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2020 NPO Tax Update

MD Non-Profit Update Tuesday 7.21.2020

2020 NPO Update Tax Agenda

- IRS TE/GE Fiscal Year 2019 Accomplishments
- IRS TE/GE Fiscal Year 2020 Program Letter
- IRS Response to COVID-19
- Tax Cut and Jobs Act (TCJA) Revisited
- Taxpayer First Act of 2019
- 2019 Form 990 and 2019 Form 990-T
- What Else?

IRS TE/GE Fiscal Year 2019 Accomplishments

IRS TE/GE Fiscal Year 2019 Accomplishments

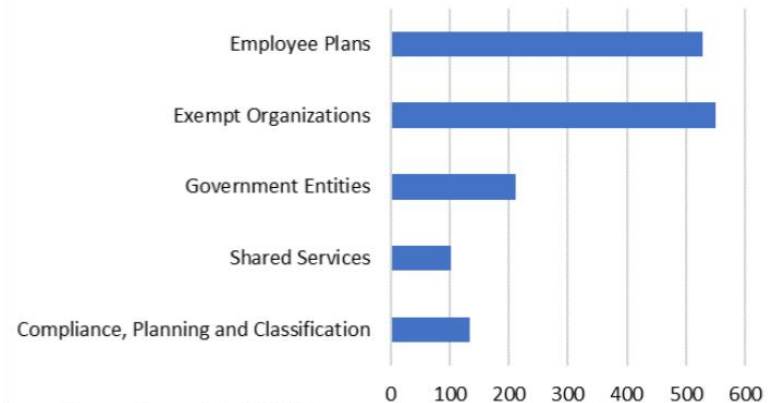
- ❑ Publication 5329 (Rev 3-2020)
- ❑ New TE/GE Commissioner: Tammy Ripperda
- ❑ New Deputy TE/GE Commissioner: Edward Killen
Director, Exempt Organizations : Margaret Von Lienen
- ❑ TE/GE covers:
 - ❑ Employee Plans
 - ❑ Exempt Organizations
 - ❑ Government Entities
 - ❑ Indian Tribal Governments

FY 19 TE/GE Staffing

- ❑ Hired 200 people
 - ❑ 77 tax examiners
 - ❑ 55 revenue agents
- ❑ Total staff: 1521

Source: Pub 5329

Figure 1: FY19 TE/GE Staffing



TE/GE Compliance Program

- ❑ Compliance Strategies
- ❑ Data-Driven Approaches
- ❑ Referrals, Claims and Other Casework
- ❑ Compliance Contacts

IRS is leveraging Lean Six Sigma program office
Have a LSS Exam Team pilot project

EO Examinations

Source: Pub 5329

	STARTED	CLOSED
Compliance Strategies	246	21
Data-Driven	1,948	1,982
Referrals, Claims and Other Casework	1,611	1,672
Totals	3,805	3,675

EO-Examinations

- Compliance Strategy Exams:
 - IRC 501(c)7 investment & non-member income
 - Previous for-profit
 - Private benefit/inurement
 - IRC Section 4947 (a) (1) Non-Exempt Charitable Trust income or charitable contribution reporting

EO-Examinations

- Compliance Strategy Exams that resulted in a change = most prominent issues:
 - UBI
 - Foundation status
 - Operational issues
 - IRC 4941 tax on self dealing
 - Filing requirements

EO-Examinations

- ❑ Data-Driven Examinations:
 - ❑ Those selected through compliance query sets based on 990 series filings
 - ❑ Those identified by collaborating with the IRS Research, Applied Analytics & Statistics Office
 - ❑ Private benefit/inurement
 - ❑ Related employees & for-profit partnerships
 - ❑ Officer business partnerships
 - ❑ Under-reported credit card income

EO-Examinations

- ❑ Data-Driven Exams that resulted in a change = most prominent issues:
 - ❑ Filing requirements
 - ❑ Employee classification
 - ❑ Unreported compensation
 - ❑ UBI
 - ❑ Excise taxes

EO Determinations

Source: Pub 5329

Figure 6: Taxonomy of 501(c)(3) Organizations Approved in FY19

1023EZ			1023		
Human Services	Arts, Culture & Humanities	Religion-Related	Religion-Related	Human Services	
				Education	Arts, Culture & Humanities
Education	Recreations & Sports	Philanthropy, Voluntarism & Grantmaking Foundations	Philanthropy, Voluntarism & Grantmaking Foundations	Youth Development	Health Care
		Youth Development			

Federal, State & Local/Employment Tax-Examinations

- FSLG/ET for short
- Compliance Strategy Exams:
 - Backup withholdings related to Form 1099s
 - Early retirement incentive plans
 - Form W-2/1099 matches
- Exams with changes = prominent issues:
 - Unreported compensation
 - Employee classification
 - Backup withholding
 - Taxable fringe benefits

