EO Tax Journal 2014-120

Paul Streckfus, June 17, 2014 at 5:22 am

How to Improve IRS Administration of the EO Tax Laws (Part 1)

What follows is Part 1 of a transcript of an *EO Tax Journal* roundtable discussion that was held on June 5, 2014. I'm indebted to Mark Weinberg for taking the initiative in putting this roundtable together. The participants are all so extremely well-qualified that including their resumes would take several pages, so I'm skipping that. You can always google them. I am including their email addresses if readers wish to contact them directly. I believe we all owe them a debt of gratitude for their efforts. I invite anyone who would like to add to the discussion to email his or her comments to me at pstreckfus@gmail.com for publication.

Subtopics:
(1) Budgetary Issues
(2) Operational Failures
(3) Reducing or Eliminating Administrative Non-Uniformity under Current Law
(4) Administrative Non-Uniformity — Policy and Legislative Solutions
(5) Lack of Timely Guidance at All Levels
(6) Educating Service Personnel at All Levels

Moderator: Mark Weinberg, Weinberg, Jacobs & Tolani, paladin@wjtlaw.com

Participants:
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Chip Watkins, Webster, Chamberlin & Bean, cwatkins@wc-b.com

Prior Coverage:
• Spring Cleaning: IRS Reorganizes Tax-Exempt and Government Entities Division, edited transcript of the April 16 program of the EO Committee of the DC Bar, printed in email updates 2014-98 and -99.
• State of the IRS: Post-TIGTA Report, by Marc Owens, reprinted in email update 2014-59
• Listing of Problems and Solutions, by Paul Streckfus, printed in email update 2014-79
• 12 Ways to Clean Up the Mess at IRS, by Paul Streckfus, Government Executive News, May 5, 2014
• "Addressing Operational Failures in the EO Division," by Marv Friedlander, printed in email update 2014-109
• "Response to Marv Friedlander," by Bill Brockner, printed in email update 2014-110
• "Application Blues and Lack of Timely Guidance," by Milt Cerny, printed in email update 2014-116

Streckfus: Welcome to this roundtable discussion sponsored by the *EO Tax Journal*. I count over 200 years of EO experience in this room, including over 100 years of IRS experience, but who's counting. Our program chair and moderator is Mark Weinberg, who has divided the discussion into six subtopics. My thanks to Celia Roady, Alex Reid and Morgan Lewis & Bockius for extending to us the use of this conference room. With that, let me turn the program over to Mark.

(1) Budgetary Issues

Weinberg: Thanks, Paul. Let's start with Chip Watkins on our first topic. Chip, it seems there is never enough money to do all of the things that Congress demands of the Service and that the public expects the IRS to do. Can you see ways in which federal oversight of nonprofits can become more efficient and better meet the demands of the 21st century?

Watkins: Well, unfortunately, the IRS can only collect taxes. It can't print money. The reality is that over the last five to ten years probably the IRS generally and the EO function in particular have been starved for money. The demands on their resources have increased with the increasing number of tax-exempt organizations and increasing number of applications for exemption every year and the need to both educate taxpayers and maintain a reasonable level of audit coverage.

The reality is that in the past five years, personnel in EO have dropped by about five percent. These are numbers coming out of the last two annual reports that Lois Lerner published. The budget numbers for 2013 and 2014 were actually below the appropriations for 2009. So you've got much more work to do and less money and fewer people to do it with.

Unfortunately, the budget issues really spill over into everything else because if you don't have money to hire good people, you get poorer quality work. I circulated recently a private letter ruling in which the Service first said on the cover letter and at one point in the determination letter that the organization didn't quality for exemption under section 501(c)(3) and six pages into the letter it said after reviewing the religious activities of the organization, it did qualify.

As for training, the GAO issued a report six weeks ago on the budget issues facing the IRS and the EO training function has, between 2009 and 2013, cut their spending on training, and this is across the board training I guess, including maybe training for administrative staff, by 96 percent. And the per full time equivalent employee numbers went from something like $1450 to less than $250.

Well, $250 doesn't get you much training here in this town, let alone the money that used to be spent to write the CPE programs and take people around the country to train the agents. The overall training for the IRS is down 83 percent from 1974 to, I'm sorry, ranging from 74 to 96 percent, depending on the function.

In addition, the IRS in the revisions to the 1023 and the revisions to the 990 really increased their personnel demands if you're going to really review those expanded 1023s that came out in 2004. People are going to be taking more time to do it and the same thing with the 990s. If you're going to audit a 990 now, it's going to take more time to audit a 990 than it took for the returns that were filed before 2007.

So the bottom line is that the Service leadership is going to have to persuade the Ways and Means and Appropriations Committees that they both need and can effectively use more money. The difficulty for EO is they don't collect much in tax. A little bit of UBIT here and an excise tax here and there, but nothing compared to what Large Business & International or Small Business/Self-Employed collects. Unfortunately, as Mark's comments indicate, the business model looks at taxes collected primarily and gives less weight to the important regulatory functions in both TE and GE, retirement plans as well as EO.

Weinberg: Very good. Thank you very much. I would like to ask Milt Cerny if he has some thoughts about that.

Cerny: I think that Chip has laid out the case for additional funding but as we look back over the years, the Exempt Organizations function has always played a unique role; it was the advisor to the Commissioner with regard to regulations, on cases, etc. Today the EO function is operating, according to the National Taxpayer Advocate, at a rate of 35 to 38 percent of the total TE/GE budget.

That means that during this whole three or four year period, what has happened with auto-revocations, the congressional inquiries that have come in on 501(c)(4), etc., it has really drained the Service. I agree totally with Chip that there were important functions that were dropped during a time that Mark and I and Paul and Bill were there at the IRS, including the CPE text and the national training program that we had for the field, all no longer there. There is no longer reliance by the public on positions that the IRS issues and we'll be discussing that in greater detail.

Weinberg: Okay, thank you very much. I was wondering, since we've been talking a good deal about education and that's the particular forte of Ed Beckwith, do you have any thoughts on that?

Beckwith: We'll talk about training later but I want to echo what's already been said. The political appetite for putting a positive spotlight on the need for EO to be better funded or better staffed is very low at this point. All across this sector we see the need to rely on private-public partnerships in order to get needed resources. I suspect somewhere down the road in the third or fourth generation of the caretaking of this important area of the law and for our society, we are going to find a re-emergence of some sort of private-public partnership. I don't think you're going to see the tax revenues at the federal level get back to where we think they were in 1969.

Weinberg: Well, let me ask other people around the table, do you have any thoughts about this that are in any way different from what has been expressed?

