**June 17, 2022, TEGE EO Council Meeting**

**EO Update Session with TEGE Exempt Organization Division’s Rob Malone and Tim Berger**

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| **Session Start:**  **9:40 am** | **TOPIC** | **Primary Speaker and Timemark Goals (all times Eastern)** |
|  | **Introduction of Panelists by Moderators** | Eve – to 9:43 |
| Opening Remarks | **Remarks from the EO Division Director** | Rob – to 10:03 |
| **Key Topics:** | | |
| Topic #1 ~12 min | **Current IRS Operations**   * Dialogue re new items Rob has noted as well as those followed up upon from this Panel’s March 3, 2022 predecessor * Please elucidate the dimensions of work performed with respect to EOs in the Ogden UT Center * EO Entity (Ogden) – please share info on the work performed in this Office (e.g., # of EOs served, type of assistance, average time to work and/or close a T/P’s file, volume of backlog). We are particularly curious as to the handling of both: (a) name change requested in writing (versus had notice been provided solely on Form 990-series filing); and (b) other T/P correspondence (or referral from CAS) relating to requests to correct BMF issues * Form 1023 pay.gov website had a computer update in early March, and thereafter all applications “in progress” were only available in pdf and not accessible for further editing. As a result, applicants had to rekey in all prior-entered data. Can this be avoided in the future or upcoming system updates noticed in advance to alert applicant? * When an organization realizes it has failed to make annual return filings on two consecutive years, it is not unusual for it to extend its then-3rd year return’s due date. We continue to see revocations posting prior to the extended due date. When that occurs, what recourse is available to the affected taxpayer? | Eve & Jennifer tee-up these five subjects – to 10:07 |
| Topic #1 Prepared Remarks/Dialogue | Current IRS Operations | Rob (with moderators’ follow-up) – to 10:15 |
| Topic #2 ~9-12 min | **Business Master File Data Issues**   * Sharing of Office of National Taxpayer Advocate’s statistics provided, if available * Overlap with Topic #1 – reserved for additional queries related to EO Entity processing times and/or procedures in addressing EOBMF issues * EO Entity addresses for written correspondence (including fax #: 855-214-7520) were provided by you following our 3/3/2022 last Forum (info is provided at page 3 of this agenda’s accompanying additional info). We are curious as to any limits to or explication of issues worked by EO Entity relating to EOs’ BMF records. For example, is it only EO BMF Abstract info they handle or is it the entirety of the EOs’ BMF details? We’d also appreciate hearing about current challenges that Office may be experiencing. * Re filing 990-Ns: can EO Entity assist non-501(c)(3) taxpayers who are ‘self-described exempts’ (such as “self-declared c4’s” who presumably have met their Form 8976 filing obligation, or “self-declared c6’s” who have no such filing obligation) in order to have them *able to file* annual return in their next reporting cycle? Similarly, can they assist 501(c)(3) churches who have NO letter ruling but now have Form 990-T filing obligation? * Specific issue: very common to hear of problems that Group Ruling Holder is having with ITS EIN and those of one of its subordinates having been “switched” | Eve to report NTA statistics (if we have them) and then tees-up the other four subjects – end 10:18 |
| Topic #2 Prepared Remarks/Dialogue | Business Master File Data Issues | Rob – end 10:24 |
| Topic #3 | **E-filing Issues**   * 990-series filing on short year begun in 2021 is rejected unless “initial return” or “final return” box is checked * 990-series filing on short year begun in 2022 rejected when using 2021 Form (following instructions which specify same is to be made upon the 2021 Form while the 2022 Form has yet to be released) * Advance ruling PF-to-PC has Form 990 filing that is permitted on year rejected (our understanding is that system “expects” 990-PF and has not been programmed to deal with this arena) * It is common for ‘self-declared’ non-charitable exempt organizations to NOT be noted in IRS system as having a 990-series filing obligation, which results in their filings being rejected**\*** * The preceding point also applies to churches that are forestalled from e-filing Forms 990-T**\*** * Those who