**March 7, 2024, TEGE EO Council Meeting**

**11:10 to 12:40 ET**

**IRS Exempt Organization Update and Q&A Session with TEGE Exempt Organization Division's Rob Malone (Division Director) and John Montague (Acting Senior Technical Advisor to the Director, EO, IRS)**

**Moderated by Anne Fulton and Preston Quesenberry**

| **Session's Sections** | **AGENDA & QUESTIONS** |
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| **11:10 ET**  | **Introduction of IRS Panelists and Moderators**  |
| Opening Remarks**11:12 – ~11:30 ET**  | **Remarks from the IRS' EO Division Director** |
| **~11:30 to ~11:40** | **Follow-up Discussion from prior TEGE EO Council Events** (see the end of the handout for the questions). |
| **Topic #1** **Q&A ~11:40 to 12:10** | **Business Master File Data Issues and Responsible Party Information** 1. Practitioners have reported receiving letters from the IRS reporting an address change and are uncertain as to why, since they did not file a Form 8822-B reporting a change in address. Some guess that it may be because the address in the BMF might vary slightly from the U.S. Postal Service address or the address reported on another Form. Is there any light you can shed on what is generating these letters?
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| Topic #1 Prepared Remarks/Dialogue | Business Master File Data Issues |
| **Topic #2** | **IRS Forms, E-filing and ID.gov Matters**1. We understand that the IRS will accept electronic filing of Form 8868 for the 2023 Form 990 (i.e., tax years beginning in 2023) only after March 17, 2024. Can you confirm this is correct and explain the reason?
2. The statute of limitations for tax years beginning in 2020 is still open, but CCH Tax Access has informed taxpayers that they now have no ability to e-file amended 2020 returns. Can you confirm this is correct and, if it is, explain the reason? Also, if it is correct, is paper filing an acceptable means of filing amended returns?
3. We understand that taxpayers who must e-file a Form 990-T between January 15 and March 15, 2024 (i.e., because the extended due date falls within that date range) should include with its late e-filed Form 990-T (filed on or after March 17, 2024) a request that any penalties for late filing not be imposed due to reasonable cause. Can you comment on whether taxpayers will still receive a penalty notice? Should the applicable taxpayers also paper file the [Form 843](https://www.irs.gov/pub/irs-pdf/f843.pdf), *Claim for Refund and Request of Abatement*?
4. During the November 2023 filing season, practitioners reported having many problems e-filing returns for taxpayers who were able to e-file in past years. As a result of these issues, the taxpayers will receive penalty notices and will have to seek reasonable cause abatement. Practitioners could only guess as to why e-filing was rejected. Some practitioners reported that the taxpayer in question had formerly changed their accounting period, but the change was not reflected in the BMF; as a result, the taxpayer had received erroneous notices claiming they owed a return for the former accounting period. Could this have been part of the problem? Also, in the last meeting, you mentioned you would look into why these erroneous notices based on a former accounting period were being sent out. Any updates to report?
5. Part VI-A of the Form 990-PF says, "Has the foundation made any changes, not previously reported to the IRS, in its governing instrument, articles of incorporation, or bylaws, or other similar instruments? If 'Yes,' attach a conformed copy of the changes." The instructions say that if you are filing the 990-PF electronically as required, you must send the amended governing documents to the address for a 507(b)(1)(B) termination notice, but that is now submitted electronically on pay.gov with a Form 8940. The IRS website says it is not sufficient to just notify EO Determinations. Any ideas on where and how to send the amended governing documents?
6. Some practitioners have reported having issues filing Form 990-Ts for IRAs that had not formerly paper-filed Form 990-Ts. These practitioners were erroneously informed by agents that the IRA had to file a Form 1023. Do you have any recommendations to prevent issues here?
7. Rev. Proc. 2024-5, Appendix A, says the user fee for a Form 8940 seeking advance approval of grant-making procedures, set-asides, and voter registration activities is now $3,500, but we’ve been told pay.gov is still saying the fee is $2,500, as it was at the end of 2023. Is the effective date for these fee increases actually July 1, 2024, or has pay.gov just not yet been updated to reflect a January 1, 2024 effective date? **RESOLVED: IRS Announcement 2024-7,** [**IRB 2024-7, page 673**](https://www.irs.gov/pub/irs-irbs/irb24-07.pdf)
8. When individuals attempt to e-file Form 4720 (e.g., to pay tax under section 4958 or 4940), we’ve been told IRS systems will not accept social security numbers. Is paper filing the only option for individuals?
9. Several members have reported receiving IRS notices regarding the processing of the Form 4720, despite accurately completing Form 4720 for Chapter 42 transactions that result in tax imposed on disqualified persons (i.e., reporting $0 tax in Part I and leaving Part II blank), either the IRS's computers or personnel (it is unclear which) continue to reject processing the foundation's Form 4720 because no tax is reported. It seems to take multiple rounds of correspondence to educate the IRS employees on the issue and convince them that the filing organization should not pay the tax, as it would trigger another act of self-dealing or excess benefit transaction.
10. We have been told practitioners are having problems submitting IRS Form 4506-B on-line, and EO Customer Service has informed them that “technical staff is currently trying to fix" the issue. Can you give us any information or updates on this?
11. Some practitioners are reporting that when they established Id.me accounts, their other accounts (and all information associated with them) disappeared. Do you have any recommendations to prevent this from happening or for resolution when it does happen?
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| Topic #2 Prepared Remarks/Dialogue | E-filing Issues |
| **Topic #3** | **Group Exemption Holders and Subordinates**(a) Is it possible for a subordinate in a group ruling to get an auto-revocation reversed if it can show (i) that it was included on one or more group returns during the three-year period that resulted in auto-revocation and (ii) the central organization listed it as a subordinate in an annual update submitted to the IRS before such group return(s) was/were filed? (b) Can IRS systems accommodate a subordinate organization in a group ruling both obtaining independent recognition of it exempt status on Form 1023 (thus being removed from a group) but also, on that same Form 1023 relying on the group affiliation to qualify as an integrated auxiliary excepted from Form 990 filing (see Reg § 1.6033-2(h)(2)(i))?(c) If a central organization successfully converts all of the subordinates to being independently exempt by having each file a Form 1023 to obtain their own section 501(c)(3) status, is there a recommended process for terminating the group ruling? (d) Members continue to report that, in administering group rulings, they are repeatedly seeing name changes introduced spontaneously in EO-BMF updates and/or reverting to the incorrect form after having them corrected once (or sometimes twice) |
| Topic #3 Prepared Remarks/Dialogue | Group Exemptions – Feedback |
| **Topic #4** | **Other Issues**1. A charity marked the "Final return/terminated" box on their Form 990 for 2022, and the IRS removed the organization from Pub 78. However, the charity is not terminated, and in fact is still operating. Is there a fix for this?
2. Is there a reason the IRS does not make the Form 872-B available? (At least it cannot easily be located through online searches.) Private foundations are required to attach this form to a Form 8940 when they request termination of foundation status and seek an advance ruling regarding satisfaction of public charity requirements over the subsequent 60-month period. IRS representatives have informed practitioners that the Form is "obsolete," but the Form 8940 instructions require it.
3. Why were the Form 1023-EZ instructions amended in 2018 to require a public support computation over the first five years based on actual and anticipated revenue as opposed to a general instruction that the organization be "reasonably expected" to meet the public support test? As a result of this change, we understand that the percentage of Form 1023-EZ approvals that are private foundations has more than doubled.
4. For purposes of the cap on section 6652 equal to 5% of gross receipts, are capital losses taken into account in computing gross receipts?
5. If you look at the “Where's My Application for Tax-Exempt Status?” webpage, it shows that Forms 1023 filed after June 4, 2023 have not yet been assigned, which is about 8 months (as of Feb. 5, 2024). Is that accurate? That length of time does not seem consistent with practitioners’ experience or with IRS reports on application processing times.
6. How do the Section 318(a) attribution rules apply to nonprofits for purposes of reporting whether a related organization is a "section 512(b)(13) controlled entity" of the filing entity on column g of Part II of the Schedule R? Specifically, in the case of nonprofits with a "brother-sister" relationship by reason of being controlled by a common parent, can the brother have to report the sister as a "controlled entity" and vice versa? (This could also have relevance for Part V, line 2 of Schedule R, as well as line 11 of Part VI.A of the Form 990-PF.)
7. Practitioners often grapple with foreign filings for an international nonprofit or non-governmental organization. Suppose a domestic EO has an overlapping board (greater than 50%) as a foreign-exempt organization (nonstock entity). Is the domestic exempt organization considered to control the foreign exempt organization for purposes of the Form 5471 filing requirements under sections 6038 and 6046 (which, by their own terms, refer to stock ownership)?
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**Follow Up Matters from the June 9th Event**