Reid: I'd like to suggest that what we're seeing right now might be described as a vicious circle, but maybe there's a way to turn it into a virtuous circle.

The vicious circle is that budget cuts lead to fewer resources for the IRS. This leads to a diminished stature of the IRS EO function: less training, less market demand for EO expertise, less opportunity for employee advancement in the Service. This leads to administrative problems: delays in processing applications, delays in approving transactions, delays in issuing needed guidance, improper activity in the sector that goes unchallenged for too long, which in turn discourages good actors from compliance, etc. This leads to public outcry, scandal, and

ultimately a negative political response which, inevitably, leads to more budget cuts. So this is the vicious circle that we are seeing, and it is something that we should try to change if we can.

A virtuous circle might arise from more enforcement and more guidance. This should result in increased stature of the IRS EO oversight function, fewer problems in administration of the sector, greater compliance, and increased public confidence in the IRS. I can't promise this will lead to an increased budget, but it might prevent more cuts.

So how do you create a virtuous circle or or at least break a vicious circle? The IRS might do this through a limited but intense period of increased activity. It might be possible to prime the pump in a way by having a short-term intensive effort at enforcement and guidance to break the vicious circle and put EO oversight on a new path.

Weinberg: I am wondering, and this may be considered by others in their presentations, whether it isn't possible to put the burden of policing this sector on the sector itself, which would require legislation. But it seems to me that we have vast amounts of money that is being invested both here and abroad tax-free. The counterpart solution for private foundations was to impose a two percent tax, ultimately reduced to a one percent tax in certain circumstances, and the original idea was to have that money be available solely to defray these costs. It seems to me that's worth looking at. I know that Congress does not like to create trust funds, especially when you see what they've done with the highway trust fund, but this would provide the funds necessary to try and do something to reform EO administration. Those are my thoughts.

Brockner: In regard to your comment about priming the pump, to me it sounds like what in effect was done in 1969 by creating the private foundation provisions. It caused a great re-thinking about the charitable sector, at least the part that's not charities or other 501(c) organizations. With it, there was a doubling or tripling of the person power in the Service that was dedicated to nonprofits. We did a lot. There is no question about it. We were, I guess, as commensurately funded as any time in the exempt function's history. It lasted for a good while.

Owens: I'd like to point out that the funding level in the wake of the Tax Reform Act of 1969 and the formation of the Office of the Assistant Commissioner (EP/EO) did not last long. You may recall there used to be Assistant Regional Commissioners in EP/EO that were charged with overseeing the field; those evaporated like puddles in the sunshine.

I think the difficulty, and we're seeing it right now play out, is that we're talking about a regulatory function embedded in an agency that is not a regulator. There is nothing about the systems, the procedures, or the structure of the Internal Revenue Service that lends itself to regulation. In fact, the budget of the Service will always be limited by Congress. Every agency budget is always limited by Congress and for a rational decision maker, which the Commissioner generally is, they have to make a decision between funding revenue agents who will conducts audits of enterprises that have been shown to be underpaying income tax or they can devote resources to a regulatory function that, as Chip points out, does not raise revenue.

Now, it raises some revenue, but an immaterial amount. It is a rounding error, if that, in the IRS budget. Hence, there is a tension created here that simply has gotten to the point where I think it's irretrievable. If you look at what is going on now, you have essentially the agency moving to

a registration system for applications. They have announced they are closing down audit programs left and right. They aren't going to have any public statement about audit activity. Training has evaporated. They are going to make the problems go away by simply not regulating, not enforcing, not administering the law in this area. That will last for a few years until a scandal occurs.

(2) Operational Failures

Weinberg: The next person in the batting order is Bill Brockner and Bill, it is clear that many things at IRS, especially within the EO function, are fouled up. It is reported that the National Office EO function is being transferred to Cincinnati and that virtually all the personnel dealing with rulings, both private and public, are going to be transferred to the Chief Counsel's office. What do you think can best improve the operational functionality of the EO mission at IRS, not only in determinations and exams but also in rulings and tech advice?

Brockner: Well, Marv Friedlander and I wrote a couple of papers for Paul's publication and I am not going to talk about most of it, but I am going to try to highlight what you are asking me. Pardon me if I say we because it's hard to leave the IRS, even after eight years. If you like something or love something, you stay with it as long as you can. Certainly, in the memory of all these great people that we had, what we did, what we have done, what the framework is, I think we all have an obligation to try to keep the place good or better. The IRS Exempt Organizations function is not a part of the Service that tabulates taxes. We're not into numbers, although we do a little bit. So much of what we do is probably analogous to work done by the Supreme Court. The work requires somebody who has got to make a decision after closely considering balanced points of view.

A lot of people don't like what we do because they say it's somewhat like what we did in law school, all these hypothetical type fact patterns that have to be resolved by reasoning that doesn't allow a quick answer. But that's what we do as a regulatory function. One of the great problems that we've had through the years was a lack of having some kind of strong central authority by the Exempt Organizations Division that would settle, resolve, point the direction on these situations where charity and other nonprofits are going a different direction and how to handle the laws that apply.

You have to apply the law to the facts in a consistent manner. Without having a strong central organization in Washington, I think we're losing a great deal by moving the entire determinations function to Cincinnati. It's like out of sight, out of mind, less contact. To some extent I believe that sliding down the slope began when we moved to 1750 Pennsylvania Avenue. Now, you might say that's only 10 blocks but the fact is we could no longer easily communicate face-to-face with Chief Counsel people and others still at 1111 Constitution Avenue.

As Marv Friedlander has pointed out there was less contact with the top people. During my day we would talk to the Commissioner or his top people on a regular basis to brief them about the problems that we had and what we proposed. Life goes on but we seemed to have lost contact with the top people. We in Washington also lost communication with our own troops. We lost the ability to talk with practitioners on the outside.

Is it, to some extent, because we have this lack of trained people who can communicate? We have people in charge who are not attorneys, who do not have an EO background. Is that the problem? I think the overriding solution is for EO to have some kind of independent regular funding that is independent of the IRS budgetary process. Give the Service the 4940 tax, which should be expanded to all large nonprofits. We all want a regulated EO sector, including churches.

Weinberg: Okay, those are all good issues. Marc, your comments.

Owens: Bill raises a good point and that is the teamwork issue. That's another way of describing the communication challenge. While we're in a modern era with email and things of that nature, instantaneous messaging, I don't know if the Service uses that or not, you can communicate words but you don't build teamwork very easily that way.

