

**November 18, 2022, TEGE EO Council Meeting**

**EO Update Session with TEGE Exempt Organization Division’s Rob Malone (Division Director)  
and Tim Berger (Senior Advisor to the Director)**

| Session’s Sections | TOPIC   |
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|                    | <b>Introduction of IRS Panelists and Moderators</b>   |
| Opening Remarks    | <b>Remarks from the IRS’s EO Division Director including recent release of TEGE 2023 Program Letter (pub. 5313)</b>   |
|                    | <p><b><u>Current IRS Operations</u></b></p> <p><b>(a)</b> IRS Bulletin, “Form 990-N Filers Will Now Use a New Sign-in Process (see EOTJ 2022-156, 8/18/2022 as well as 8/15/2022 IRS <a href="https://content.govdelivery.com/accounts/USIRS/bulletins/3281eea">https://content.govdelivery.com/accounts/USIRS/bulletins/3281eea</a>)</p> <p><b>Query:</b> what issues was this designed to address and what results are in hand from the August implementation?</p> <p><b>(b)</b> Relief for 990-PF and 990-T filers via IRS Notice 2022-36, Aug. 24: <a href="https://www.irs.gov/pub/irs-drop/n-22-36.pdf">https://www.irs.gov/pub/irs-drop/n-22-36.pdf</a>. This was a broad, late-filing, <b>administrative penalty relief program</b>, which for EOs only reaches Forms 990-PF and 990-T late filing/paying of <b>TAX penalties</b> (not late filing penalties) assessed under IRC sec. 6651 on tax years 2019 and 2020. The Notice “is designed to allow the IRS to focus its resources on processing backlogged tax returns and taxpayer correspondence to help return to normal operations for the 2023 filing season.” It relieves affected filers of tax penalties imposed on tax year 2019 and 2020 -T’s and -PF’s filed on or before 9/30/2022. This relief is “automatic,” and in cases where the assessed penalty was already paid, refunds will automatically be issued.</p> <p><b>Query:</b> will (and if so, when) might EO sector receive IRC sec. 6652 late filing penalty relief for 990’s, 990-EZ’s, and 990-PF’s? [We note that Notice 2022-36 does not cover those penalties.] The total number of these returns filed in <i>each</i> of the prior two federal FYs was ~850k and a significant number of those returns were assessed late filing penalties. Those assessments disproportionately impacted the sector and is the source of vast resource drains on the sides of BOTH filers and the IRS. We also note that Form 4720 filings have yet to be provided relief of section 6652 late filing penalties.</p> <p><b>(c)</b> External referrals of noncompliant activity to TEGE are made via submission of Form 13909 (Rev. 12-2016), the <i>Tax-Exempt Organization Complaint (Referral) Form</i>, which can be emailed or mailed with supporting documentation to <a href="mailto:eoclass@irs.gov">eoclass@irs.gov</a> or IRS EO Classification, Mail Code 4910DAL, 1100 Commerce St., Dallas, TX 75242-1198, respectively.</p> |

**Query:** How many of these are received? Please comment on the bandwidth IRS has to investigate referrals via exams or otherwise.

**(d)** IRS's EO and Government Entities Division continues to issue "Technical Guides". The most recent releases we have seen are:

- [TG 23 Religious and Apostolic Associations IRC 501\(d\)](#), Publication 5627 (3/1/2022)
- [TG 58 Excise Taxes on Self-Dealing under IRC 4941](#), Publication 5616 (3/1/2022)
- [TG 62 Excise Taxes on Taxable Expenditures under IRC 4945](#), Publication 5590 (3/10/2022)
- [TG 6 IRC 501\(c\)\(6\) Business Leagues](#) Publication 5710 (9/16/2022)

**Query:** What additional Technical Guides are currently in process? Is it contemplated that application of the multiple "facts and circumstances" arenas affecting both 501(c)(3) public charities and/or 501(c)(4) social welfare organizations (examples being both "what is impermissible private benefit" or in what circumstances is the so-called "commerciality doctrine" applicable) might be topics of address?

