

Annual Program: Session 1

March 3, 2022

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Session 1: IRS Exempt Organizations Update and Q&A

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Topic #1: Current IRS Operations



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IRS Nat'l Taxpayer Advocate Annual Report to Congress - 1

- National Taxpayer Advocate Erin M. Collins released the 2021 Annual Report to Congress, calling calendar year 2021 “the most challenging year taxpayers and tax professionals have ever experienced.”
- <https://www.taxpayeradvocate.irs.gov/reports/2021-annual-report-to-congress/>
- Report dated December 31, 2021 – key data follows on next two slides



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IRS Nat'l Taxpayer Advocate Annual Report to Congress - 2

Phone lines

- In FY 2021, the IRS received about 282 million telephone calls.
 - Customer service representatives were able to answer only 32 million, or 11%, of those calls.
- On March 15, 2021, IRS received 1,500 calls per second!

Taxpayer Advocate Service (TAS) Role

- TAS is swamped by demand: from FY17 to FY21 their case load increased from 167,000 annually to 264,000 with 6% less funding
 - NOTE: TAS will not accept cases based solely on processing delays

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IRS Nat'l Taxpayer Advocate Annual Report to Congress - 3

IRS Processing Backlog At End of the 2021 Filing Season (2020 Year Returns)

- The IRS had a backlog of over 35 million individual & business returns at the end of the filing season. (This compares to over 10.7 million returns at the end of the 2020 filing season.)
- At the end of the filing season, the IRS's Error Resolution System inventory included 10.3 million individual and business returns, a 544% increase over the prior season.
- Further, approximately 16.8 million individual and business paper returns awaited processing, compared with 4.3 million paper returns at the end of the 2020 filing season – a 291% increase.
- The IRS currently has 4.75 million pieces of paper correspondence that have not been worked.

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Other Pertinent Quotes

IRS COMMISSIONER CHARLES RETTIG (Washington Post, 11/11/2021)

“Today, we have fewer than 15,000 people to handle more than 240 million calls received in the first half of this year alone.”

IMMEDIATE PAST TAXPAYER ADVOCATE, NINA E. OLSON (Washington Post, 2/2/2022)

“The IRS commissioner recently stated the IRS is trying to hire **5,000 customer service employees**, but only 179 positions have been filled so far.”

CURRENT TAXPAYER ADVOCATE, ERIN COLLINS, US Congress’ HWMC, Oversight sub-comm. hearing 2/8/2022 (official video at: <https://www.youtube.com/watch?v=TyG4FQ7fxGY>)

- “Paper is the IRS’s Kryptonite and . . . the IRS is still buried in it”
- “recently the IRS advertised for **5,000 positions in the campuses** [the three locations with on-site personnel who process returns] . . . but received <200 individual applicants”
- “the unprecedented return processing and correspondence backlogs we have seen over the past two years did not exist before the pandemic” (Collins’ written testimony, p. 1)

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Topic #2: Business Master File

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Business Master File “Issues”

Specific BMF data populates TEOS’ Pub. 78 and is used on third party’s data listings on 501(c)(3) and other tax-exempt entities. The overall data publicly-released is called the EO BMF Extract (“EOBMF”) and includes:

- Organization name and EIN
- Current qualification for charitable contributions deductibility as 501(c)(3) entity
- Current 501(c)(3) sub-classification as public charity or private foundation
- Current exemption classification if other than 501(c)(3)
- Date organization’s tax year ends (a/k/a ‘accounting year’)
- Information if organization holds a “group exemption” and information on subordinates thereunder (note that subordinates are NOT listed in Pub. 78)

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Additional info for PARTICIPANTS:

Rev. Proc. 2018-32 notes that the IRS’ EO BMF Abstract contains more information, in a slightly different format, than Tax Exempt Organization Search’s Pub. 78 data and includes information on most tax-exempt organizations, rather than just the tax-exempt organizations eligible to receive tax-deductible contributions under §170 that are included in Pub. 78.

Grantor and contributor “reliance” on data confirming qualification of grantee/donee as eligible for deductibility of contributions was updated completely **via Rev. Proc. 2018-32** ... “to simplify compliance for grantors and contributors,” rev proc combines the safe harbors of Rev. Procs. 81-6, 81-7, and 89-23 and the reliance revenue procedure of Rev. Proc. 2011-33, and replaces them with one revenue procedure on deductibility and reliance issues for grantors and contributors.