I think that's a key factor that has just withered away. The components that used to be in place to establish teamwork seem to have disappeared and as a result the EO function has been broken into pieces. I think it's going to be difficult to put those back together again and create that sense of teamwork, but you absolutely need it in order for the oversight to occur.

Cerny: I'd like to highlight what Marc just said. If we take ourselves back to the seventies, when the EO Branch was expanded after the Tax Reform Act of 1969 to provide additional guidance to organizations, we had to reclassify thousands of organizations as to whether they were public charities or private foundations. On top of that, we had the private school issue hit us so that we had to make decisions there, and we had to get lots of guidance to our field offices.

Teamwork was important then, and it's important now. At that time, the technical organization worked with the Chief Counsel's office in drafting regulations and we also had the private rulings there. The private bar assisted in the drafting of regulations. So we got the regulations right and they really hit the problems that Congress intended us to look at.

The private foundation area is a good example because it has stood the test of time. When a private ruling was issued, it had to go both to Chief Counsel and Treasury before we could release it since the regs weren't in place. Once they were in place, then the technical people had the authority. At one time, we wrote all of the regulations in the office of the Assistant Commissioner (Technical) and we also wrote revenue rulings through the Bulletin Branch. These were guidance functions that the Service performed not only for their own agents and specialists but also for the public. So I think this partnership within the functions in the Service and with the public is critical and will help us in resolving some of these problems that I'll address in my presentation.

Watkins: Just a real quick comment about the guidance issue we've been talking about. Some of it goes to timeliness. The IRS website has archived guidance. I did a quick search on all the archived guidance and from 1964 to 1981, there are a few years missing, they're not for whatever reason on the website, but looking at about 52 or 53 years out of a 60-year period, from 1964 to 1981, you have 643 revenue rulings issued and from 1982 to 2013, which is almost twice that timeframe, you only have 53 revenue rulings. So you have in 1981, '82, '83, this complete drop-off in the number of revenue rulings issued. That's true across the board for the Service

generally but it's I think perhaps more true in EO. I am talking about substantive rulings, not revenue rulings that have to be issued every month, interest rates and that kind of stuff. So just from a standpoint of public guidance we're all trying to figure out how much we can rely on private letter rulings and tech advice, what little of that there is.

Brockner: I wouldn't say that's absolutely true because you're using those statistics in a way that attacks my ego because most of the revenue rulings were published in the period between 1982 and 1986 when I was running the programs.

In regard to teamwork, I don't think there's anything that can replace the live, on-site training programs that we used to deliver. When we would go out as instructors, we always learned things from the people whom we taught. There was a great to and fro that continued long after the programs, this networking, phone calls going back and forth. When it was replaced by computer conferencing, you lost a lot of this teamwork.

Weinberg: I think that goes both ways. That's inward looking. The organization creates teamwork but the truth is that if what we're trying to do is get to a fairer system where people know what the rules are so that they can play within them, then outward looking teamwork is necessary and I hope people have a chance to think and talk about that as we move forward. Well, we're on to the third subject and for that I am going to ask Marc Owens to step up to the plate.

(3) Reducing or Eliminating Administrative Non-Uniformity under Current Law

Owens: I interpreted this topic of reducing administrative non-uniformity under current law really as suggesting different methods for achieving consistency without significant organizational change, without additional funding, as something within the control of the managers in the Tax Exempt and Government Entities Division. It seems to me that that boils down to a few matters that I think come under the head of judgment of management and I think the trend to filling management positions with people who have no background or no particular experience in the Exempt Organizations function means they cannot review the quality of the work product of their subordinates. They can't identify and distinguish between cases and issues based on the nature of the content. They can only count the widgets and I think we're seeing that memorialized in the streamlined processing and the Lean Six Sigma approach, which is basically an assembly line derived management technique. They count the applications. The more that are processed, the better, without regard to the answers that are being provided in those applications.

There's a management component. I think there is a need to re-establish that sense of teamwork and one way to accomplish that is also going to accomplish the need for not just guidance, and revenue rulings are very useful, but what is perhaps even more useful are the more discursive statements of the law. The discussion of the application of the rules that used to occur in the old General Counsel Memoranda, that used to occur in Technical Advice Memoranda, that used to occur in the Continuing Professional Education textbooks.

That sort of explanation of how the law and regulations and revenue rulings are applied in a real world situation I think is very important to achieving or trying to achieve greater uniformity. I think it has the side benefit of creating teamwork because the group has to come together and

discuss and a leader or instructor has to lead them through the information and there has to be an exchange. I think that's best done in a face-to-face context but I think that is something that can be reconstituted. It takes time but I think it pays huge dividends that aren't fully taken into account under the current format of looking at dollars available for training. You can't segregate that from the other aspects of operations. I think that's it in a nutshell.

Brockner: I believe in a registration system. I think it's the only way to go, call it 1023-EZ or whatever you want to call it. We just don't have the manpower, if we ever did have the resources, to really do an in-depth study and analysis of what is being presented in an application. It's nice to have this initial review, but they're going to lie anyway. So the way to go is to throw the weight on the exam side. If we catch somebody, we throw the book at them and make it clear that whoever put that application together, in the event the organization can't pay the back taxes and the penalties and all that, they're obligated for it, so something tough.

And to go a little bit further, it also should be understood that if you don't apply for tax exemption and you act out there like you are exempt and we catch you, and you're not doing what is in the framework of what the 501(c) provisions are all about, that you don't get any safe provisions, you don't get any benefits of what the law provides for an exempt entity. For example, like with the 501(h) election. If the charity doesn't make the 501(h) election, they don't get the advantage of any of the expenditures test. They're on their own.

They should be looked at as if there is really nothing to go on except basic principles of being operated for charitable or social welfare or whatever purposes. The other thing nobody has mentioned here, there is not enough disclosure. There should be more. There shouldn't be any bar between the Service and the states and the local governments.

Reid: One point that should be discussed a bit more is that EO guidance has a lot of rules, but there's a real reluctance to clarify the basic principles underlying those rules. Marc alluded to this in his comments about how helpful General Counsel Memoranda are because they include discursive, reasoned analysis rather than just summary legal conclusions. I believe that one of the things that renders EO such a difficult area for compliance is that people don't understand why they need to comply. The rules don't pop out as intuitive because people don't understand the principles behind the rules.

There are a lot of really basic questions in EO that are persistently left unclear. Why are certain organizations exempt from tax and others not? Why are donors allowed to deduct charitable gifts from income? Why is commercial activity okay in some cases but not in others? How much is too much? Does charity always have to do with relief of poverty? What exactly is private benefit? When does it overshadow charitable purposes? Why is lobbying an issue for EOs? If you're lobbying to accomplish your charitable purpose, why is that bad? Why is political activity prohibited? Why is it so bad that it is a bar to (c)(3) exemption? There are many complex rules on each of these issues, but insufficient guidance and consensus about the principles underpinning them.

