

APPENDIX 1

Transcript of March 3, 2023 Exempt Organizations Update Program Reprinted Verbatim From Exempt Organizations Tax Journal.

Page 4 provides colloquy between EO Division Director Rob Malone and the panel's moderators as to website representation that December 2022 EO BMF Abstract had not been posted until after the start of the 2023 year.

**Transcript of March 3, 2023 Exempt Organizations Update Program Reprinted Verbatim From
Exempt Organizations Tax Journal**

What follows is a transcript of the March 3, 2023 session titled “IRS Exempt Organization Update and Q&A” that was part of the annual program of the TEGE Exempt Organizations Council. The speakers were Robert Malone, Director of Exempt Organizations and Government Entities, and Timothy Berger, his Senior Technical Advisor. The moderators were Preston Quesenberry, KPMG, and Anne Fulton, Deloitte. The prepared materials are included with the presentations.

Part 1 follows from 2023-47:

Fulton: Good morning, everyone. I am so pleased to be able to introduce our IRS speakers today. They work with us all year long and spend a lot of time preparing for all of the questions that we submit, so I really want to thank them for their ongoing engagement with our Council. Today we have Rob Malone, who’s the Director of Exempt Organizations in the IRS TE/GE Division. We also have his Senior Technical Advisor, Timothy Berger.

As to our agenda today, Rob is going to provide some opening remarks. Then we’ll have a follow-up discussion with Rob about various EO topics, for about an hour. For the remaining 30 minutes of today’s session, I’m going to invite Eve Borenstein and Jennifer Becker Harris to join Preston and me for a roundtable discussion. So with that, I’m going to turn it over to Rob.

Malone: Thank you, Anne. As always, it’s very nice to be here and thank you for having me. To start, as you mentioned, I’ll have a few items that I’d like to bring to your attention and afterwards we’re prepared to answer some of the pre-submitted questions.

First up, I’d like to mention the FY 2023 TE/GE Program Letter. Now, of course, the FY23 Program Letter came out last quarter, but we didn’t discuss it at our last meeting. As you know, each year we share the letter summarizing our priorities for the next 12 months. The Program Letter is designed to inform our customers of TE/GE’s priorities for the new fiscal year, and how they align with the IRS Strategic Plan and with our mission as well.

So if you haven’t had a chance to read this year’s letter, I’d encourage you to do so. The letter is posted on [irs.gov](https://www.irs.gov). I’m not going to walk through the entire letter, but it really is an interesting read. You get to gain some more information. So I encourage people to really take a look at that.

Now with that, for those of you who have read the FY23 Program Letter, you know it refers to the Inflation Reduction Act, the IRA of 2022. I’d like to speak briefly on this. The signing of the historic Inflation Reduction Act in August of 2022 really did mark a transformational moment for our agency and an opportunity for the future of tax administration.

Now the IRS has struggled for many years without sufficient resources to fulfill our important mission. The Inflation Reduction Act provided nearly \$80 billion — \$79.4 billion — to the IRS

over a 10-year period. Now this funding is intended for critically needed transformations at the IRS, including service improvements and hiring initiatives.

This funding will help us in many areas, including adding the important resources not for just tax enforcement, but taxpayer service and technology as well. We've been moving quickly and doing a lot of work, including building out the Strategic Operating Plan. The plan will include our transformation plans for taxpayer services, being in person, via phone, and [irs.gov](https://www.irs.gov) tools — so online accounts and digital options — and tax compliance, ensuring everyone pays their fair share with the focus on wealthier taxpayers — those over \$400,000 — and human capital: hiring, training and retention. For our technology, it will absolutely be a technology transformation, which modernizes the IRS systems, including scanning technology.

Now the IRS Transformation and Strategy Office will work across the IRS and oversee the implementation efforts. This office will work closely with the functions within the IRS to implement our transformation plans. Now we're already moving on a tax law implementation of the clean energy credits. Since enacted, we've begun implementation for the 21 clean energy tax provisions.

This includes guidance such as notices, revenue procedures, and announcements. Clean vehicle credits and residential and commercial building energy credits rolled out in December. Supporting materials included an [irs.gov](https://www.irs.gov) information center, frequently-asked questions, news releases, and fact sheets.

The funding in the Inflation Reduction Act will help ensure that everyone pays their fair share, especially focusing on wealthier taxpayers. The IRS funding is absolutely not about increasing audit scrutiny on small businesses or middle-income Americans. The investment of these important resources is designed to support honest, compliant taxpayers.

Now we're exploring compliance transformation options that will allow us to improve across compliance areas, streamline operations by removing structural and procedural silos, and adapt to changing taxpayer expectations. At the same time, we're working to create more complete and connected career paths that allow employees to develop their careers, and in some cases, more easily shift roles to meet changing taxpayer needs. We'll continue to work on our hiring plans that were made possible by the IRA funding.

An overlooked point in this discussion is that we have one of the oldest workforces in government, and we're losing about 10,000 employees a year. Now we will pursue a thoughtful, measured increase to our personnel to ensure we can onboard, train, and deploy these new employees effectively. Additionally, we'll be simultaneously hiring positions in taxpayer service and information technology across the IRS.

We've experienced significant technology transformations at the IRS in recent years, but there's more to do after years of under-investment. For the first time in years, the IRS has predictable multi-year funding for modernization over the long term. With this additional funding, the IRS plans to go above and beyond the technology modernization plan released in 2019. The additional funding enables the IRS to tackle the transformation of core tax systems and address some major pain points for taxpayers, businesses, tax professionals, and others.

Some modernization work will take years to complete, but taxpayers and IRS employees can expect to see some IT changes soon and incrementally during this effort. For example, adding new features to an IRS online account that makes it easier to communicate with the IRS. Equipping IRS employees with the ability to retire paper-based processes by transitioning to digital platforms and making it possible for large corporations to share large files with the IRS more seamlessly. If you want to learn more about the recent technology improvements at the IRS, check out the IT Annual Key Insights Report at [irs.gov/modernization](https://www.irs.gov/modernization), and again, I'd encourage you to take a look at that.

I would like to speak to you briefly about our latest TE/GE letter consolidation efforts. To further the goal of one TE/GE, to conserve resources, and to simplify the decision-making process of determining which letters to use in which circumstances, TE/GE began a review of letters for consolidation.

Prior to the letter consolidation effort, each function maintained multiple separate letters for similar purposes. For example, Letter 1744 has been revised to consolidate 12 letters that were previously used by Employee Plans, Exempt Organizations, and Tax-Exempt Bonds for closing a primary examination when corrective action was completed to resolve compliance issues.

Interim Guidance Memorandum TEGE 0411220033 was issued on November 15, 2022. That memorandum provides guidance on the use of a new consolidated TE/GE-wide closing letter. That's Letter 1744 for the examination of a primary return when there's a change due to correction of operations, but no change to the taxpayer's plan, exemption, bond status, or qualification. Use of this letter should provide consistency and eliminate the use of advisories.

I'll move to the next subject and say that we recently released the FY22 TE/GE Accomplishments Letter. I wanted to highlight just a few of those accomplishments mentioned in the letter. First up is our successful collaborations and partnerships. We continue to strengthen our compliance strategies and enforcement efforts through collaborations with Criminal Investigations, Large Business & International, Small Business/Self-Employed, Wage & Investment, and Research and Applied Analytics and Statistics to identify potential noncompliance in the exempt sector, and we partnered with Information Technology on modernization efforts.

We introduced a new pre-exam compliance program pilot designed to reduce taxpayer burden by allowing retirement plan sponsors to self-correct their applications, thus reducing the amount of time spent on retirement plan examinations. We're also proud of the accomplishments of our Small Entity Compliance Initiative — what we refer to as SECI — which focuses on developing outreach strategies and products to better serve small entities, under-served taxpayers, and those with limited English proficiency.

In FY22, we produced several new products including postcards, webinars, seminars, videos, presentations, and newsletter articles. Last July, TE/GE presented two virtual seminars at the IRS Nationwide Tax Forum where we reached more than 17,000 attendees, which was approximately 8,500 per session.

These are just a few of the highlights of a really busy and productive year and a good transition point to the next topic that I want to cover, which is the Nationwide Tax Forums. This summer, the IRS Nationwide Tax Forum is once again coming to a city near you. General registration opened on March 1, so it is open now.

I'll give you the tax form locations and dates. First we have New Orleans, July 11-13. Next we have Atlanta, July 25-27, then the Washington, D.C., area, August 8-10, followed by San Diego, August 22-24, and Orlando, August 29-31. For more information and to reserve your accommodations, visit the IRS Nationwide Tax Forum website.

Last but not least, I'd like to take this opportunity to invite you to complete the TE/GE Outreach Survey. Survey data will be used to evaluate TE/GE outreach and to help determine future event topics. You can find the survey at www.irs.gov/tegesurvey. Once again, I thank you for the opportunity to speak with you today. I always enjoy our time together. With that, I'd like to throw things back to Anne and Preston and we can start walking through our prepared questions and answers.

Business Master File Data Issues (from outline)

As of **3/2/23**, EO BMF is now updated through 2/14/23. However, as of 2/17/23, the EO BMF webpage (Exempt Organizations Business Master File Extract (EO BMF)) has a last data post date of 11/14/2022 [that webpage was last updated 1/12/2023]. Can you please address what led to the delay and/or failure to post monthly data in December and January?

Quesenberry: Our first topic of the day is Business Master File data issues. The first thing we thought was going to be a question looks like it has been remedied. When we go to the EO Business Master File now, it looks like it's updated through February 14, 2023. But it seemed up until a few weeks ago, it was still showing the last data posting date of November 14. So we were curious as to whether there was some sort of delay between the November and February posting date? Or should we expect any delays coming up?

Malone: I wouldn't expect any delays and I don't believe there's any delay on this posting. Looking at it, the EO BMF data was updated December 12. So it was on December 12, 2022, but the date on the webpage wasn't updated.

So the data was there and that's been corrected. It's exactly as you said. If you look now, it reflects the last update of 2/14/2023. But it's always nice, Preston, when we can sit here and say there was an issue we thought was an issue but now it's corrected.

Quesenberry: There may be another issue if you go to the TEOS bulk data download page, it's still showing the last update as September or August in some cases, and I'm assuming that's just another one of these issues where you just haven't changed the date on the website but it actually is being updated.

Malone: I think I cover that later with the bulk data updates.

Name Changes (from outline)

IRM 21.3.8.9.2 states that filers who are required to file an annual information form and who have not already notified the IRS of their name change “can report the change on their return according to the 990 instructions.” You noted this as well at the November 18 meeting – but we understood from your comments then that this does NOT affect the change being entered on the BMF – is that correct?

Quesenberry: The next question deals with name changes. At the last EO Update in November, we really appreciated the information that you guys provided and pointing us to that IRM that lays out what you’re supposed to do with name changes. For those in the audience who don’t have it, it’s IRM 21.3.8.9.2. But if you make it all the way through that IRM and get there, you’ll see some specifics on how exempt organizations can affect a name change.

Just looking at those specific provisions in the IRM, we did have a couple of follow-up questions that we were hoping you might be able to shed some light on. The first one is if you go to that IRM, and you go into paragraph 2, it talks about filers who are required to file an annual information return and who haven’t already notified the IRS of their name change. It says you can report the change on their return, according to the 990 instructions. But we think you said at the November 18 meeting, that that does not actually affect the change being entered into the Business Master File. Is that correct?

Malone: That is correct. For 2024, we’re submitting programming changes so that when an organization checks the name change box on the 990, that will update the name provided on the form and it’ll update the records.

So the name will be updated if all of the required documents are attached. In the meantime, we’ll also look at clarifying IRM 21.3.8.9.2 regarding the impact of reporting a name change on the 990. But that is correct what you said, and we’re working on that.

Quesenberry: Just so I’m clear, that means that for 2024, we can expect, hopefully, if all the programming changes get made, that when a name change is affected through the 990 with the accompanying documentation, there will be a name change in the BMF. But until that happens, at least for 2023, we should expect that there wouldn’t be a change. Is that accurate?

Malone: Correct, and I’ll update you towards the end of the year as well to say that we’re putting in the programming change requests and expecting them to happen. So I’ll update you towards the end of the year and let you know where we are with that.

Name Changes (from outline)

IRM 21.3.8.9.3 states that organizations NOT required to file annual returns (other than 990-N) and organizations who want a letter acknowledging the name change should provide

documentation to specific enumerated IRS offices (in the case of organizations with an INDIVIDUAL ruling , i.e., not a central group ruling holder or subordinate of one, or other certain organizations without an individual ruling), that would be the **EO Correspondence Unit (fax number 855-204-6184)**). Can you confirm that this is required to effect a change in the BMF? Is it the case that such a submission will generate a requested letter back from this unit acknowledging the name change to filers who file Forms 990? And same question, but for 990-N filers?

Quesenberry: Okay, and this gets me to IRM 21.3.8.9.3 that covers organizations that are not required to file an annual return. The way I read IRM 21.3.8.9.3, it says “or organizations who want a letter acknowledging the name change.” So when I see that “or” that reads to me like even if you are required to file an annual return and could wait to file your 990, if you want that letter actually acknowledging your name change, that you can go ahead and do the submission by continuing to do what you’re supposed to do in that case. It says that you would contact the EO Correspondence Unit, and provide them with the information regarding the name change and the appropriate documentation. Am I reading that right? Is that option available to anybody, including those who may be required to file an annual return, but just want that letter?

Malone: Any organization with an individual ruling can request a name change by submitting their amended organizing documents to the EO Correspondence Unit. So procedurally, we respond by mailing an affirmation letter with the updated name, as described in the IRM.

Quesenberry: And will that affect a change in the BMF if you go that route?

Malone: Yes, that should affect the name change in the BMF, and I’ll grab Tim just to make sure, but I do believe that will affect the name change. Tim, would you have anything to add there?

Berger: No, that’s correct.

Quesenberry: Okay. So it seems like if you’ve got the individual letter, I don’t know if that also applies to certain, say nongroup or subordinates that don’t have a letter, like churches and stuff just because they don’t have to actually get a letter. If you do at least have an individual letter, and you want to get that change in the BMF in 2023, before the change that you noted might be made in 2024, they do have this option of just sending everything in to the EO Correspondence Unit in 2023.

Malone: Correct.

Quesenberry: How about 990-N filers, would that be available to them, too, as long as they have that individual letter?

Malone: Yes. I don’t see why it wouldn’t be. I don’t see any distinction there at all as far as why it wouldn’t change.

Name Changes (from outline)

There is an exception at IRM 21.3.8.9.3 for those filing delinquent Form 990 series returns – these must include the name change documentation with those filings rather than sending the name change information under separate cover. Previously you said that doing so will NOT effect a change in the BMF. Is that still accurate? How are the circumstances of these filers handled (and how do they differ from those addressed in IRM at read IRM 21.3.8.9.2 (see above))?

Quesenberry: Now there is an exception at IRM 21.3.8.9.3 if you move further down into that paragraph. It says for those filing delinquent Form 990 series returns, they have to include the name change documentation with those filings rather than sending the name change information under separate cover. And so it sounds like for them, they can't send that correspondence to the EO Correspondence Unit. They have to go through the 990 and if that's the case, that will not affect a name change in the BMF.

Malone: What I'll say to that is organizations should submit correspondence to effect a name change. We're going to review the IRM and take a look to clarify that point.

Quesenberry: Okay, so that same option now would be available to them to send into the EO Correspondence Unit.

Malone: Correct.

Quesenberry: Another issue we wanted to note was that we continue to see issues of the IRS using old addresses after a taxpayer submitted the Form 8822-B multiple times and after they've checked the change of address box on the Form 990. Notwithstanding doing that, they continue to have correspondence mailed to their old address, and then mail forwarding generally only lasts about a year and then they're not getting the correspondence that they need to. Is there anything else these organizations can do to just make sure that the correspondence from the IRS will be sent to the new address rather than the old address, other than that 8822-B and that change of address box in the Form 990?

Malone: I understand the frustration there, but the 8822-B is what's used to report the new address, and it should result in updating the records, but we've taken your comments. We appreciate you letting us know that it's not necessarily working the way we think it's working. And of course it's one of the answers that's very tough for people to hear sometimes, but occasionally you have to call Customer Account Services.

Quesenberry: Thank you for that information. Next, Anne will ask you about e-filing and Form 4720 matters.

Part 2 follows from 2023-48

Fulton: Now we're going to talk about some e-filing questions.

E-filing and Form 4720 Matters (from outline)

A CCH Software News report released on 12/16/2022 [note: same is provided in Handouts] alerted customers and taxpayers of a systems issues regarding Forms 990/990-T Inclusion of Forms for Electronic Filing. Per the report: "When a 990/990-EZ/990-PF and a 990-T were exported from the same return for tax year 2021, forms might not have been included with the electronic file. [...] If a return needs to be corrected, an amended return will need to be filed." Is the IRS aware of this CCH systems issue and will the IRS release any specific guidance to indicate to taxpayers how to file their amended returns? Should any specific information be included in a cover letter with the amended return filing?

When software issues such as the above arise due to software vendor limitations, what is the best practice to alert the IRS?

Fulton: Our first e-filing question is regarding a specific vendor, CCH, that released a report in December of 2022 indicating that taxpayers that have used that system to file Forms 990 or 990-T with certain foreign filings like 5471, 926, 8865, that there was potentially an issue with those forms being exported in the XML although the return itself had been accepted. They indicated that in order to correct this action, they recommended an amended return to be filed. So Rob, I was just curious if the IRS has been made aware of this situation, and if we should expect the IRS to release any guidance specifically to those taxpayers that were using that software vendor.

Malone: We're absolutely aware of the software provider's issue. Now the software provider should have issued the relevant guidance. So filers were instructed by the provider to e-file an amended return to include missing attachments, because the returns are already accepted. So no cover letters needed with the e-filed amended return. Now we understand the provider has offered information on how users of the software can avoid the issue in the future, but it absolutely has to be the amended return.

Fulton: Okay. Is the IRS planning on issuing any written guidance or taxpayers should look to the software vendor?

Malone: I hadn't planned on issuing any written guidance at this point. But I can take it into consideration; take a look and see if there's something we could put out to clarify.

Fulton: The next question is just as a follow on. If a taxpayer does encounter some type of software issue with their e-filing vendor, what's the best method to alert the IRS?

Malone: I understand you wanting to send something directly to the IRS letting us know that this is going on with the software vendor, but really the best way to notify us is for the software company to notify us when they have an issue. They do let us know. So as soon as you let them know, they come to us and let us know that there's an issue. So the best practice, truly, to alert us, is to notify the software vendor.

E-filing and Form 4720 Matters (from outline)

Current IRS guidance indicates that the IRS allows taxpayers to use electronic or digital signatures on certain paper forms through October 31, 2023. This leaves a gap for exempt organizations from November 1, 2023 - November 15, 2023, when a high volume of organizations are filing returns.