(continued next slide)

Business Master File “Issues”

The updated EOBF is available to the public on taxpayers who are currently tax-exempt monthly (except January). If information there is wrong, those who cull data from this source (Guidestar’s Charity Check, ProPublica’s Nonprofit Explorer, the IRS’ Publication 78 info via TEOS, etc.) will disseminate that misinformation.

- Funders are entitled to rely on Pub. 78/EOBF data to confirm deductibility of their gifts under Rev. Proc. 2018-32
- Errors in organization’s name, EIN, 501(c)-“type”, or classification as a PC versus PF typically surface when a donor refuses to make a grant or gift to a 501(c)(3)
- Ability to file appropriate annual return will be hampered by a public charity’s posting as a private foundation (and vice versa)
- Errors in 501(c)-classification act as a bar e-filing Forms 990/990-EZ/990-T as do errors in tax year end date



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Additional info for PARTICIPANTS (continued from prior slide):

SECTION 6. CERTAIN LIMITATIONS ON TAX-EXEMPT AND PUBLIC CHARITY STATUS RELIANCE

.01 Reliance Provisions Apply Only to Certain Names of Organization:
The reliance on tax-exempt and public charity status provided by sections 4 and 5 of this revenue procedure applies only to grants or contributions made to an organization listed in or covered by Tax Exempt Organization Search (Pub. 78 data) or the EO BMF Extract ***in the organization’s official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known.***

.02 Reliance Provisions Do Not Apply to Organizations Until They Are Listed in or Covered by Tax Exempt Organization Search (Pub. 78 Data) or the EO BMF Extract: The provisions of sections 4 and 5 of this revenue procedure do not apply to an organization until it is listed in or covered by Tax Exempt Organization Search (Pub. 78 data) or the EO BMF Extract.

EO Business Master File Abstract “Issues”

IRS website states content issues should be brought to TEGE CAS (i.e., 877-829-5500). No expedite mechanism has been available to secure corrections in the past and many organizations report waits of >1 year.

NOTE: cite posts **12/13/2021** as the data’s “posting date” [this at 2/27/2021], reflecting that February’s upload (1st since December as there is no January post) was itself subject of delay.

irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-BMF

Data Updates Delayed
Expect delays in data updates for the Tax Exempt Organization Search tool. We are still processing paper-filed 990 series received April 2020 and later.

The Exempt Organizations Business Master File Extract provides information about an organization from the Internal Revenue Service's Business Master File. This is a cumulative file, and the data are the most recent information the IRS has for these organizations.

The files are available in comma separated value (CSV) format. The Exempt Organization Business Master File Extract [information sheet](#) explains the codes used in the data files.

They are divided by [states](#) and [regions](#):

- States and regions are determined from the filing address and represent the location of an organization's headquarters, which may or may not represent the state(s) in which an organization has operations.
- Records are sorted by Employer Identification Number (EIN).
- There is one file for each state, the District of Columbia, and Puerto Rico.
- One file for international non-domestic organizations.

If you have any questions about the tax exempt organizations or the content of the files, please contact TEGE Customer Account Services toll-free line at [877-829-5500](tel:877-829-5500).

Exempt Organizations by States and Regions
Updated data posting date: 12/13/2021
Record Count: 1,786,293

CSV Files by State

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Additional info for PARTICIPANTS:

Link for the IRS' EO BMF web page shown here is:

<https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-BMF>

Also, the AICPA has a blog post from December 2021 on the issues:

<https://www.aicpa.org/professional-insights/article/irs-business-master-file-issues-plague-exempt-organizations>

Topic #3: E-filing



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Electronic Filing

- Most organizations with tax years beginning after July 1, 2019 are required to E-file their annual filings. But that requirement has the following date-applicable modifications for 2020 Forms:
 - Form 4720 for private foundations is to be e-filed (unless postmarked prior to 6/15/2021)
 - Form 990-T filers can only e-file for tax years ending December 2020 and going forward (but could paper file until 3/15/2021)
 - Form 990-EZ filers have transition relief and the IRS will accept paper filings for tax years ending before 7/31/2021
- Organizations filing on 2021 Forms are required to electronically file (including amended returns on those forms).