And just to complete this point, the situation in EO is quite unlike the rest of tax. The income tax is at its core a very simple idea. All income from whatever source is subject to tax. That's what the 16th Amendment says. Why? Because we need to fund the federal government, and the

income tax is considered to be a fair way to do it. The rules around taxation can be complex, but the underlying idea is very straightforward, so tax lawyers tend to know when a rule "makes sense" or when an answer is "too good to be true." Not so in EO. I think the reason we get different results in similar cases is confusion about the principles. If my understanding of the principles differs from yours, and we're trying to enforce the same rule, then my intuitions about what constitutes the right result are going to be different from yours, and it will be difficult for us to agree.

Brockner: You're absolutely right. There's no uniformity. The rules aren't simple enough. They should be across the board. The Chapter 42 provisions for private foundations should apply to all 501(c)s. An agent, a practitioner, a tax law specialist in the National Office or in Cincinnati should be able to look at a fact pattern and apply the same rules to everybody.

Beckwith: I would like to add to what Alex said. We look at this through a tax lens when it is a much broader, much more important societal issue. Taxes are not the most welcome subject. Contact with tax administration is rarely the happiest moment in one's life. In a pluralistic society with so many essential organizations, allowing the tax tail to wag the dog here is a fundamental problem, both from the standpoint of public perception and also political reality and funding. I realize it's an overarching statement but Alex's basic principles are exactly the point. None of them are primarily tax questions. Why do we as a society favor this? Why do we put boundaries around it? Why are there certain things that need to be regulated? If we were to look at it that way, we would probably get to better fundamentals that people would more easily understand.

Weinberg: There are examples in our government of similar problems that have been addressed in the way that Marc Owens was describing. At the Fed, for example, the financing is done by the regulated. That has its own concerns but the fact is that just as the money supply must be regulated so must the tax exemption of nonprofits; lately there are many questions as to whether anyone, be it the Internal Revenue Service or another agency, would have the funds to do that well.

Cerny: I was going to just add to what Ed has said. John Gardner, probably the grandfather of the philanthropic sector, wrote a book and he said as he looked at the sector, "it encompasses a remarkable array of American institutions…. Perhaps the most striking feature of the sector is its relative freedom from constraints and resulting pluralism." I don't think we should ever forget that, that we have a unique system here in the United States that allows organizations to seek out answers to very difficult issues, to advocate their position, etc.

I think that if we put too many restraints on organizations, then we are going to dull that sword that organizations can use in order to change society. We just recognized the 50th year anniversary of the War on Poverty and basically those were new initiatives by foundations, by public charities, etc., that tried to solve a problem, not always successfully, but they tried and I think we've got to encourage that and I think one way to do that is to try to limit restraints but provide transparency, which I'll address when I do my presentation.

(to be continued)

EO Tax Journal 2014-121

Paul Streckfus, June 18, 2014 at 5:25 am

How to Improve IRS Administration of the EO Tax Laws (Part 2)

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(4) Administrative Non-Uniformity — Policy and Legislative Solutions

Weinberg: Our next presenter is Alex Reid. We've heard his very thoughtful comments up to now. I was wondering, Alex, there have been varying degrees of administrative uniformity over the years. Lack of uniformity can stem from political motives as it did during the Nixon

Administration with the Special Services Staff or from poor administrative restructuring, as many suggest happened in 1998. In your view what policy or administrative changes would best promote fair and even handed administration of the tax law?

Reid: I'd like to start off by questioning our basic working assumption that the IRS EO function is dysfunctional and needs to be rescued. I've said some things that are critical of the IRS EO function, and it's true that there have been problems. But I think the main reason the IRS Exempt Organizations function has received so much criticism is actually a sign of its importance rather than a sign of its failure. Just because something is difficult doesn't mean you shouldn't try. The IRS Exempt Orgs oversight function has been involved in virtually every political movement and cultural shift in American history. A lot of the folks around the table here were in the trenches when the IRS was wrestling with profound cultural shifts in America arising from the civil rights movement. EO was front and center in many of those battles.

The issue today is money in politics, which I know from my time on the Hill was too hot for Congress to handle. I worked on the staff of the Joint Committee on Tax, which is a non-partisan committee, and both House and Senate Republicans and Democrats were aware of the problem of money flowing into (c)(4)s and being used for political purposes. But that was not an issue that anyone in Congress felt comfortable jumping in on. Particularly if you're the one benefiting from those dollars, it's awkward to try to get in there and cut off the stream.

So it has fallen to the IRS, the agency of last resort, to deal with this problem. Does that mean that the IRS is somehow bad? I don't think so. It means that it's important. It's the safety net that catches the issues that the government might otherwise prefer not to think about. The proposed (c)(4) regs got 160,000 comments. That's far more than any other tax regulation I've ever heard of. Is that a signal that the regs are bad? I don't think so. It's a signal that there are a lot of different opinions about money in politics, which is of course understandable.

I think a lot of us around this table feel that exempt orgs is one of the most interesting areas of the tax law. That's why we all practice it and devote our careers to it. I think that's because it involves the stuff that people really care about the most: religion, politics, education, science, health. Making America a better place.

Exempt orgs is consistently the area where the demand for IRS attention outstrips its supply. So we have the cycle of inconsistent enforcement, scandal and rebuke. That's the cycle that we see repeated over and over again. I think all of this comes from a fundamental conflict between tax principles and EO principles.

To pick up from some comments I made earlier, the income tax comes from the 16th Amendment, which is all about government intrusiveness. In order to measure your income, the government has to literally get into your business, evaluate your income, and tax you correctly. The exempt orgs principles come from the first ten amendments, all of which are about government restraint: freedom of association, freedom of religion, freedom to contribute to society in whatever way you think is appropriate as long as you don't hurt anyone. That's quite a different set of principles.

It's easy to evaluate whether a tax collector is doing a good job. How much did you collect? Did you fail to tax someone who should have been taxed? But these aren't the right metrics for evaluating the effectiveness of exempt orgs administration, which is about protecting a public space in which people can express themselves. EO metrics should be about: Is American civil society flourishing? Are there too many barriers to forming institutions? Do the tax laws inhibit creative solutions to society's problems?