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|  | Other/Misc – Circling Back to Prior Panel "To-Dos"1. At the June 9, 2023 EO Update session, there was a question as to whether the more extensive "other" type of organization choices for the electronically filed Form SS-4 would also garner 990-filing ability. We know that the paper Form's "other nonprofit organization choice" and the e-filed Form's "other nonprofit/tax-exempt organization" boxes, when checked, are supposed to trigger 990-filer status on the BMF. You were going to check on whether "block/tenant association,” "community or volunteer group," "church or church-controlled organization," etc. also yield such a result . . . .
2. At the June 9, 2023 EO Update session, you were going to do additional research as to whether workarounds were available to allow a short-year filing to effectuate a change in accounting year to not conflict with the filing using the same tax year Form (based on year in which the filing period began) that was either prior filed or will be later filed . . . .
3. At the June 9, 2023 EO Update session, the query regarding filer having extended Form 4720 with an extension payment, but later determining that no such filing is required, necessitates filing a –0- due Form 4720 to trigger the refund. You all said if you found any additional instructions (relative to this scenario), you'd share them . . . .
4. At the June 9, 2023 EO Update session, the question of how to abate, on reasonable cause grounds, penalties for late filing Form 8976 came up. Preston had said he'd that he had been (in spite of no instructions on the penalty letter) submitting a Form 843 to Ogden. You all said you would look at amending the penalty letter to specify appropriate steps to take to seek abatement . . . .
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**12:10-12:40 ET:** Follow-up panel discussion with Anne, Preston and Jennifer