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Electronic Filing

- The IRS website is extremely helpful:
 - Publication 4163: <https://www.irs.gov/pub/irs-pdf/p4163.pdf>
 - IRS Approved Software Providers: <https://www.irs.gov/e-file-providers/exempt-organizations-mef-providers>
- There are many benefits to e-filing:
 - Ensures the returns is completed when transmitted as it will be “rejected” by both the software vendor and/or the IRS if critical fields are not properly filled out.
 - Have immediate record on file of when the return is “accepted” by the IRS.
 - When an e-file attempt is made on the deadline there is a 10-day “perfection period” or grace period to resolve any issues.

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E-filing Considerations

- Organizations that have historically paper filed (especially Form 990-EZ filers); may need to find access software to transmit the return and depending on the software may need to become an authorized e-file provider to transmit the return. Alternatively, that can work with a paid preparer who is an authorized e-file provider.
- Need to ensure the software can meet the needs for the filing organization.
- Prior to e-filing ensure the organization is properly set up in the Business Master File – this can be an obstacle to e-filing including when there is a name change.
- There may be situations where changes need to be made to the return in order for it be e-filed (use the IRS e-file support team to help guide you through these changes).
- For more tips see the AICPA Blog Post: <https://www.aicpa.org/professional-insights/article/tips-to-overcome-challenges-of-e-filing-the-form-990-series>

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Topic #4: Exams & Determinations



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IRS Exams

- <https://www.irs.gov/government-entities/tax-exempt-government-entities-compliance-program-and-priorities>. This webpage notes:
[Per FY 2022 Program Letter] in fiscal year 2022, we'll continue to pursue our compliance program described in our program letters for prior years.
- Compliance Strategies
 - [Form 990-N Filers/Gross Receipts Model](#);
 - [Form W-2 and 1099-Misc to the same Payee](#)
 - [Excise Tax on Excess Compensation](#)
- Data-Driven Approaches
 - Data and queries based on quantitative criteria, used to identify high risk areas of noncompliance and focus on issues with the greatest impact.
 - IRS will continue to pursue the initiatives listed in the FY 2020 Program Letter.



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IRS Exams (continued)

- Referrals, Claims and Other Casework
 - Referrals of alleged noncompliance from internal and external sources, and claims for refunds, credits or adjustments.
 - Continue to pursue referrals received from internal and external sources that allege noncompliance by a bond issuer, exempt organization, government entity, retirement plan and Tribal entity.
 - Continue to address requests for refunds or credits of overpayments of amounts already assessed and paid; they can include tax, penalties and interest, or be a request for an adjustment of tax paid or credit not previously reported or allowed.
- Compliance Contacts
 - Issues approved by the TE/GE Compliance Governance Board for correspondence contacts known as compliance checks addressing potential noncompliance, and educational letters to limit costs and taxpayer burden.
 - 509(a)(3) organizations mis-filing Form 990-N
 - Excise tax on excess compensation



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IRS Rulings (Determinations) & Agreements

Processing Time for Applications:

- “Where’s My Application for Tax-Exempt Status?” IRS webpage: <https://www.irs.gov/charities-non-profits/charitable-organizations/wheres-my-application-for-tax-exempt-status>.
- Paper determination letters are still being mailed to Taxpayers & POAs.
- Note: IRS is also posting awarded determination letters on the TEOS webpage (see next slide). Applicants are advised to obtain the electronic copy of the IRS determination letter on TEOS. (Search the applicant’s name or EIN)



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Tax Exempt Organization Search (TEOS)

<https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>
(overall) -- jump right into search at: <https://apps.irs.gov/app/eos/>.

“Data Updates Delayed”

- Website states they are still processing 990 series received April 2020 and later, and to expect delays in annual return filings’ posting here.

- **System Limitations Cause Some Inaccurate Revocation Dates**

Website states that organizations appearing on the auto-revocation list *with a revocation date between April 1 and July 14, 2020*, actually have an effective revocation date of July 15, 2020. Link is provided with further information: Revocation Date of Certain Organizations,

<https://www.irs.gov/node/86866#revoke2>.

