Written Materials for News from the IRS and Treasury

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Disclaimer

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Legislative Updates
Taxpayer Certainty and Disaster Relief Act of 2019 (12/20/19)

• Found in Division Q of the Further Consolidated Appropriations Act, 2020, Public Law No. 116-94

• Section 206 modified the net investment income tax for private foundations to a flat rate
  • The law modified the net investment income tax under section 4940
  • Instead of a 2% tax, or reduced 1% tax based on historical qualifying distributions, PF’s will now pay a flat rate of 1.39%
  • This change is effective for tax years beginning after December 20, 2019

• Section 302 of the law repealed the tax on certain transportation fringe benefits (“the parking tax”) under Section 512(a)(7)
  • The repeal is retroactive to the 2017 date of the Taxpayer First Act
On January 8, 2020, Representatives Neal and Lewis sent a letter to the IRS requesting an expedited process for issuing refunds of UBIT paid on parking and transportation benefits under section 512(a)(7).
IRS Updates
FY20 Program Letter

• Released on October 16, 2019

• Provides an overview of planned EO Examination activities in the Tax Exempt Government Entities Division for the 2020 Fiscal Year

• Sources for examinations
  • Compliance Strategies
  • Data-Driven Approaches
  • Referrals
  • Form 1023-EZ Statistical Sample
  • IRS-wide compliance efforts on IRC Section 4980H with respect to certain exempt employers
  • Compliance Contacts (e.g., compliance checks and soft letters)
  • Annual review of hospitals mandated by the Affordable Care Act
• Lists 5 EO specific compliance strategies:
  • Hospital organizations
    • Focus is on unrelated business taxable income reported on the Form 990-T where expenses materially exceed gross income
  • 501(c)(7) entities (social clubs)
    • Looking at investment income and non-member income
  • For-profit to non-profit conversions
  • 4947(a)(1) non-exempt charitable trusts
  • Private Foundations (listed as “Private benefit and inurement”)
    • Looking at loans from private foundations to disqualified persons
    • NOTE: On October 22, 2019, the IRS also issued two new issue snapshots related to self-dealing:
      • “Private Foundations –Self-Dealing IRC 4941(d)(1)(A)”
      • “Private Foundations - Self-Dealing IRC 4941(d)(1)(B)”
FY20 Program Letter – Compliance Strategies

• 3 employment tax compliance strategies that impact exempt organizations
  • CP2100 Backup Withholding Notice
    • determine if mismatched and/or missing taxpayer identification numbers on Form 1099-MISC, Miscellaneous Income, indicate failure to comply with backup withholding requirements
  • Forms W-2/1099 matches
    • compare wages reported on Form W-2, Wage and Tax Statement, with payments reported on Form 1099-MISC to determine if income should have been subject to Federal Insurance Contribution Act (FICA) tax and income tax withholding
  • Small employer employment tax
    • determine if fringe benefits are properly taxed for FICA and income tax withholding
FY20 Program Letter – Data-Driven Approaches

• Data models (now referred to as “query sets”) for the:
  • Form 990
  • Form 990-EZ
  • Form 990-PF and
  • Form 5227
• Collaboration with the Research, Applied Analytics, and Statistics Division of the IRS on development of new data models, including models to detect private benefit and inurement issues
Referrals

- IRS will continue to pursue referrals received from internal and external sources that allege noncompliance by an exempt organization and pursue taxpayer and interagency referrals, including information items from sources within and outside the IRS that allege noncompliance with an employment tax law by an exempt organization.

Form 1023-EZ

- Statistical sample of organizations that filed and received exemption using the Form 1023-EZ.

Support IRS-wide compliance efforts on IRC Section 4980H with respect to certain exempt employers.
FY20 Program Letter – Compliance Contacts

• Compliance Checks and Soft Letters
  • Combined Annual Wage Reporting (CAWR) – Federal Unemployment Tax Act (FUTA)
    • Organizations that failed to file Form 940 but should have
  • Credit Balance Nonfiler
    • entities that have credit balances but fail to file employment tax returns
  • Financial Assistance Policy (FAP)
    • tax-exempt hospital organizations that did not comply with 501(r)(4)
  • Form 990-T Nonfiler
    • 501(c)(7) organizations that reported investment income on Form 990/990-EZ but did not file Form 990-T
FY20 Program Letter – Compliance Contacts

• Compliance Checks and Soft Letters
  • Form 1099 Stop Filer
    • entities that were required to file, but failed to file Form 1099-MISC
  • IRC Section 501(c)(12) Mutual or Cooperative Telephone Companies
    • organizations that may have failed to meet the 85%-member income test
  • IRC Section 4947(a)(1) Non-Exempt Charitable Trusts (NECTs)
    • exempt organizations that are required to file, but fail to file Form 1041
IRS and Treasury Guidance Updates
The 2019-2020 Priority Guidance Plan (PGP) was released on October 8th, 2019.