**(e)** Can you: (a) comment on issues you have seen on the IRS's side with mandatory electronic submission of Form 1024 (mandated as of 1/3/2022)?; (b) discuss how Forms 1023 "in-process within the app" (i.e., not yet submitted) continue to be moved out of "user in-process" status when software updates occur?; and (c) same as (b) but with respect to "in-process" Forms 1024 and 1024-A?

**(f)** IRS's officials have recently commented on steps taken to review possible outliers who have been awarded 501(c)(3) rulings via Form 1023-EZ. Can you comment on those review initiatives?

**(g)** 990-N eligible entities that have not yet filed for exemption and aren't coded in the BMF as having a 990-series filing requirement have an extremely difficult time getting into the system as 990-series filers given that the CAS phones are almost always busy. **Those delays often lead to auto-revocation 'hitting' upon filing of an exemption application as so many of these groups have a first tax year that is a short year.**

**Query:** Has the IRS considered alternative means by which "newer groups" (other than 501(c)(4)-described groups who file Form 8976) can more expeditiously get into the system to make 990-series' filings? Are there means by which the possibility of auto-revocation can be avoided (such as by having the applicant seek exemption effective the first day of the tax year in which activities were actually undertaken?) or by accepting proof of a rejected Form 990-N filing as a "filing"?

**(h)** We had also asked IF erroneous automatic revocation faxline, 855-247-6123, had been discontinued given that practitioners were reporting nonstop busy

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|                                    | signal 10/12/2022 and forward. THAT “constant busy” was a systems issue that has been resolved!  |
| Topic #1 Prepared Remarks/Dialogue | Current IRS Operations   |
|                                    | <p><b>Business Master File Data Issues</b></p> <p><b>(a)</b> IRS’s EO Entity (Control) office addresses for written correspondence (including fax #: 855-214-7520) were provided by Rob Malone and Tim Berger shortly after the March 2022 EO Update Panel. The ability to fax requests to the IRS is extremely helpful, but taxpayers would appreciate knowing what to expect once they have sent a fax or mailed in a request for correction(s): We also have the following specific <b>queries</b>:</p> <ul style="list-style-type: none"> <li>• What is the expected processing time once EO Entity has received a fax or letter?</li> <li>• Taxpayers would appreciate confirmation of faxes to EO Entity having been received! Can acknowledgments be generated?</li> <li>• Similarly, taxpayers would appreciate receiving a communication confirming EO Entity having taken appropriate action and/or resolved the issue. Can such communications be generated?</li> <li>• Please confirm that EO Entity can process “change in the taxpayer’s accounting year-end” when Form 1128 is not required.</li> </ul> <p><b>(b)</b> We continue to receive questions from practitioners as to <i>how to best effect name changes on the BMF</i> (and how same are handled).</p> <ul style="list-style-type: none"> <li>• May taxpayers “check” the name change box on the first 990/990-EZ/990-PF following a change in name <i>if they have already submitted the name change to EO Entity</i>?</li> <li>• <b>ALSO</b>, for 990-N filers, is corresponding with EO Entity (per (a), prior) the only option they have to effect name change?</li> <li>• Can you confirm that checking the name change box on an annual return filing with adequate documentation attached to the filing result in the new name being entered not only on the BMF but also e-file registration, payroll and excise records, collections, and whatever Form 8822-B filings have recorded for an organization’s current address and current responsible party?</li> </ul> <p><b>(c)</b> Can you please describe what processes are invigorated when a Group Ruling Holder submits its annual updating of subordinates? The specific concern is the extent to which that filing affects the taxpayer’s BMF data inputs.</p> |
| Topic #2 Prepared Remarks/Dialogue | Business Master File Data Issues   |

