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IRS

What's New in Latest TE/GE Program Letter

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Each year, the Tax Exempt and Government Entities (TE/GE) Division of the Internal Revenue Service publishes a "Program Letter" for the fiscal year. This gives nonprofit organizations, professional advisers, academics, consultants, and all other interested parties a snapshot look at what these IRS officials believe are the most important developments and pressing needs to address.

The agency published its *TE/GE Fiscal Year 2019 Program Letter* on October 7, 2018. The accompanying message from the IRS TE/GE Commissioners explains the purpose; that is, to share where the Division is "heading in the new fiscal year, including executing compliance strategies, building better processes, and providing useful information and guidance on the Tax Cuts and Jobs Act (TCJA)." They will "provide a full review of" the "accomplishments" of FY 2018 sometime before the end of 2018.

FY 2019 Program Letter

The TE/GE Commissioners open this fiscal year's Program Letter with good news for everyone interested in federal oversight of nonprofits: "For the first time this decade, TE/GE is onboarding a significant number of new hires." For a variety of reasons, not the least of which has been Congressional animosity arising several years ago from the so-called 501(c)(4) "scandal" (which turned out to be a non-scandal!), the TE/GE Division has been seriously underfunded and understaffed.

The Commissioners then tout successes including, most notably, the rollout last spring of the new Tax Exempt Organizations Search (TEOS) online search portal which includes five relevant, searchable, databases. We featured this development in *IRS Announces New 501(c)(3) Databases*: "In real time, with the click of your mouse, you can find out whether an organization is eligible to receive tax-deductible donations, along with additional helpful information. No longer are those "scattered pieces of guidance" – well – scattered."

A major emphasis of the TE/GE Division recently and into the foreseeable future is "… data and analytics to drive decisions about identifying and addressing existing and emerging high-risk areas of noncompliance to which it applies optimal resources."

"As part of [the] compliance strategy process," these officials explain that they use the "most appropriate, cost-effective and least intrusive compliance treatments." Examples include "educational efforts, soft letter compliance reviews, compliance checks, and correspondence or field examinations." They plan to expand this lighter-touch approach to compliance in the future along with adding more compliance units.

Regarding which "compliance" issues will receive the most attention in FY 2019, there are five designated topics:

- Internal Revenue Code (IRC) Section 501(c)(7) entities: focus on investment income, non-member income and non-filers of Form 990-T, Exempt Organization Business Tax Return, by tax-exempt social clubs.
- Previous for-profit: focus on organizations formerly operated as for-profit entities prior to their conversion to IRC Section 501(c)(3) organizations.
- Self-dealing by private foundations: focus on organizations with loans to disqualified persons.
- Forms W-2/1099 matches: compare payments reported on Form 1099-Misc., Miscellaneous Income, with wages reported on Form W-2, Wage and Tax Statement, and subject to Federal Insurance Contribution Act (FICA) tax and income tax withholding.
- Worker classification (misclassified workers): determine whether misclassified workers result in incorrectly treating employees as independent contractors

Conclusion

By way of comparison, the TE/GE Division Work Plan for the prior year, FY 2018, opened with a "a glimpse of the struggles" the Division had faced for the past few years because of a reduced workforce and budget, tied in to fallout from that 501(c)(4) non-scandal. However, they reported that they entered "Fiscal Year 2018 as a more cohesive and efficient division than [they] were even a year ago."

The 2018 areas for compliance focus included: (1) for-profits converted to nonprofits; (2) private benefit and inurement; (3) Form 1099/W-2 matches; and "monitoring of newly formed organizations that have recently received tax exemptions through the streamlined Form 1023-EZ."

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