Keeping the public safe without infringing on anyone's civil rights is more of a police-type function than it is a tax collection-type function. And there are two kinds of police: one kind wears uniforms, drives around with flashing lights, and responds when you call 9-1-1. We may not always like them, sometimes they get out of line, but we generally agree that they serve an important function, and we appreciate them for what they do. The other kind of police does not wear uniforms and they do not come to our aid when we're in trouble. They're the secret police. They spy, operate secret detention centers, have unorthodox interrogation methods, and they are a law unto themselves. They decide what to enforce and whom to enforce it against. They're not publicly accountable. We're just supposed to trust that they're doing their job, and assume that we would approve if we knew what it was. And nobody likes the secret police — they never will win a popularity contest.

I think that's the root of the dispute between the IRS and the House Oversight Committee. The House Oversight Committee is trying to paint the IRS as a secret police, and it has had some success doing so. Why? Because of section 6103. The IRS is required to keep mum about its enforcement efforts because it cannot reveal confidential taxpayer information. That's fine when the IRS is collecting tax, but it is not fine when the IRS is policing the Bill of Rights. Fair or unfair, the effect of 6103 on EO enforcement is to make the IRS look like the secret police, which is what has the House of Representatives all riled up. The bigger problem, and the one we're discussing today, is that the more the IRS looks like the secret police, the less we like it, which erodes its effectiveness over time.

Weinberg: That was very thoughtful, Alex. Now let's hear what Chip Watkins has to say about all of this. How about the secret police?

Watkins: Well, I think what's going on on the Hill and what we don't like about secret police is not so much that they're secret but that because they're secret, they have a tendency by nature to operate outside the law. Clearly in hindsight and the disclosures that have been made in the last year, that's what was happening with the (c)(4) scandal. Obviously, there were lots of other things there, lack of training, lack of teamwork, lack of communication. But those of us who were in the room last May 10th knew immediately that what Lois said couldn't possibly have been true because we ourselves had clients who had been told that things were happening in Washington, that we needed to wait until Washington approved this, that or the other thing. And to pin it on two people in Cincinnati just was not at all credible.

So I think this issue of transparency leads back to more guidance, more training. As has been mentioned here, the CPE text that came out for 20 years or so, they were wonderful things. They were very helpful and we all benefited from them and we all kept them in our libraries. In fact, when we went through our library a couple of years ago to clean out stuff, that was one of the paper things that we kept even though they're available on-line, and probably one that has been

accessed more than any other is Jack Reilly and Judy Kindell's treatise in 2002 on political activity. So, I don't know if the problem of administrative non-uniformity is very susceptible to policy or legislative solutions but it's certainly susceptible to improvement by some of the changes that Marc and others have mentioned in terms of better teamwork, better communication, more transparency and, with more transparency, more accountability to the community.

Owens: I guess my sense is that one of the problems that is bedeviling the IRS right now is a failure to appreciate the importance of the Exempt Organizations function and that led inevitably to I think the problems that came to light beginning in May of 2013. I think there were some other precursors, though, that suggested that the IRS was beginning to marginalize the function. I know there may be some around the table here who disagree but I think the decision in the Spring of 2011 I guess it was by then Deputy Commissioner Steven Miller to close down five audits in progress when the only event to cause that to occur were complaints from members of Congress.

To me, there are ways to deal with audits. You have Counsel review the facts, review the law, and either approve or disapprove the action. But to simply and summarily end examinations in progress with a directive from the highest level within the IRS as a result of complaints from members of Congress is politicization of the process. It's nothing more, nothing less. I've started seeing that now flow down to actual case processing.

I was at a conference of right in the Exempt Organizations Division about a month ago. It was a proposed denial of an application for exemption. The conferee started out the process by saying there's an unstated reason for denial in this case. I said, "Oh? Unstated reason?" and they said, "Yes. What you are proposing to do with this environmental organization has not been authorized by Congress. That is, Congress has not spoken that it is okay to do the sorts of things that you propose to do to protect the environment." Well, the basis for exemption was not relieving the burdens of Congress and government. It was protecting the environment, and to say there was an unstated reason for denial and that had to do with political decision making on Capitol Hill is to me confirmation that the administration of tax law has become politically oriented.

Watkins: So have you filed your section 7428 petition yet?

Owens: No, but I can tell you that that issue has now been documented in the file. I think that there is a fundamental problem here and there are all sorts of causes but we're off on a track that I think is going to lead to significant erosion of confidence in the administration of tax laws across the board, not just in EO.

Watkins: Marc, let me ask you fairly bluntly, do you think that is attributable to the fact that for eight or so years we had a director of EO that did not have an EO background?

Owens: That certainly didn't help. I think part of it is that the employees have been brutalized by the endless investigations and hearings. They don't want to do anything, I think, that would cause some member of Congress to demand another Inspector General review, another

Department of Justice review. It's all about keeping your head down and avoiding controversy. Move everything off to Cincinnati.

Watkins: Isn't the best way to avoid controversy to make decisions in accordance with the law?

Owens: There will never be avoidance of controversy in the exempt organizations area. You can go back to 1601 and the Statute of Charitable Uses. It's been controversy after controversy after controversy simply because of the issues that arise in this context. They are not tax issues. They are dressed up as tax issues but they go to some of the fundamental reasons why humans get together and make decisions.

Cerny: The flip side of what Marc has said, in my experience with a case that we currently have pending, is that there hasn't been a recognition of what Congress did with the Affordable Care Act. We look at health maintenance organizations and we've got these two or three adverse court cases out there but the whole ballgame has changed now. Congress is encouraging the development of organizations that are providing health care to the community in a broader context yet the Service continues to rely on old cases without coming out with any new guidance in this area.

I know we got section 501(r) and we got some of the other things that are pending, but they are really statistical gathering information. They are not attacking the problem of health care in this country and we've got to allow that to come to the fore through organizations that are doing so with new concepts on how to handle the problem.

I think Marc is right, some of it may be influenced by some political decisions, but I think others is a lack of training and understanding which we had also when the War on Poverty started in the 1960s and '70s. No one really thought whether these organizations were charitable and we had to always go back to the Statute of Charitable Uses to what was the basic context of charity, what did the 1959 regulations say to open the door. It's an education process.

Owens: One of the issues that I think is one of the benefits of the discussion of how tax law is applied is that court decisions are put in context, because those of us who have been involved in litigation know that once you're in court, the Department of Justice and IRS Counsel want to win because if they win, they can decide in the future whether to use that precedent or not. It's their call. If they lose, they don't have that ability. So once the case is in court, it is a 100 percent total effort to win by the government and that produces decisions, particularly when you have judges who don't see these issues every day, that can have some rather bizarre judicial findings.

