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Exempt Organizations

Higher-Cost PLRs, Less Communication Expected From Exempt Division Realignment

Private letter rulings will cost a lot more for exempt organizations in 2015 now that responsibility for issuing them has been transferred to the IRS Office of Associate Chief Counsel (Tax Exempt and Government Entities), an attorney told Bloomberg BNA.

Some of the changes from the realignment of the TE/GE Division are positive, Alex Reid, of counsel with Morgan, Lewis & Bockius LLP, said Jan. 8. However, the cost of a PLR—\$28,300—isn't one of them.

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ALEX REID
MORGAN, LEWIS & BOCKIUS LLP

The Internal Revenue Manual says the chief counsel generally responds to letter ruling requests within 180 days of receipt. That is the good news, he said—the bad news is the cost.

“Just as we get the possibility of rulings being issued more frequently, we get this increased cost that will really discourage people,” Reid said.

While the new time frame for obtaining guidance suggests it will be easier and more expeditious to get a ruling, the fees have increased from \$10,000, in what amounts to a 283 percent increase, Reid said.

The user fee hike, which goes into effect Feb. 2, is designed to cover the government's cost of issuing such guidance. However IRS officials appeared somewhat tentative about the move at a Jan. 21 D.C. Bar Association gathering.

“We're a bit curious on how the user fee change will impact the number of PLR requests we get, although we also realize that because of the six-month deadline that we have internally, it might offset to some degree the considerations about the user fee,” said Janine Cook, IRS deputy associate chief counsel for the Tax Exempt and Government Entities Division.

Marc Owens, a member with Caplin & Drysdale, said the realignment of the IRS Exempt Organizations unit announced in January is essentially “the disintegration

of the process of administering the tax law in the exempt organizations area.”

Beginning in January, the Internal Revenue Service announced that technical responsibility for preparing revenue rulings, revenue procedures and certain letter rulings would move from the TE/GE Division to the IRS Office of Associate Chief Counsel (Tax Exempt and Government Entities Division).

As a part of the shift, technical law specialists and support staff responsible for those types of published guidance moved to the chief counsel's office.

The IRS said the effort was designed to bring TE/GE into alignment with the other three IRS business operating divisions, which use the chief counsel function for their guidance and legal work.

However, Owens said the transition will essentially mean that there is no single point of organizational integration in which the handling of issues with cross-jurisdictional components are addressed. “There is no single point where all the elements come together,” he said.

The processing of exemption applications is based in Cincinnati, audits are based in Dallas, and while nominally the director of the Exempt Organizations unit is going to be in charge of both applications and audits, Owens said the director's physical presence in Cincinnati means that her day will be taken up with application-related issues.

Meanwhile, Owens said, the interpretive function—private letter rulings, technical advice, revenue rulings, revenue procedures and regulations—will be back in Washington in the Office of Chief Counsel in TE/GE.

It doesn't appear the Washington office will have any direct line involvement in the operational side, Owens said, “meaning they will be brought in on technical advice when the revenue agents deem it appropriate.” Essentially they will have an advisory role just as lawyers in private practice do, he said.

Coordination between the Cincinnati and Dallas field offices and Washington will be a challenge, he predicted.

Less Communication. The upshot is that there will be less informal communication with stakeholders, in the nature of a work plan or continuing professional education texts, Owens said. In fact, overall there hasn't been much spontaneous release of information since the division was realigned in 2014 following the Tea Party controversy in 2013.

That trend is already being played out, Bruce Hopkins, an attorney with Polsinelli PC, said Jan. 16.

The TE/GE Division's program letter for fiscal year 2015, issued in early November 2014, “is a program let-

ter without any discussion of programs,” Hopkins said. “It’s a non-substantive document.”

The accompanying message from TE/GE Commissioner Sunita Lough said the goals are to provide technical assistance to TE/GE employees and managers “on cases and issues on an ad hoc basis without burdensome approvals or procedures.” It also said the group will “encourage collaboration among various functions, such as rulings and agreements, examination and counsel,” among other goals.

There was no mention of specific guidance or audit projects, although there were descriptions of those in a December 2014 Government Accountability Office report. That report described the audit program on Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, Owens said, and discussed potential areas of noncompliance such as compensation issues, unrelated business income tax activity and overseas activities.

Rebirth of 501(c)(4) Rules. The Exempt Organizations unit is expected to complete a project defining prohibited political activity for tax code Section 501(c)(4) social welfare groups in the spring of 2015.

Another round of comments and a public hearing will be held on revisions to rules (REG-134417-13) the IRS proposed in November 2013, but agreed to revise in May 2014 due to an outpouring of public interest.

“What we ought to end up with is a regulation that is fair to everybody, easy to understand and easy to administer, and to the extent we can, get the IRS out of the politics of facts and circumstances,” IRS Commissioner John Koskinen told Bloomberg BNA reporters in December 2014.

The IRS has received 160,000 comments from groups as diverse as the American Civil Liberties Union and the American Conservative Union, with about 47,000 of them not falling into the duplicate category.

The revised proposed rules will give stakeholders “a pretty good idea of how much is too much” when it comes to political activity, Koskinen said. That means

the IRS will have to come up with “a pretty good definition of what the ‘it’ is.”

He suggested that the proposed rules would encompass several types of exempt organizations, with the goal being “to look at the 501(c) category in its entirety and see what the rationale for 501(c)(3), 501(c)(4) and 501(c)(6)” political activity should be.

“It’s appropriate to try to establish a level playing field,” he said.

Koskinen said the IRS hasn’t ruled out anything in terms of addressing the situation, “including a percentage limitation.” He said the agency is looking at clarifying the perceived perception that social welfare organizations are staying within acceptable parameters for political activity if at least 51 percent of their spending is devoted to social welfare activity.

The vast majority of 501(c)(4) organizations have nothing to do with politics, Koskinen said. Therefore, the IRS will strive to make sure that the definitions it comes up with “don’t inadvertently make life difficult for the 95 percent who have no political activity at all.”

That brings up the question of measuring political activity. “In terms of measuring the activity, the easiest thing to do is measure how many dollars you spend, rather than causing people to keep track of all their volunteers,” he said.

“But it turns out there are a lot of small- and medium-sized truly social welfare organizations who don’t spend much money, who really measure their effort by volunteers,” Koskinen said. Those groups must be taken into consideration, he said, because they could be spending money on year-end gatherings, for instance, that aren’t related to social welfare activity.

“You have to be careful they don’t get suddenly sunk because you say we are going to measure it one way, but their activity is measured in another way,” he said.

By DIANE FRED A

To contact the reporter on this story: Diane Freda in Washington at dfreda@bna.com

To contact the editor responsible for this story: Cheryl Saenz at csaenz@bna.com