

IRS Still Changing EO Streamlined Exemption Application

by Fred Stokeld — fred.stokeld@taxanalysts.org

The IRS is continuing to make tweaks to the form used by small organizations seeking tax-exempt status as charities and is conducting a two-year post-check to make sure it's working, an IRS official said June 27.

Speaking at the American Institute of CPAs' Not-for-Profit Industry Conference in National Harbor, Maryland, Jeffrey Cooper, director of EO rulings and agreements at the IRS, said the IRS has already completed a one-year post-check of Form 1023-EZ, "Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code." Critics have said the form does not ask small organizations for enough information about their activities. The post-checks help "to make sure that we've got it right," Cooper said, adding, "I'm sure there will be changes as we go forward."

Cooper also said the IRS's examination of tax-exempt organizations will focus on several areas, including tax gap issues related to employment taxes, terrorist funding, and foreign bank account reporting requirements. Other issues include private inurement, protection of assets, nonexempt charities trusts, and "nonexempt purpose activity," he said.

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Cooper reminded the audience about a recent IRS memo saying that the agency will no longer call taxpayers to tell them they have been selected for examination but will send them letters instead. The change, made public May 30, came after Tax Analysts first reported May 6 that some Iowa residents were receiving calls from the IRS. (Prior coverage: *Tax Notes*, June 6, 2016, p. 1327.)

Cooper also discussed the IRS's work reviewing EO hospitals, noting that since 2011 the agency conducts more than 1,000 reviews of exempt hospitals annually. Examples of noncompliance the reviews have uncovered include failure to maintain a community health needs assessment, failure to have a strategy to meet any needs identified, and lack of a financial assistance policy, he said.

Cooper brought up the recent IRS announcement that data from electronically filed copies of Form 990 series information returns are now available in machine-readable format through Amazon Web Services (not IRS.gov). The IRS is "really proud" of this development, he said, adding that the agency will be able to make more than 1 million documents available in this format.

Cooper added, however, that the IRS will no longer transcribe extraneous information submitted by filers. "If it's not on the appropriate form, we're no longer going to transcribe that information," he said. (Prior coverage: *Tax Notes*, July 6, 2015, p. 40.)

Another topic was the new section 506 requirement that an organization described in section 501(c)(4), no more than 60 days after its formation, notify the IRS it is operating under that section. Elinor Ramey, attorney-adviser, Treasury Office of Tax Legislative Counsel, said Treasury and the IRS are working on proposed regulations and a notification system.

Congressional Developments

Alexander L. Reid, a former legislation counsel to the Joint Committee on Taxation who is now with Morgan Lewis & Bockius LLP, discussed several congressional developments regarding EOs and charitable giving, including the tax reform blueprint House Republicans presented June 23. He said that although the plan would retain the charitable deduction, it would also double the standard deduction for single and married taxpayers, a change he suggested could affect use of the charitable deduction.

"For charitable organizations that means, yeah, we preserved the charitable deduction, but everyone's taking the standard deduction, so no one's really using the charitable deduction anymore," Reid said, though he acknowledged counterarguments of tax reform proponents who believe charitable giving would rise because they think people would have more money in their pockets as a result of tax reform. The tax reform blueprint would also eliminate the estate tax, which is a big driver of charitable giving, Reid said.

Reid also brought up a measure, passed by the House Appropriations Committee on June 9 as part of a bill funding the IRS and other agencies, that would make the commissioner of the IRS the sole official at the agency who could decide whether to revoke a church's exemption because of political campaign intervention. The commissioner would have 30 days to notify the House Ways and Means and Senate Finance committees of the decision, and revocation would not take effect until 90 days after that. (Prior coverage: *Tax Notes*, June 13, 2016, p. 1474.)

Reid said he thinks the measure is “a bit of a signal to religious institutions that if they engage in politics this election cycle, they have a friend in Congress.” He added that because the provision is in an appropriations bill, “I think it’s pretty likely that this will stick.” ■

IRS EO Disclosures May Have Violated Law, Group Says

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The IRS apparently gave confidential return information of tax-exempt organizations to the FBI and Justice Department without receiving statutorily required requests for it, a conservative watchdog group said June 29.

The IRS disclosed over 1.1 million pages of return information to the FBI in October 2010, which appears to have been inspected by the Justice Department’s Public Integrity Section, according to a letter from Alfred J. Lechner Jr., president and CEO of the Cause of Action Institute (COA) to Treasury Inspector General for Tax Administration J. Russell George and Justice Department Inspector General Michael E. Horowitz. However, the IRS’s March 9 response to a 2012 Freedom of Information Act request from the COA confirms that the Public Integrity Section did not request the information as required by law, Lechner said. Further, documents the IRS gave the COA last fall indicate the FBI also did not ask for it, he added.

The disclosure could represent ‘the largest and most significant breach of taxpayer confidentiality laws by the Federal government in the history of the United States,’ Lechner wrote.

“The willful unauthorized disclosure of return information, and the similarly unauthorized collection and inspection of that information, not only violates the law but represents a breach of public trust,” Lechner wrote. “To our knowledge, the disclosure and inspection of 1.1 million pages of tax-exempt organization records at issue here may represent the largest and most significant breach of taxpayer confidentiality laws by the Federal government in the history of the United States.” He urged TIGTA and the Justice Department inspector general to investigate the matter and “take all appropriate action.”

The COA said the information in its letter will be included in a “comprehensive investigative report” that the group plans to release in the coming weeks. “The report will outline a pattern of abuse by the Obama administration relating to the safeguarding of confidential taxpayer information,” the group said.

The disclosure matter is related to the controversy surrounding the IRS’s past mishandling of conservative groups’ exemption applications. In