IRS TE/GE Fiscal Year 2020 Program Letter

IRS TE/GE Fiscal Year 2020 Program Letter

- ❑ Publication 5313 (Rev 10-19)
- ❑ Exempt Organizations Compliance Strategies
 - ❑ Hospital organizations with UBI/990-T focus where expenses materially exceed gross income
 - ❑ Same Matters at disclosed for FY 19 accomplishments (slide 8)
- ❑ FSLG/ET
 - ❑ Same matters disclosed for FY 19 (slide 13)
 - ❑ Small employer employment tax-fringe benefits

IRS TE/GE Fiscal Year 2020 Program Letter

- ❑ Exempt Organizations Data-Driven Approaches:
 - ❑ Query sets based on Form 990 series data
 - ❑ RAAS collaboration

- ❑ Referrals, claims and other casework

IRS Response to COVID-19

Filing Extensions

❑ IRS Notice 2020-18

- ❑ Deadlines for both filing federal income tax returns & making most payments to the IRS extended from April 15, 2020 to July 15, 2020

❑ IRS Notice 2020-23

- ❑ Extended additional returns, tax payments & other actions (including Form 990 series)
- ❑ Generally filing or payment deadline fell on or after April 1, 2020 extended to July 15, 2020

Filing Extensions

❑ IRS Notice 2020-35

❑ Relief provided related to correcting employment tax reporting errors, electronic filing requirements for CPEOs, funding provisions for qualified defined benefit pensions plans, excise tax returns, 990-N filers and others

❑ Extensions (where appropriate) to July 15, 2020

IRS Notice 2020-32 re: PPP Loans

☐ IRS Notice 2020-32

- ☐ Clarifies that no deduction is allowed under the IRC for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan and the income associated with the forgiveness is excluded from gross income pursuant to Section 1106(i) of CARES Act.
- ☐ Potential implications for EOs really only in unrelated business income activities arena

IRS Enforcement

- ❑ People First Initiative (March 25, 2020)
 - ❑ Suspension of new liens and levies initiated by field revenue officer
 - ❑ Not starting new audits but will continue to work refund claims where possible
 - ❑ Suspension of in-person meetings for current audits but will work audits remotely where possible
- ❑ Will continue to work Appeals cases

IRS Enforcement

Statute of Limitations

- IRS will continue to protect all statutes of limitation during the pandemic
- Exempt organizations are encouraged to cooperate with IRS requests to extend the Statute of Limitations during the pandemic

Temporary Deviations (to 7-15) allowed for:

- Documents transmitted through secure email
- FAX still most secure and preferred way (includes Efax through a computer)
- Electronic signatures accepted for certain documents

IRS Operational Impacts from COVID-19

- ❑ Safety of employees and tax-payers paramount
 - ❑ Prioritized remote work
 - ❑ Halted vast majority of in-office work from mid March to the end of April
- ❑ Suspended toll-free help lines during that time as no way to do remotely; limited service currently re-established but will be longer waits

IRS Operational Impacts from COVID-19

- Mail processing functions impacted
- Updating Tax Exempt Organization Search data base impacted
- E-filings continue to process w/o issue
- Use IRS website
- Should be no notices for 7-15 filings as late

Tax Cut and Jobs Act (TCJA) Revisited

TCJA—Yes, that is still a thing

❑ irs.gov/tax-reform

❑ Section 4960 Tax on Excess Tax-Exempt Organization Executive Compensation

❑ Section 4968 Excise Tax based on Investment Income of Private Colleges and Universities

❑ Section 512(a)(6) Separate Computation of UBIT

~~❑ Section 512(a)(7) UBI by Disallowed Fringe
(Repealed)~~

Section 4960 Excess Tax –Exempt Organization Executive Compensation

- ❑ Imposes a 21% excise tax on (i) the amount of compensation in excess of \$1 million paid by an ATEO to its five highest paid “covered employees” and (ii) any “excess parachute payments” made to a covered employee.
- ❑ Compensation paid by “related organizations” count.
- ❑ Exceptions exist-medical/vet

Section 4960 Proposed Regulations Issued

- ❑ IRS Notice 2019-09
- ❑ Proposed regulations published June 11, 2020
 - ❑ REG-122345-18
 - ❑ Comment Period open to August 10, 2020
 - ❑ Until regulations are final, “may apply a reasonable, good faith interpretation of the statute”

Section 4960 Regulations: Don't Snooze & Lose

- ❑ Section 4960 Excise Tax can apply to nonprofits that don't pay compensation over \$1 million
 - ❑ Compensation paid to covered persons by related organizations
 - ❑ Excess parachute payments
 - ❑ Payments compensatory & contingent upon employee separation
 - ❑ Aggregate PV of payments exceeds 3x the base amount (average annual comp over preceding 5 years)