1. Will taxpayers be allowed to use electronic signatures for filing the Form 8879-TEs for 2022 Forms 990-EZ, 990 and 990-T? Has the IRS considered adopting electronic signatures as PERMANENT vs. temporary?

2. See [Details on using e-signatures for certain forms | Internal Revenue Service \(irs.gov\)](#)

Fulton: Regarding e-filing there is some current IRS guidance that allows taxpayers to use electronic or digital signatures on certain paper forms through October 31, 2023. That's very helpful for some of our taxpayers these days. We did get a question noting that for certain exempt org taxpayers, that leaves a gap of about 15 days before November 15. Do you think there's going to be any extension or consideration for those tax filers coming up on the November 15 deadline?

Malone: What I'd say is the temporary deviation from the handwritten signature requirement was authorized by a memo from the Deputy Commissioner of Services and Enforcement on an IRS-wide basis and currently, as you stated, it applies through October 31, 2023.

This is not the first that I've heard this type of comment. It seems to be that a lot of people appreciated the ability to do this and so we have passed those comments on. We'll continue to pass comments on about how much the industry has appreciated being able to use that and would like to continue to use that. So we have passed that comment on and I'll pass them on some more.

Fulton: Sounds great. For participants, there is a link in the handouts to the IRS website where you can check for updates or review the information that Rob is referring to.

E-filing and Form 4720 Matters (from outline)

Many tax-exempt organizations are required to file certain forms to report international activity (e.g. Forms 5471, 8865, 926, 8858). These forms are attached to the Form 990 or 990-T to be transmitted to the IRS. Can you please provide clear written guidance as to whether these forms

must be e-filed via XML with the Form 990/990-T XML package, or whether the IRS will accept these forms in a PDF version attached to the e-file package?

Fulton: The next question is regarding the e-filing of certain foreign forms, such as Forms 5471, 8865, and 926. The way that these forms are transmitted by a taxpayer is that they are attached either to a Form 990 or a Form 990-T, both of which are required to be e-filed now. Can the IRS provide any written guidance as to whether these forms must be e-filed via XML, or whether the IRS will accept these forms in a PDF version that's attached to the e-file package?

Malone: We continue to accept the PDF attachments of the listed forms for tax year 2022. We'll continue to review this issue to determine if certain forms do require XML format. But for 2022, we continue to accept the PDF attachments. And so if there are other forms like this that you have questions about, just let us know, but we'll continue to look at that.

Fulton: Do you know if that will be provided in writing anywhere on the IRS website?

Malone: I don't know at this time, but we talk quarterly, so it's one of those things I'll make a note of.

Fulton: That would be very helpful to have some guidance to show taxpayers or point them to.

E-filing and Form 4720 Matters (from outline)

We were made aware that the Form 990-N filing system has been down for over a month as of 2/23/23. Many CPAs noted this to us in late January (at which time a flag was on the webpage saying the system was down). That flag was removed as of 2/3/2023, but we heard from an experienced EO lawyer earlier this week that she has been trying to file a Form 990-N for over a month and every single time receives a message that an error has occurred prior to her even being able to locate the EIN of the entity. We understand that Publication 5248 was to be updated on or about 2/10/2023, and see that same has not yet occurred. Can you provide any update on the 990-N filing system?

Fulton: Our last question in this section is that we have some small taxpayers right now that are filing the 990-Ns and they try to do that as soon as the new calendar year flips over. We had some feedback that there was a delay with the 990-N filing system being available, and some taxpayers receiving error messages. Can you give us an update on the current status of the 990-N filing system?

Malone: The 990-N filing system was unavailable for a period due to system maintenance. Now the system is restored, and has been available since February 3. So we're currently not aware of any system outages. If a particular organization is having trouble with submitting the Form 990-N, we do post FAQs and those are on the Form 990-N page on [irs.gov](https://www.irs.gov). An organization may also contact CAS at 877-829-5500 to assist with submitting the 990-N information. But there are no system issues now that I am aware of.

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 [Return of Certain Excise Taxes on Charities and Other Persons under Chapters 41 and 42 of the Internal Revenue Code] 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. The IRS's Exempt Organization Division in both sessions stated that the issue was caused by filers incorrectly completing Form 4720) [1] Part I and Part II by failing to report \$-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 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 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 connecting with IRS teams to resolve this issue.

[1] For further information on how to correctly fill out Form 4720, please refer to the transcript from the IRS's Charities & Tax-Exempt Organization Update presented by IRS tax law specialists Elaine Leichter and John Matias on August 16, 2022: <https://www.irstaxforumonline.com/sites/default/files/players/4cte722/downloads/4cte722transcript.pdf>.)

Fulton: Typically in this session we also cover 4720 questions. There weren't any questions arising today, but I wanted to give members an update on some previous discussions that we had. You'll find in the back of the Participant Agenda today a summary of a 4720 issue we had discussed with Rob and Tim that they were successfully able to help us with, and some guidance on what to do if you have a private foundation filing a Form 4720 with a self-dealing transaction. Through our correspondence last year, we were able to get some information about

the IRM and the way that you should properly file those returns. So Rob, we just want to thank you again for hearing us and for providing us with some guidance going forward.

With that, I'll hand it back to Preston.

Part 3 follows from 2023-49:

Group Exemption Holders and Subordinates (from outline)

Issues with EO BMF Coding relating to Subordinate Organizations:

Currently, in the BMF for a subordinate organization, the IRS (usually) puts the name of the group exemption letter holder in column B which is otherwise typically reserved for the name of the exempt entity with the subordinate organization's name being placed in column AB. This has resulted in almost every database that pulls data from the IRS BMF including TEOS incorrectly listing the group exemption holder's name as the subordinate organization's name. This causes issues with verifying exemption status with donors, especially with large-scale donors such as Cybergrants, the Blackbaud Giving Fund, and similar organizations. While they can be directed to IRS Pub 4573 about relying on the central organization in our experience when confronted with conflicting data from the IRS and a group exemption holder, these organizations will typically prefer to use IRS data. Would the IRS be willing to consider listing the name of the subordinate organization in Column B of the BMF and moving the central organization to column AB?

Quesenberry: We're going to move on now to group exemption holders and subordinates. I think the big question on everyone's mind is, when is the IRS going to open up group rulings again? And when is the guidance, the follow up on the 2020 Notice, going to be released, but that's really more of a guidance question, we understand, so we're reserving that for the Treasury and Chief Counsel panel coming up next.

In the meantime, we've got our existing group ruling holders, and we have some questions related to them. So the first one is some issues with the EO BMF coding related to subordinate organizations. My understanding is that currently in the BMF, for a subordinate organization, the IRS usually puts the name of the group exemption letter holder in column B of that BMF; that would typically be where the name of the exempt entity goes. Then they put the subordinate organization's name way to the right in a column AB.

What this means for almost every database that's pulling data from the IRS BMF is that they are pulling from that column B. So they're pulling the group exemption holder's name as a subordinate organization's name, and that can cause issues when it comes to verifying exemption status with donors, especially with large scale donors, like CyberGrants and Blackbaud Giving Fund, and similar organizations.

While you can always tell them, "Hey, look at IRS Pub. 4573; you can rely on the central organization." In our experience when they're confronted with that conflicting data from the IRS

and a group exemption holder, they typically just want that IRS data. So all that's a long wind-up to a question, which is, would the IRS be willing to consider listing the name of the subordinate organization in column B of the BMF and then moving the central organization to Column AB as the default choice.

Malone: We absolutely appreciate the observation. We continually consider revisions and improvements to our processes and systems. Now, on this point, we have to balance that any updates to the current system would require extensive resources to manually update entries for all subordinates.

I think it's important to note that, as the comment observes, Pub. 4573 directs donors to verify a subordinate's inclusion in a group ruling with the central organization. As described in Section 6.03 of Revenue Procedure 2018-32, there's no reliance for donors on the listing of subordinates in the EO BMF extract, or TEOS Pub. 78. In fact, subordinates do not appear in TEOS Pub. 78. But again, we absolutely appreciate the observation and we continually consider the revisions and improvements to our processes and systems, so thank you.

Quesenberry: My understanding is that, even though that's the default that the subordinate goes in column B, if there is a subordinate that specifically contacts EO Entity and asks, "Hey, can you move my name to column B?" Is that something that can be done on an individual basis? Or is that an option? I'm kind of springing that one on you.

Malone: You're definitely springing it. [Laughter.]

Quesenberry: I feel like I've done that in the past.

Malone: Yes, I think so. I don't know the answer to that. Tim, do you know the answer to that?

Berger: Our people do review and respond to individual correspondence, so I think they can make those updates. I would just note that that is a workflow that we have to work on a manual basis, but yes, we do respond to correspondence and make updates to group exemption rosters when we're notified by the appropriate parties.

Group Exemption Holders and Subordinates (from outline)

Group Exemption Letter holders are required to submit information about their subordinate organizations annually to maintain the letter in force. In our experience, the IRS only acknowledges receipt of this information about half of the time, and usually only after any information changes are added to the BMF which tends to be several months after submission. Is there any good way to verify that the IRS has received the required annual information?

Quesenberry: The next question is group exemption letter holders are required to submit their information about their subordinate organizations annually to maintain the letter that's in force. In our experience, the IRS only acknowledges receipt of that information about half the time and that's usually only after any of the information changes have been added to the BMF, which

tends to be several months. But again, half the time there is no letter of acknowledgement and half of the time there is, but it's delayed.

So we have two questions. One is should all group exemption letter holders expect that acknowledgement letter; is that part of the general IRS procedure? Two is if they don't receive that acknowledgement letter, is there a good way to verify that the IRS has received the required annual information?

Malone: We did confirm with our team that our procedures provide for sending a letter to the central organization once the update is completed, but keep in mind we don't send an initial acknowledgement letter of receipt. If they don't receive a letter, it's one of those things where I don't like to say people should call, but if they don't receive the letter, I'm thinking that would be the approach. Tim, would you have a better approach for someone versus calling?

Berger: You can review, as Preston noted, the subordinates appear for the most part not in the Pub. 78 data but on the Exempt Organization Business Master File extract, which is on [irs.gov](https://www.irs.gov), which we were talking about earlier. Those have records of subordinates, so that is one method that you can review the information about subordinates and confirm that it is as the central organization expects.

As we noted, you can see when it was last updated, so you can have a sense of the timeframe, when did you submit what we call the STRI, the submission, the annual update. Obviously, that takes some time to process, so you wouldn't expect to see that immediately, but you can monitor the EO BMF extract.

Group Exemption Holders and Subordinates (from outline)

Subordinate organizations with some frequency erroneously file 990-N's in the name of the central organization. The central organization will then typically file its own 990 properly and face no consequences; however, it does make TEOS look like a mess. What is the best way for a central organization to have erroneously filed 990-Ns removed from its TEOS listing?

Quesenberry: What happens sometimes with group rulings is that the subordinate organizations will, with some frequency, erroneously file Form 990-Ns in the name of the central organization. Then what happens is the central organization will file its own Form 990 properly, and so there won't be any consequences when it comes to all those 990-Ns that were also filed in its name. But it does make TEOS look like a mess because then you've not only got the central organization's 990, but you've got all these 990-Ns from subordinates that were erroneously filed. Is there any way or what is the best way that a central organization can have those erroneously filed 990-Ns removed from its TEOS listing?

Malone: Right now the 990-N filings are posted on TEOS systemically -- they're filed and they're posted systemically. Once they're filed, there's currently no option or programming that would allow us to pull the 990-Ns from TEOS. That currently is not there, but one thing I would say is I do encourage the central organizations to exert general supervision

and control and ensure that the subordinates file the appropriate filing. But with that, there's currently no way to pull the 990-Ns from TEOS; we don't have any programming in place for that. But I've taken your note here and appreciate knowing what's going on there.

Annual Information Report/BMF Accuracy Issues (from outline)

The IRS currently provides little guidance on the formatting or delivery of the required annual information from group letter holders. However, to our knowledge, the only two ways to submit that information are by fax or by mail, with fax generally being a vastly more effective mechanism despite not being truly trackable. The result however is that the IRS will receive a paper copy of in our case hundreds or even thousands of changes to the IRS BMF. While this is a vast improvement of the previous method of hand-correcting a printed list, it still requires the IRS to somehow input these changes back into its system.

It is our experience that the IRS's accuracy with these updates is spotty. As one small example, as of January 1/23/2023, a group exemption with approximately 4,800 subordinate organizations saw 811 errors in the BMF for its subordinate organizations. The vast majority of these are the incorrect name or address of the organization. Notably, however, not all of the errors appear to be simple typographical errors (such as dropping the "C" from "INC") but can be as severe as changing the word "USA" to "CLUB" or not including "INC" at the end of the name. In addition, 68 organizations are listed with the wrong accounting period which causes tremendous issues when trying to file the 990, which typically cannot be resolved by calling the IRS, instead requiring going through the process of changing an organization's fiscal year. Two organizations are also listed as having the wrong Group Exemption Number, and of greatest concern, two are listed with the wrong deductibility code, making it appear that donations to them are not tax deductible.

Comments? We want to make the IRS aware of these issues if it does not already have them in its sights. Can alternative methods of submission be employed to effect more efficient and accurate annual updating, or to make corrections?

Quesenberry: The next topic deals with annual information report and BMF accuracy issues. There's not currently that much guidance on the exact formatting or delivery of that required annual information that group letter holders have to provide. But to our knowledge the two ways to submit the information are either by fax or by mail, with fax usually being the more effective mechanism, even though it's not truly trackable.

The result, though, whether it's by fax or by mail, is that the IRS is still going to receive a paper copy of sometimes hundreds or even thousands of changes and then they have to manually input those changes into the IRS BMF. As a result, the accuracy of those inputs can be spotty due to human error and so we see everything from just some typos in the names to more significant changes in the names. We also see organizations with the wrong accounting period, which can cause tremendous issues when you're trying to file the 990, and we also have a couple that have the wrong group exemption number. We've seen that as well.

So, first, do you have any comments on that, generally? And second, has there been any thought put to if there could be alternative methods of submission that might not be as prone to sort of those kinds of input errors, whether that be e-filing or electronically or something along those lines?

Malone: No, but absolutely appreciate the comment. I truly appreciate hearing that the current process is an improvement over the prior process and a way of correcting a list mailed out by the Service. Glad to hear that and Preston, we're always considering ways to improve the process and do appreciate the input and comments.

Even when we're sitting here, and some things we talk about genuinely are just receiving comments from you, it's not necessarily a question tied into it. But those comments are as valuable as questions to us, because it lets us know what you're running into, the issues you're having.

Again, improvements are nice to hear about, too. When we make a change that works well, it's great to hear about that when we're considering other changes that may be similar. So we have a comment and appreciate it and always looking for ways to improve and taking all that into consideration, so thank you.

Quesenberry: Now Anne has some other issues for you.

Part 4 follows from 2023-50:

3 – IRS Exempt Organization Update and Q&A

What follows is a transcript of the March 3, 2023 session titled "IRS Exempt Organization Update and Q&A" that was part of the annual program of the TEGE Exempt Organizations Council. The speakers were Robert Malone, Director of Exempt Organizations and Government Entities, and Timothy Berger, his Senior Technical Advisor. The moderators were Preston Quesenberry, KPMG, and Anne Fulton, Deloitte. The prepared materials are included with the presentations. Parts 1, 2 and 3 appeared in email updates 2023-47, -48 and -49.

Other Issues (from outline)

The "Where's My Application" page still says that after submitting the application you will receive an acknowledgement notice. Is this still the IRS protocol to send an acknowledgement notice? If not, can you please update the text on the website?

See [Where's My Application for Tax-Exempt Status? | Internal Revenue Service \(irs.gov\)](#)

"After submitting your application for tax-exempt status, you will receive an acknowledgement notice, which means the IRS has received your application."

Fulton: This is just a grab bag of questions that didn't fit into any of the other categories. So

Rob and I might be bouncing around a little bit here, but the first question is that we had previously talked about the fact that I don't believe that once an organization submits an exemption application that they receive an acknowledgement notice of receipt. However, the "Where's My Application?" page still says that taxpayers will receive an acknowledgement notice, just meaning that they've received the application? But can you clarify if that is the process or not going forward?

Malone: For the applications that are submitted through pay.gov, applicants do receive an email from pay.gov acknowledging the submission. So, if you were expecting a letter, it's not a letter coming from the Service; it's actually an email coming from pay.gov that acknowledges the submission. We will continue to mail an acknowledgement letter in the case of paper applications, but if coming through pay.gov, pay.gov gives you the notice.

Fulton: So taxpayers should keep that electronic notice that they're received.

Malone: Yes.

Other Issues (from outline)

Since early COVID, external entities that make 990s available (such as Candid's GuideStar site) do not generally seem to have access to 2020 Forms 990 (and to a lesser extent, 2019 Forms 990) for many entities. Can you discuss the reasons for the delays in those returns being available and note when those delayed returns will start to be released?

- The absence of Forms 990 makes it much more difficult for the sector and its overseers to conduct due diligence. For example, nonprofits that have filed their 990s on time are now unfairly suspected of being out of compliance because the IRS has failed to post their tax forms, and fundraising is impeded when donors don't have access to the most recently filed information. The lack of timely and consistent 990 data posted by the IRS was raised as an operational concern in the 2022 IRS Advisory Council report. Please let the field know when machine-readable 990 data links for 2021/2022 will be available to the public, and whether you are taking any steps to address the operational improvements called for by the IRS Advisory Council? [Publication 5316 \(Rev. 11-2022\) \(irs.gov\)](#) (pages 102-103)

Fulton: The next question is about the availability of certain 990s to the public. We know that there has been some processing delays since 2020. As a result, we have noticed that many of the 2020 Form 990s and to some extent for fiscal taxpayers, the 2019 990s have not been posted yet electronically, such as on the IRS website or Candid's GuideStar.

Commentary we've received from our members is that this does make it more difficult for the sector to oversee and conduct due diligence on certain nonprofit organizations. Many donors and taxpayers use the Form 990 to look for information for certain nonprofit organizations.

Particularly when an organization is fundraising, the lack of a recent 990 can impede the organization's ability to fundraise. I know that this was one issue area that was addressed in the

2022 IRS Advisory Council Report. So can you just let us know any comments that the IRS has about this and any steps that are being taken to make operational improvements?

Malone: The IRS makes returns available on TEOS, the Tax Exempt Organization Search. We can't speak how third parties may utilize or repost the available data, but regarding the posting of the 990 series data on TEOS, we had discovered some machine-readable XML Form 990-T data had been made available for bulk download on TEOS that should not have been made public.

So we removed the 990 series filers from TEOS as we review the situation. Once the review, which is ongoing, is completed, we will replace them with updated files. Now stakeholders that can't locate a filed 990 series return on TEOS can still request a copy by submitting Form 4506-A to us and we'll provide a copy.

