Disclaimer

• The content of this presentation is not intended as a statement of the views of the speakers, the Department of the Treasury, the Office of Associate Chief Counsel, or the Internal Revenue Service. These materials were prepared without input or review from the government speakers.
Capitol Hill Update
• **Taxpayer First Act, Pub. L. No. 446-25 (July 1, 2019)**
  - Mandatory e-filing of all Form 990 series returns, including the Form 990-T (Sec. 3101)
    - Provides for a 2-year transition period for small organizations (which generally lines up with Form 990-EZ filers) and a 2-year period to implement an electronic Form 990-T
  - IRS is required to provide notice to organizations at risk of auto-revocation (Sec. 3102)
    - After an organization has missed 2 annual returns or notices, the IRS must send a letter making clear that the organization is at risk of auto-revocation
    - This provision stems from a recommendation from the Taxpayer Advocate in 2011
  - Modernization of IRS organizational structure (Sec. 1302)
    - IRS must provide Congress with a plan to redesign the organization of the IRS no later than Sep. 30, 2020
    - One year after the plan is submitted, the requirement in the Internal Revenue Service Restructuring and Reform Act of 1998 that the IRS “establish organizational units serving particular groups of taxpayers with similar needs” is eliminated
Legislative Updates

• Multiple bills pending in the House and Senate that would repeal sections 512(a)(6) (UBIT silo-ing) and/or 512(a)(7) (transportation fringe benefits)
  • There has been little movement on these bills, even though there is bipartisan support
  • Senate:
    • S. 1282 – Preserve Charities and Houses of Worship Act (introduced on 5/2/19)
    • S. 501 – Stop the Tax Hike on Charities and Places of Worship Act (introduced on 2/14/19)
  • House
    • H.R. 513 – Nonprofits Support Act (introduced on 1/11/19)
    • H.R.1223 - Stop the Tax Hike on Charities and Places of Worship Act (introduced on 2/14/19)
    • H.R. 1545 - To amend the Internal Revenue Code of 1986 to repeal the inclusion of certain fringe benefit expenses for which a deduction is disallowed in unrelated business taxable income (introduced on 3/5/19)
    • H.R.3323 - Nonprofit Relief Act of 2019 (introduced on 6/18/19)
• Rep. Richard E. Neal (D-MA) is the Chairman. Rep. Kevin Brady (R-TX) is the Ranking Member.

• EO-related investigations, hearings, etc.:
  • Letter to IRS Commissioner Rettig on May 9, 2019 re NRA
  • Hearing: How the Tax Code Subsidizes Hate (9/19/19)
Sen. Charles (Chuck) Grassley (R-IA) is the Chairman of the Senate Finance Committee. Sen. Ron Wyden (D-OR) is the Ranking Member.

EO-related investigations, hearings, etc.:
- Letter to IRS Commissioner Rettig re 501(c)(3) hospitals and enforcement of 501(r)
- Letter to IRS Commissioner Rettig re charity involved in college admissions scandal, Key Worldwide Foundation (“KWF”), and “donations” to KWF both from parents individually and through at least one private foundation
- Letters to ten 501(c) organizations re opioid drugs, pain management advocacy, and relationship to pharmaceutical companies
- Letters to U.S. Olympic Committee re oversight of USA Gymnastics
IRS Updates
Changes in IRS Leadership

New Deputy Commissioner for Services and Enforcement:
Sunita Lough, the former Tax Exempt Government Entities Commissioner

New TEGE Commissioner:
Tammy Ripperda, former SB/SE Deputy Commissioner and EO Director, is now the TEGE Commissioner

National Taxpayer Advocate:
Nina Olson retired on July 31, 2019. Bridget T. Roberts is the Acting National Taxpayer Advocate

NOTE: With respect to tax litigation and the legal interpretation of tax law, the Chief Counsel also reports to the General Counsel of the Treasury Department. On matters solely related to tax policy, the Chief Counsel reports to the Treasury General Counsel.
FY19 Program Letter

• Provides overview of planned EO Examination activities in the Tax Exempt Government Entities Division for the 2019 Fiscal Year
  • (Note: Issued in early October 2018. A new letter may be issued between the date this presentation was prepared and the date of the conference)