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| <p><b>Topic #3</b></p> | <p><b>E-filing Issues</b></p> <p><b>(a)</b> Submissions to EO Entity (Control) requesting coding changes to allow a “self-declared exempt” to make 990-series filings at the present time take approximately six weeks to effect the change. Is there a contact phone number for that Unit by which one may check on the status of the request or seek priority treatment so that taxpayers do not have to repetitively attempt to e-file?</p> <p><b>(b)</b> Organizations filing a Form 990, 990-EZ, 990-PF or 990-T for CY2021 and for tax years ending January 2022 and after <b>must</b> file their returns electronically; the same applies to private foundations’ filing a Form 4720 for CY 2021 and ensuing year ends. Has mandatory e-filing of 2021 returns been normalized at this point?</p> <p><b>(c)</b> Practitioners are still experiencing difficulties in e-filing new organization returns before a filer’s exemption application has been approved. We note that a new exempt organization has 27 months to apply for tax-exempt status and that applicants are expected to file 990s when exemption application is pending (as well as preceding such filing in most circumstances). Filers in such circumstances must contact CAS by phone to get the 990-filing switch “flipped” to “yes” on the IRS’s side. In some instances, the bar here brings a taxpayer close to the line for not having filed returns on three consecutive years which of course would yield automatic revocation. <b>Also note</b> Topic #6(a) and IRM 7.20.4.2 -- .1, .2, .3 (12-03-2018, in handouts) address Determinations’ auto-revocation vetting.</p> <ul style="list-style-type: none"> <li>• Are you aware of this issue? Are any resolutions contemplated?</li> <li>• Is it possible to automatically abate penalties when the IRS’s system is the basis for a filer not having been able to timely file their annual information return?</li> <li>• WE ALSO NOTE THAT INABILITY TO EFILE is also an issue for taxpayers who have garnered favorable ruling but entity remains NOT included in EOBMF/TEOS databases</li> </ul> <p><b>(d)</b> Clarification regarding issues with short-year final returns is sought again as we are still determining if it is the IRS’s systems or software vendors’ programming that have created roadblocks. Examples of such filing issues follow:</p> <ul style="list-style-type: none"> <li>○ In the case of a final short-year 2022 return that is due prior to January 2023, the return has to be filed on a 2021 Form 990 Series. With no relief to paper file, the instructions indicate e-filing can be undertaken, but the tax practitioner community is receiving rejections of these filings.</li> <li>○ A filer who can effect an “automatic change” in their accounting year end by making a short-year filing may need use the prior year form; can the IRS accept that second year Form for e-filing? As noted in (a), above, it is taking six weeks to have the taxpayer’s record adjusted after notifying the IRS’s EO Entity (Control) office.</li> </ul> <p><b>(e)</b> For organization’s seeking reinstatement of exemption after automatic revocation, Rev. Proc. 2014-11’s sections 5 and 6 mandate “paper filing” of the</p> |
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|   | <p>pertinent missed years’ returns AND require the applicant to affirm that those returns have been filed.</p> <ul style="list-style-type: none"> <li>• How may filers effect paper-filing of returns on the missed years (if indeed those years’ returns are now required to e-filed)?</li> <li>• How may filers e-file returns on missed years given that automatically revoked groups, once they no longer show as “exempt” for back tax periods, will have those years’ e-filings rejected?</li> <li>• Are there plans to update Rev. Proc. 2014-11 or otherwise provide guidance to those who are in the cited circumstances?</li> </ul>  |
| <p>Topic #3 Prepared Remarks/Dialogue</p> | <p>E-filing Issues</p>   |
|   | <p><b>IRS Webpages – Feedback</b></p> <p><b>(a)</b> Neither of the two IRS webpages addressing late filing penalties cross-references the other. One page, <a href="https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-filing-procedures-abatement-of-late-filing-penalties">https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-filing-procedures-abatement-of-late-filing-penalties</a>, notes that a reasonable cause explanation is required and that these will be evaluated on a case-by-case basis. It specifically says that to establish reasonable cause, the filer need describe “how the organization was not neglectful or careless, but exercised ordinary business care and prudence.” This page we believe erroneously states that the written statement <i>should be made as an attachment to the filed return</i>. A second, much longer page, <a href="https://www.irs.gov/charities-non-profits/annual-exempt-organization-return-penalties-for-failure-to-file">https://www.irs.gov/charities-non-profits/annual-exempt-organization-return-penalties-for-failure-to-file</a>, has a section relating to “Requesting abatement of tardiness penalty on electronic filing after rejection of paper form.” It states, “You may make the request in response to a penalty notice that you receive or, in the case of Forms 990* or 990-PF, when you electronically file the return. Explain what facts previously prevented the electronic filing. Include the date of the attempted paper filing.”</p> <p>* We note this text (posting with a 8/30/2022 revision date) has yet to be updated to reference the Form 990-EZ!</p> <p><b>Query:</b></p> <ul style="list-style-type: none"> <li>• When an abatement request <i>is made via written attachment to an e-filed Form 990-series annual return</i> is there some mechanism by which such requests are then handled?</li> </ul> <p><b>(b)</b> The issues noted in Topic #3 (e) also should be addressed in the Automatic Revocation Reinstatement webpage, (<a href="https://www.irs.gov/charities-non-profits/charitable-organizations/automatic-revocation-how-to-have-your-tax-exempt-status-reinstated">https://www.irs.gov/charities-non-profits/charitable-organizations/automatic-revocation-how-to-have-your-tax-exempt-status-reinstated</a>) as the text there relating to Rev. Proc. 2014-11’s “streamlined reinstatement procedures” fails to address current paper vs. e-filing realities.</p> |
| <p>Topic #4 Prepared Remarks/Dialogue</p> | <p>IRS Webpages – Feedback</p>   |