Fulton: Okay, so there is a systemic issue that is being addressed that is causing the delay.

Malone: Actively being worked. Working through it as quickly as possible.

Other Issues (from outline)

We have heard that IRS IT improvements are anticipated from the Inflation Reduction Act funding. This will allow 26 separate systems now run with COBOL programming to migrate to new program language. Is the Business Master File one of those? Are there separate exempt organization systems aside from BMF in that count? How integrated is the Business Master File data of exempt organizations in the larger IRS system?

Fulton: You touched on the next question in your opening remarks a bit, but I'm excited to hear that the IRS will have funds available from the Inflation Reduction Act for certain IT improvements. Is there anything that you can say as far as what systems may impact this sector, such as the Business Master File, any other data systems that will affect exempt organizations? Are those on the list to receive funding for upgrades?

Malone: I don't have a specific list. I'm sure IT probably does have a specific list; they're working through everything. I don't have the specific list, but the additional funding really will allow us to do a tremendous amount of modernization and transformation of really core systems.

There's some modernization already, let's be very clear, but it's going to take years. But there has already been some modernization, we're not even talking about various modernization that's occurred over the years. We have a correspondence unit, for example, that's working through our Enterprise Case Management System. So these have all been improvements in our efforts to modernize our technology and that will continue. As to our really core systems, I'm looking forward to a great deal of modernization with technology.

Fulton: Great. Well, I think you already know that all of us on the phone would put in a vote for

the BMF. [Laughter.]

Other Issues (from outline)

The retroactive-to-date of formation “rule” that mandates 501(c)(3) applicants must file their exemption application by end of 27 month post-formation can be waived via available IRC sec. 9100 relief. For non-501(c)(3)s, a “rule” disallowing retroactive-to-formation ruling for those who file for exemption after end of 27 months post-formation was effected in recent years via the annual Revenue Procedures. Non-(c)(3) organizations who seek a reasonable cause waiver which would thus allow retroactive exemption to date of formation have been informed by Determs’ staff that the absence of a statute allowing relief from the rule bars the IRS from considering waiver requests. That sets up a Catch-22: Treasury via administrative procedures has set an inviolate rule that only Congress can address.

Fulton: The next question is regarding the exemption application process. Exemption applications typically need to be filed within 27 months. However, there is a section 9100 relief waiver that applies to certain 501(c)(3) filers, if they’re filing after the 27-month period. However, for non-(c)(3) filers, we understand that they would not be allowed to seek reasonable cause waivers in order to ask for retroactive exempt status back to date of formation. Can you give us any insights into this or any updates on this Rev. Proc.?

Malone: What we have here is a situation that is addressed in a legal advice memo from our Division Counsel in Memorandum 20205201F [reprinted in email update 2020-250]. The memo provides that non-(c)(3) self-declarers are not eligible for 301.9100-3 relief because they didn’t fail to make a required regulatory election. That is, there’s no due date for such organizations prescribed in the regulations or IRB guidance. Thus, unless such organizations apply within 27 months of their formation, they should be recognized as exempt as of the postmark date pursuant to Revenue Procedure 2020-5, section 6.08, or its successor. Now these organizations may qualify for exemption for earlier periods, the self-declarers, for example, but the IRS doesn’t recognize them for those periods.

Fulton: Okay, thank you for that information and that site. We’ll post that on our website as well.

Other Issues (from outline)

Lack of data on EO sector’s number of returns in process exists in many cases because tax filings have no coding that identifies the filer as a tax-exempt entity – for example, Form 941-X does not reflect taxable vs. tax-exempt status of filing org. Are other mechanisms available by which IRS can readily detail number of ERC pending claims from 501(c)-filers? (other arenas where such data would be helpful could be added too)

Fulton: The next question is we’ve been receiving some questions from taxpayers, specifically

regarding those that have filed Employee Retention Credit claims and maybe have been pending. Do you have any data available as to the quantity of those claims that are pending? Are you able to track the EO taxpayer subsets specifically? Or does the IRS just process those generally with all other taxable taxpayers?

Malone: They're processed, but as far as specific data, we have a lot of data, as you know. I can do data pulls on various things, but I try to avoid doing too many data pulls and taking up resources that really need to be used in other areas, but we absolutely appreciate the comment. Thank you for the comment and we do strive to process, verify, and pay claims, including the COVID Employee Retention Credit claims promptly, as we receive them. We're working through everything as quickly as we can.

Other Issues (from outline)

Late filing penalties are still being assessed on delinquent 990s filed as part of the organization's efforts to re-establish exempt status after auto-revocation even with filers inputting reference to Revenue Procedure 2014-11 on page 1 of each delinquent return. Penalty assessments are still coming and some penalty abatement requests have been before IRS staff who state they are not familiar with retroactive reinstatement procedures. For e-filed returns, we are concerned that perhaps the designation on page 1 is not being transmitted properly and/or being entered into the IRS computer systems. Can you please comment?

- We continue to see errors stemming from filing 990s for the three consecutive years *that caused automatic revocation* (these are to be filed via paper submission to perfect a retroactive reinstatement application under Rev. Proc. 2014-11). What steps should a taxpayer take if they receive late filing assessments? How can a taxpayer request penalty abatement?

Fulton: The next question we have heard from some members is that they had received a late filing penalty notice in response to filing delinquent 990s as part of the effort to re-establish tax-exempt status after auto-revocation. So they are still receiving those penalty assessments and when they have called the IRS, we're concerned that potentially those are not being processed correctly. What steps should a taxpayer take if they receive those late filing or penalty assessments, and how could they request abatement?

Malone: As described in Revenue Procedure 2014-11, an organization seeking retroactive reinstatement outside of the streamlined process for small organizations must file completed paper returns for the three years that caused the revocation and for any subsequent periods due before the application for reinstatement is submitted.

Per the revenue procedure, the filer should write "Retroactive Reinstatement" on the top of the returns. So if the application is approved, then as described in Rev. Proc. 2014-11, the IRS won't impose the late filing penalty for the returns for the three years that caused the revocation.

Note that the returns should be filed before the organization applies for reinstatement. Penalties

may issue if they are filed after reinstatement. If the organization receives a penalty notice, and it believes penalties should not apply under the criteria of Revenue Procedure 2014-11, it should respond to the notice. You do need to respond to the notice.

It's a difficult thing, but with auto-revocation, the thing that I would say about auto-revocation is the best way to avoid auto-revocation is to file timely. I view this as it happened because of filings were not occurring and now they're caught up in trying to get reinstated. So truly, I know we're all pretty much aware of this, but the best way to avoid this situation is to have the clients avoid the auto-revocation process. But if you receive a penalty notice you do need to respond to the notice.

Fulton: I didn't specifically put this in here, but is it correct that if part of their delinquent return is a 2020 or 2021 return, they should e-file those?

Malone: No, they should file a paper return. Tim, those have to be filed on paper, correct?

Berger: Yes. I think we had discussed this a little bit last time, but happy to provide that reminder. The procedures in Rev. Proc. 2014-11 are still relevant here. So those are to file paper file returns.

Fulton: Thanks for clarifying.

Other Issues (from outline)

The 2022 instructions for Forms 990, 990-EZ, and 990-PF no longer provide the "Table of Contents" list that has in prior years appeared on the instructions' page 1. This makes it very difficult to quickly navigate to the desired page in the instructions. We hope that this omission is temporary and can be restored (at least for future years); we also hope that the Contents list will remain and not be removed from the 2022 Form 990-T instructions (they appear on the draft 2022 990-T instructions).

Fulton: The last question is really just a comment. When the 2022 instructions were released for the Forms 990, 990-EZ, and 990-PF, there was no longer a Table of Contents and our membership has indicated that they really love the Table of Contents. It's helpful since those instructions are so long. I know those are already released, but we just wanted to provide that feedback. If those can come back in a future edition of the instructions, that would be very helpful.

Malone: I absolutely appreciate the comment, and we'll look at that for sure.

Fulton: Great. Rob and Tim, thank you so much. Do you have any closing remarks or anything else that you wanted to mention to our membership?

Malone: What I would say, Anne and Preston, it's always wonderful to be here and we get to talk quite a bit. So it's nice to have the opportunity to cover things and answer some real good

questions and help provide needed information. So I really appreciate the opportunity to be able to sit down with you all and have a conversation, so thank you.

Fulton: Thank you guys so much for your time, and we will hopefully see you back in June.

Part 5 follows from 2023-51:

Roundtable Discussion

Fulton: Now that we have finished our discussion with the IRS, I'm going to invite Jennifer Becker Harris of Clark Nuber and Eve Borenstein of Harmon Curran to join us. We're going to have a roundtable discussion on a number of topics. I'm handing it off to Eve for topic number one.

Borenstein: Thank you so very much. I have to say it was great to not be moderating because you have an opportunity to synthesize information. One of the things I just want to talk about is the name change focus. Name changes came up last year on November 19. I actually have an old Q&A submission asking, how do we do this?

In March of 2022, we got information about there being an EO Entity Office. We also had the IRM cited to us and we were a little confused about the IRM and discussed it again last November. Now here we are.

For those of you who might have lost your minds about what was being said about the name changes, in the materials that you have, with a 2/28 date, there is what we're calling an EO Help Chart for contact purposes [reprinted in email update 2023-38]. That was culled with the input of many people, but it was done by myself and Chris Anderson, who is a CPA who chairs the AICPA Technical Resource panel, but we were both doing this in our individual capacity.

I will say that we are responsible for errors, except that what we're doing is ratifying today, what we think we did correctly. There are ten separate issues on that Help Chart, but issue (6) is divided into five subparts because the five subparts reflect or allow us to kind of cheat in parsing through the IRM.

The reason for the breakout is that IRS procedures separate the responsibilities for how different types of taxpayers, for example, individual organizations with an exemption determination, versus a group ruling holder. If they are 990-N filers, they have to go different places to seek a name change.

I'm going to go through the Help Chart, and I'll give you the cites to it so that you can keep the specifics in front of you. The first thing we parsed out of the IRM in (6)A is a 990-N filer only. The only way they can change their name is to contact the EO Correspondence Unit and the Help Chart gives the mailing address. We also know anecdotally that sometimes people calling 877-829-5500 and going through the prompts to get to the EO person or whoever's staffing that, what we call Customer Accounts Services, or CAS, that sometimes CAS will work with the caller to make that happen. But good luck to you getting through to CAS. Good luck to you getting the

right person who's going to do this. Sending the information to the EO Correspondence Unit is what you would do if you're a 990-N only filer and again, that's on line (6)A.

Line (6)B is rare. You have to be a group ruling holder who is a 990-N filer. They would file with EO Entity the name change for themselves, the group ruling holder.

Line (6)C talks about something we just confirmed, because we thought Rob said this the last time, and the IRM mentions that 990 filers, someone who is required to file a 990 series information return other than 990-N, can quote unquote inform the world but apparently not the EO BMF of their name change.

So you check the name change box and they invite you to do this in the IRM. But what we have confirmed is that the IRS systems do not allow that filing to then correlate to people knowing somewhere in their computers, and then getting to real people, that they have to flip switches in the EO BMF.

That is coming to you, Rob just told us, next year. That always scares me as to when is it in 2024. Is that fiscal year 2024? Is that the IRS definition of soon, 2024? Whatever. Right now, doing that allows people in the public to see that you've had a name change, the returns will be accepted with the name change, but it's not making the EO BMF change.

Which then gets us to line (6)D to inform the IRS of a change in the organization's name by a non-church who's not a subordinate under a group exemption. Oh, I'm sorry I missed the three most important words, which is you don't have a formal ruling letter. Okay, so no ruling letter.

Here, the only way to get a name change through, for self-declared groups, is to contact EO Entity. We've got the submission methods; we've known since March that there's a fax number to those people. We're going to morph in a second in line (6)E to how do you get acknowledgement letters, but first I want to clarify some confusion that may have been generated by the succinct way in which Rob addressed this.

But before doing that, the Help Chart has a right-hand column that says, look, there are some scenarios we didn't even address here. Name changes required by churches without a formal ruling, and 527 groups needing to make changes, they have 527s and federal, state and local government entities, they're directed to specific places in the IRM as to how to do this. I've left out that information.

So now we're at the wonderful point where someone's saying, I need a letter from the IRS that shows I have a 501(c)(X) letter under this name. So (6)C says that if you have informed the IRS of a change in the organization's name, but want to get an IRS letter acknowledging the new name, you make it to one of the two cited offices depending on whether it's an individual ruling given to you or you're a group ruling holder.

For individual rulings it's the EO Correspondence Unit; for everyone else, the group ruling holders, that would be the EO Entity. This letter is different than the affirmation letters, which the IRS invites you to seek. That's on line (8) of the Help Chart where you just contact Customer Account Services.

But the thing that I want to parse through with my co-presenters is what I understood Rob to say is, you could write to the EO Correspondence Unit, saying here's my name change and here's the documentation. At the end of your processing that documentation, you need to send me the letter because he said if the name change is there with documentation.

So, for example, if the IRS somehow had that through the 990 filing, then writing to the EO Correspondence Unit, and again, this is in (6)E, will get you an acknowledgement letter that you are recognized as a 501(c)(X) under this letter. Otherwise, and it's in the IRM, the only way they can issue affirmation letters is from the historic records that Determs created. Well, Determs created it with your old name.

So parse (6)C versus (8) for a plain old affirmation letter versus a name change acknowledgement. I think the bump in the road is, will the EO Correspondence Unit take the documentation and process the name change? You have to make sure that that was the place to go to do that in the first place. And then, of course, expect delays in receiving the acknowledgement letter. So I think I'm done with that name change focus.

Harris: Eve, where is that chart that people can find? Has that been published yet?

Borenstein: It's in the program materials [also reprinted in email update 2023-38].

Quesenberry: I think one of the questions and I don't know whether it was resolved or not, but I saw something asking, what about groups or subordinates? What the IRM says is that central organizations have to ensure that subordinates have changed their names. They're not required to submit the name change documentation on behalf of the subordinates. They simply inform EO Entity of the change and then there's the contact information. It says subordinates have to submit all the name changes through the central organization and not send it directly to the IRS.

Borenstein: Right and that's firm and fast. There's no way for the subordinates' names to be changed except for the central organization, for the group ruling holder, to do that on their annual updating. So you're out of luck if it's in-between annual updates, and you're out of luck if you're waiting to see them properly posted with the name change and the EO BMF subordinates listing that eventually you'll see.

Quesenberry: There was also one question about what if it's not your name, but you got something else wrong on the application? Is there any way to get that change in the record?

Borenstein: There are two parts to this. If you can get to Determs right away to say that they've made a mistake when they still haven't sent it over. There's a contact for Determinations in this chart, line (7), "Communicating With EO Determinations Unit when updating information provided in a submitted (and still pending) exemption is sought," which is to contact Determinations by fax. I would try that immediately. But once it's not in their hands or once you're not getting an answer, this is an EO BMF correction and that goes to EO Entity.

Harris: On a similar but kind of unrelated matter, because Eve was was talking about self-

declarers, and even any new organizations, make sure you pick the correct boxes when you do your EIN on the SS-4, make sure it's a nonprofit or other nonprofit or a church box. That gets you into the EO Business Master File, so you could start e-filing. That's something Tim and Rob confirmed, I think, on a previous panel.

Borenstein: I believe they actually implemented that on January 1, 2022, for SS-4 filers.

Harris: Yes, 2022 or 2021. I can't remember which one.

Borenstein: It is one of those two. [Laughter.]

Harris: Are we ready to move on to a different matter? So one of the other items was on the Form 990-T. CCH Access had a glitch at your end, and after the deadline of November 15, practitioners were told, and the IRS was told, that some form filings and some other forms may not have been attached to those forms when they were e-filed for the submission and the appropriate way to rectify it was to amend the returns and resubmit those filings.

I think there were some concerns by taxpayers and practitioners that many of these forms come with large penalties and so would the IRS assess penalties. I think there are a few practitioners who have looked at the *Boyle* Supreme Court case, which basically says, if you're delegating to a tax practitioner, that does not relieve your duty of filing those forms, except the tax practitioners thought they filed those returns. Again, it was just a glitch in the system.

So it was good to get confirmation that you don't have to do any additional items on top of the forms. I don't know, Anne or Preston, if your groups have started amending those returns. I know when we got the notification, CCH also told us that within a day or two the system would be going down for a month to update systems. So it was going to take a little bit of time to be able to submit those filings.

Fulton: I have not yet submitted any of the amended returns through that process.

Harris: One of the things that we're doing is we're adding a reasonable cause statement, but knowing that some of these things, which pieces are open to public disclosure, when you file a 990-T and the foreign filings under a previous notice, those should not be open to public disclosure and so explaining the issue in a non-public disclosure, like where does that happen is important.

I was relieved to hear that we could still PDF them, so I may consider PDF-ing the entire group of those additional filings and not having them in that HML data because that actually was causing system issues, we found, through our software provider, because they would come back and say, well, there was a diagnostic, but they couldn't tell us exactly where the diagnostic was being located. They'd just say in a 5471, and when you have 10, 15, 20 5471's, that's a really hard process to figure out where exactly it's at.

Fulton: I think the issue that we see is that certain taxpayers have a huge volume of these forms, depending on their profile. So it's very difficult to get these returns filed. I am very hopeful that the IRS will publish some written acknowledgement of that statement that Rob made today.

If we see that, we will alert you in our Members Forum.

Borenstein: I wanted to point out that practitioners or advisors who are not used to filing some of those international tax forms should also take a look at the note that we posted in the materials with respect to what are the forms, a little bit more information about what the issues are, etc., is in the in the program materials.

For the more sophisticated practitioners, I did take a look at the *Boyle* case and one of the findings that was used against the poor Boyles, who were hit with an unbelievable amount of late filing penalties, is that they did not have proof of the preparer's submission. Now in a world of e-filing, I just want to remind folks that providing a copy of the ERO to your clients will get you out of any issue about whether or not this happened or was rejected filings, etc., in the e-filing world. I'm trying to say that diplomatically.

Harris: I know Danika Mendrygal has shared information, and we keep referring to the TEGE EO Council website, but we did want to actually show for those visual learners where it is. Being a member is free, we highly encourage all participants to become members. If you come into the site, there is a Members Only content. You will find under this Members Forum, it's now grouped by categories. You can also see how many replies, where the information is, you can see that these are conversations that have been happening in real time. So we are, as a TIC-TAQ group, moderating this content.

This is between our different panels and sessions, this is a great forum to be able to communicate with other practitioners to see if they're having issues as well. I know in one instance, the 990-N, Rob said that the systems were all back up. But I think there was some comments even as recently as the 28th, where Emmett Robertson said that he's still having some problems accessing the 990-N. I'm not sure if it's now a user error on our part or not.