Section 4968 Excise Tax based on Investment Income of Private Colleges and Universities

- Imposes on each applicable educational institution, as defined, an excise tax equal to 1.4% of the institution's net investment income and as described, a portion of certain net investment income of certain related organizations
- Have to have at least 500 full time tuition paying students (more than $\frac{1}{2}$ of whom are located in the US) & assets (other than those used in charitable activities) worth at least \$500,000 per student

Section 4968 Proposed Regulations

- ❑ Interim guidance provided IRS Notice 2018-55
- ❑ Proposed Regs issued June 28, 2019;
published in the Federal Register July 3, 2019
 - ❑ (2019-13935.pdf)
 - ❑ Use FMV at end of 2017 as basis
 - ❑ Defines terms
 - ❑ Clarifies how to determine net investment income

Section 512(a)(6) Separate Computation of UBIT

<https://www.law.cornell.edu/uscode/text/26>

(6) SPECIAL RULE FOR ORGANIZATION WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS In the case of any organization with more than 1 unrelated trade or business—

(A) unrelated business taxable income, including for purposes of determining any net operating loss deduction, shall be computed separately with respect to each such trade or business and without regard to subsection (b)(12),

(B) the unrelated business taxable income of such organization shall be the sum of the unrelated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.

Section 512(a)(6) Separate Computation of UBIT

- Effective date: Taxable Years Beginning after December 31, 2017
- Carryovers of Net Operating Loss- If arose from taxable years beginning before January 1, 2018, Subparagraph (A) of Section 512(a)(6) shall not apply and the UBIT of the organization, after application of Subparagraph (B) of Section 512(a)(6), shall be reduced by the amount of such net operating loss

Section 512(a)(6) Separate Computation of UBIT Proposed Regulations Issued

- ❑ IRS Notice 2018-67
- ❑ Proposed regulations published April 24, 2020
 - ❑ REG-106864-18
 - ❑ Comment Period closed June 23, 2020

Section 512(a)(6) Separate Computation of UBIT

- ❑ Key points on Proposed Regs:
 - ❑ Use 2 digit NAICS codes (22 codes in total) to distinguish business activities (direct & indirect)
 - ❑ <https://www.census.gov/eos/www/naics/>
 - ❑ Still allows qualifying investment activities to be treated as single unrelated trade or business
 - ❑ Qualifying partnership interests (QPIs)
 - ❑ Qualifying S Corp interests
 - ❑ Debt-financed property

Section 512(a)(6) Separate Computation of UBIT

- ❑ Key points on Proposed Regs:
 - ❑ QPIs include partnership interests that meet either the *de minimis* or *control* test
 - ❑ *De minimis* test : Met if the exempt organization holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest
 - ❑ *Control* test : Met if the exempt organization:
 - ❑ Directly holds no more than 20% of the capital interest
 - ❑ Does not have control or influence over the partnership
 - ❑ New Look-through rule for using *de minimis* rule indirectly

Section 512(a)(6) Separate Computation of UBIT

- ❑ Key points on Proposed Regs:
 - ❑ Key changes from Notice 2018-67: no aggregation of partnerships entities from DP, SO or controlled entities for determining *de minimis* test
 - ❑ For *control* test, have to aggregate IRC Section 509(a)(3) SO & Section 512(b)(13) controlled entities (but NO DP aggregation)

Section 512(a)(6) Separate Computation of UBIT-Be Aware

- ❑ Ordering and usage of NOLS (pre-2018 and post-2017) and charitable contributions deductions complicated—look for more guidance

“Parking Tax” Refunds

- <https://www.irs.gov/forms-pubs/how-to-claim-a-refund-or-credit-of-unrelated-business-income-tax-ubit-or-adjust-form-990-t-for-qualified-transportation-fringe-amounts>

