

## More About the New EO Technical Guides

05.04.23 | Linda J. Rosenthal, JD



Several years ago, the [General Accountability Office \(GAO\)](#), as part of its duties to help government “work more efficiently,” made a suggestion to the IRS.

The Exempt Organizations and Government Entities Division (TE/GE) had, over many decades, developed and curated an impressive collection of public educational materials on the complex law of tax-exempt organizations. The intended audience: not only its own EO specialists and agents but the nation’s nonprofit organizations, their professional advisors, and the general public.

But this vast repository of wisdom, we explained last week in [New Treasure Trove of EO Guidance](#) (April 25, 2023), was buried in a “[mind-numbing cache of documents](#) named IRMs and TAMs and ARGs and other acronyms familiar only to individuals who eat, sleep, and breathe EO law and procedure.”

The GAO recommended scooping it all up, bringing it current, and presenting it “in a more manageable, user-friendly, single-source.” And that’s exactly what happened, culminating in the release beginning in 2021 of the first batches of individual titles of the brand new “Exempt Organizations Technical Guide” series.

Read the candid account by IRS officials of how and why the TE/GE Division accepted this massive challenge, how it progressed in several steps over a few years, and what’s planned for the full series. See IRS [Publication 5729, Exempt Organizations Technical Guide \(TG\) 0: Technical Guide Overview](#) (December 9, 2022).

[Pub 5729](#) includes an all-important Exhibit A; that is, a chart of over 70+ individual titles planned for the series, current as of the December 9th issuance date. Each will be released on a rolling basis when and as completed.

The proposed 70+ new topics of the Exempt Organizations Technical Guides series will run the gamut from charitable organizations through business leagues, social welfare organizations through cemetery companies, from veterans organizations through black lung benefits trusts. In addition to the 70+ named topics, there are several “reserved” open slots. It’s should be no surprise that at least 40% of the planned new Technical Guides will relate to section 501(c)(3) issues, including private foundation status.

Exhibit A helpfully marks the 15 titles already published in 2021 and 2022 through the December 9th publication date. (Two more titles have been published since then.) The chart also notes the publication dates.

But there’s a crucial omission on the Exhibit A lists: There are no links to the documents themselves.

### ***The Published Titles***

We have the links for you.

The 17 titles completed and released so far are:

- [TG-0: Publication 5729 – Technical Guide Overview](#) [12-9-22] 13 pp. PDF
- [TG 3-3: Publication 5781 – Exempt Purposes, Charitable 501\(c\)\(3\)](#) [3-20-23] 60 pp. PDF
- [TG 3-4: Publication 5730 – Exempt Purpose, Scientific Organizations 501\(c\)\(3\)](#) [12-9-22] 51 pp. PDF
- [TG 3-20: Publication 5525 – Introduction to Private Foundations & Special Rules Under IRC 508](#) [9-1-21] 16 pp. PDF
- [TG 3-21: Publication 5579 – Private Operating Foundations](#) [12-1-21] 69 pp. PDF
- [TG 3-22: Publication 5614 – Termination of Private Foundation Status IRC 507](#) [12-10-21] 36 pp. PDF
- [TG 6: Publication 5710 – IRC 501\(c\)\(6\) Business Leagues](#) [9-16-22] 42 pp. PDF
- [TG 23: Publication 5627 – Religious and Apostolic Associations 501\(d\)](#) [3-1-22] 17 pp. PDF
- [TG-45: Publication 4498 – Suspension of Tax-Exempt Status of Terrorist Organizations Under 501p](#) [12-1-21] 9 pp. PDF
- [TG-57: Publication 5580 – Taxes on Net Investment Income IRC 4940](#) [12-10-21] 66 pp. PDF
- [TG-58: Publication 5616 – Excise Taxes on Self-Dealing Under IRC 4941](#) [rev. 1-24-23] 127 pp. PDF
- [TG-59: Publication 5581 – Taxes on Failure to Distribute Income IRC 4942](#) [12-10-21] 96 pp. PDF
- [TG-60: Publication 5582 – Taxes on Excess Business Holdings IRC 4943](#) [12-10-21] 87 pp. PDF
- [TG-61: Publication 5584 – Excise Taxes on Investments Which Jeopardize Charitable Purposes IRC 4944](#) [12-10-22] 94 pp. PDF
- [TG-62: Publication 5590 – Excise Taxes on Taxable Expenditures Under IRC 4945](#) [3-10-22] 129 pp. PDF
- [TG-63: Publication 5526 – Disqualified Persons as Defined in IRC 4946](#) [9-10-21] 18 pp. PDF

- [TG-64: Publication 5583 – Foreign Organizations IRC 4948](#) [12-10-21] 19 pp. PDF

### ***TGs Are Not Citable Authority***

The *Technical Guide Overview* makes clear that no individual title is “... an official pronouncement of the law or the position of the Service.” It cannot be “... used, cited, or relied upon as such .... The material in the TGs does not extend or modify published authority and should not be cited either as precedent or authority in deciding cases.”

The purpose of each Exempt Organizations Technical Guide is as a “training tool” or “research aid” or both; it can lead the reader to whatever controlling precedent, if any, is available.

The federal law of tax exemption is based in statute; namely, the U.S. Internal Revenue Code. Under well-accepted American “rules of statutory construction,” the primary and governing authority is first and foremost, the statute itself. “Statutory construction begins with looking at the plain language of the statute to determine its original intent. To determine a statute’s original intent, courts first look to the words of the statute and apply their usual and ordinary meanings....If after looking at the language of the statute the meaning of the statute remains unclear, courts attempt to ascertain the intent of the legislature by looking at legislative history and other related sources.”

After that, there is a cascading sequence of legal authority that may have precedential or persuasive authority, or is merely guidance with no precedential value. See [TG-0](#), pp. 4-5. See also, for instance, *Reliance on Treasury Department and IRS Tax Guidance* (July 21, 2020), *Congressional Research Service*, [crsreports.congress.gov](https://www.crsreports.congress.gov). [“In a tax dispute with Treasury or the IRS, taxpayers can rely on treasury regulations and sub-regulatory guidance published in the IRB (such as revenue rulings, revenue procedures, notices, and announcements) to support their tax position, as long as the guidance is not contrary to or inconsistent with the law....”

### ***Conclusion***

The Technical Guides follow a standard format, using a sentence-outline method of explaining the key points. But they succeed more or less based on the specificity of the statute on which they are based. Compare, for instance, [TG-57: Publication 5580 – Taxes on Net Investment Income IRC 4940](#) with [TG 3-3: Publication 5781 – Exempt Purposes, Charitable 501\(c\)\(3\)](#).

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