Borenstein: This is a great promo for using the forum because we're getting real time information when someone posts under here. I'm just trying to see what order you're doing this in. Okay, would you just go to the top of the page and show the latest replies on top? This is easier, I think, tracking what's going on here.

So Emmett ends up responding to two or three posts down, there's someone saying, well, I figured out why they weren't accepting it. They went to a new program for 990-N filing in January; they've already had some technological issues with it. Your old EINs for different filers did not come over so that you'd have to put them in again. And so someone said, well, I was able to do it when I hit the right click after putting in the EIN. Then Emmett responds, well, when he tried that, it did not work at all.

So a general error message is showing up. I know other people have said the same thing. This is the one area in which I will contradict Rob. They do not believe that they're having issues with the system since the February 10 update, but they are. So we'll poke at them. This is an arena where we will bring more information back to Rob and Tim, saying, well, look, we have people posting daily.

I also want you to know that we mine the forum for questions and data to bring before the IRS.

So for those of you who are late thinking of questions, go back and check the forum to see if some of these issues have already been raised. It's not perfect, the new organizational system, as to where things go. But I have found from perusing it and going in by the different subject areas, it is interesting.

Now that we have categories assigned, there are several pages; many of them go back quite a ways. Before we had done the characterization and sometimes when we know that there's something that's old that is still valid, we'll just bring it up to post it as a reply. In each of these categories, you're basically saying that you're replying, because you're replying to the fact that we created the category.

Harris: And then also, if you want to find the materials, you go to Events, Program Materials, and here's this wonderful outline of that EO Help Chart that Eve was speaking to earlier today. Anything else on this website that anyone wanted to mention?

Fulton: Can you just also show the TIC-TAQ comments submission? So to the extent that you don't want to post something publicly for the entire membership to see, but you want to raise a question to the TAC-TAQ Committee, you can fill out this question submission and then the email is just privately sent to Eve and myself. They can probably get sent to Preston and Jennifer, Eve, if you don't want to keep seeing those, but this is another way that we receive lots of information from members and we use all of these questions to generate material for upcoming sessions.

Borenstein: Right, and if you mark that you want to be anonymous, we certainly will keep it anonymous. I use the name of someone from the past who had not marked it to be anonymous. It also allows you to upload files if you've got documentation and remember our friends at the IRS, particularly if they're not believing that they're having problems, love to see information, and please feel free to redact the taxpayers name and EIN, if you're sending us anything to prove difficulties that we've been having.

Again, the reason for the TIC-TAQ Forum is for the IRS to be informed of what our problems are. I know it doesn't feel great when we hear that they just don't have the resources to address things. I mean, we heard that several times today and we know that, but at least they're triaging what affects the most taxpayers. With the exception of group ruling issues, which clearly they don't have the bandwidth to try to address before they get the Rev. Proc. out, and the systems are going to take forever, they are receptive to our suggestions of priority needs.

Fulton: Emmett just commented, just as a reminder that we're continuing to update the member forum. He's also going to post instructions about how to use it, the categorization and all of that. So, Emmett, thank you so much for leading the charge on organizing our forum.

Borenstein: Great shout out there. I'm just going back to the open questions. Someone asked about a typo in the effective date on a determination on the EO BMF ruling letter retroactive to wrong date of formation. That's something that has to go back to EO Entity. That's line (5) on the EO Help Chart.

When people are having problems with not getting retroactive reinstatement through Determs

that was processed incorrectly, I would just write to Determs and say they've made a mistake, but you still have to wait in line. When I said write, there's a fax number for Determs. They are eager to correct their internal errors when they have them in Determs, which is a different queue that you're waiting in for than just EO BMF corrections overall.

I think we've addressed the group exemption adjustment. Something I do want to remind you that the text said in the agenda, the fact that subordinates are filing 990-Ns with the central's name does not stop the central from filing their 990 series annual information returns. But it does create a mess in TEOS as to why does TEOS show 990-Ns plus a 990 being filed.

Fulton: There's a question about changing a taxpayer's year end if the 1023 had established the wrong year end. They think it depends on whether the application is still in process or not.

Borenstein: The determination and affirmation letters, or name change acknowledgement letters, are not going to say anything about the fiscal year end.. Here we have another 990-N filer saying the system's down. The list of foreign forms that can be attached in PDF to the 990-T? I missed what Rob or Tim said about the PDF and where it will be published and about what forms they accept.

Harris: They didn't say it'd be published, just the forms. I assume any forms that you would file, you could attach, at least, to the 2022 return. I think one of the things would be hopefully the software providers, they can keep doing the PDFs until they could get the software providers to be able to do this easier. Because there's some software providers like for 926's, there's no massive data upload for a 926 or 8865, where it'd be much easier just to do those in PDF.

Fulton: They're in the 990-T instructions. There's a list of all of the ancillary schedules that you may be required to attach to your 990-T. So I would also refer back to that.

Harris: Again, as a reminder, a number of foreign filings can be filed with a 990. It's just you don't have full assurance that they may be not disclosed. There are certain forms that have to be with a 990-T like a Form 5713 for countries that boycott Israel, and I believe like 3520 for foreign trusts, but the other ones you could pick between the 990 or the 990-T for that filing.

Quesenberry: I know you don't get the same assurance; there's nothing saying it. But I've never been able to check to say when I do file the 990, does that end up on GuideStar? Have you ever been able to check?

Harris: I do check; it doesn't end up on GuideStar. It is in the IRM that it shouldn't be in GuideStar. I wonder if one of their systematic issues for not being able to have all those 2020 filings, those old filings, is possibly the foreign piece? In the paper version you can pull that out. I wonder if there are some public disclosure issues that they're working through?

Fulton: That was interesting to hear that there was a systematic issue.

Quesenberry: I don't know if you saw the latest comment, which I've run into this too. I was happy that they clarified that for 2020 and 2021, when you're doing retroactive reinstatement, that you are supposed to paper file those, even though there is this contradiction. That was a

good confirmation but we just got a comment saying, hey, I just tried that and they were rejected, I was told that I need to e-file.

Borenstein: Well, that's not uncommon. I mean, I like to think of the right hand not knowing what the left hand is doing, but with the IRS, we have all these hands going on, including the systems.

It's way more typical to get rejections and then someone said that they were able to e-file them, and that may be because there was a rejection or paper filing in the system. So then they had to accept it. The other comment about the person who had the paper filings rejected, was a PF filer. I think the system for PFs is just that much more arduous.

A very common question I just want to take, one of the last things that came in, is the organization has the determination letter in hand, but the BMF has no exempt status, so the e-filing is being rejected. Has anyone else seen this? Yes, there is a delay. This is just part of the process here — or lack of processing — the fact that it's been entered as having a ruling doesn't mean that it's in the BMF. And then there's the lag time between when it actually gets to the BMF and then a lag time for when we see it in the BMF.

Because remember, the BMF that was just updated on Valentine's Day. It was a nice heart for those of us who thought it had been updated since November, but it was only since December, we had been waiting. They were late in February, by the way. But in any case, the fact that you're looking at a 2/14 posting doesn't mean that everyone whose determination letter which came out through 2/14 is in there, it means that that's the data date of all the entries they've accomplished. So you may still have January 31 letters that are not in there, you've got to wait until the March EO BMF to see it. But at some point, once it's in there, the e-filing switch should be working.

Harris: According to Tim, it should be working if you pick the right box on the SS-4. That should get you in as well. We've even had them in the BMF, but older ones and it didn't work. They were in there, but I think it was because there was some other trigger that they had to fix.

Quesenberry: I think we got one comment on that. Someone said, I called yesterday regarding a self-declared but the agent said she had never heard about the auto-entry into the system by marking the EIN box. I was interpreting that in saying they marked the right EIN box and then they were trying to and the EO Agent said they didn't know what she was talking about.

Borenstein: Right. I mean, not that we've never seen glitches in coding getting over properly into the system.

Fulton: I want to thank everyone who submitted comments. Hopefully it's helpful. I know that with the IRS we pre-submit those to the IRS and they do try to answer as many as they can. So we've got the June session coming up very quickly. Please continue to submit questions for that.

Eve, I just want to thank you for all of your leadership as co-chair of the committee. You have continued to just move us forward so much. Thank you so much for all of your time and we're

still keeping you around. You aren't going anywhere.

Borenstein: We're all helping the sector here, so I'm really happy to have such wonderful co-chairs in the past and seeing the addition of Jennifer as co-co-chair on the CPA side. And Preston, I think, is going to allow things to continue to evolve in very productive ways.

So thank you, and our audience in particular, and again, a shout out to the IRS folks who are being very patient with us. Having given them a voluminous number of questions the last time, we trimmed them down this time. I thought the pattern here went really well.

Fulton: Okay, that's it. Thanks everyone.

APPENDIX 2

Sandy Deja's Form 14111 Submission with Related Exhibits (provided to TEGE EO Council by Ms. Deja on Feb. 19, 2024)

Deja, Form 1411 SAMS Submission:
Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 1 of 10)

Text of Form 14411 Systemic Advocacy Issue Submission

Sandy Deja - Submitted January 10, 2024

Form 1023-EZ, meant to “streamline” the 501(c)(3) application process, has, instead, harmfully prolonged the process for tens of thousands of small charities. Half of 1023-EZ private foundation classifications appear to be wrong. Many of these applicants actually meet IRS guidelines for public charity status. Misclassifications mean millions of dollars in unnecessary IRS fees, missed funding opportunities, unanticipated paperwork, even loss of exempt status. In addition, misclassifications are a damper on charitable activity and a needless drain on scarce IRS resources.

Form 1023-EZ, introduced in 2014, and its instructions, are to blame. Part IV of Form 1023-EZ, Foundation Classification, is oddly worded and ignores the public charity tests that specifically apply to most 1023-EZ applicants. The more detailed description of the public support tests for new charities in the EZ instructions simply does not appear in any other current IRS guidance. Providing inconsistent guidance is a violation of the taxpayer’s right to be informed.

The obvious solution would be to change the wording of Part IV of Form 1023-EZ and its instructions to make them consistent with tax law and with other similar IRS Forms. A more comprehensive solution would include stepped-up IRS review of Forms 1023-EZ that indicate private foundation status, as well as User Fee adjustments.

Actions Taken: If any of the IRS offices I have contacted about this issue have taken action, I am not aware of it. Although I have also alerted EO tax professionals and non-profits themselves, it is really up to the IRS to fix this.

The 2,000 character limit for Form 14411 means that relevant authorities and guidance, sample language, examples, charts, links and a more complete description of actions taken have been omitted from this submission. **Please** email me at sssandydeja@gmail.com for this background documentation.

Deja, Form 1411 SAMS Submission:
Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 2 of 10)

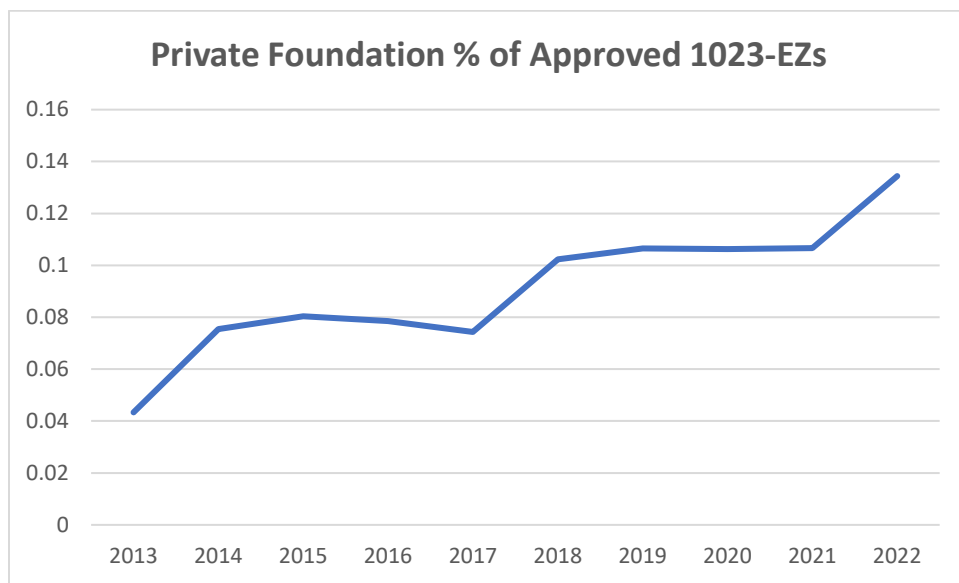
Notes/Background Documentation for Systemic Advocacy Issue Submission

Form 1023-EZ, meant to “streamline” the 501(c)(3) application process, has, instead, harmfully prolonged the process for tens of thousands of small charities.

Charitable, educational, etc. organizations, tax exempt under Section 501(c)(3), are classified as either public charities or private foundations, based on the types of support received. Once an organization has been misclassified as a private foundation, files IRS Form 8940, and pays the \$550 User Fee for reclassification, it can take a year or more before the IRS finally records a correction in their database of charities. Harms to small charities resulting from this delay are described in detail below in *Misclassifications mean millions of dollars...*

Half of 1023-EZ private foundation classifications appear to be wrong.

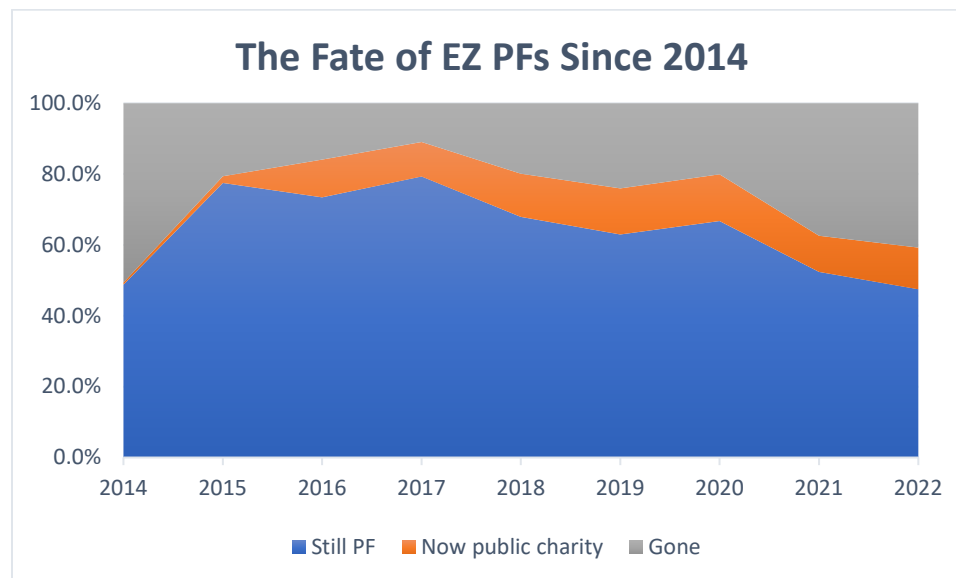
The percentage of newly approved small 501(c)(3)s classified as private foundations immediately jumped in 2014 when Form 1023-EZ was introduced and has steadily increased. In 2013, before Form 1023-EZ, less than 5% of newly approved 501(c)(3) organizations were private foundations. The chart below shows increases since then. (There have not been any significant changes to public charity/private foundation law during this time.)



By the end of 2014, less than a year after the introduction of Form 1023-EZ, misclassified 1023-EZ users were already applying for and receiving reclassification. By the end of 2022, close to 9,000 EZ-origin private foundations (almost 20% of the 9-year total) had applied for and received reclassification, and an additional 30% had disappeared from the IRS database of charities. At the end of 2022, less than half of 1023-EZ applicants initially determined to be private foundations still

Deja, Form 1411 SAMS Submission:
Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 3 of 10)

had that status. In contrast, close to three quarters of applicants determined to be private foundations back in 2013, pre-1023-EZ, still had that status in late 2023.



Many of these applicants actually qualify for public charity status.

Separate Test for New Organizations: Around 90% of 1023-EZ applicants had not completed their first five years before applying. Under current tax law, start-up 501(c)(3)s are entitled to the benefit of the doubt when it comes to the public charity support tests. The Income Tax Regulations set forth a separate test specifically for new organizations: an organization that can **reasonably be expected** to meet a public charity support test by the end of its first 5 tax years will qualify as publicly supported for its first 5 years "...regardless of the level of public support it in fact receives during this period." T.D. 9423, [73 FR 52533](#).

NTEE Categories - Traditional Public Charities: Some types of organizations have historically met the public charity tests. PTAs, for instance, are usually supported by dues and by fundraisers such as book fairs, bake sales and field days - all sources of public support. In 2013, two PTAs were approved as 501(c)(3) private foundations. Since the introduction of Form 1023-EZ, on average more than 80 Parent-Teacher organizations have ended up as private foundations every year. Similar stories could be told for senior centers, youth development organizations, food banks, animal shelters, and no doubt many others. It is very likely that most of these organizations have been misclassified.

Mission Statements: A hallmark of a public charity, according to the Income Tax Regulations, is "continuous and bona fide efforts to raise funds." Since 2018, Form 1023-EZ has asked applicants for a brief Mission Statement. The words "raise funds," "fundraising," "collect funds," "solicit" and similar terms are specifically mentioned in thousands of the mission statements of approved private foundations. These organizations clearly indicated to the IRS that they expect public

Deja, Form 1411 SAMS Submission: Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 4 of 10)

support, but ended up as private foundations anyway. It is very likely that most of these organizations have also been misclassified.

Misclassifications mean millions of dollars in unnecessary IRS fees, missed funding opportunities, unanticipated paperwork, even loss of exempt status, [and] are a damper on charity.

Unnecessary User Fees: There is no publicly available information about the User fee paid by specific Form 8940 filers, but there have been nearly 9,000 successful reclassifications. Using an average User Fee of \$445, small charities have paid at least \$3.5 million to correct Form 1023-EZ foundation classification errors. Based on time estimates in the instructions for the one page paper Form 8940, preparing and filing these forms would have taken more than 100,000 hours. No data is available about Form 8940 denials, if any. Those organizations would also have spent time and money on Form 8940.

Missed funding opportunities: Many private foundation grantors will not make grants to other private foundations because of additional record-keeping requirements. Many public grantors will not make grants to private foundations in order to avoid the appearance of diverting public money to private uses. Many popular on-line fundraising opportunities are not available to charities classified as private foundations.

Unanticipated paperwork: In addition to the hours spent completing Form 8940 to request reclassification, misclassified 1023-EZ users find that instead of the handful of questions on Form 990-N they expected to answer, they are required to file the much more complex 13-page annual Form 990-PF.

Loss of exempt status: By the end of 2022, nearly 19,000 EZ applicants approved as private foundations had lost their 501(c)(3) status. Many no doubt succumbed to automatic revocation for failure to file, but there can be little doubt that limited fundraising opportunities, complex filing requirements, and the costs and delays associated with correcting a misclassification played a large part.

