

November 22, 2024, TEGE EO Council Meeting

12:00-1:00 PM ET

IRS Exempt Organization Update and Q&A Session with TEGE Exempt Organization Division's Rob Malone (Division Director) and Mackenzie McNaughton (Exempt Organizations Technical Advisor, IRS).

Moderated by Jennifer Becker Harris and Preston Quesenberry

Session's Sections	AGENDA & QUESTIONS
12:00 ET	Introduction of IRS Panelists and Moderators
Opening Remarks	Remarks from the IRS' EO Division Director
	<p>Follow-up Discussion from prior TEGE EO Council Event</p> <p>June 2023 Event:</p> <ul style="list-style-type: none"> In the June 2023 Program, we asked about situations where an extension was filed for Form 4960 and the 4960 tax was paid, and then it was subsequently determined that no tax was owed. We asked how a taxpayer should go about getting a refund in these situations. In your reply, you referenced filing an amended return (i.e., after an original Form 4720 had already been filed) to request a refund, not an original return filed on extension. Tim Berger said “we’ll get back to you” on the specific issue relating to an original return. We have clients who have tried to obtain a refund by filing an original Form 4720 reporting \$0 tax, and the Form 4720 keeps getting rejected because it shows \$0. In doing some research, it appears it might be possible that one is supposed to write “Not Liable” across the front of the (presumably paper-filed) Form 4720 in these situations. Is that accurate? If the organization is required to e-file the Form 4720, is there a process to use to ensure the refund will get processed?
<p>Topic #1</p> <p>Q&A</p>	<p><u>EO Exams</u></p> <p>(a) Can you share anything about which TE/GE agents were trained on section 501(r) audits? Were all TE/GE agents trained in this area, or is a particular subset of agents responsible for performing these 501(r) examinations?</p> <p>(b) Can you share anything with respect to the outcomes TE/GE hopes to achieve with the section 501(r) and community benefit exams aside from</p>

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	<p>section 4959 excise tax? Does it expect revocations of tax-exempt status? Advisory letters to help ensure compliance going forward? Anything else?</p> <p>(c) Some have reported that the IRS is placing increased scrutiny on tax-exempt entities engaged in fiscal sponsorships, with a focus on the practice of fiscal sponsorship fees. Can you comment on whether this is accurate? Is this part of a compliance strategy?</p>
<p>Topic #2</p> <p>Q&A</p>	<p><u>EO Determinations</u></p> <p>(a) Do you have any updates you would like to share with our members about EO Determinations? With the addition of new personnel, do you anticipate the backlog for applications to decrease over the next year? We have noted the current backlogs are approximately 190 to 230 days.</p>
<p>Topic #3</p> <p>Q&A</p>	<p><u>Business Master File Data Issues and Responsible Party Information</u></p> <p>(a) In prior meetings, you indicated to us that an EO’s “responsible party” could be the party listed in the “In Care Of” field for the organization in the EO BMF extract. However, practitioners inform us that when they update the responsible party on Form 8822-B, that “In Care Of” field does not get updated. Is the BMF just not getting updated as it is supposed to? Or is there a separate “responsible party” field in the BMF that does not appear in the publicly available BMF extract? If the latter, is there a way for organizations to determine who the IRS has listed as their responsible party?</p> <p><i>Background: Many organizations would like to know who is on file with the IRS as the “responsible party”, as they want to be in compliance with Treas. Reg. 301.6109-1(d)(2)(ii) if there should be a change.</i></p> <p>(b) There is no column in the publicly available EO BMF extract on whether a charity has made a section 501(h) election. Is that information that the IRS has, and if so, is there a way for practitioners to determine whether their organization has previously filed a Form 5768 to make this election? How about if the organization has previously filed a Form 8976?</p>
<p>Topic #4</p> <p>Q&A</p>	<p><u>IRS Forms, E-filing and ID.gov Matters</u></p> <p>(a) TEGE EO Council Submitted Comments on Series Form 990 in July of 2024.</p> <p>i. Is there any feedback you can provide that would be helpful for future submissions?</p>

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	<p>ii. Are any of the comments under review for the 2024 Forms and Instructions, or will they have to wait until 2025?</p> <p>(b) Thanks to the IRS for issuing Rev. Proc. 2024-39, which allows applicable entities making an elective payment election under section 6417 on a Form 990-T to submit a paper Form 990-T. In cases where the relevant IRA credit form is not made available for e-filing in XML format, we are planning to paper file. Can you confirm that the IRS prefers paper filing in this instance and does not want practitioners to e-file the return and upload the applicable credit form as a PDF?</p> <p>(c) More generally, practitioners report having Forms 990-T with Form 3800 claiming certain credits (e.g., Form 8848 for certain employee tips) where the tax software does not have the relevant credit forms available in XML for e-file. (Many foreign forms are also not available in XML.) If the software allows practitioners to attach the forms as a PDF, is that something the IRS will accept and process? If the software does not allow the attachment of a PDF, do you have any suggestions as to what practitioners should do?</p> <p>(d) Is it accurate that the tax year of an exempt organization in the BMF is established by the SS-4 and/or exemption application rather than the initial return (as Treas. Reg. § 1.441-1(c)(1) suggests it should be)? For tax-exempt organizations that decide on a different tax year than that asserted on an SS-4 or exemption application, is there a way they can easily e-file their first relevant Form 990 series return or notice with a different tax year than that reflected in the EO BMF and also have that tax year changed in the EO BMF?</p> <p>i. More generally, when EOs subsequently change their tax year using the procedure in Rev. Proc. 85-58, they routinely report receiving “failure to file” notices based on the prior tax year. Is there a way to avoid these notices?</p> <p>(e) We have heard from practitioners that when taxable entities that are related to an ATEO subject to section 4960 attempt to e-file a Form 4720 to pay their share of the 4960 tax, the Form 4720 for the taxable entity gets rejected because the EIN is not that of an ATEO and IRS systems are not set up to accept an EIN from a non-ATEO that completes Part I of the Form. Paper-filing the Form 4720 results in the IRS issuing an EIN to the taxable entity solely for the purpose of the 4960 tax and Form 4720 filing, resulting in the taxable entity having two EINs. Does the IRS intend for taxable entities to have an additional EIN solely for Form 4720 purposes? If not, is there a way to avoid the issuance of a second EIN and/or get rid of its</p>