• Lists 8 compliance strategies:
  • W-2/1099 matching
  • For-profit to non-profit conversions
  • 501(c)(7)
  • 4947(a)(1) non-exempt charitable trusts
  • Private benefit and inurement
  • Early retirement incentive plans
  • Notice CP 2100 on backup withholding on the Form 1099
  • Worker classification
• Data driven models for examination:
  • Form based models using Forms 990, 990-EZ, 990-PF, and 5227
  • Employment taxes
  • Collaboration with the Research, Applied Analytics, and Statistics division of the IRS to develop models for private benefit/inurement, officer business partnerships, underreported credit card income, and related employees and for-profit partnerships

• Compliance Checks

• Referrals

• Form 1023-EZ statistical sample
• Review of IRS data for its activities in Fiscal Year 2018
• Started reviews of 307 returns using compliance strategies
• Started reviews of 3,901 returns using data-driven models
• Started 2,374 reviews based on referrals, claims, the 1023-EZ statistical sample, and ACA
• It is expected that the number of new starts for FY19 will be less than those reported in FY18 due to the government shutdown and shifting of resources to reduce the number of open applications in EO Determinations
IRS and Treasury Guidance Updates
• The fourth quarter update to the 2018–2019 Priority Guidance Plan (PGP) was released on August 28, 2019

• EO-related Tax Cuts and Jobs Act projects on the PGP:
  • Guidance on computation of unrelated business taxable income for separate trades or businesses under new 512(a)(6), as added by section 13702 of the TCJA
  • Guidance on the excise tax on excess remuneration paid by “applicable tax exempt organizations” under new 4960, as added by section 13602 of the TCJA
  • Regulations on the excise tax on net investment income of certain private colleges and universities under new 4968, as added by section 13701 of the TCJA
  • Charitable contribution deduction when a taxpayer receives or expects to receive a state or local tax credit
  • Guidance under 274 concerning qualified transportation fringe benefits, including the application of new 512(a)(7)
Priority Guidance Plan

• Other EO-related projects
  • Guidance under 170(e)(3) regarding charitable contributions of inventory
  • Final regulations under 512 re computation of UBTI for VEBAs
  • Final regulations on 506 as added by the PATH Act of 2015
  • Final regulations on 509(a)(3) supporting organizations
  • Guidance under 512 regarding methods of allocating expenses relating to dual use facilities
  • Regulations under 529A on Qualified ABLE Programs as added by section 102 of the ABLE Act of 2014
Priority Guidance Plan

• Other EO-related projects
  • Guidance under 4941 regarding a private foundation’s investment in a partnership in which disqualified persons are also partners
  • Guidance regarding the excise taxes on donor advised funds and fund management
  • Guidance under 6033 on reporting donor contributions
  • Final regulations under 6104(c)
  • Final regulations designating an appropriate high-level Treasury official under 7611
• Notice of Proposed Rulemaking (‘‘NPRM’’) published in the Federal Register on July 3, 2019 (84 FR 31795)

• Proposed regulations clarify several terms including:
  • The definition of tuition paying student
  • The calculation of the $500,000 per student threshold
  • The determination of exempt purpose assets
  • The treatment of related organizations

• The proposed regulations also for comments on several issues, including whether:
  • Specific types of income should be excluded from gross investment income
  • Educational institutions use functionally-related businesses in conducting their operations and if those businesses should be included as examples of exempt use assets
  • Rules similar rules similar to the private foundations rules of section 4942(e) and Treas. Reg. section 53.4942(a)-2(c)(4) are useful when valuing non-exempt use assets
  • There should be a special rule excluding any appreciation in a gift of donated property that occurred before the date of receipt by the applicable educational institution should be included in the final regulations
Guidance under I.R.C. § 6033 (including reporting of donor names)