So what has to happen as a regulator, those decisions have to be put in context and that has to be communicated. Just because a court said, as it did, for example, in the *Family Trust of Massachusetts* case, that if you don't solicit charitable contributions, that's an indicator you aren't a charity, but section 509(a)(2) suggests you don't have to solicit charitable contributions at all.

Watkins: Private foundations, last I checked, really don't solicit charitable contributions.

Owens: Maybe right at the beginning. But in any case, there needs to be a device for putting some context around that sort of case law and we don't have that now. Case law is just about the only current guidance we have from the government.

Cerny: I think that's an important point because when the EO function and the Chief Counsel can't go to Justice and say we need to get this case litigated to develop a position in this particular area that will be sustained, then that issue is dropped and it's not raised again. Or if they lose a case, an action on decision is recorded, whether they still publish them or not, and no follow-up action is ever taken to see whether or not there should be additional guidance in this area or if the Service changes position.

(5) Lack of Timely Guidance at All Levels

Weinberg: Milt, I have a set-up for you here. No one is ever satisfied with the length of time it takes to get an answer from the IRS, be it at the National Office or in the field on a tech advice request or revenue agent report or a response from the field to a protest. Nobody is ever happy. What can be done to promote a more rapid responsive time for guidance on which as many people as possible can rely?

Cerny: Let's think out of the box for a moment. The current process causing much of the delay in the issue of determination letters has been that the specialists today use checksheets, they ask every possible question that might trip up a new organization to reveal whatever its true intentions might be and, in the process, in the faint hope that they're going to educate an organization on how to properly operate, about business activities, governance, prohibition on private benefit, when the thrust should be to get an answer to the organization as quickly as possible.

The recent IRS data book shows that 46,000 applications were processed, an overwhelming majority in determination letters and rulings. Of those 38,000 were granted, only 79 were denied. That's about .002 [.2 percent]. The remaining 7200 failed to complete the application process. Now, many people say, well, they didn't want to complete the process because they didn't want to answer the questions. Well, that may be partially true, but I think it's also true that many just give up so that what has happened now with the automatic revocation of organizations for failure to file the 990 has resulted in a backlog of 60,000 organizations, 50,000 cases now have been added to the workload of the IRS.

The problem is that the current process has not stopped organizations that intended to violate the law from the start, but rather it has caught up otherwise well-meaning organizations. There's got to be a better way and let me suggest to you what I think might be the better way. I know there will be issues with regard to it, but let's think about it a little bit. As pointed out today by Ed and others, we have a dual system for EO administration. Bill has talked about the IRS. Well, we also have the state attorneys general, we have charity state officials involved and these three governmental groups administer the area. However, there's also the public and the public many times sees an organization that may not be operating properly or has concerns about them, so we need to develop a system of transparency.

My suggestion is that we establish a standard uniform IRS and state registration 1023 that would recognize tax exemption under certain agreed upon requirements and standards, coupled with a single point filing multi-state registration system. These aren't new ideas. They've been thought about in the past and certain action has been taken with regard to a single point filing system.

Let me point out to you historically a similar approach was taken by the IRS in 1981 with regard to the 990. At that time, organizations were required to file returns in every state in which they operated. Many of them had different rules. Millions of dollars were expended on filing these returns. So the IRS got together in a compact with the states and they developed a uniform 990. That system worked well for a number of years. I think it has to be revisited from time to time as new 990s are developed and new issues arise.

The same was true when you go back to the organizational test under 501(c)(3). We worked with the American Bar Association and we worked with the state officials to develop a model charter and a model trust instrument that organizations could use that met basic state requirements, and then it became the standard. So this was a partnership between the states and the federal government.

Basically what would happen under this system I propose would be you file the 1023, you get the organization approved for granting of charitable contributions in that state. All this information then would be brought together and there would be an open data system operation where the platform for it would be the state and federal government and the public could access it so that transparency would come from the divulging of information about organizations that claim to be charities and if the public wants to see what they really do, who they are, who the individuals are involved with these organizations, it would be out in this open data platform.

Now, the Aspen Institute has looked at this with regard to raw data from the 990 and I think the 990s could be put into this system also so, when you go to see whether you want to contribute to your favorite charity, you don't have to look at the Cumulative List of tax-exempt organizations, whether it's still published or not. You use the computer. The computer will tell you who this organization is, what it does. It would have the organization's charter on record. It would have a financial statement, etc.

So the problem with the 1023-EZ is it just wasn't enough information that was given and boxes were checked and people attested to certain things. But if this information were available on this type of platform, then you would have the states and the IRS getting together on voluntarily presented information that would not violate, I don't think, 6103 or the other provisions. Today, there isn't a concerted effort between states and the IRS and the reason for it is the IRS can't divulge all the information and if it does, it puts such restrictions on its use that there are only three states out of 50 that have accepted this information from the IRS because it's too difficult to follow all the requirements that the IRS has put on the divulging of that information. So I think this could be done through a vehicle that would have both the opportunity for an open data system and would provide the opportunity for the state and the federal government to come together on those type of audits that need to be done and three, the public is made aware.

Brockner: On this business about the information out there, cooperation with other organizations and the states is not enough. For example, a relationship with the watchdogs. Why

doesn't the IRS promote Guidestar? Tell the world that if you want to go look at what an organization is all about, go look at the 990s that are in the depository of Guidestar and easy to access. Why doesn't the Service do that?

Owens: I think the interested public knows about Guidestar. I think the fundamental difficulty is most people don't know about it and don't care to know about it. They don't base their giving decisions on Form 990 information. They're based on something else, their religious beliefs, their charitable motivations but something else entirely. And they don't have time to go through a 990.

Beckwith: But I do think personally we will get back to timely guidance. We really should talk about the front end of the process and that is having data transparently available to the public. There are two audiences, the one that Marc is pointing out, which is the prospective donor, and the other one is the one Bill was pointing out before and Alex and that is the policeman. And the whole point is if we can make the information available so that people can slice and dice and look at it, call it triage, find the bad actors more easily, then I think the public will be more accepting when the police pursue the truly bad actors. I think what Milt is suggesting makes perfect sense, something really that should be promoted.

Reid: There's a lot of transparency on the exempt orgs side, but not much on the part of the IRS. The Form 990 is publicly available. What we're missing is transparency on IRS enforcement. Part of that is the IRS's own fault — it's always preferable to operate in the shadows rather than daylight. But the fact is, those shadows are cast in large part by legislative obstacles. Section 6103 makes it *criminal* to reveal any taxpayer information, and that's a big deal. The IRS takes that rule very seriously, as it should.