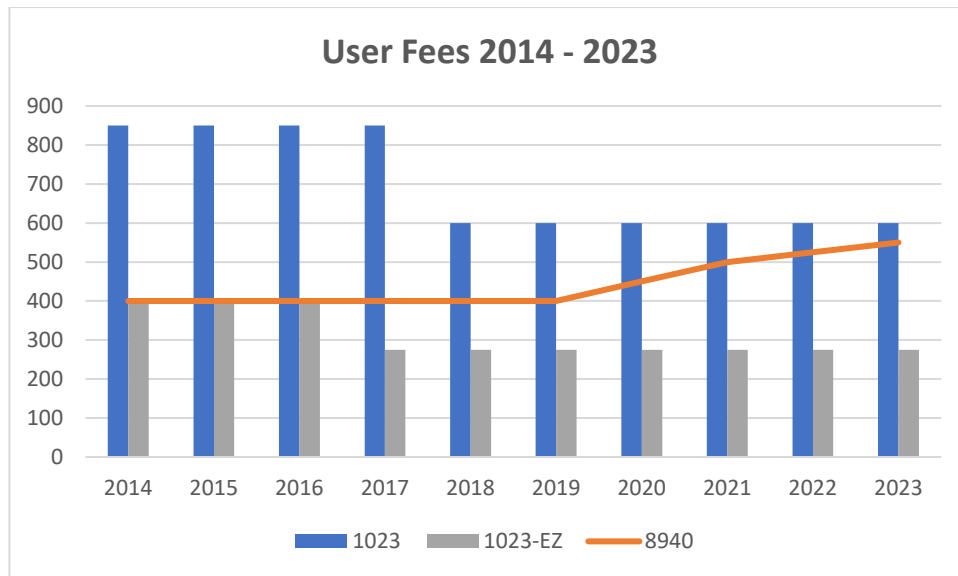
Damper on Charitable Activity: It is impossible to estimate the costs to society of almost twenty thousand non-profit organizations abandoning their efforts to help their communities.

Misclassifications are a needless drain on scarce IRS resources.

There does not seem to be any publicly available information on the cost to the IRS of processing Forms 8940, but there is plenty of indirect evidence suggesting the “burden” created by Form 8940 is increasing.

User Fees: The IRS reviews User Fee charges every two years to ensure rates are adjusted to reflect changes in costs. The User Fee for Form 8940 (orange in the chart below) has increased steadily since 2019, during a time when User Fees for both 1023-EZ (grey) and the long form 1023 (blue) have been decreasing. (**Late breaking news:** the IRS has announced that the User Fee for Form 8940 foundation reclassification will increase to \$600 on July 1, 2024.)

Deja, Form 1411 SAMS Submission:
Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 5 of 10)

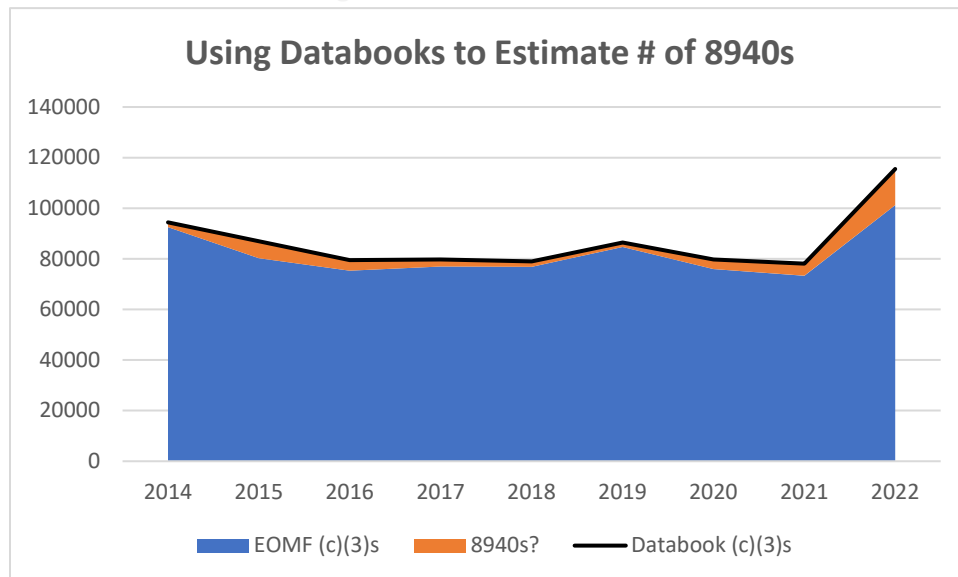


Processing Time: Form 8940 has a lengthy processing time. In figures released by the IRS in November, 2023, the average age of Form 8940 cases was the highest of any determination category, at 113 days. The average processing time for Form 8940 was second highest at 164 days. (Form 8940 is used for a dozen types of miscellaneous determinations. I am under the impression that foundation status reclassifications are the most common.)

Number of Form 8940 Submissions: The IRS has estimated an annual “burden” of 2,100 Forms 8940 in every Paperwork Reduction Act submission since the form was introduced in 2011, but it appears that actual receipts have sometimes far exceeded that number.

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Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 6 of 10)

Chart: Using Databooks to Estimate # of 8940s



There is no publicly available IRS database that directly reports the annual number of Forms 8940. A footnote to Table 12 of the annual IRS Databook, however, suggests Forms 8940 are included in those totals. “These include not only initial applications for tax-exempt status, but also other determinations such as public charity and private foundation status determinations...” The chart above “backs into” an annual estimate of Forms 8940 by comparing Database totals with publicly available Exempt Organization Master File data. The black line at the top edge of the orange area shows the total Databook (c)(3) “approval” closures for each year. The blue area below shows the total number of (c)(3) entities on the Exempt Organizations Master File with “ruling dates” for the same year. The difference between the two (orange) suggests that Form 8940 submissions are increasing, reaching over 10,000 in 2022.

Electronic Form 8940: It is too soon to assess the impact of the early 2023 switch from a one page paper Form 8940 to a 46 page electronic form, but changing Form 8940 is not the answer to the problem described here. As explained below, it is the Form 1023-EZ that needs to change in order to stop this needless drain on IRS resources

Form 1023-EZ, introduced in 2014, and its instructions, are to blame. Part IV of Form 1023-EZ, Foundation Classification, is oddly worded and ignores public charity tests that specifically apply to most 1023-EZ applicants. The more detailed description of the public support tests for new charities in the EZ instructions simply does not agree with other current IRS guidance.

Problems with Part IV: If an applicant checks the box on Form 1023-EZ with the wording below, the organization is classified as a private foundation (Part IV, Question 3):

- Select this box** to attest that your organizing document contains the provisions required by section 508(e) or that your organizing document does not need to include the provisions required by section 508(e) because you rely on the operation of state law in your particular state to meet the

Deja, Form 1411 SAMS Submission:
Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 7 of 10)

requirements of section 508(e). (See the instructions for explanation of the section 508(e) requirements.)

Contrast this with the private foundation question on the 2006 Form 1023, when private foundation classifications were around 5%...

1a Are You a private foundation? If "Yes," go to line 1b. If "No," go to line 5... Yes No

...or with the private foundation question on the now electronic long-Form 1023:

1 Select the foundation classification you are requesting from the list below.
...
...
 You are a private foundation.

Form 1023-EZ, Part IV, Question 3, quoted above, which notably only asks about compliance with Section 508(e), is preceded by a short paragraph concluding that the applicant must be a private foundation because it is not described in one of the Part IV, Question 2 boxes. But Part IV, Question 2 fails to describe the correct public charity tests for around 90% of 1023-EZ applicants: new organizations that have not completed their first five years. There is another off-ramp on the road to private foundation status that is simply never mentioned in Part IV of Form 1023-EZ.

Problems with Instructions: The Form 1023-EZ instructions also ignore this alternate route. New organizations are told to use revenue actually received since formation, together with revenue anticipated for the balance of the organization's first 5 years of existence to complete a seven step 33⅓% computation (nine steps for those seeking 509(a)(2) status). The Regs section [1.170A-9\(f\)\(4\)\(v\)\(A\)](#) "reasonable expectation" test for new organizations is not described at all in the 1023-EZ instructions.

This "project future support and calculate public percentage" procedure is not found in the Regulations. Whether a new organization can reasonably be expected to be publicly supported, according to the Regs, is determined by organizational structure, current or proposed programs or activities, actual or intended methods of operation and other facts and circumstances. **No computations of any kind are mentioned.**

In addition to the Regulations, the IRS provides guidance on the public charity/private foundation tests in [Revenue Ruling 2018-5](#), [Publication 557 - Tax Exempt Status for Your Organization](#), [Publication 4220 - Applying for 501\(c\)\(3\) Tax Exempt Status](#), [Publication 4221-PC - Compliance Guide for 501\(c\)\(3\) Public Charities](#), [Form 990 Schedule A](#) and [instructions](#), and in the long-form 501(c)(3) application and [instructions](#). Not one of these sources of guidance mentions the "project and calculate" procedure.

The original 1023-EZ instructions, issued in 2014, accurately described the public charity tests for new organizations. The "project and calculate" procedure, unsupported by any published IRS guidance, appeared when the instructions for Form 1023-EZ were revised in 2018. Information about provisions in the Regulations that could benefit small charities seeking 501(c)(3) recognition was simply dropped.

Deja, Form 1411 SAMS Submission: Half of 1023-EZ Private Foundation Classifications Are Wrong (p. 8 of 10)

Unsurprisingly, the percentage of private foundation EZ approvals took an upturn at around the same time the revised instructions were issued (see the “Private Foundation % of Approved 1023-EZs” chart above). The User Fee for Form 8940 also began to rise shortly after that (see the “User Fees 2014 – 2023” chart above). Anecdotally, this is about when I began to hear from non-profits that needed help completing Form 8940.

Providing inconsistent guidance is a violation of the taxpayer’s right to be informed.

A tax form that disagrees with all other guidance and fails to mention well established tax law that applies to 90% of the form’s users is seriously flawed. Form 1023-EZ violates the taxpayers’ Right to Be Informed.

The Right to be Informed Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The instructions for Part IV of Form 1023-EZ include this message: “You are solely responsible to check the line on Part IV of Form 1023-EZ that corresponds to your correct foundation classification. We will process your application with the classification you indicate based upon your representations.” If a disclaimer like this makes it OK to keep 1023-EZ applicants in the dark about their legal options, then the taxpayers’ “Right to be Informed” does not mean much

The most obvious solution would be to change the wording of Part IV of Form 1023-EZ and its instructions to make them consistent with the law and other similar IRS Forms.

Suggested Wording for Part IV: Why not have the wording of Form 1023-EZ, Part IV, Foundation Classification, mirror the wording in Form 1023, Part VII, Foundation Classification? An eligibility warning could be added to public charity statuses that are not available to Form 1023-EZ users.

1 Select the foundation classification you are requesting from the list below.

You are described in 509(a)(1) and 170(b)(1)(A)(vi) as an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.

You are described in 509(a)(2) as an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions).

You are described in 509(a)(1) and 170(b)(1)(A)(i) as a church or a convention or association of churches.
Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.

You are described in 509(a)(1) and 170(b)(1)(A)(ii) as a school.

Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.

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- You are described in 509(a)(1) and 170(b)(1)(A)(iii) as a hospital, a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital.
Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.
- You are described in 509(a)(1) and 170(b)(1)(A)(iv) as an organization operated for the benefit of a college or university that is owned or operated by a governmental unit.
- You are described in 509(a)(1) and 170(b)(1)(A)(ix) as an agricultural research organization directly engaged in the continuous active conduct of agricultural research in conjunction with a college or university.
Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.
- You are described in 509(a)(3) as an organization supporting either one or more organizations described in 509(a)(1) or 509(a) (2) or a publicly supported section 501(c)(4), (5), or (6) organization.
Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.
- You are described in 509(a)(4) as an organization organized and operated exclusively for testing for public safety. **Stop. Do not file Form 1023-EZ. See the Eligibility List in the Instructions.**
- You are a publicly supported organization and would like the IRS to decide your correct classification.*
- You are a private foundation.

* The long form 1023 offers applicants an opportunity to have the IRS decide an organization's foundation status. This may not be appropriate for a "streamlined" application form.

This change in Part IV would add a couple of inches to the text in Form 1023-EZ. There is currently more than twice that amount of blank space on the third page of the form.

Suggested Wording for Instructions: Why not simply add back the instructions for new organizations that were already included in the 2014 and 2017 instructions but deleted in 2018? Of course, the sections of the current instructions that tell new organizations to make a calculation based on "revenues you have actually received since your formation as well as revenues you anticipate," should be removed.

Stepped Up IRS Review: A quick IRS review of Forms 1023-EZ that have checked Question 3 of Part IV, though undoubtedly helpful, might also be at odds with the "streamlined" intent of Form 1023-EZ. IRS management must decide whether employee time and IRS resources are better spent on processing Forms 8940 or on issuing correct determinations in the first place by identifying and following up with EZ applicants that have checked the "private foundation" box, but whose NTEE codes or mission statements point to public charity status.

User Fee Adjustments: An additional idea for dealing with these misclassifications would be to lower the User Fee for reclassification (Schedule G of Form 8940). The current fee of \$550 – twice the 1023-EZ User Fee – is a steep price to pay for mistakenly checking a poorly explained box on Form 1023-EZ. Different Form 8940 miscellaneous determinations already have different User Fees.

Actions taken:

Commented on Part IV of Form 1023-EZ when a draft was released in early 2014. Commented again in November of 2022, in response to an IRS request for public comments on Form 1023-EZ. Explained in detail why I thought Part IV of Form 1023-EZ should be changed. Also included comments about Part IV of Form 1023-EZ as part of a more general discussion of Form 1023-EZ in

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mid-2021 with the office of the Treasury Inspector General for Tax Administration (by email and teleconference). If any action was ever taken in response to these contacts, I am unaware of it.

Reached out to Exempt Organizations tax professionals through letters and comments to a specialized journal for EO practitioners and submitted a Form 1023-EZ, Part IV question to the TEGE Exempt Organizations Council for an IRS Q & A session scheduled for their June, 2023, meeting.

Added free detailed instructions for completing Form 8940 to my website. Corresponded with hundreds of non-profits who have found themselves in the exact predicament described here. (A few of these people believe Pay.gov changed their Form 1023-EZ, Part IV answers after they left the page. Some others wondered whether this happened because the IRS needs the additional Form 8940 User Fees to make up for years of underfunding.)

I asked my Representative to add wording to an appropriations bill that would require greater IRS review of 1023-EZ applicants that “claimed” private foundation status.

I am a mostly-retired tax consultant specializing in Form 1023. I was an IRS Exempt Organizations Specialist from 1973 to 1986.

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APPENDIX 3

Transcript of November 17, 2023 Exempt Organizations Update Program Reprinted
Verbatim From Exempt Organizations Tax Journal.

Pages 10 and 11 provide colloquy between EO Division Director Rob Malone and the panel's moderators as to issues with pay.gov and his noting that implementation of corrections are outside of his jurisdiction.

**Transcript of November 17, 2023 Exempt Organizations Update Program Reprinted Verbatim
From Exempt Organizations Tax Journal**

What follows is a transcript of the November 17, 2023 session titled “IRS Exempt Organization Update and Q&A” that was part of the annual program of the TEGE Exempt Organizations Council. The speakers were Robert Malone, Director of Exempt Organizations and Government Entities, and John Montague, the Acting Senior Technical Advisor. The moderators were Preston Quesenberry, KPMG, Anne Fulton, Deloitte and Jennifer Becker Harris, Clark Nuber.

Quesenberry: I am joined here today by my co-moderators, Anne Fulton and Jennifer Becker Harris, and we’re also joined by Robert Malone from the IRS Commissioner’s side of the TE/GE Division. He is the Director of Exempt Organizations and Government Entities.

What we have today is the usual panel where we have collected all the excellent questions that TEGE EO Council members have submitted through our Member Forum. We have shared those with Robert Malone to give him time to consider these questions that have come up and you have all the questions in your materials.

We’re going to just go over a number of those with Rob during the panel, but before doing that, we’re going to turn it over to Rob who’s going to give us a lowdown on what’s going on in his shop.

Malone: Thank you, Preston. I plan to briefly touch on several topics that I trust you’ll find helpful and timely. Then afterwards, we’ll transition to our Q&A session. So let me get started with my opening remarks.

We’re pleased to announce that the FY 2024 TE/GE Program Letter is now available. Each year we share the letter summarizing our priorities for the next twelve months. The Program Letter is designed to inform our customers of TE/GE’s priorities for the new fiscal year and how they align with our mission. If you haven’t had a chance to read this letter, I encourage you to do so. The full letter is posted on [irs.gov](https://www.irs.gov). I’ll cover just a few of the highlights.

In FY 2024 TE/GE will view compliance through a service-wide lens that fully supports the IRS Strategic Operating Plan and the agency’s transformation. Our FY 2024 program and priorities align with the IRS Strategic Operating Plan for FY 2023 through 2031 in its five transformation objectives, with those objectives being better taxpayer experience, issue resolution, enforcement, modernization, and workforce.

Our first priority is to provide a better taxpayer experience so we’ll seek to dramatically improve service to help taxpayers meet their tax obligations and to receive tax incentives for which they’re eligible. For example, we’ll provide education and outreach to help our stakeholders with the new elective payment elections for clean energy credits that are now available under the Inflation Reduction Act. I’ll be speaking more on that in a few minutes. Taxpayers will be able to

get service quickly and through the channel of their choice, including digital and non-digital options. Taxpayers will have options to interact digitally, and will have self-service tools to file forms and returns, track statuses of IRS actions, make payments seamlessly, and communicate with the IRS, and more.

Our second priority in FY 2024 is to resolve issues faster. This objective is about making it quicker and easier for taxpayers to resolve issues related to satisfying their tax obligations, whether in filing correct and timely returns or resolving any balance due situations. We'll do this by supporting IRS efforts to proactively review and address employee retention credit claims and by collaborating across the IRS to streamline notices and improve how notices are issued to taxpayers. We will also encourage two-way electronic communication between us and taxpayers regarding notices.

Smarter enforcement is TE/GE's third priority for FY 2024. To support this priority we'll have an expanded focus on high-dollar noncompliance and on taxpayers with complex tax filings. In doing this, our goal is to address the tax gap. We'll also continue to collaborate across IRS on highly complex or emerging issues like ESOPs, tax-exempt hospitals, and high-wealth individuals.

TE/GE's fourth priority is advanced technology and analytics. We'll focus on delivering cutting-edge technology, data, and analytics to operate more effectively. For example, we'll complete and launch the electronic Form 13909, Tax-Exempt Complaint — the referral form — which will allow taxpayers to submit a referral from any electronic device.