EO-related Tax Cuts and Jobs Act projects on the PGP:

- Regulations on computation of unrelated business taxable income for separate trades or businesses under 512(a)(6), as added by section 13702 of the TCJA
- Regulations under 4960, as added by section 13602 of the TCJA
- Final regulations on the excise tax on net investment income of certain private colleges and universities under 4968, as added by section 13701 of the TCJA. Proposed regulations were published on July 3, 2019
- Regulations under 274 concerning qualified transportation fringes, including the application of 512(a)(7), and other issues under 274
  - NOTE: the December repeal of section 512(a)(7) impacts this project
Priority Guidance Plan

• Other EO-related projects
  • Guidance under 170(e)(3) regarding charitable contributions of inventory
  • Guidance implementing section 3101 of the Taxpayer First Act on new electronic filing requirements for exempt organization returns
  • Guidance revising Rev. Proc. 80-27 regarding group exemption letters
  • Guidance on circumstances under which an LLC can qualify for recognition under 501(c)(3)
  • Final regulations on 506, as added by the PATH Act of 2015 (published 07/23/19 in FR as TD 9873)
  • Final regulations on 509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016
• Other EO-related projects
  • Guidance under 4941 regarding a private foundation’s investment in a partnership in which disqualified persons are also partners
  • Regulations regarding the excise taxes on donor advised funds and fund management
  • Regulations and other guidance under 6033 (NPRM published 09/10/2019 in FR as REG-102508-16)
  • Final regulations under §6104(c) (proposed regulations were published on March 15, 2011)
  • Final regulations designating an appropriate high-level Treasury official under 7611 (proposed regulations were published on August 5, 2009)
• Changes to prior IRS determinations processing revenue procedure:
  • Added section on the impending electronic Form 1023
    • The electronic Form 1023 is expected to replace the paper Form 1023 in 2020. The IRS will release a new revenue procedure to provide information on the electronic Form when it is released. The new revenue procedure will include information on a transition period from the paper form to the electronic form

• Changes to user fees for submissions postmarked on or after July 1, 2020:
  • Group exemption letters – user fee will increase to $2,500
  • Requests on the Form 8940:
    • Reclassifications of public charity and foundation status – increased to $500
    • Section 507 terminations (advance or final ruling under 507(b)(1)(B) – increased to $500
    • Section 4942(g)(2) set asides – advance approval – increased to $2,500
    • Section 4945 advance approval of organization’s grant making procedures – increased to $2,500
    • Section 4945(f) advance approval of voter registration activities – increased to $2,500
    • Section 6033 annual information return filing requirements (including a subordinate organization’s change of filing requirements) – increased to $500
    • Unusual grants to certain organizations under 170(b)(1)(A)(vi) and 509(a)(2) – increased to $500
    • User Fees for determination letters under the jurisdiction of the Determinations Office not otherwise described or covered in the Appendix of the Revenue Procedure – increased to $500
Judicial Developments

- Separate order dismissing case issued on Sept. 30, 2019
- Memorandum opinion issued on January 10, 2020
- Facts:
  - To protest allegedly preferential treatment allowing churches to not file the Form 990, NonBelief Relief did not file a Form 990 for three consecutive years and its tax exempt status was automatically revoked. NonBelief Relief then sued the IRS Commissioner, alleging that the revocation violated the First Amendment’s Establishment Clause and the Fifth Amendment’s Due Process Clause.
- Court dismissed the case finding:
  - “The Anti-Injunction Act and Declaratory Judgment Act divest this Court of jurisdiction to hear claims that NonBelief Relief’s tax-exempt status was improperly revoked, since the award of an injunction or declaratory judgment on NonBelief Relief’s behalf would restrain the government’s collection of taxes against NonBelief and its donors.”
  - “NonBelief Relief’s claims related to the church exemption and its alleged unequal treatment must be dismissed for lack of standing.”