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| <p><b>Topic #5</b></p> <p><b>NOTE: IRS comments on this issue at presentation made by Elaine Leichter at IRS's August National Tax Forum is in handouts</b></p> | <p><b>Form 4720 issues</b></p> <p>Since early spring 2022, TEOs who file a Form 4720 <i>to self-report</i> an act of self-dealing (for private foundation) or an excess benefit transaction (for other applicable exempt organizations) are receiving notices to pay penalties and interest related to the excise tax their filing shows as applying to the disqualified person under IRC sec. 4958 or 4941, respectively. As was noted at the 6/17/2022 EO Update session, these are NOT those relating to the exempt organization but to the disqualified person.</p> <p><b>Query:</b> Is there a streamlined way to report this ongoing glitch to the IRS? Currently, taxpayers and practitioners are contacting CAS at 1-877-829-5500 and are being told to also contact Collections to place a hold on the account until the matter can be resolved in the computer system. CAS phone contact is typically taking days or weeks of multiple calls to discuss the issue with a live person!</p>  |
| <p>Topic #5 Prepared Remarks/Dialogue</p>   | <p>Form 4720 issues</p>  |
| <p><b>Topic #6</b></p>  | <p><b>Determinations</b></p> <p><b>(a) IRM 7.20.4.2.1 and .2 and .3</b> denote required Determinations' procedures pertaining to applicants for exempt status. In all cases, the reviewing agent is to "determine whether an organization is currently automatically revoked, records need to be updated to reflect automatic revocation, or needs actions taken to prevent an erroneous automatic revocation." Results there often lead to the applicant receiving a notice of auto-revocation which comes well before any exemption application-related correspondence. The affected taxpayers are often not aware that their pending exemption application is still being worked and may be eligible to be treated as an application for retroactive reinstatement.</p> <p><b>Query:</b> IRM 7.20.4.2.2 instructs the application's reviewers to treat the application as possibly eligible for retroactive reinstatement under Rev. Proc. 2014-11's sections 4, 5 or 6. Section 4 (which applies to organizations eligible to have filed Forms 990-N or 990-EZ on all of the three years that are the basis of auto-revocation) can be applied by the agent <i>without</i> the agent having to seek the applicant's permission or further information. Accordingly, applicants who get a notice of automatic revocation are typically unaware of their ability to seek retroactive reinstatement under the cited Rev. Proc.'s procedures. How can we help taxpayers and their representatives work with determinations to appropriate ends here most expeditiously?</p> <p><b>(b)</b> There seems to be a significant number of applications <u>not</u> subject to a request to expedite that are getting approved with a ruling letter issued 3-4 months after submission, while plenty of others submitted 6+ months ago are still awaiting communication as to their approval or rejection. <b>This is an obvious departure both from what we have experienced for years now and the timing expectations set out on on the IRS website.</b> Are there currently different procedures in place</p> |