Taxpayer confidentiality is appropriate for the 16th Amendment income tax type of principles. If the government is going to go into your business, you are going to want to have confidentiality. It's embarrassing. You don't want the government to spread your dirty laundry all around. But when the police are regulating civil rights, you want them to be wearing a uniform, show their badge, and come in with flashing lights on their car. Everyone wants to know exactly what they're doing and why.

Because if the police are doing something wrong, we need to know about it. We can also learn something from how the police operate when they are short staffed. They drive around with their lights on. Why? Because you are more likely to obey the law if you've seen a cop recently than you are if you haven't. It increases everyone's compliance and sense of safety when the police do their work in the daylight.

Cerny: As has been indicated by others around the table, over the past 25 years, revenue rulings have dried up, technical advice requests have not been sent to the National Office for consideration nor have technical assistance there. They're minimal today and what is the reason for it? It isn't that the issues aren't there. It's because the emphasis hasn't been put on them and the reality that, even if written, they won't get published because Chief Counsel and Treasury are swamped with too much other work to deal with these matters.

So I recommend with regard to revenue rulings, aside from what Marc has said about the discursive aspect, to do digest rulings. They were written at one time and they gave back the situation, the law and the conclusion. That's what people want out there. They want to know what is the answer to this problem or this issue that I am confronted with, so I think they could do digest rulings.

The next thing that Chief Counsel can do, since they are now writing the revenue rulings and have been for the last several years I think — we've only got one or two out of them recently — but what they can do, as we did with the then-Assistant Commissioner (Technical) is have an agreement between Chief Counsel and Treasury that once a ruling was written, Treasury had 30 days in which to make a decision. It seems to me that some kind of an agreement like this has to come about here so that there is timely distribution of guidance. The same is true of publications and other matters that now currently are being reviewed by Counsel.

The new system, by giving total control of guidance to the Chief Counsel, isn't going to work unless the emphasis is put on the exempt organizations area. Otherwise, it's just going to get swamped with other work and that's why I think getting the bar involved in this process, as had been done with the foundation lawyers with regard to the Tax Reform Act of 1969, as done when section 501(h) regs blew up, so it seems to me that the bar today should make recommendations to the IRS. It took years to get the 4944 program-related investments regs updated but the bar made great suggestions and finally Counsel agreed that maybe this is a good idea because old guidance does not reflect the realities of today. Most organizations are relying on revenue rulings that are 30 and 40 years old and situations and regulations have had their time. So new situations arise and we need to get this partnership started and get it going.

(6) Educating Service Personnel at All Levels

Weinberg: That's a terrific segue to our final presenter, Ed Beckwith. Ed, you've practiced before the Service and Treasury for close to 40 years and have also been deeply involved in continuing legal education efforts aimed at tax lawyers and other practitioners who have a responsibility for exempt organizations and charitable giving issues. Given the poor state of communications generally within the Service, how might Service personnel better stay up with the changes in the law and what taxpayers and their advisors are doing in the field. This is by way of the outward bound partnerships that I discussed earlier.

Beckwith: I think it's a critically important subject, particularly given the perspectives you've shared this morning. I'd like to step a little back from your question first. In addition to representing donors and exempt organizations, I also have been teaching tax lawyers at Georgetown for 30 years, many of whom have worked in the Service so I have that perspective of them coming to Georgetown seeking a certain degree of education in order to do their jobs better.

Obviously, this is a unique body of law that we all care a great deal about. I think the goal should be the efficient, informed, consistent and responsive application of this unique body of law to the exempt organizations sector in our society. But I think we need to keep in mind that although you framed this as a question about Service personnel and their education, that there are really

multiple audiences. The public here is not only the tax-exempt sector but also the public at large, and then there are at least three levels of professionals.

I call them professionals, some may disagree. Obviously the first level would be the accountants and the lawyers organized through the AICPA and the ABA and those who care about the sector. I would add our students, frankly, to that public that needs to be informed on the professional side. Then you've got the career folks. I think all of us around the table, to one degree or another, can be viewed as having careers in this area and then you have the staff at the Service and the managers. But I would add a third level to that and that would be senior management. We've alluded to this, and then I'd go one step beyond that. I'd say that congressional staffers and the members of Congress themselves because in the end, the Executive Branch and the Congress more than anything else I think have in a way added a lot of noise and a lot of barriers and a lot of complication to an area which I think we all agree should be more transparent and more easier to navigate than it seems to be.

We also need to recognize that this body of laws we refer to really is quite young and that many of the pioneers in the area are still with us. Part of the exercise is to capture some of their wisdom before we lose it. But there is a sense, a resignation, that what was created out of whole cloth in order to educate ourselves and to have concentric circles of education has collapsed, whether it's the CPE, whether it's the Manual, whether it is the internal programs that went on both here in Washington and out in the field, and that level of face to face or over the phone communication with people you became acquainted with through that process who can then come to trust the judgment of others here in Washington, and that feedback clearly is broken.

Of course, the give and take in the ruling process also was a way to start to get a sense of what is really going on in the field. Traditionally, this has been an internal process, internally driven, IRS owned, branded and run. I'd like to suggest an entirely different approach, sort of a reboot, and I alluded to that a few moments ago. I think we may want to look to formalize a collaboration between the public and private sectors. This would necessitate something like an editorial board. I don't know quite what to call it, maybe a Board of Education or a Board of Public Information. There are a number of places of higher learning well situated to house such an Institute. This would provide the consistency that we no longer have in the Service that most of us agree is unlikely to return, at least not before we have lost any meaningful access to the treasure trove that resides in our pioneers.

So, with that in mind, we may want to find a home outside of the Service that is structured as a collaboration where the federal government, academics and professionals would be entrusted to educate, to archive, to make available, to simplify. There's a difference when one of us gets up and speaks to the public about this area of the law. We're not as constrained, we're not as cautious. We sometimes can be much more candid or blunt as some of us have been today and I think that type of collaboration may serve that broader audience much better.

Now, in this regard it occurs to me that there is core knowledge and Alex was referring to this earlier, sort of basic principles, basic concepts. He put it in the proper constitutional context. This is an appropriate place to start for a group of lawyers, but it also establishes a broader appreciation for why this is so important, so vibrant. I am active on college campuses. I am active in the classroom and the law schools. There is a whole generation coming up behind us

that is very much like the generation that came to Washington when Kennedy was President. They are oriented towards a civil society, very oriented towards philanthropy, towards giving, constantly asking, how do I start a career in this area? This includes my law students who want to know how they can take their tax background and contribute to this area of the law.

