

November 17, 2023, TEGE EO Council Meeting

11:20 to 12:50 ET

IRS Exempt Organization Update and Q&A Session with TEGE Exempt Organization Division's Rob Malone (Division Director)

Moderated by Anne Fulton and Preston Quesenberry

Session's Sections	AGENDA
11:20 – 11:25 ET	Introduction of IRS Panelists and Moderators
Opening Remarks 11:25 – 11:45 ET	Remarks from the IRS' EO Division Director
Topic #1	<u>Business Master File Data Issues and Responsible Party Information</u> (a) Practitioner Observation: 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. (b) 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?
Topic #1 Prepared Remarks/Dialogue	Business Master File Data Issues

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Topic #2	<p data-bbox="427 317 886 348"><u>IRS Forms, E-filing and ID.gov Matters</u></p> <p data-bbox="475 413 1409 548">(a) Effective September 16, 2023, all users who already had a Pay.gov account had to begin using ID.me or Login.gov. Pay.gov usernames and passwords were no longer valid. Practitioners have expressed the following concerns with ID.me accounts:</p> <ol data-bbox="524 556 1442 905" style="list-style-type: none"> <li data-bbox="524 556 1360 585">(1) The IRS prohibits sharing these credentials, even with one's spouse. <li data-bbox="524 590 1442 657">(2) Each person's ID.me account provides access to that person's personal tax records. Therefore, it is not useful in a professional capacity. <li data-bbox="524 661 1442 800">(3) Whoever uses their 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). <li data-bbox="524 804 1406 905">(4) No one other than the person whose 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. <p data-bbox="524 947 1425 1081">Will the 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?</p> <p data-bbox="524 1123 1430 1266">Practitioner Observation: 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.</p> <p data-bbox="475 1297 1422 1640">(b) Practitioner Observation: We've noticed a few aspects of the Pay.gov platform that could be improved:</p> <ul data-bbox="524 1377 1422 1640" style="list-style-type: none"> <li data-bbox="524 1377 1422 1560">• 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. <li data-bbox="524 1570 1406 1640">• 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. <p data-bbox="475 1686 1422 1824">(c) 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</p>

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	<p>practitioners have been advised to send their name change information (approved copy of amended articles, etc.) to the EO Correspondence Unit.</p> <p>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) 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 efile. [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.]</p> <p>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?</p> <p>(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?</p> <p>(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</p>

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	<p>steps that have been and will be taken to resolve this issue? See the Ancillary information regarding the past responses.</p> <p>(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?</p> <p>(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?</p> <p>(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?</p>
Topic #2 Prepared Remarks/Dialogue	E-filing Issues
Topic #3	<p><u>Group Exemption Holders and Subordinates</u></p> <p>(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?</p> <p>(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))?</p>

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	(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?
Topic #3 Prepared Remarks/Dialogue	Group Exemptions – Feedback
Topic #4	<p><u>Other Issues</u></p> <p>(a) Practitioner Observation: The IRS's EO Customer Service Center now permits you to leave a callback number. We appreciate this new development.</p> <p>(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?</p> <p>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</p> <p>Including the missing information, referencing the Pay.gov Tracking ID and the Agency Tracking ID, and requesting that the information be added to the prior-submitted application.</p> <p>(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?</p> <p>(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.</p> <p>(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?</p>

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	<p>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?</p> <p>(f) When submitting Forms 8940 Miscellaneous Determination requests 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.</p> <p>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.</p> <p>(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?</p> <p>(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?</p> <p>(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)?</p> <p>(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</p>

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	<p>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.</p> <p>(k) Why were the Form 1023-EZ instructions amended in 2018 to require a public support computation over the first five years based on actual and anticipated revenue as opposed to a general instruction that the organization be "reasonably expected" to meet the public support test? As a result of this change, we understand that the percentage of Form 1023-EZ approvals that are private foundations has more than doubled.</p> <p>(l) For purposes of the cap on section 6652 equal to 5% of gross receipts, are capital losses taken into account in computing gross receipts?</p> <p>(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.)</p> <p>(n) If you look at the "Where's My Application for Tax-Exempt Status?" webpage, it shows that Forms 1023 filed after March 1, 2023 have not yet been assigned, which is about 8 months. Is that accurate? That length of time does not seem consistent with practitioners' experience or with IRS reports on application processing times.</p>

12:20-12:50 ET: Follow-up panel discussion with Anne, Preston and Jennifer

Topics for panel discussion:

- Reminder about Member Forum on website (Jennifer)
- Reminder about EO Help Chart – Updated October 2023 (Jennifer)
- Reminder about IRS Statistics (Jennifer)
- Form 1023

- Section 318 attribution rules (See #4m above.)
- Practitioner observations

Ancillary Information Augmenting Agenda Topics

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

From the TIC TAQ Committee:

For the last two filing seasons, exempt organizations filing Form 4720 to report an excess benefit transaction under IRC section 4958 or private foundations filing Form 4720 to report acts of self-dealing under IRC section 4941 *initially had been* the subject of collection efforts, which sought to collect the amount of excise tax liability that would be the responsibility of the subject disqualified person from the organization. This issue was addressed at both the EO Update sessions held June and November 2022. The IRS's Exempt Organization Division in both sessions stated that the issue was caused by filers incorrectly completing Form 4720¹ 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 2023 was that the returned filings occurred due to an issue on the IRS's end. They thus advised as follows:

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

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

[EO Council Resource Link](#): Form 872-B, *Consent To Extend the Time to Assess Miscellaneous Excise Taxes*.