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Topic #5: Erroneous Notices

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Suspension of certain IRS Notices

- As of February 9, 2022: For businesses, the IRS has suspended *the use of* the following notices:
- CP259 (also CP959, in Spanish) – Return Delinquency
 - IRS sends this notice when there is no record of a prior year return being filed.
- CP518 (also CP618, in Spanish) - Final Notice - Return Delinquency.
 - This is a final reminder notice that we still have no record of a prior year tax return(s).
- <https://www.irs.gov/newsroom/irs-continues-work-to-help-taxpayers-suspends-mailing-of-additional-letters>

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Additional info for PARTICIPANTS:

One CP259-series notice going to the EO community is Letter CP259D, “You didn’t file a Form 990-T.” We are seeing these now (Nov 2021-present day, although now suspended per slide above) relating to tax periods closed 12/31/2019 and following all the way calendar 12/31/2020. Typically recipient is EO who had filed a 990-T multiple years ago (in one instance, only 990-T filing was on 2016) but none thereafter, as their UBI-reached gross receipts in subsequent years were below the filing threshold OR only 990-T was parking tax (512(a)(7)) related. Letter has CAS phone number (and a fax number on it) and states:

- IF return WAS filed within last 4 weeks, disregard this notice.
- IF filed more than 4 weeks ago, or used a different name or EIN [!], complete the Form’s response blank and mail it and the signed and dated copy of the return in the envelope provided.
- IF taxpayer was required to file but has yet to do so, . . . get the return done and send it in with the Form’s response blank, again doing so using the envelope provided.
- Finally, if non-filing is because “you don’t think you have to file Form 990-T for [the cited tax period], complete the Form’s response blank to indicate whether any of the “not-required-to-file” circumstances apply to you.

Time lags are common, for example, we have a practitioner who shared a CP259D that addressed the 12/31/2019 tax year. It was dated 1/3/2022 and seeks a response no later than 2/2/2022. However, the taxpayer did NOT receive the letter until well after 1/3!

Dealing with Other Correspondence from IRS

Assessment and Collections Notices

- The phone number provided on notices of late filing / late payment penalty assessments against Form 990-series filings IS that of CAS call center (877-8290-5500). End of calendar 2021 started assessment parade on “supposedly” late-filed 990s for year ended 12/31/2020; had same issue on earlier tax years (those ended 12/31/2019 through 11/30/2020).
- Letter CP141L assesses 990 late filing penalties.
- When one can get through to CAS personnel, they WILL TAKE a reasonable cause abatement request *from the taxpayer or its duly-authorized representative* and are very receptive and helpful – the problem has been that the line was almost never susceptible of answering throughout 4th qtr 2021 and 1st 6 weeks of 2022.

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Topic #6: Recommendations & Tips

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Tips for Taxpayers

- E-file returns (and extensions!) if possible [990-EZs will be subject to mandatory e-filing as of tax years ending July 31, 2021 and after]
- Fax correspondence, rather than snail-mail, to IRS whenever possible
- Taxpayers should monitor their mailboxes (if possible, use USPS notification of received mail) for physical correspondence FROM IRS
- Mailing to IRS of any paper-filed return as well as any correspondence should be made “return receipt requested” and contemporaneous records kept to document content of mailing
- Avoid multiple mailings on same subject whenever possible as these further add to mail backlog at IRS and may cause system conflicts

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Additional info for PARTICIPANTS:

We are aware that paid preparers and tax advisors face what may be ethical constraints and/or malpractice issues in utilizing/applying the IRS’ “suspension of notice” pronouncements. Practitioners may be duty-bound in certain instances to protect a taxpayer’s position (for example, to observe and/or protect statute of limitations, to create a correspondence record, etc.) regardless of whether IRS suggests same may not be immediately required.

Thank You to Participants and to the Panel's IRS Guests!

Remember that TEGE EO Council members may use the Council's website "discussion thread" function (members-only) to correspond on current matters and work-arounds....

See "notes" below for what IS NOW THERE for you to add to!



Home > Members > Members-only Content

UPCOMING EVENTS

[March 3-4, 2022 - TEGE Annual Exempt Organizations Update and Meeting \(session 1 of 2\)](#)
03/03/2022 10:00 AM | Zoom Webinar - Link Circulated Prior to Program

[March 3-4, 2022 - TEGE Annual Exempt Organizations Update and Meeting \(session 2 of 2\)](#)
03/04/2022 10:00 AM | Zoom Webinar - Link Circulated Prior to Program

[June 17, 2022 - Exempt Organization Update](#)
06/17/2022 | DC Bar; Dallas (Offices of Jackson Walker); Cincinnati (TBD)

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Topic	Last message	Replies
Welcome	02/22/2022 1:45 PM Danika Mendrygal (Administrator)	—
HELP! IRS PHONELINE WON'T ANSWER	02/05/2022 7:24 AM Eve Borenstein	—