So there are people to whom we can pass the baton. The question is how do we gather and preserve the core knowledge and create a fertile environment for it to continue to grow in ways that best serve society. As much as I favor face-to-face meetings and team collaborations, the reality is we will need to rely more on interactive technology to create more economical virtual meetings. This is already done to a degree on portable devices like laptops and iPads.

This is largely generational. If we can figure out how to use the technology and find the private dollars to fund a home for the Institute, maybe, rather than serving here as something of a eulogy, we can possibly be actually foretelling the rebirth of what has been really an incredibly creative and important function for the success of our society. I know that so much of it today has changed in our lifetime and it was all built on the back of the nonprofit sector.

Watkins: I think the concept of some kind of outside or private-public partnership is an interesting one. I have some serious questions about how it would be structured because ultimately it's still going to be serving a governmental function. The IRS under the current structure at least can't delegate the responsibility for administering tax laws but certainly the private sector can contribute, if you will, in some ways to the education and training not just of IRS personnel, and we do that. The number of CLE programs and conferences and what not is certainly out there.

I don't know the extent to which under the current government ethics rules, an IRS attorney, for example, can be given a free pass to a conference apart from actually being a presenter there. But it seems to me that there ought to be some ways that that could be done in a way that would both be a positive contribution but also maybe if possible relieve some of the budgetary pressure on the IRS for training.

Weinberg: I don't think that Ed was suggesting that would take the place of either EO or what Marc Owens was talking about by way of an independent agency, rather it's another string in the bow for us to make available the decades of analysis on EO issues created under this system for the benefit of future generations.

Cerny: I think you've hit the nail on the head. Today there are probably 100 institutes out there that try to do what you're saying and maybe some do better jobs than others but certainly we need to correlate all this information together. We did this with CEELI [Central and Eastern European Law Institute], the American Bar Association's project in Central and Eastern Europe, to get together all the laws and knowledges that began changing, decide to bring back those to that area. I think we should do it. I would like to see someone take the lead on that.

And one other thing that comes to mind is that we all knew Don Alexander and Don called us together as managers and he said I want you to manage your organization but I want you to think. What he was saying to us was know the provisions that you're administering or otherwise

you're not going to be able to administer the people. I think Marc has pointed to that and I think that's critical.

As far as the partnerships, I think the IRS and the Bar, to be part of the solution and not the problem, for years they've tried and many times those suggestions have sort of withered but if we could do it on a systematic basis through an institute that you've suggested and have the training done partially by that institute. When I was head of training for EO specialists, I brought in private practitioners to talk about their areas of expertise. I think we can utilize the private sector in this whole education process and it needs to be done.

Brockner: I take it that you envision 501(c)(3) public support.

Beckwith: It could very easily be an institute at an existing university law school with active participation by the AICPA, the ABA, and the management of the IRS designing educational packages for the public, for the staff, for the professionals in the field, a collaborative effort, all recorded, all archived, all cross referenced, which I think would then lift off the back of the Service something that they are now clearly failing to do well enough, to perpetuate the brilliance that was birthed in the sixties and seventies and that's really my motivation.

Being a CLE chair of a lot of programs, I know there are 100 different ways to put this together, but I would love to have a panel that includes an accountant, a lawyer, and someone from the Service on every key issue. It would look at three things. One is core knowledge. The program would also look at key developments, and there always are. And then most importantly, I think, it would look at what is coming down the road. That was the feedback that is now broken from the field asking for guidance.

A lot of us don't come in and ask for guidance now because we know by the time we're going to get it, the function that we wanted to transact is already going to be passed. The idea is, get it out in the public. How vibrant are those discussions at the ABA and the AICPA, at those committee levels where people start talking about things they see coming down the road. There isn't a person at this table that didn't know about the abuse of the (c)(4)s, didn't know about the abuses of (c)(6)s, didn't know about the mishmash between 527 and 501(c)(3)s fifteen years ago. Alright, but a lot of that might bubble up in a more positive, less scandalous way if it was done in the context of an institute where there were proceedings and people were saying here's something Congress might want to pay attention to, rather than coming back in at the last moment hysterical that they've discovered something for the first time.

Weinberg: Thank you. Before we end, are there any other comments?

Watkins: One more comment in response to Ed's presentation and that is that the success of that kind of institute is going to depend on the willingness and ability of the Service to participate and follow through. I don't know what your perspective is, but my perspective on the exempt organization's advisory committee that currently exists is that for the Service, it's good window dressing but they rarely follow through. I don't know whether that's because they don't want to follow through or they don't have the resources to follow through.

Beckwith: I guess my point is, again, I think it's a reboot. It's a new paradigm. If you talk to the current staff and somebody else said it earlier, they're beaten down. There is no reason for them

to do anything more. You don't have the pioneer enthusiasm today in the staff that you had 30 or 40 years ago. That's just a fact. Now, part of it is you can predict that at the very beginning of any administrative agency, you've got people with a lot of enthusiasm but it wanes over time, the agency becomes more of a bureaucracy, the work more of a job. So you could have predicted that in 1969 and 1976. But on top of that, they're beaten down. There's no doubt about it.

The question is, if you took the function theoretically out of the Service from, if you will, a budget perspective, but the mandate was you go to this institute every year or you log in every year or you get re-certified by taking tests every year, then you would have the buy-in because it would be part of the administrative structure and this goes on all over the country. There are a lot of states that train various state employees through the private sector. They don't actually have a training facility or the trainers. This is really no different except that it's a public-private collaborative and frankly, as Milt pointed out before, there's no reason why the states couldn't get pulled into this, too. I think if we could get some sort of agreement that this is really for the benefit of the country and it doesn't have to be 50 different ways to look at it all the time on every issue, that that would be a public good.

Cerny: I serve on the Commissioner's Advisory Committee for tax-exempts. I am going off this year, but I invite you to come next week when we issue our report on UBIT. If you go back and look at the reports that have been issued by the ACT committees, a number of those recommendations have been adopted on the 1023, the 990, and the 990-EZ.

I think if the reports continue to be taken seriously by the administration and now Chief Counsel, that there are a lot of good ideas, similar to what Ed has said. We have on our committee an accountant, two lawyers, a health care professional, and an assistant state attorney general. So that expertise is there and the ACT committee can be a very powerful force. I mean it might go to Congress and say these are our recommendations, we'd like to see them enacted. It doesn't stop us from going to Treasury and saying the same thing to TLC. Somebody has got to read it, somebody has got to get behind it and do it.

Weinberg: Let's make that the final word for today. Thanks again for participating in this roundtable discussion.