We'll also continue to work with Research, Applied Analytics and Statistics to develop an artificial intelligence capability to review and prioritize those referrals as we will continue to support the effort to standardize service-wide examination processes using Enterprise Case Management.

TE/GE's fifth priority for this fiscal year is to empower employees. We'll build community relationships by expanding our outreach efforts to market TE/GE and IRS careers and increase our visibility. We'll commit resources to develop and deliver quality mission-critical core training. We will create detailed career training paths for employees to use as a tool for them to reference as career milestones occur. We will create training workshops and mentoring seminars with a focus on developing the skills of our TE/GE frontline managers.

I'd like to switch gears and give some updates on our accomplishments so far, resulting from the Inflation Reduction Act funding. We've made a wide range of improvements across the agency following the Inflation Reduction Act being signed into law. In just over a year, we've made significant progress improving the taxpayer's experience, including delivering improved services in filing season 2023 in many areas, including on our phones, in-person assistance, tax processing, and online tools. We have expanded the availability of a customer callback option to cover up to 95 percent of taxpayers seeking live assistance and added 73 toll-free applications, bringing the total number of applications with an option for customer callback to 116 taxpayer-facing applications.

We have launched new voice and chatbots to help taxpayers with a wide range of issues since

January 2022. Voice and chatbots in English and Spanish helped more than 13 million taxpayers avoid wait times by resolving their tax issues, including setting up roughly 151 million in payment arrangements, answering 3 million more calls and cutting phone times from 28 minutes to only 3 minutes during filing season, reopening 35 Taxpayer Assistance Centers, and offering Community Assistance Visits in underserved areas.

Thanks to the Inflation Reduction Act resources, taxpayers are now able to respond to more notices online. The IRS has made significant progress adopting new technology that automates the scanning of millions of paper returns. As the next phase of our modernization, we're accelerating paperless processing efforts. Using IRA resources, we're launching an ambitious plan to ensure that by filing season 2024, taxpayers will be able to go paperless if they choose to do so.

By filing season 2025, the IRS will achieve paperless processing, digitalizing all paper-filed returns when received. In effect, this means all paper will be converted into digital form as soon as it arrives at the IRS. Now for the 2024 filing season, taxpayers will be able to digitally submit all correspondence, non-tax forms, and responses to notices. As a result, the IRS estimates more than 94 percent of individual taxpayers will no longer need to send mail to the IRS.

Taxpayers will be able to e-file 20 additional tax forms. Achieving this milestone will enable up to 4 million additional tax documents to be filed digitally every year. This includes amendments to Forms 940 and 941, for example, which are some of the most common forms taxpayers file when amending returns.

By filing season 2025, an additional 150 of the most used non-tax forms will be available for digital, mobile-friendly formats. An estimated 15 percent of Americans rely solely on mobile phones for their internet access; they do not have broadband at home, and making forms available in mobile-friendly formats is key to serving these taxpayers. Up to 1 billion historical documents will be digitized, improving customer service, giving taxpayers access to their data, and ultimately saving IRS approximately \$40 million in annual storage costs.

Digitization has far-reaching implications for improving IRS service. Digitizing paper returns will eliminate errors that result from manual inputting data from paper returns, which will speed up processing, reduce storage costs, and allow the IRS to focus more resources on customer service. Once paper returns are digitized, extracting the data will enable IRS Customer Service employees to more quickly and accurately answer taxpayer questions and resolve issues. Customer Service employees do not currently have easy access to the information from paper returns and other correspondence submitted by mail, so digitization and data extraction will give access to that information they need to better serve taxpayers.

When combined with an improved data platform, digitization and data extraction will enable data scientists to implement advanced analytics and pattern recognition methods to pursue cases that can help address the tax gap, including wealthy individuals and large corporations using complex structures to evade taxes they owe.

With that, I'll talk a little about our online improvements, things that we've been working on. Since everyone is familiar with TEOS, I wanted to cover the TEOS improvements and to update

you briefly on the TEOS Modernization Project.

Stakeholders have given feedback and we're actively addressing some of the requested items. The TEOS Modernization Project team is currently focused on implementing seven improvements derived from the valuable stakeholder feedback. These enhancements involve providing essential descriptive information — such as a dataset guide, data dictionary, indices, annotated tax forms, schemas, FAQs, and regular updates — all aimed at enhancing public usability. The goal is to publish these improvement documents on TEOS' improvements webpage sometime this year.

Next I would like to turn to clean energy tax credits and elective payment elections. I know folks from Counsel were talking a little about the ERC, and they may have covered some of this as well, but I want to cover this as it's an important topic. I'll just discuss for a few minutes items in regard to elective payment elections of certain clean energy tax credits under the Inflation Reduction Act. Tax-exempt and government entities, including those that were generally unable to use tax credits previously, can now benefit from clean energy tax credits using new options enabled by the Inflation Reduction Act.

Elective pay makes certain clean energy tax credits effectively refundable with elective pay. For tax years beginning after December 31, 2022, an applicable entity that qualifies for an applicable clean energy tax credit can choose to make an elective payment election, which will treat certain credits as a payment against their federal income tax liability rather than as a nonrefundable credit. This payment will first offset any tax liability of the entity and any excess will be refundable.

For example, as a result of the Inflation Reduction Act, a local government that makes a clean energy investment that qualifies for the investment tax credit can file an annual tax return — which will be the 990-T for them — with the IRS to claim elective pay for the full value of the investment tax credit as long as it meets all of the requirements, including pre-filing registration requirements. Now as a local government would not owe other federal income tax, the IRS would then make a refund payment in the amount of the credit to the local government.

Here's an important point. Organizations that believe they qualify to make elective payment elections for clean energy tax credits should not wait until their return is due to take action. Eligible taxpayers must complete an electronic pre-filing registration process in advance. This process will help prevent fraud and ensure that those who are eligible can benefit from the clean energy tax credits available under the law.

A pre-filing registration portal for elective payments will open later this year. In order to complete the pre-filing registration process, each applicable entity must have its own Employer Identification Number or Taxpayer Identification Number. Applicable entities cannot use or borrow the EIN of a related entity. To complete the pre-filing registration process, you will need to list all applicable credits you intend to claim on your income tax return or Form 990-T, and each applicable credit property that contributed, or will contribute, to the determination of such credits. Additionally, you'll need to provide other specific information that is required, such as information about each applicable credit property.

After you complete the pre-filing registration process, the IRS will review the information provided and will issue a separate registration number for each applicable credit property for which the applicable entity provided sufficient, verifiable information. A registration number does not confirm credit eligibility.

Pre-filing registration provides the IRS with information that helps ensure the prompt processing of the election and payment after the tax return is filed. You must establish eligibility for the credit on Form 990-T before payment will occur. In addition, you must substantiate your eligibility for the credit if selected for an IRS audit.

The elective payment election is made on your annual tax return along with any forms required to claim the relevant tax credit: the source credit forms; a completed Form 3800, General Business Credit, or its successor; and any additional information, including supporting calculations required in the instructions to the relevant forms.

Entities not ordinarily required to file tax returns must file a return to make the elective payment election. Such an entity must file the return they would be required to file if they did have such a requirement, such as for an individual or business or the Form 990-T, Exempt Organizations Business Income Tax Return if no such return is required, such as for government entities, including any tribal governments, along with properly completed source credit forms, a properly completed Form 3800, and any required return attachments and information required in instructions to the relevant forms.

In general, payments occur after the tax return is processed, assuming the requirements are met. Under the statute, the taxpayer is not entitled to the elective payments until the due date of the return, even if the taxpayer files the return before that date.

To determine your tax year, check the instructions for the annual tax return you're filing. For example, for tax-exempt entities filing Form 990-T, the return must be filed using the organization's established annual accounting period. If the organization has no established accounting period, file the return on the calendar-year basis. Electronic return filing is strongly encouraged.

Elective pay is only available after an applicable credit is earned and able to be claimed on relevant annual tax returns. In general, a tax credit is earned during the taxable year the applicable credit property is placed in service or eligible production occurs. An applicable entity can use elective pay with respect to tax credits under twelve different Code sections, provided it meets the tax credit's underlying requirements.

For more information on elective pay, the IRS has posted FAQs, so there are frequently-asked questions on [irs.gov](https://www.irs.gov) that provide an overview and discuss eligibility, applicable credits, steps for making an election, and other rules. There's also helpful information on [cleanenergy.gov](https://www.cleanenergy.gov). Additionally, the IRS has posted numerous concise publications with key information about elective pay specifically for various types of applicable entities.

As I've said in other speeches, if you start with Publication 5817, 5817-A, -B, -C, -D, -E, -F, and -G all relate to the clean energy credits and give an elective payment overview. So there's

plenty of information there that you can find on [irs.gov](https://www.irs.gov). I'm encouraging everyone to take a really good look and make sure that you're doing everything you need to do, including the pre-filing registration and all of the timely filing, so you need to pay close attention.

I'd like to give you an update on employee retention credits. As I'm sure many of you know, the IRS recently shared new steps the agency is taking to prevent honest taxpayers from falling victim to employee retention credit scams. Last month the IRS announced the details of a special withdrawal process to help those who filed an ERC claim and are concerned about its accuracy.

But before I discuss the withdrawal process, I'd like to remind you we also announced a moratorium on processing new ERC clients through at least the year's end to prevent further abuse from predatory promoters using the ERC to scam businesses and organizations.

The IRS understands the valuable impact of the ERC credit and is working to process valid ERC claims filed before the moratorium, but with increased scrutiny. We're also working on guidance to help employers that were misled into claiming ERCs and have already received the payment. We're still working through the details and will give more information at a later date. We'll continue to partner with tax professionals to help taxpayers get reputable services and help.

Let's talk more about the withdrawal process. As I stated earlier, the IRS announced the new withdrawal process that allows businesses and others that filed an ERC claim to withdraw their submission to avoid future repayment, interest and penalties. The withdrawal option can be used by taxpayers whose claim hasn't yet been paid or by taxpayers who haven't cashed or deposited the refund check. It will allow taxpayers — many of them honest employers who were misled by promoters — to avoid possible repayment issues and paying contingency fees to promoters.

Who can withdraw the ERC claims? Employers can use the ERC claim withdrawal process if all of the following apply. They made the claim on an adjusted employment tax return — that's, for example, a 941-X, 43-X, 44-X, or CT-1-X; they filed the adjusted return only to claim the ERC; they made no other adjustments; they want to withdraw the entire amount of their ERC claim; and the IRS has not paid their claim or the IRS has paid the claim but they haven't cashed or deposited the refund check. Taxpayers who can use the withdrawal process can reduce or eliminate their ERC claim by filing an amended return. There'll be more information about this in our FAQs.

Just how do you request withdrawal? The withdrawal process will vary depending on the taxpayer's situation, whether they cashed or deposited the payment, whether they're under audit, or if they use a professional payroll company. Taxpayers who filed their ERC claims themselves, haven't received, cashed, or deposited the refund check, and have not been notified their claim is under audit should fax withdrawal requests to the IRS.

The IRS has set up a special fax line to receive withdrawal requests. This enables the agency to stop processing before the refund is approved. Taxpayers who are unable to fax their withdrawal can mail their request, but this will take longer for the IRS to receive. Detailed steps on how to withdraw the claim, submitting the form, and how to notate are available in the News

Release Fact Sheet and will be available on irs.gov/withdrawmyerc.

Employers who have been notified they're under audit should send the withdrawal request to the assigned examiner or respond to the audit notice if no examiner has been assigned. Those taxpayers that received a refund check, but haven't cashed or deposited it, can still withdraw their claim. They should mail the void check with their withdrawal request using the instructions in the release and available on irs.gov/withdrawmyerc. For taxpayers whose professional payroll company filed their ERC claim, they should consult with the payroll company. The payroll company may need to submit the withdrawal request for the taxpayer, depending on whether the ERC claim was filed individually or batched with others.

What happens after you've requested a withdrawal? The IRS will send the taxpayer a letter telling them whether their withdrawal request was accepted or rejected. The approved request is not effective until they receive an acceptance letter from the IRS. One note of caution: If the withdrawal is accepted, taxpayers may need to amend their income tax return. We held a webinar regarding recent ERC developments on November 2. The recording is available at irsvideos.gov. We'll continue to update products and the website as information is made available.

One thing I want to make sure I've mentioned — as I move to a new subject — is the electronic signature and encrypted emails. I'm happy to announce the IRS has extended acceptance of digital signatures until more robust technical solutions are deployed. The option to use encrypted email when working directly with IRS personnel has been extended until October 31, 2025. As a result, Internal Revenue Manual 10.10.1 was updated to allow the acceptance of alternatives to handwritten signatures for certain tax forms, and the ability to accept images of signatures and digital signatures in compliance with interactions. A listing of allowable signature options can be found in IRM Exhibit 10.10.1-2 on irs.gov.

In addition, Interim Guidance Memorandum PGLD-10-1023-0002 provides for the receipt and transmission of documents through October 31, 2025, using email with encryption when working person-to-person with IRS personnel to address compliance or resolve issues in ongoing or follow-up authenticated interactions. This guidance remains in effect until the IRS fully implements long-term solutions for secure electronic communication channels for taxpayers as alternatives to encrypted email.

As I end, I wanted to let everyone know of a recent change in leadership. Steve Chamberlin was selected as Director of Government Entities in September. Prior to that, Steve served as a Senior Manager in various TE/GE and SB/SE programs, including Exempt Organizations (Examinations), Tax-Exempt Bonds, Employee Plans Ruling Agreements, and Bank Secrecy Act Examinations. Steve holds both a Master's degree in Public Policy and Management and a Juris Doctorate degree from the University of Oregon, as well as a Bachelor of Arts degree in business leadership from the University of Puget Sound. Steve joined the IRS in 2000, through the Presidential Management Fellows Program, and I'm confident Steve will do well in this new position. With that, let's turn to questions.

Quesenberry: Now we will move to the questions we presented to Rob Malone and the IRS.

Topic #1: Business Master File Data Issues and Responsible Party Information

Practitioner Observations: Corruption errors in EOBFM extract are still frequently popping up, especially for group rulings. Specifically, the central organization's EIN often shows that of a subordinate entity and vice versa. We have also seen an increase in the number of subordinate organizations with an incorrect deductibility code.

Quesenberry: We have been getting over the last couple of months practitioner observations that corruption errors in the Exempt Organization BMF Extract are still frequently popping up. That essentially means if you go to the BMF Extract and look at the various columns, there is different information that will appear for unknown reasons. We've seen this especially with group rulings.

As an example, a central organization's EIN will often show a subordinate entity's EIN or vice versa. You might see the central organization's EIN in the subordinate entity column. Practitioners are also reporting an increase in the number of supporting organizations with an incorrect deductibility code.

Malone: We have looked into it. We always appreciate your observations very much. All of you provide us with a lot of information, things that we don't know, that come up because you're out there practicing, doing a lot of different work and run into different things that we don't see every day. We very much appreciate the comments and letting us know things like this.

I've looked into this concern and we've given internal feedback in an effort to assure that in the future when a subordinate is added, the deductibility code is entered. I want to make sure everyone knows if there is a deductibility code or similar issue, you can direct questions right away to the Entity Unit in Ogden, and you can fax it to them. I assume everyone has the fax number, but I'll give it very quickly, and that's 855-214-7520. Again, I very much appreciate all the feedback we get from you.

Quesenberry: Thanks, Rob, and thanks also to our members, who give us this feedback through the Member Forum. That's where we get a lot of our observations.

Practitioner Observations: When applying for an EIN using Form SS-4 for a Single Member Limited Liability Company (SMLLC), the form mandates the identification of a responsible person. Exempt organizations can no longer be named for this purpose, necessitating the need to name an individual instead. However, when an individual is named, many practitioners find that the IRS records will then have the single member of the LLC (or its sole owner) recorded as the responsible person provided on the Form SS-4, rather than the exempt organization who is the single member or owner of the LLC. Is there a way to prevent this from occurring?

Quesenberry: Moving to the next question, when applying for an EIN using the Form SS-4 for a Single Member Limited Liability Company, the form mandates that you identify the responsible

person, but an exempt organization can no longer be named for that purpose, so that necessitates the need to name an individual instead.

But when an individual is named on that SS-4, practitioners are finding that the IRS records -- and by IRS records, I believe that's not the EO BMF Extract; instead, I think it's records related to the SS-4 -- will then have that individual recorded as the LLC's responsible person, rather than the exempt organization, which is really the single member or owner of the LLC.

I know that because this isn't an EO BMF issue this may not fall under your jurisdiction, but do you have any recommendations either how to prevent this from occurring or who people can contact related to that?

Malone: It's interesting to hear that. With all the forms that we have within the IRS, they're not all owned, for example, by TE/GE. You know the Form 990 is ours. But other forms, like the SS-4, we don't "own" the SS-4. W&I actually is the organization that owns that so we'll pass this information on to them to address.

The best way to address issues concerning the SS-4 is to direct them straight to W&I with your comments. You can go on irs.gov at irs.gov/formcomments and state the form you're commenting about and put in what's going on, what the concerns are, hit send, and then that's routed to the correct party to make sure that they know what's happening.

But I always want to make sure I provide good customer service. Whether we own a form or not, we do what we can to make sure that things are running smoothly and everything's getting taken care of. So again, we appreciate the comments on this.

Topic #2: IRS Forms, E-filing and [ID.gov](https://id.me) Matters

Practitioner Observations: Effective September 16, 2023, all users who already had a [Pay.gov](https://pay.gov) account had to begin using [ID.me](https://id.me) or [Login.gov](https://login.gov). [Pay.gov](https://pay.gov) usernames and passwords were no longer valid. Practitioners have expressed the following concerns with [ID.me](https://id.me) accounts:

- (1) The IRS prohibits sharing these credentials, even with one's spouse.
- (2) Each person's [ID.me](https://id.me) account provides access to that person's personal tax records. Therefore, it is not useful in a professional capacity.
- (3) Whoever uses their [ID.me](https://id.me) account to enter the client's form information (e.g., Form 1023, 1024, 8940, etc.) and pay the application fee will personally have access to that information in perpetuity (or at least until the IRS deletes it).
- (4) No one other than the person whose [ID.me](https://id.me) account was used will have access to the information, so no one else can go in and make edits in the preparation process.

Will the [Login.gov](https://login.gov) account have the same restrictions/issues, or is it more geared at professionals using a shared account? To the extent EO practitioners are finding authentication

issues arising with [Login.gov](#) is there another office we can provide feedback to?

To make the application more user-friendly for practitioners, some have started utilizing security keys, like YubiKey, to mitigate technical difficulties. Firms often establish a single [Login.gov](#) account and have distributed security keys to a select number of individuals.

Quesenberry: Many of our practitioners are increasingly using the [Pay.gov](#) platform. It started with 1023-EZ, and now it's 1023, 1024, 1024-A, and 8940. Increasingly, they're going on to [Pay.gov](#) to complete various forms and it used to be that you would have your own [Pay.gov](#) username and password, but effective September 16, 2023, you can no longer use the [Pay.gov](#) username and password and you needed to begin using either the [ID.me](#) username and password or the [Login.gov](#) username and password.