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	<p>second EIN? Does the IRS have plans to resolve this issue for the 2025 filing season?</p>
<p>Topic #5</p> <p>Q&A</p>	<p><u>Other Issues</u></p> <p>(a) We have received numerous reports from practitioners saying they have received a Notice of Intent to Levy (Letter 1058), without first receiving any penalty letters regarding late filing fees and interest, meaning that the taxpayer doesn't even know what the underlying issue is because there has been no prior correspondence. Does TE/GE have any idea what may be causing this to happen and if anything is being done to resolve the issue?</p> <p>(b) Numerous practitioners report that when they file a Form 4506-B using the automated email process to request a copy of an exemption application, they only receive the Form 1023 and none of the attachments. Can you confirm that attachments should be included and explain how practitioners can best ensure that they receive them and how best to follow-up to obtain them if they are not included?</p> <p>(c) The IRS Document Upload Tool was introduced in 2021 as a quick and secure way for taxpayers and practitioners to respond to IRS notices. The tool allows for the submission of responses and requested documentation online, instead of mailing or faxing them to the IRS. Per a recent news release, the IRS has received over 1 million submissions using this tool. The tool is not available for notices relating to exempt organizations. The only way to respond to these notices is still by mail or fax. Exempt organizations and tax practitioners would benefit from the ability to submit such correspondence electronically to the IRS. Are there plans to expand the tool's functionality to include notices to exempt organizations? If so (and I do hope so), what is the projected time frame for the rollout?</p> <p>(d) We have received numerous reports from practitioners who say that agents answering the 877-829-5500 customer service line routinely refuse to talk to them because of Forms 2848 they say are defective but seem consistent with the Form 2848 instructions. Example: The agent says a Form 2848 is defective for purposes of a Form 1023 because a "Year or Period" does not appear on line 3 of Part I. However, a power of attorney</p>

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	<p>for a Form 1023 is called out in the instructions as “a power of attorney that does not relate to a specific tax period,” and the instructions further state that if “years or periods do not apply to the matter (for example, . . . filing a request for a . . . determination letter) . . .enter ‘Not Applicable’ in the appropriate column(s).” Would you agree in this particular instance that a year is not required on the Form 2848? And, more generally, can you speak to what recourse practitioners have when agents are erroneously claiming their Forms 2848 are defective? IRS agents also routinely assert that signatures are electronically produced when they are not. Would the IRS consider permitting electronic signatures on the Form 2848 to avoid rejections on this basis?</p> <p>(e) We received reports for when organizations are converting from public charity to private foundation status that, when filing an extension for Form 990-PF, got a notice back saying, effectively, “We see you accidentally filed an extension for a Form 990-PF, so we’re changing it in the system to a Form 990 extension.” Is this the standard process the IRS follows in these situations? Is there something public charities that actually want to convert to private foundation status can do to avoid this?</p>
<p>Topic #6</p> <p>Q&A</p>	<p><u>Group Exemption Holders and Subordinates</u></p> <p>Practitioners are still reporting rampant issues with seemingly random errors in the information regarding subordinates in group rulings appearing in the EO Business Master File, leading to the following questions:</p> <p>(a) What is the official process for getting EO BMF extract errors fixed? Should practitioners send a fax to 855-214-7520 or a letter to IRS, Attn: EO Entity, M/S 6273, Ogden, UT 84201? Is there any telephone number that practitioners can call to talk to someone?</p> <p>(b) When practitioners attempt to fix a BMF error via fax or letter, they typically get no acknowledgment letter and simply must wait to see if the EO BMF error is ever fixed. Is it possible to have some kind of acknowledgment letter or other correspondence, so practitioners can know that their request has been received and is being processed?</p> <p>(c) When practitioners call about a subordinate, it is unclear whether they should have a Form 2848 for the subordinate or the central organization. Practitioners report that when they call with a Form 2848 for one, they are typically told they need a Form 2848 for the other, with no consistency in the answer. Can you tell us which Form 2848 is necessary?</p> <p>(d) If the erroneous element in the EO BMF extract regards items like the public charity classification of the subordinate or whether the subordinate is required to file a Form 990, is a letter to EO Entity sufficient? The</p>

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	<p>subordinate doesn't need to file a Form 8940 to get the change made, correct?</p> <p>(e) The prevailing theory as to why so many errors related to subordinates appear in the EO BMF is that agents make errors when manually entering information from the annual updates to group rulings that are made in paper form. Would the IRS give any consideration to allowing central organizations to e-file their annual updates?</p> <p>(f) If a central organization wants to add a subordinate within 90 days of the end of a tax year, after the annual update has been provided, is there a process for amending the annual update to include the additional subordinate?</p> <p>(g) Many subordinates report receiving annual "failure to file" notices even though they were included in a group return, which requires them to repeatedly have to notify the IRS of the error. Is there any way to get the IRS to stop sending these notices?</p> <p>(h) Would TE/GE consider lifting the moratorium on group rulings since updated guidance on group rulings has taken more than 4 years (and counting) to be issued?</p>