* **TEGE EO Council’s Practitioner Roundtable**
	+ Meeting information:
		- Meets the second to last Thursday of each month at 11:00 am PT and 2:00 ET, with exceptions for conflicts
		- Next Meeting is March 21st
		- If you are interested in attending, please email Jennifer Becker Harris at jharris@clarknuber.com
	+ State Regulatory Discussion Group – Amanda Adams (aadams@citrincooperman.com) and Elisabeth Ponsano (eponsano@adlercolvin.com) co-leaders
* Subgroup 1 – Compliance (to compile information about state exemption, registration, and annual filing requirements) meets the last Tuesday of every month from 3 PM – 3:30 PM (EST), with the next meeting occurring on March 26.
* Subgroup 2 - Monitoring and Advocacy (to monitor state developments affecting NFPs and develop comment letters to advocate on behalf of the NFP community) meets the fourth Friday of every other month from 11 AM – 12 PM (EST), with the next meeting occurring on March 22.
* Subgroup 3 - Educational Resources and Collaboration (to compile information about resources available in a particular state for charity advisory councils, educational resources, and collaborative efforts). This group has not yet finalized a recurring meeting time.
	+ Working Group Projects:
		- IRS’s Strategic Operating Plan Comment Letter
		- Sec 4960 Remuneration Practice Aid
		- Series Form 990 Comment Letter
		- Tax Payments Guide for Exempt Organizations
* **Council Member’s Resources**
	+ Transcripts from prior events
	+ Member’s Only Forum
* **TIC TAQ Committee Submissions**
	+ <https://www.eocouncil.org/TIC-TAQ-Comments-Submission>
	+ Submissions are due to the IRS by May 7, 2024
	+ Please submit no later than April 30th

**Ancillary Information Augmenting Agenda Topics**

**Form 4720 Issues with E-filing January 2023 and Prior: Updates**

From the TIC TAQ Committee:

For the last two filing seasons, exempt organizations filing Form 4720 to report an excess benefit transaction under IRC section 4958 or private foundations filing Form 4720 to report acts of self-dealing under IRC section 4941 *initially had been* the subject of collection efforts, which sought to collect the amount of excise tax liability that would be the responsibility of the subject disqualified person from the organization. This issue was addressed at both the EO Update sessions held June and November 2022. In both sessions, the IRS's Exempt Organization Division stated that the issue was caused by filers incorrectly completing Form 47201 Part I and Part II by failing to report the $-0- tax payable there.

Since the November EO Update session, filers have had properly completed Forms 4720 filed in November and December returned to them even though the filed forms had been prepared correctly (showing no tax due or payable on the part of the filer). This development was brought to the attention of the Division's Director, Robert Malone, and Senior Technical Advisor, Timothy Berger, in early January by the Committee and Berger escalated the issue for further internal review. The result noted to us mid-January 2023 was that the returned filings occurred due to an issue on the IRS's end. They thus advised as follows:

**If an organization or private foundation is filing a Form 4720 to report an excess benefit transaction or act of self-dealing of a disqualified person, please hold off electronically filing the return until January 25, 2023, or later. Otherwise, the Form 4720 may be returned to the entity, as the IRS cannot currently process the return when there is zero tax reported on Part I or II of the Form 4720 (which is appropriate for such a filing). The IRS is updating its systems and IRM provision 3.11.12.11.1(5) in order to resolve the issue.**

The Committee expresses our gratitude to Tim Berger and Robert Malone for their efforts and for connecting with IRS teams to resolve this issue.

[EO Council Resource Link](https://www.eocouncil.org/resources/document/uTljNHN_T9II2VPclRSi4fDMWH_8Dx3bgNusJTYxDmtDBEoymHEbNSCnkOmoleYsWO4P45jifR-JE9IeDzjDjw2?token=a7f779fadfea4004b7a6da7bf072a227): Form 872-B, *Consent To Extend the Time to Assess Miscellaneous Excise Taxes.*