Practitioners have been expressing concerns with the [ID.me](#) accounts when it comes to filling out these forms. One concern is that the IRS prohibits sharing any of those credentials. Also, each person's [ID.me](#) account provides access to that person's personal tax records so it's not really useful in a professional capacity.

Whoever uses their [ID.me](#) account to enter client form information and pay the application fee will personally have access to that information in perpetuity. No one other than the person whose [ID.me](#) account was used will have access to the information so no one else could go in and make edits. Those are problems with the use of [ID.me](#).

It seems that [Login.gov](#) is slightly more user-friendly in a professional capacity in terms of what our practitioners are reporting. We do have some practitioners saying that they will set up a [Login.gov](#) account, and then utilize certain security keys so that a number of individuals within a firm, for example, can potentially use that [Login.gov](#) account to access a form.

We welcome any thoughts or comments you have on [Login.gov](#) versus [ID.me](#) and also any thoughts you have if EO practitioners are finding authentication issues arising with [Login.gov](#). Is there another office that they should go to to provide feedback, comments, etc?

Malone: Well, we're sort of having a theme. Some of the items, like I said, we own in TE/GE and some we don't. [Pay.gov](#) is actually one of those we don't own. [Pay.gov](#) is part of Treasury and Treasury owns that. It allows users to authenticate using either [ID.me](#) or [Login.gov](#), just like you said. What I would really say is there's information on [Pay.gov](#) with regard to sign-in options and support can be found on the [Pay.gov](#) website. So you can take a look there; I understand there is some information there related to support.

The IRS utilizes [Pay.gov](#) for submissions of certain forms and fees, but we don't control the security standards. They have to make sure that they meet the correct security standards. It's always sort of finding that balance between where it's good customer service and you have sufficient security.

None of us want information getting out that shouldn't be out in the public. No one wants their personal information shared, whether it be an individual or an entity. So we appreciate this

concern and we'll pass it on to [Pay.gov](#). I really encourage you to take a good look at [Pay.gov](#) and read through there with regard to support. But again, we'll pass this on to [Pay.gov](#).

Practitioner Observations: We've noticed a few aspects of the [Pay.gov](#) platform that could be improved:

- All applications, whether filed or in draft, are only identifiable by the [Pay.gov](#) tracking number. The only way to discern which client an application is for is by opening it or viewing the PDF. It would be helpful if the display screen could include some additional identifying information, such as the EIN or the initial letter of the entity's name.
 - When a form's coding is updated, drafts can potentially be lost. We do appreciate the prior draft is viewable so it can be recreated if needed
-

Quesenberry: While we're on [Pay.gov](#), we've also gotten a few comments from practitioners noting some aspects for improvement. One is all the applications, whether they're filed or in draft, if you go to try to identify them, they're all identified by the [Pay.gov](#) tracking number. The only way to be able to tell which client an application is for is by opening it or viewing the PDF. It would be helpful if the display screen could include some additional identifying information such as the EIN or the initial letter of the entry's name or something other than just that tracking number.

That was comment number one, and then comment number two was when a form's coding is updated, drafts can potentially be lost. I think practitioners appreciate a prior draft is viewable, but you still need to re-enter all the information from the draft that you view. Do you have any observations or comments?

Malone: I would say again we appreciate the comments and we will take them to [Pay.gov](#) so when they are making adjustments or updating they will have the comments and know what we're hearing from the community. We will make sure that these comments get these to [Pay.gov](#) to help them see what practitioners face. I understand that it's helpful if you have access to everything and what you're saying about having to re-enter all of it, so we will pass all the comments on the [Pay.gov](#).

I know, Preston, that's not always an answer that everyone wants to hear. We all want the instant answer of how do I resolve this? What do I do? But sometimes it is just a point of we get it and we pass on the comments to see what can be done there. So again, much appreciated.

Quesenberry: As I said, a number of these things don't fall under your jurisdiction, but we really appreciate you being willing to act as a conduit. The next item is on name changes.

Practitioner Observations: We have heard from more than a few practitioners that when they attempt to e-file an extension for an organization that has changed its name on a prior, e-filed Form 990 (following all the required procedures), the form has been rejected because the IRS

had not yet updated the new name. These practitioners have been advised to send their name change information (approved copy of amended articles, etc.) to the EO Correspondence Unit.

The IRS website also seems to recognize that organizations that have changed their name may be unable to e-file because of "a limitation of the e-file system." See Exempt Organizations e-file — Name Change | Internal Revenue Service ([irs.gov](https://www.irs.gov)) That webpage (as last reviewed/updated in March 2023) appears to instruct such taxpayers to file a paper return and include the required supporting material for a change of name with that return. It states that the taxpayer will receive a notice from the IRS that has been automatically generated asking the organization to e-file but notes that the taxpayer need not respond to this Notice because it will be closed out and the taxpayer will receive a closing letter.

We are not aware of any paper-filed returns submitted in this way that have incurred this treatment; rather, the paper-filing has been returned with an instruction that directs the taxpayer to e-file. [The webpage also notes that taxpayers that have previously reported a change of name may wish to confirm with Customer Account Services that the IRS has updated the organization's name in its records before attempting to e-file.]

Can you advise what are the appropriate procedures to avoid such e-filing issues following a Form 990-reported name change? Also, are there plans to fix the "limitation of the e-file system" relating to name changes? And, finally, can you review and confirm that the guidance on the cited webpage is still correct?

Quesenberry: Next is another name change item, which comes up from time to time. We've heard from a number of practitioners that when they attempt to e-file an extension for an organization that has changed its name on a prior e-filed Form 990, having followed all the required procedures, the form is rejected because the IRS hasn't yet updated the new name. Then they're advised to send their name change information to the EO Correspondence Unit.

The IRS website actually seems to recognize that organizations that have changed their name may be unable to e-file. There's a link in the materials to a webpage that says because of limitations to the e-file system, you may run into problems, and the instruction appears to be that for taxpayers that run into that problem, they should paper file their return, include the required supporting material for a change of name with the return.

It also states the taxpayer will then receive an automatically generated notice from the IRS asking the organization to e-file, but says the taxpayer doesn't need to respond to the notice and it will be closed out and the taxpayer will receive a closing letter. But at least what practitioners are reporting to us is that when they actually do follow that instruction and paper file the returns, the paper filing is returned with an instruction to e-file, so it doesn't seem to be working, according to them. But our question for you is, is that instruction on the webpage, is that still the right instruction? Is there anything else you'd suggest when it comes to name changes and e-filing?

Malone: Before submitting an extension or return with a new name, an organization should check the EO Business Master File Extract to confirm that the IRS has updated the name it has

on file. If the name has not been updated, the organization can change the Name Control field in their software to match the name in the EO BMF Extract. So if an organization has requested a name change, it can follow up with IRS Customer Account Services.

With regard to the information on the webpage suggesting that a paper return may be filed, that's outdated information and we have requested that an update of the guidance be done on the webpage. This is just another example of my appreciation for letting us know that this is out there so we can get that updated.

Quesenberry: Thank you. Now I'll turn it over to Anne for more questions.

Fulton: I'm going to go through item (d) on our agenda for those of you that are following along.

(d) Annually, the IRS Modernized e-file (MeF) shuts down for maintenance. Thus, Forms 990 and other business returns cannot be electronically submitted during that timeframe. It is our understanding that if the return is e-filed it will be held and transmitted once the IRS re-opens e-filing. Query: Does the IRS accept a paper copy in the event the re-opening does not take place in time for the January 15th deadline?

Fulton: We've discussed this in the past but for those of you that aren't aware, the IRS Modernized e-File System has to shut down for maintenance every year. That is our understanding. So there is a period of time, I believe typically it's the December/January timeframe when the Form 990 and other business returns cannot be electronically submitted during that timeframe. But it is our understanding that if the return is transmitted for e-filing during that time it will be held and received by the IRS once the e-file platform opens.

We've gotten a couple of questions from practitioners that are filing for tax-exempt organizations that have a fiscal year-end that would require a January 15 due date. Their question is, does the IRS accept a paper copy in the event that the e-file system is not reopened by January 15? I assume I know the answer but I'll let you respond to confirm.

Malone: What I would say is the Form 990 series returns must be submitted electronically and paper returns, as I've heard, have been sent back. The IRS systems do normally stop receiving returns on December 26 but reopen prior to the January 15 due date. If there were an issue, we'd address it at that time. We'd come out with what to do. We would do that in some sort of guidance to make sure that taxpayers and practitioners know what they can do.

Fulton: My practitioner advice would be to taxpayers to just plan ahead and plan accordingly, knowing that that shutdown is going to happen. Try to file before or after the shutdown.

(e) 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), the

IRS's computers continue to reject processing the organization's Form 4720 because no tax is reported. The instructions make it clear that Part II is to be left blank (beginning in 2022), and the IRS previously announced this before the updated instructions were released. The instructions also require foundations to report self-dealing transactions and for charities to report excess benefit transactions even when there is otherwise no tax liability imposed on the organization. Can you discuss the steps that have been and will be taken to resolve this issue? See the Ancillary information regarding the past responses.

Fulton: Item 2(e) is regarding the Form 4720. We've talked about this in the past and there's some great materials and information that Rob had given us in the past about filing 4720s. But just to clarify, due to some changes with regard to how the Form 4720 is filed now, both the disqualified person and the organization involved in self-dealing are required to file a separate Form 4720 and the disqualified person's Form 4720 is the one in which the tax liability is actually reported and owed.

Therefore, the organization involved in the self-dealing transaction is supposed to file a blank Form 4720 just to report their involvement in the other side of the transaction. Rob, we've discussed this in the past, I think, but the instructions tell the foundation regarding the self-dealing transaction or charities regarding the excess business transaction to file a blank Form 4720, even when no tax liability is imposed. However, some organizations are receiving rejections when trying to file that blank 4720. Do you have any additional information to provide the community?

Malone: What I would say is I'm a little surprised hearing that it's rejecting because the e-file system shouldn't reject a zero return on Part I. That is, as long as the amounts on Part III also show zero, it simply shouldn't reject. If it does reject, you have to contact the e-Help Desk. But make sure that you're putting a zero in Part I and for the amount in Part III also show zero.

Fulton: Thank you. We have copies of the information that we had been providing previously regarding 4720s on our TE/GE Council website, which is a great reference as well. So Rob, thanks for all of your previous guidance.

(f) When section 527 political organizations with a short lifespan (e.g., for an election cycle) file a Form 8871 to terminate, they are not thereafter able to e-file a final Form 990. Instead, they get a rejection notice stating that their EIN is no longer in the system. When the organization (or authorized representative under a power of attorney) has called the IRS for assistance, they have been told to mail a paper copy of the Form 990 together with a print-out of the notice of e-file rejection and a letter explaining the situation. But these paper-filed returns are then returned to the filer. If the section 527 organization reverses the order and files the final Form 990 first, it is then unable to file the Form 8871 termination afterward. What should taxpayers in this situation do?

Fulton: Item 2(f) is regarding certain section 527 political organizations. We received a question regarding some 527 political organizations that have a short lifespan. For example, maybe

they're only open for one election cycle. They are required to file a Form 8871 when they terminate. They are also required to file a final Form 990. Apparently they get into kind of a circular issue when they file the final Form 8871 to terminate, then they can't e-file the Form 990 after that because the IRS system rejects them. However, if they were to do it in the reverse order and file the final Form 990 first and then file the notice to terminate, apparently then they are unable to file the Form 8871. So curious if you have any advice or comments for those taxpayers?

Malone: I don't have any advice on this. I appreciate understanding more what you're facing, what's happening there. I know it's not always what you want to hear, but this is an example of where you will have to call the e-Help Desk and request the issue be escalated. That's what would have to happen there. I think everyone probably has the number, but the e-Help Desk number is 866-255- 0654.

(g) Practitioners and organizations continue to have issues when a tax year-end has been changed. We find that the IRS system sends out notices to the organization asking why prior year Forms 990 with the new year-end were not filed. This is an apparent glitch, Is there a way to prevent notices from occurring?

Fulton: Next is item 2(g). Certain practitioners and organizations continue to have issues when a tax year-end has been changed for a taxpayer. We find that sometimes the IRS system sends out notices, perhaps they're auto-generated, to the organization asking why the prior year Forms 990 with the new tax year-end have not been filed. Is there any way to prevent these notices from occurring?

Malone: We're looking into that and I appreciate you letting us know so I'm aware of it now. You're absolutely correct; those notices are issued systemically. They shouldn't be going out is what should happen so we are looking into getting that corrected.

(h) Exhibit 10.10.1-2 of the newly revised I.R.M. 10.10.1 lists many varieties of the Form 1120 as eligible for electronic and digital signatures, but not the Form 1120-POL. Is that omission an oversight?

Fulton: Finally, item 2(h). You talked a little bit about this, but there is new, revised IRM information regarding the forms that are available for electronic signature. We got one comment from a member that the Form 1120-POL is not on that list. We are curious if there was a reason for that, or if that is up for further consideration before being added to the list.

Malone: It's interesting that that came up because it the 1120-POL was not on the original list, I don't believe, and it wasn't on this list either. The revised IRM section is 10.10.1. They've fully incorporated in the IRM related to the temporary deviations from handwritten signature requirement for the limited list of tax forms. Now, it's a list of forms that was developed during the pandemic. That was when all of that came out. What we're doing right now is we're working

on developing criteria for adding additional forms. So that's where we are with that, asking if there other forms that could fit in there and what would the criteria be?

Fulton: Maybe take this initial comment as one vote for the 1120-POL to be added, and we'll come back to the group with further information as that progresses.

Malone: That's how I took it.

Fulton: We're going to skip topic number 3 for the time being and go to topic number 4.

Topic #4: Other Issues

(a) **Practitioner Observation:** The IRS's EO Customer Service Center now permits you to leave a callback number. We appreciate this new development.

Fulton: Topic number 4(a) is a practitioner observation to make sure everyone is aware of this, that the IRS EO Customer Service Center now permits you to leave a callback number. Rob, we really appreciate this new development. Any of you who are going to be calling the Customer Service Center, I would highly encourage you to leave a callback number, if necessary. Rob, any comments on that?

Malone: I think we've made some good improvements. This is one of them. I've heard that many people are taking advantage of it and everyone's been very pleased with it so that would be my comment there.

(b) **Determinations:** If an organization unintentionally omitted a relevant schedule from its Form 1023 (at the time of submission) (for example, Schedule G regarding successor organizations), is it possible to file an amended Form 1023 prior to IRS review of the electronically submitted Form 1023, and, if so, how?

A possible solution we would like you to comment upon:

Mail an addendum to the Form 1023 to:

Internal Revenue Service
Attn: Correspondence Unit
550 Main Street, Room 6-403,
Cincinnati, Ohio, 45202,

Including the missing information, referencing the [Pay.gov](https://www.pay.gov) Tracking ID and the Agency Tracking ID, and requesting that the information be added to the prior-submitted application.

Fulton: The next item is 4(b) regarding determinations. This is a question regarding the filing of

a Form 1023. If an organization submits a 1023 but then unintentionally omits some information from that 1023, what's the best way for a taxpayer to provide supplemental information to the 1023 either before or during it has gone through its assigned review process? We provided a potential solution in the agenda regarding a mailing address to the Correspondence Unit, but we're curious to get your thoughts.

Malone: Just thinking about it, it seems as though it would be kind of difficult to leave a form off when you're filing through [Pay.gov](https://www.pay.gov) because I think it typically pulls up what you need to fill out so it'd be difficult there. But with regard to what to do, in the event that you found that you left a schedule off, you could, in fact, fax it to EO Correspondence. That number is 855-204-6184. So if you left something off, you could fax that.

You can also mail it to EO Determinations; it's actually a different address than you have there. But you could mail it to Internal Revenue Service, EO Determinations, and send it Attention: Manager, EO Correspondence, and that's P.O. Box 2508, Room 6-403, Cincinnati, Ohio 45202. You can also send it express and overnight delivery. It's basically the same address: Internal Revenue Service, Room 6-403, Attention: Manager, EO Correspondence. But that will be to 550 Main Street, Cincinnati, Ohio 45202.

The other thing I want to point out here is if you filed an application, when it gets assigned, the agent will look at it, and if they see that there's a schedule missing, they will contact you and say, hey, we have your application, but it appears that a schedule is missing. But in advance of that phone call, absolutely you can submit through those two ways.

Fulton: That is super helpful. Thanks for those addresses. We will get those addresses added to the agenda and posted on the EO Help Chart.

(c) **Determinations:** Could you please provide specific guidance on the language the IRS requires in the governing documents when seeking exempt status for a supporting organization, particularly in the context of Type I and Type II relationships? Furthermore, for a Type II Supporting Organization, is it sufficient to have a de facto majority board overlap, or do the bylaws of both the Supporting and Supported Organizations need to formally incorporate this arrangement?

Fulton: Item 4(c) is another question regarding determinations. Is there any specific guidance you can provide regarding if the IRS requires any specific language to be in the governing documents if a taxpayer is seeking exempt status for a supporting org, particularly in the context of Type I and Type II relationships? And then the member asked, for a Type II supporting organization, would it be sufficient to have a de facto majority board overlap? Or is the IRS looking for the bylaws of both the supporting and the supported organization to have specific language to formally incorporate the arrangement?

Malone: Here's what I would say. Pub 557, "Tax-Exempt Status for Your Org," provides guidance on the language supporting orgs should include in their governing documents to satisfy the organizational test. I think it's actually on page 42 of that document. You can also

look at the regulations themselves. Sections 1.509(a)-4(c) and -4(d) provide guidance on what you should include in the organizational documents and provide examples.

So for Type II supporting organizations, the regulations provide that for a Type II relationship to exist, control or management of the supporting org must be vested in the same person that controls or manages the publicly supported organizations. The examples of Type II relationships state that board overlap is required pursuant to the supporting organization's governing instrument. In processing applications we review to ensure that the application is as defined in the regulations.

(d) **Practitioner Observation:** We are still periodically encountering the Tax Exempt Organization Search (TEOS) Tool having limitations when practitioners search by name rather than by EIN.

(e) If a private foundation reports an overpayment of net investment income tax on its final Form 990-PF after dissolving and distributing all remaining assets, what should the former foundation officials do with the refund check from the IRS?

May it sign it over and distribute it to a public charity assuming the recipient is qualified as a remainder distributee in accord with the law of the jurisdiction in which the dissolution occurred?

Fulton: I'm going to skip item 4(d). That's just a practitioner observation regarding TEOS. Going to item 4(e), that's a question that says if a private foundation reports an overpayment of net investment income on its final Form 990-PF, after dissolving and distributing all assets, then it would receive a refund check at that point. May it sign over the refund check and distribute it to a public charity, assuming it's all in accordance with state law, etc.