have a PENDING Form 1023-EZ or 1023 are not in the system as 990-series filers. As a result, when it is time for them to e-file returns, their attempts are rejected**\***   **\*** Taxpayers and their representatives have had mixed results when calling the e-file support phone number on these last three issues. While in some cases it takes 3 to 10 days to resolve, there are instances where it takes much longer. It is common for the e-file personnel to direct the taxpayer to call CAS (877-829-5500). In those cases, many further transfers occur and usually the taxpayer is told that they must use the e-file support number! NOTE: Direct calling CAS in the past had yielded the sought “fix,” but that has not been the case for quite a while now.  Any guidance you can provide would be helpful! | Jennifer to tee-up these six subjects – end 10:27 |
| Topic #3 Prepared Remarks/Dialogue | E-filing Issues | Rob – end 10:33 |
| Topic #4 Feedback | IRS Webpages – Feedback   * EO BMF page hasn’t been updated to direct those needing correction to send written correspondence by mail/delivery or fax to “EO Entity” (slide will show those addresses!) * Webpage titled “About Us,” <https://www.irs.gov/charities-non-profits/contact-irs-exempt-organizations> states that taxpayers may “*obtain a determinations letter applying to a specific set of facts,* **or** *… send copies of amended documents* to EO Determinations by mail or fax ((855) 204-6184). Can you elucidate what is being referenced in those two cases? * Webpage titled “Change of Name – Exempt Organizations”, <https://www.irs.gov/charities-non-profits/charitable-organizations/change-of-name-exempt-organizations> states:   *An exempt organization that has changed its name generally must report the change on its next annual return (such as Form 990 or 990-EZ).  An organization that does not file an annual return (for example, an organization that instead files Form 990-N, the e-Postcard), or an organization that wants a letter acknowledging the name change, may report the change of name by letter or fax (not by phone) to Customer Account Services.* [Underlining has been added] Language there generates three questions:  **Q1:** Where is written notice of name change to be sent when a taxpayer desires to notice the IRS of the fact of its name change *prior to* filing their next Form 990-series annual return?  **Q2:** Is written notice to the IRS of the taxpayer’s name change only to be provided by filers of Form 990-N?  **Q3 & Q4:** When an EO seeks a confirming letter acknowledging the name change how shall it proceed if its 990-series annual filing has noticed the name change but same is not yet reflected in the EOBMF? Can you give us a ballpark of wait time for the issuance of such confirmation letters currently? | Eve to tee-up the first two points as needed and summarize the “name change” procedural questions – end 10:37 |
| Topic #4 Prepared Remarks/Dialogue | IRS Webpages – Feedback | Rob – end 10:45 |
| Topic #5 | **Form 4720 issues**  Recurring systematic issues we note:   * Forms 4720 filed by PFs to report the excise tax on a self-dealer yields an eventual notice TO THE PF to pay the excise tax (even though it is the disqualified person, not the PF, who is liable for, and may already have paid, the tax). * Returns filed by an exempt organization (separately from the disqualified persons) to report either a Code sec. 4958 excess benefit transaction or a Code sec. 4941 self-dealing are being rejected because the organization does not have an amount due on the filing on page 1 of the Form. The returns have been prepared based on the instructions.   Recurring procedural questions:   * When a Form 4720 is filed by a taxpayer who believes they have reasonable cause to abate the excise tax (other than an act of self-dealing under Sec. 4941), what are the proper steps for filing a claim of refund upon Form 843? Should the claim be filed at the same time as the Form 4720 or should it be filed only after the penalty has been assessed? Can the Form 843 be attached to the Form 4720 and provided to the appropriate office at the IRS? | Jennifer – end 10:48 |
| Topic #5 Prepared Remarks/Dialogue | Form 4720 issues | Rob – end 10:54 |
| **Thank you to OUR IRS PANELISTS, Rob Malone AND Tim Berger**  **(they are departing at 10:55 am)** | | |
| **Switchover to Further Materials Presentation by Moderators –**  **Session ends at 11:10 am** | | |