- Notice of Proposed Rulemaking ("NPRM") published in the Federal Register on September 10, 2019 (84 FR 47447)
- These proposed regulations follow the July 30, 2019 decision in Bullock v. Internal Revenue Service, which set aside Rev. Proc. 2018-38 for failure to follow the Administrative Procedure Act ("APA") and ordered the IRS to follow proper notice and comment procedures pursuant to the APA if it seeks to adopt a similar rule.
- The proposed regulations incorporate the changes in donor reporting for 501(c) organizations (other than 501(c)(3)) originally contained in Rev. Proc. 2018-38.
- The proposed regulations also incorporate other statutory changes and sub-regulatory guidance that were not previously reflected in the regulations.
Guidance under I.R.C. § 6033 (including reporting of donor names)

• Change in Donor Reporting
  • Specifying that only organizations described in sections 501(c)(3) and 527 would continue to be required to provide names and addresses of contributors on their Forms 990, 990-EZ, and 990-PF

• Updates to match previous statutory changes and sub-regulatory guidance
  • Incorporating items listed in 6033(b)(10) (reporting of taxes imposed on certain lobbying and political expenditures by 501(c)(3) orgs)
  • Adding items listed in 6033(b)(11) (reporting of taxes under 4958 for excess benefit transactions)
  • Incorporating other statutory reporting requirements for controlling organizations (6033(h)), sponsoring organizations (6033(k)), and supporting organizations (6033(l))
  • Amending the gross receipts threshold to $50,000 (other than for private foundations and supporting organizations) to match current filing requirements listed in Rev. Proc. 2011-15
  • Specifies that the Commissioner has the discretion to increase the filing thresholds through forms, instructions to forms, or guidance in the Internal Revenue Bulletin
  • Clarifying that section 527 organizations with gross receipts greater than $25,000 generally are subject to the reporting requirements under 6033(a)(1) as if they were exempt from taxes under 501(a)
Notice 2019-47 re Penalty Relief

• Provides penalty relief for taxpayers who relied on Rev. Proc. 2018-38 for organizations filing returns before July 30, 2019 that did not report the names and addresses of contributors on Schedule B (other than those statutorily required to report such information)

• The IRS has not clarified whether there is any relief available for organizations that filed a Form 990 and withheld this information between July 30, 2019 (the date of the decision in Bullock) and September 10, 2019 (when the proposed regulations were published)
Judicial Developments
On July 24, 2018 the State of Montana sued the IRS alleging that Rev. Proc. 2018-38 violated the Administrative Procedure Act (“APA”) and should be set aside.

- Montana alleges that “Revenue Procedure 2018-38 is a substantive or legislative rule” that may only be implemented after the IRS provides public notice and the opportunity for public comment in accordance with the APA, which the IRS did not do.

On July 30, 2019 the Court, agreeing with Montana, set aside Rev. Proc. 2018-38 and ordered the IRS to follow the notice and comment provisions of the APA

- The IRS followed this order and issued a proposed regulation that was published in the Federal Register on September 10, 2019
- The Court noted that it was not reviewing the substance of Rev. Proc. 2018-38 or whether the agency had broad discretion under 6033. Rather, the review was only on whether the IRS was required to follow the APA in issuing the guidance

• Case stems from a 2009 notice of proposed adjustment issued by the IRS re unrelated business taxable income and whether that income could be excluded from unrelated business income because Mayo was a “qualified organization” under 514(c)(9)(C)(i) because it was an organization described in 170(b)(1)(A)(ii)

• The IRS EO Technical Office issued a Technical Advice Memorandum in 2013 confirming its position that Mayo did not qualified as an educational organization under 170(b)(1)(A)(ii) and could not as a result exclude the income from UBI under 514(c)

• Mayo sued, seeking a refund of more than $11 million in taxes

This Court held that the regulation in question did more than the law allowed “because it adds requirements—the primary-function and merely-incidental tests” that “Congress intended not to include in the statute.”

Because the requirements in the regulations related to the primary function and merely incidental tests “exceed[ed] the bounds of authority given by [170(b)(1)(A)(ii)]” the Court ruled in favor of Mayo.
• Declaratory judgment action under 7428 following retroactive revocation of organization’s 501(c)(3) status

• The Tax Court upheld the revocation, agreeing that the organization was operated for a substantial non-exempt purpose

• In particular, the organization was generating sales leads (and revenue) for a commercial for-profit enterprise