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|                                    | <p>for processing applications? How do so many applications jump ahead in the queue?</p> <p><b>(c)</b> How might practitioners submit multiple Forms 1023 together under the new electronic filing system such as in a situation when a group of organizations are together leaving a group exemption? Ideally it would be resource-saving if they could be reviewed together, as they will be nearly identical with similar documents and re-branding under a similar affiliation.</p> <p><b>(d)</b> IRS has been providing 1024-A applicants who will conduct political campaign activities (“PCA”) with “optional/expedited” ability to garner the sought 501(c)(4) exemption ruling if the taxpayer agrees to limit the magnitude of its PCA annually to no more than 40%. To what end is that process being applied and how are applications flagged to receive that letter?</p> <p><b>(e)</b> A newer issue that has come up from practitioners is that they cannot distinguish a draft of a Form 1023 prepared on pay.gov from the final, i.e., submitted version. (Indeed, the payment confirmation has the filer’s credit card info but NOT the organization’s name or EIN). For those reviewing copies of 1023s prepared by others, there is no way to know if what they have been provided is the as-submitted application. Given delays in getting a copy of filed exemption applications from the IRS (one practitioner noted “the last time I did that, it took 11 months, and I didn’t get everything I asked for”), it would be great if the pay.gov app could stamp “Submitted [Date]” on the Form that was submitted or provide a filing page with the submitted copy (similar to what Secretary of State Offices do on incorporation documents).</p> <p><b>(f)</b> Practitioners seeking expedite of submitted exemption application are frustrated when “denial” comes but there is no means of contacting Determs back to speak to correct facts or make case that denial is in error. Is there a contact number that can be provided for use in such instances? (this is common question!)</p> |
| Topic #6 Prepared Remarks/Dialogue | Determinations   |
| <b>Topic #7</b>                    | <p><b>Examinations and Miscellaneous</b></p> <p><b>(a)</b> Exam agents in both August and September who have received IDR information from examinees on flash drives have not been able to access the information on those flash drives!</p> <p><b>(b)</b> When is secure e-fax messaging going to be up and running?</p> <p><b>(c)</b> Timing of BMF anticipated upgrade overall – any indications that upgrade planning is in the works?</p> <p><b>(d)</b> Anything you can share as to how the IRS’s reorganization that is starting to be implemented in 2023 will impact EO procedures and/or operations?</p>   |
| Topic #7 Prepared Remarks/Dialogue |  |

List of Handouts Available to Participants 11/18/2022 EO Update Panel  
(the files are named as follows)

TEGE Joint Council Handout Nov 18 2022 (provided by IRS)  
statistics on FY2022 work accomplished within IRS's EO Division (Rulings & Agreements, Determinations, and Examinations) as well as list of "Helpful Links"

Current list of TEGE IRS Audit Technique Guides and Technical Guides  
Printout of IRS webpage last updated 19-Sep-2022:  
<https://www.irs.gov/charities-non-profits/audit-technique-guides-atgs-and-technical-guides-tgs-for-exempt-organizations>

IRM 7.20.4.2 excerpted \_\_ Exemption Applications and Auto Revocation [sorry re typo]  
This resource is noted in the Session Agenda (specifically, IRM Sections 7.20.4.2.1, .2, and .3) as they detail how Examinations is to work exemption applications on entities who may be subject to automatic revocation (various annotations have been made thereupon by Eve Borenstein)

Filing Form 4720 \_\_ IRS's National Tax Forum Aug 2022  
This resource is the transcript of EO filing issues noted by Elaine Leichter at IRS's forum this summer, excerpted (with bold, underlining, and highlighting added for emphasis) by Eve Borenstein