**ANCILLARY INFORMATION ON SOME OF OUR REQUESTS**

**TOPIC 2: Business Master File Data Issues**

Regarding absence of a c3-qualified entity in Publication 78 and/or a c3 entity having its public charity/private foundation classification misreported in the EO BMF Abstract and thus all databases that draw from it:

Rev. Proc. 2018-32’s Section 6 specifically states that donors’ reliance on the tax-exemption and public charity statuses of a potential donee in order to be entitled to a charitable contribution deduction is predicated on the donee organization being listed in the Tax Exempt Organization Search (Pub. 78 data) or the EO BMF Abstract, as follows:

Section 6.01 sets out that the listing in TEOS’ Pub. 78 or the EO BMF Extract must identify the organization with its “official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known.”

Section 6.02 sets out that donors are only entitled to the reliance provisions accorded in earlier sections of the Rev. Proc. (as to continued reliance in the case of revocation and as to the accuracy of the classifications the organization has been listed with) “do not apply to an organization until it is listed in or covered by the Tax Exempt Organization Search (Pub. 78 Data) or the EO BMF Abstract.”

There is thus substantial urgency to having an organization’s name change properly rostered in the EO BMF Abstract timely. How organizations are to accomplish that is addressed by divergent information within the current Form 990 instructions and the IRS web page on the topic EO name changes. The 990 instructions state that the Header’s name change box is to be checked “if the organization hasn’t reported the change on its most recently filed Form 990 or 990-EZ **or** in correspondence to the IRS.” [bold added for emphasis]

Regarding last bullet-point’s issue (frequent miscoding of Group Ruling Holder and/or its subordinates): This topic comes up on virtually every practitioner call and meeting. It would be helpful if you would illuminate what processes are in place by which a Group Ruling Holder’s annual updating of subordinates affects these taxpayers’ BMF data inputs. We assume that this annual updating is an exceedingly laborious task. Unfortunately, there is much evidence across the last 2+ years of tons of inadvertent name and EIN “switches”. These typically come to light either when a Group Ruling Holder attempts to file their 990 (or their group 990 for some or all subordinates) or when a subordinate that was NOT included in the “group 990” attempts to file their 990.

**TOPIC 3: E-filing Issues**

Regarding 990-series filing on short years begun in 2021 being rejected: The e-help support line is suggesting the work-around noted here (in the case of a non-final return filer) which is to check the “initial return” box. Filers are not happy using such a mechanical “fix” when it is patently false.

**TOPIC 4: Webpage Feedback**

As you will note, the third webpage listed generates multiple questions relating to how EOs can get their names changes processed. Taxpayers and practitioners are consistently stymied by the reality that self-described 501(c)(4)s, 501(c)(5)s, and 501(c)(6)s (whether or not they have a pending exemption application) are unable to file Forms 990, 990-EZ or 990-T without an **overall BMF** coding change noting that they are eligible to file these 990-series returns. This is also a problem for 501(c)(3) public charities and private foundations when they have a pending application. In addition, in all these cases we are aware that the affected taxpayer also cannot file the e-notice, Form 990-N.

Calls to the e-help services line by affected taxpayers on this matter are typically nonproductive, although there is one agent who is very familiar with Form 990-series annual information return issues and she garners results that other agents do not. It is very frustrating to be told to contact CAS as ultimately, at least 95% of the time, the eventual result is that CAS refers back to the e-help support line.

**In addition, much confusion reigns in this area,** especiallyas it had been the case in the past that taxpayers with pending 501(c)(3) applications and (prior to advent of Form 8976) self-declared 501(c)(4)s were able to call CAS to “get the switch thrown in the BMF” to allow them to effect 990 annual information returns of the Form 990-N. At present, an IRM is in place that specifies that until a 501(c) exemption application is closed with a favorable ruling, the IRS is not not to throw the “990-filing” switch to “on.” Assuming that IRM is the current impediment, it would be advantageous to have an expedited process by which affected EOs in these circumstances could be coded or rostered properly in such fashion on the BMF to allow them to make appropriate 990-series filings.

Re the Webpage “About Us” we would like more details on BOTH:

1. the circumstances when an exempt organization may “obtain a determinations letter applying to a specific set of facts”; and
2. when taxpayers might be required to send amended documents to Determinations? [is this, for example, required when a ruling for 501(c)(3) recognition has been filed by an applicant whose organizing document has failed to satisfy the “organizational test”, or in the case of an entity seeking 509(a)(3) status public charity classification, if the entity has no purpose dedication in their organizing document that specifies they are “supporting” one or more “supporting organizations?]

And finally, we are so appreciative of the fact that immediately following the 3/3/2022 EO Update session in which you mentioned that the EO Entity unit/Office is the focal point for addressing questions on the EO BMF and gave full contact information for that Office. You and your representatives graciously provided to the EO Council the EO Entity’s fax number and mail/delivery addresses, shown below, and we strongly suggest that this (and other, as applicable) IRS webpages refer EOBMF questions to EO Entity with the same information you provided us (see next page reproduction of our post to EO Council members of the complete addresses).

USPS Address Private Delivery Service

Internal Revenue Service Internal Revenue Service

Attn. EO Entity, M/S 6273 1973 N Rulon White Blvd.

Ogden, UT 84201 Attn. EO Entity, M/S 6273

Ogden, UT 84201

FAX

855-214-7520

**TOPIC 5: FORM 4720 ISSUES**

Given how frequently the systematic issues noted arise, practitioners and taxpayers are seeking tips as to how they might mitigate these recurring notices and rejections?

As to the notices themselves, the IRS telling the EO to remit the tax obligation is concerning as some organizations will indeed make such remittance *for the disqualified person*. For both public charities and 501(c)(4) organizations with respect to Code sec. 4958, and for private foundations with respect to Code sec. 4941, we note that an EO who pays the disqualified person’s tax obligation will have inadvertently generated another excess benefit transaction or act of self-dealing, under the prior-cited Code sections, respectively.