“Parking Tax” Refunds-IRS Website Instructions

1. Write “Amended Return” at the top of Form 990-T. If the amended return is being filed only to claim a refund, credit, or adjust information due to the repeal of Section 512(a)(7), write “Amended Return – Section 512(a)(7) Repeal.”
2. Complete the Form 990-T as you originally did, but:
 - **For a 2017 Form 990-T**
 - Reduce the entry on the line on which you originally included the 512(a)(7) amount by that amount. This would have been on line 12 (Other income) if you followed the Recent Developments article originally posted to IRS.gov in filing the 2017 Form 990-T.
 - Complete the rest of the Form 990-T based on that revised entry.
 - Include on the “Other” sub-line of line 45g (Other credits and payments) the amount of tax from line 48 (Tax due) of the original return (if any).
 - If your changes result in your having made an overpayment, you should enter that amount on line 49 (Overpayment) line of the amended return, which you may request as a refund or credit on line 50.
 - **For a 2018 Form 990-T**
 - Enter “0” (zero) on line 34 (Amounts paid for disallowed fringes).
 - Complete the rest of the Form 990-T based on that revised entry.
 - Include on the “Other” sub-line of line 50g (Other credits, adjustments, and payments) the amount of tax from line 53 (Tax due) of the original return (if any).
 - If your changes result in your having made an overpayment, you should enter that amount on line 54 (Overpayment) line of the amended return, which you may request as a refund or credit on line 55.
3. Attach a statement indicating the line numbers on the original return that were changed and the reason for each change (for example, stating “repeal of Section 512(a)(7)”).

Please keep in mind that the time limits for filing refund claims found in IRC Section 6511 apply to these refund claims. Typically, these time limits are three years from the time the original Form 990-T was filed or two years from the time the tax was paid, whichever is later.

Taxpayer First Act of 2019

Electronic Filing Mandate

- ❑ Taxpayer First Act of 2019 (July 1, 2019) (IR-2019-206)
- ❑ Electronic filing required for all 990-series returns (tax years beginning after July 1, 2019)
 - ❑ Transition relief = years beginning after 7/1/2021 (small (EZ))
 - ❑ 990-T/4720 Keep paper filing under e-filing available; expect to be ready for e-filing in 2021 for TY 2020
- ❑ Use EFTPS (same as used for services such as payroll tax deposits)
- ❑ Consult IRS Publication 4990 for help with EFTPS

2019 Form 990 and 2019 Form 990-T

What's New 2019 Form 990

- Required electronic filing by exempt organizations reminder for tax years beginning in 2020 and later
- Reminders regarding:
 - Excise tax on executive compensation, Part V
 - Excise tax on net investment income of certain colleges and universities, Part V
 - FASB Changes, Part X (2016-14 Update to Part X)

What's New 2019 Form 990-T

- ❑ Qualified transportation fringes repeal
- ❑ Extended tax provisions
- ❑ Increase in minimum penalty for failure to file
- ❑ Qualified Opportunity Investment
- ❑ Qualified Business income deduction
- ❑ Adjustments to tax attributable to partner's audit liability

What's New 2019 Form 990-T

Reminders:

- Separate UBTI calculation for each trade or business
- Don't disclose social security numbers on publicly disclosed forms

What Else?

IRS Notice 2020-36 Group Rulings

- ❑ Notice regarding new proposed revenue procedure to supersede Rev. Proc. 80-27 and requests comments
- ❑ Modifies requirements for obtaining a group ruling and imposes new requirements on central organizations to maintain a group exemption
- ❑ IRS will not accept new group ruling requests after June 17, 2020 until the new Rev Proc is published

IRS Notice 2020-36 Group Rulings

Key Proposed Changes

- ❑ Must have at least 5 subordinates to obtain a group ruling and at least 1 to maintain the group ruling
- ❑ A central organization may only hold one group ruling
- ❑ In addition to all subordinates being under the same 501(c) subsection, they must also be the same 501(c) subsection as the central organization
 - ❑ Exception for central organization that is an instrumentality or an agency of a political subdivision and is not described in 501(c)
- ❑ Subordinate organizations must have the same or similar purposes
- ❑ IRS may terminate the group ruling if more than ½ the subordinates have tax exempt status revoked for nonfiling
- ❑ Some exceptions for existing group ruling holders

IRS Reinstates fee for PTINs

- ❑ [T.D. 9903](#) to be effective 30 days after published in *Federal Register* (scheduled for July 17)
- ❑ D.C. Circuit Appeals Court held in 2019 that the IRS has authority to charge a user fee for PTINs
- ❑ Reinstating fees for applications for or renewal of a PTIN filed on or after effective date noted above
- ❑ New fee: \$21 + \$14.95 fee paid directly to a 3rd party for processing applications & renewals

2020 IRS EO Updates

<https://www.irs.gov/charities-non-profits/current-edition-of-exempt-organizations-update>

Free to subscribe

Recent Issues:

- 7.15.20 Annual filings, user fees, and electronic filing mandates
- 6.12.20 Public comments to proposed group exemption program changes, guidance issued on applying UBTI “silo” rules, common errors filing for advance payment of employer credits (Form 7200)

2020 AICPA Advocacy Letters

- <https://www.aicpa.org/advocacy/tax/2020taxadvocacycommentletters.html>
- July 2, 2020 IRS Tax Administrative Penalty Relief
- June 4, 2020 IRS Guidance For Electronic Signature Program
- March & April Letters regarding relief related to COVID-19 and related legislation

Questions? Contact Me!



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