax imposed on investment income to 1% uniformly
- Standardize mileage deduction for charity volunteers, medical and moving
- Promote transparency by requiring nonprofits to file electronically
- Create a limited exception to the excess business holding tax rules (Paul Newman's foundation)
- Express the sense of the Senate that the promotion of charitable giving be one of the goals of comprehensive tax reform

CADILLAC TAX (ACA)

- 40% non-deductible excise tax on employer-sponsored health plans that provide high-cost benefits. Health plans will pay the tax on cost of coverage over \$10,200 for individuals or \$27,500 for families.
- Tax was originally scheduled to take effect in 2018
- Effective date was delayed to 2020 by a provision of the Omnibus spending bill for Fiscal Year 2016
- May be future delays or modifications

POSSIBLE FUTURE TAX LEGISLATION

- “Preventing IRS Abuse and Protecting Free Speech Act” —Donor identity
- Charitable giving
- Deductibility for priority seating at sports events
- Extension to April 15th for charitable gifts
- Tax-exempt bonds including sports arenas
- Intermediate Sanctions made applicable to all nonprofit organizations
- Compensation over \$1 million
- Sports organizations and 501(c)(6)
- UBI-NOLs, royalties, sponsorship
- Endowments
- Internet sales tax

STAY TUNED...



QUESTIONS?

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