Malone: Here's what I would say. The organization should follow applicable laws and any provisions in its articles of organization regarding the distribution of its assets upon dissolution. In general, to establish that an organization's assets will be permanently dedicated to an exempt purpose, its articles of organization must contain a provision ensuring their distribution for an exempt purpose in the event of dissolution. Internally some organizations may rely upon state law to establish their assets are permanently dedicated to an exempt purpose.

(f) When submitting Form 8940, Request for Miscellaneous Determination, for reclassification of foundation status, the IRS determination (Letter 4425) approving reclassification does not include the reclassification effective date. While practitioners often can obtain verbal confirmation of the reclassification effective date through IRS customer account services, some have been unsuccessful in obtaining any written confirmation. From time to time, we have seen the BMF EO extract the reclassification ruling date (not the effective date); however, this is inconsistent.

Practitioner Observation: The inclusion of the reclassification effective date in the

determination letter would provide clarity for the tax-exempt organization, particularly when retroactive treatment of the reclassification has been requested and supported in the Form 8940 — and where a donor or grantor is seeking confirmation.

Fulton: In item 4(f), we got a couple of requests regarding Form 8940, Request for Miscellaneous Determination, specifically regarding taxpayers that are requesting a reclassification of foundation status as of a point in time. Would it be possible to add on the determination letter the effective date of the reclassification?

Malone: We're looking into the feasibility of that. Again, I appreciate the comment and we're looking into it.

(g) It appears that the IRS may have been revoking organizations that have been filing Form 990-N based on online sources that indicate it is ineligible to file the Form 990-N? Are these determinations occurring under audit or is the failure to qualify as a 990-N filer the basis of automatic revocation? Can you tell us what sources the IRS has been reviewing in favor of revocations here?

Fulton: Next is item 4(g). We have heard that some 990-N filers had been revoked because it was determined that they were ineligible to file Form 990-Ns. We are curious if that was happening under an actual IRS audit or if there was just information that was available to the IRS such that they realized that those 990-N filers should not have been filing the 990-N and it was just the typical auto-revocation process.

Malone: One of our recent compliance strategies has been to determine if an organization was eligible to file the N, since it's only for smaller organizations with gross receipts normally 50,000 or less. The compliance strategy is described in more detail in a memo from TE/GE Division Counsel dated February 23, 2022, which you can find in the FOIA Library on the IRS website.

If, after an exam, the IRS determines that an organization was not eligible to submit a Form 990-N and the organization has not filed the required return for three consecutive years, the organization's exemption is automatically revoked under 6033(j)(1)(B). The memorandum confirms that auto-revocation is appropriate in such circumstances.

It's important to emphasize that we auto-revoke under these circumstances only after an examination of the organization's books and records has confirmed that its gross receipts were in excess of the Form 990-N limitation during the relevant filing period. So that's really what it comes down to there. If you have not filed the required 990 and you filed the N instead, and you weren't eligible, and you did that for three consecutive years, you're revoked as a matter of law under section 6033(j).

We can sit here and I'm sure we could go back and forth and come up with scenarios where maybe they didn't file three years, but 6033(j) didn't come into play. An example that jumps into my head is, what if an organization lost their tax exemption retroactively. You could lose your

tax exemption going many years back and somewhere in the middle of those years, the three years that you didn't file consecutively, is encased. But if it was retroactive, that might not even come into play with 6033(j). But generally speaking, if you filed the N and you were supposed to file the 990, and you did that for three consecutive years, the organization is revoked under 6033(j).

(h) One taxpayer has reported receiving CP171 Penalty Notices for the year ended 12/31/19 for three years, despite the fact that they have responded to the IRS with proof by certified mail of the timely filing of both Forms 8868 and associated Forms 990-EZ along with copy of the Form 8868 submissions and a detailed explanation. This Notice only gave a phone number to call, and a mailing address, but no fax number. What is the correct fax number for which to send responses to the IRS related to this matter?

Fulton: Today's last question, as we run out of time, is item 4(h). This is regarding organizations that are trying to respond to penalty notices regarding the timely filing of extensions and 990s. The notice only has a number to call and a mailing address, but no fax number. So we are curious if there is a fax number in that case or if clients should continue to respond in writing.

Malone: The fax number is 877-792-2864. With that, I think we have gotten through what we could.

Fulton: Thank you, as always, Rob. There's so much work that goes into this from your side to prepare for these calls. So we really appreciate it and it's great to have you with us again today.

Malone: I enjoy being here and am looking forward to the next time we meet. We truly appreciate all the comments so thank you very much.

Harris: Now we kind of transition from all that great content with just a few things to be aware of. We have a sheet of statistics in the program materials [reprinted below]. These are provided by Rob, so thanks for that. There are also some links that the IRS provided. You will see information about TEOS, some of the Audit Technique Guides, and the IRA energy credit transferability.

There were some questions in the chat about what happens if you need to amend your registration. Our understanding is that it's not open yet; more information to come. There will be announcements in the EO newsletters, so if you don't get those through the IRS website, you should sign up because that information will come through. Also on our website are the questions that we asked, even though we didn't get through all of them; those are listed there that you could pull from that.

There is this wonderful EO Help Chart that's been revised [to be reprinted here on Thursday]. Eve Borenstein and Chris Anderson pulled this together and they've been maintaining it. Eve was just chatting with us, saying some of these addresses will need to be tweaked. We will do that in the next week or so and we will repost that.

As a reminder, it is free to be a member of TE/GE EO Council. Once you're a member, you get access to our members' content, which, as Danika Mendrygal said at the beginning of the presentation, look for changes in 2024. We have at the top IRS contact information, so when Eve reposts this, often there's a link there. I would say download this, laminate it. This information is just super great. Half the time when someone contacts us about, hey, do you know how to get a hold of the IRS, the information's there and we keep it moving along.

I also wanted to mention for the TE/GE EO Council that Danika kind of previewed earlier, there is a new roundtable that started in September. It is open for all practitioners, attorneys, CPAs, in private practice, in public, if you're a paralegal. We have state regulators on there, it's an area for us to come together as a community and help each other. If we're having challenges, what are they? Are they systemic or not? Do you have solutions?

Many of the questions that were submitted came through that forum as well as through the TE/GE EO Council website. If you are interested in that, we meet the second to last Tuesday; it's going to change to Thursdays in February 2024. It is at 2 p.m. Eastern time, 11 a.m. Pacific time. Put in the survey when you get that email later today that you're interested or contact me directly and we will get you signed up. So anyway, just wanted to put a plug for that.

There are a number of groups that have already started. There is a state regulatory matters discussion group that's going to be starting up. There is a work tool that's being created for how to calculate remuneration on section 4960. There are tools and resources that are being pulled together on how to effectively do EFTPS payments.

Quick note, we heard recently that you have to use ld.me. If your clients are trying to get into that, they have to register, so make sure that they're logged in. That might be a secondary step if they're doing their payments right now.

So there's all these different kinds of things we're doing and then we're also working with Chelsea Rubin and Alexander Reid on DAF regulation comments. We would love for you to join us if you are interested.

There were a lot of questions that Preston and Anne didn't get to. Preston, maybe you could do some quick items on group rulings, because there was at least one participant that was really interested in kind of our thoughts on that area.

Quesenberry: I apologize for skipping over those. As I said, I knew we weren't going to get through everything with Rob, so we decided to hold until now.

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?

Quesenberry: Moving back to topic 3, the first question was, if you've got a subordinate in a group ruling that gets auto-revoked, is it possible for that subordinate to reverse that auto-revocation if it can show (1) that it was included on one or more group returns during that three-year period that resulted in auto-revocation, and (2) that the central organization did list it as a subordinate in the relevant annual update submitted to the IRS before the group returns were filed? Would that be sufficient to say, look, this auto-revocation was erroneous and we should be reinstated on that basis?

My instinct is that it should be, that the right technical correct answer is yes. If you're eligible to be on a group return, you were included on that group return, then you didn't fail to file a required annual return for three years in a row. If you look at the various websites that deal with auto-revocation, there is a process that you can go through to argue that the auto-revocation was erroneous in the first place. To me, if you can show documentation of those points, I don't see how the IRS denies it. Maybe the IRS will but as a technical point in terms of the correct answer, I think that should be a basis to get it reversed. Maybe next time we could get Rob's confirmation of that, but I think that that should be the right answer.

(b) Can IRS systems accommodate a subordinate organization in a group ruling both obtaining independent recognition of its 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))?

Quesenberry: The next question is, can IRS systems accommodate a subordinate organization in a group ruling? You had a subordinate organization that was in your group ruling, but now they want to basically leave the group ruling and obtain independent recognition of their exempt status on a Form 1023. It's an either/or formulation. You're part of a group ruling or you have your own, but it's not both. At the same time, when they're getting their independent recognition of (c)(3) status, they want to be able to be exempted from having to file a 990 and they want to claim that exemption as an integrated auxiliary of a church.

If you look at the integrated auxiliary regs, one way you can show that you're affiliated with a church or convention or association of churches, is by saying, hey, we're part of a group ruling. So this commenter wanted to know, even though we're leaving the group ruling, can we point to our group ruling as a basis to be treated as an integrated auxiliary?

Here, I would think the right technical answer is no. If you're leaving the group ruling, that's no longer applicable, so you would have to point to one of the other prongs of showing that you're affiliated to be an integrated auxiliary since you aren't part of the group ruling anymore. That, to me, would seem like the right technical answer. How IRS systems would react to that, that's certainly something we could try to run by Rob in the next meeting.

Harris: I think the biggest challenge would be the IRS systems.

Quesenberry: Do you think that that may work and it's just getting the IRS systems to recognize it? Or do you think the technically right answer should be you should rely on a different definition of affiliate links?

Harris: I think it's the technical right answer. It's just getting the IRS systems to work, as we have challenges with some of the IRS systems, but we are excited that there's some money out there to maybe do some upgrades.

(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?

Quesenberry: In item (c), the fact pattern involves a central organization that converts all the subordinates to being independently exempt. So now you've basically got a group ruling with no subordinates. They've all obtained their 501(c)(3) status and, given that the group ruling doesn't have any subordinates, you just want to get rid of the group ruling.

The question is, is there a process for doing that? This is one I don't know what the right answer is. This might be one that next time we can ask Rob what the answer is. While talking to some other practitioners, we sort of wondered, why would you want to get rid of it? Particularly since a group ruling is kind of a rare thing these days. Who knows when you can get it back? Is there any downside to just leaving it in abeyance, given you don't have any additional filing requirement associated with it? As a practical matter, we were sort of wondering why would you want to do that?

Fulton: I echo what you said. No one has ever asked me to try to get rid of a group ruling, I think because of the reasons that you just articulated. I don't have experience doing this, but maybe there's an upside that I just haven't contemplated, and we just don't have all the facts.

Quesenberry: For next time, we can try to get these back on the list to the degree people still want answers.

Harris: Eve Borenstein had a great idea: We probably should reach out to Rob and see if we can get his prepared remarks to those questions so that we can post those. Other questions that we had talked about offline included a question about 318 and the Form 990. Do we want to kind of hit that one? Or are there other questions that we want to look at?

(m) 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.)

Quesenberry: Let's go to item 4(m) next. The question is, how do the section 318 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 Schedule R? In particular, if you look at Part II of Schedule R, there's column g. So when you're reporting your various related tax-exempts, there's a question saying, is this a section 512(b)(13) controlled entity, yes or no? So you need to check.

What the specific question here is, if you've got a brother/sister nonprofit, they're not actually a subsidiary that you would most obviously think of as a direct subsidiary — and you would obviously think of that as a 512(b)(13) controlled entity — but as a sister entity that arguably by reason of 318 attribution is your subsidiary, do you have to list them as a section 512(b)(13) controlled entity and, vice versa, on that entity's return, do they have to list you? So you basically got parent/subsidiary relationships going both ways.

This question appears in other contexts, too. If you look at Part IV, I believe it is, when you're reporting related corporations, there's a similar box there, where attribution questions come up. Also, for private foundations, there's in Part VI.A of the Form 990-PF a line 11 that asks for all of your controlled entities within the meaning of 512(b)(13), including EIN, etc. Since you need to provide an itemized list of all of them, there's a question of how broadly does that extend? And how does 318 attribution work? And does it bring in all brother/sister relationships?

Just as a little background on the question, if you look at 512(b)(13) itself, just look at the statute, it really only defines control by virtue of ownership. It refers to ownership of stock or profits interest or beneficial interest. There's no real concept of nonprofits being picked up and it's really only in the regulations that that's done. These are really old regulations that date back to 1972. There's a paragraph in there that basically says, if you appoint a majority of the board, then that's a controlled entity, or if a majority of the board consists of your representatives, and that could be employees, officers, directors, whatever, then they're also a controlled entity of yours. But these regulations are really outdated; they haven't been touched since 1972.

Harris: I think they still contain 80 percent instead of 50 percent.

Quesenberry: They still contain the 80 percent rule. In terms of net related income, they have this rule that was overridden. That takes me on to the next point, which is the statute was amended in 1997, as you pointed out Jennifer, to lower 80 percent to 50 percent. The whole definition of net unrelated income, the reduction of which then necessitates 512(b)(13) to kick in, that was all changed; that's not reflected in the regs. Also in the 1997 amendments, they added this 318 attribution. I think the most direct thing that they were trying to get at was, if you have indirect control of a subsidiary through intermediary entities, you still need to pick them up as a 512(b)(13) entity. But 318 attribution works in some unexpected ways, including if you have a parent organization.

Let's just look at two stock corporations. If the parent owns more than 50 percent of the stock of subsidiary A, and then more than 50 percent of the stock of subsidiary B, then A is considered to be the parent of B and B is considered to be the parent of A. That's just the way the 318

world works. But none of that is addressed in these regs, because again, they're outdated. They haven't been amended to reflect the 1997 changes to the statute.

So there's nothing in there about how do you apply these 318 attribution rules to nonstock nonprofits with this concept of board appointment and board overlap and representation? How does that even work? The only attempt I've ever seen where the IRS has tried to do that, to apply 318-type principles, is in the 4960 regulations. In the definition of related there, they at least attempt to kind of go down that road, but you don't see any of that in the 512(b)(13) regs, so I think there's some uncertainty, just as a starting matter, as to how 318 attribution works when you have nonstocks and nonprofits, in addition to the fact that what exactly is the IRS looking for on that Schedule R, in particular Part II and column g?

Did they really want to pick up all these relationships? How extensive do you really have to be, particularly if there's no actual transactions that would give rise to 512(b)(13) because when you're talking about nonprofits, it's really only relevant to the extent you're reducing UBIT by reason of a specified payment. You have to be making a specified payment in the first place. So it seems like it could be a lot of over-reporting, and I certainly get clients that get confused and don't like this notion that they're reporting these brother/sister entities, but no transactions between one another as controlled entities..

Harris: For Schedule R, do they really want to show all these relationships? It can be pages of Schedule R. We've gotten to the place where oftentimes we just say yes, because it is ambiguous that they do mutually control each other, and then we just mark that box. So for the people who don't prepare a lot of 990s, like we do, you could go to Schedule R on the IRS website, but there's a box for 512(b)(13) and then you can mark that in the little grids for the different entities.

Fulton: I think that the instructions are ambiguous, and it's very facts-and-circumstances-based. I am always trying to work with my clients and taxpayers to be transparent but also practical in terms of how much information we disclose and trying to disclose enough information to make sure that the return is complete. Quite often, we do end up disclosing those brother/sister entities as controlling each other through the 318 attribution rules, but you really have to kind of like walk through the org chart and see where things land.

I think this would be a great area, potentially, to provide some form comments back on Schedule R and also to have a continued discussion with the IRS. I think that there's a lack of transparency in the practitioner and taxpayer community as far as what the IRS is doing with that information. If we knew that, it may be more helpful to us to be able to provide the right information on the form.

Harris: I know this Schedule R can be kind of a shock for family offices that do private foundations and, all of a sudden, they start a (c)(4) and then they're like, okay, what's this 990? They've heard about the governance stuff, but they don't realize the scope of Schedule R — and Schedule L — and all the different pieces they have to be thinking about.

Quesenberry: Particularly if you've got an individual who controls a (c)(4), but then also has all these business entities that they also control, and you have to tell a client, actually, all those

business entities have nothing to do with your (c)(4) and aren't engaged in any transactions, but you have to list them all and their EINs. Their heads explode because that's what we have to report -- all these entities and the Taxpayer Identification Number for all of them.

(i) 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)?

Harris: The next question is item 4(i). This is an area that I think practitioners struggle with, especially if they don't own a foreign entity, again, it's by vote or they appoint all the board. If you look at the rules for filing, 8865 or Form 5471, it's voter value. Having to think through, okay, I'm basically reporting these 5471s because it's an NGO so we ended up having to create a separate entity.

Sometimes they didn't even know they created the separate entity. They just think they registered something, but they actually created something. Now they have Form 5471 filings to be attached to the return. There are a lot of penalties if you don't do that.

Having some relief and some understanding, I get why a private foundation should do it if they own a PFIC or they own especially a controlled foreign corporation, because they're going to have a pick up of Subpart F income or GILTI income; that's going to be taxable. But for a public charity, or even a program-related investment, that's not the case, especially in a 990, where we have Schedule F disclosures for all the foreign stuff, it feels like for an exempt org that TE/GE would have that information.

My speculation of what Rob probably would have said was, this isn't our area, and maybe take it back to seek some answers. I don't believe this is actually under Rob's group. There are checkboxes on Schedule F asking, are you filing these forms? I think that's to help with compliance, but I'm not sure what they do. I think it just goes to the IRS.

Fulton: I will say that for foreign filing informational reporting, the rules for all of our nonprofit clients tend to be extremely complicated. I think it's enhanced by the fact that we typically deal with a lot of organizations that are formed as nonstock or non-member corporations under state law. The guidance that's out there is not always directly on point and we have to make a lot of interpretations.

Harris: Sometimes you just have to get those returns on straight enough to be considered as filed, because you might not have all the information you need.

(j) 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.

Quesenberry: The last question that we have time for is 4(j), which is about Form 872-B, which seems to still be available if you actually look at the IRS forms. You need this if you're a private foundation. You need to attach the Form 872-B to the Form 8940 when you're requesting termination of foundation status and you want that advance ruling regarding being a public charity for the 60-month period.

The IRS wants you to file this to extend the time to assess the 4940 tax if and when they need to. You can't find the form on the IRS website, but on the TE/GE Council website, we have the form there. So if worse comes to worst, you can go there and there is a link on the last page of your materials.

Fulton: That's it for today, but, as always, we're constantly collecting questions throughout the year and the ones we didn't get to today we will roll forward for potential use at the March meeting. Thank you for your attention.
