

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

**38TH ANNUAL NONPROFIT ORGANIZATIONS
INSTITUTE**

YEAR IN REVIEW

**Treasury and IRS Regulations, Rulings, and Other Pronouncements,
Court Opinions, Proposed and Enacted Legislation,
and other Current Developments**

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YEAR IN REVIEW

This outline consists of summaries of (1) the Internal Revenue Service's Exempt Organizations Division's FY 2021 Program Letter (2) the Treasury Department-IRS 2020-2021 Priority Guidance Plan; (3) Tax Cuts and Jobs Act guidance; (4) current developments in the law pertaining to tax-exempt organizations in general; (5) current developments in the federal law of particular pertinence to public charities and private foundations; (6) current developments pertaining to unrelated business activities of exempt organizations; (7) current developments relating to the tax law of charitable giving; (8) current developments relating to the law of fundraising; (9) recent legislation; and (10) miscellaneous other current developments in the law concerning nonprofit organizations.

I. TE/GE FY 2021 PROGRAM LETTER

A. Program letter issued on November 5, 2020 (Pub. 5313). Elements:

1. TE/GE Commissioners wrote in cover letter that this program letter “takes a new form this year – a compact summary of our goals and how we plan to achieve them.” The letter consists of one page, to be augmented throughout the year on new Compliance Programs and Priorities webpage.

2. Program letter summarizes TE/GE compliance activities. It singles out syndicated conservation easement promotions, abusive charitable remainder annuity trusts, and private foundations. Mention is made of use of “enhanced techniques” to develop civil and criminal fraud and promoter investigation cases, and recommendation of civil penalties and criminal prosecutions against taxpayers and promoters who “evade the assessment or payment of taxes.”

3. Another focus is on leveraging of technology and data analytics. These efforts entail utilization of “noncompliance research and data analytics to detect emerging issues,” expansion of “taxpayer digital communications efforts” and use of “robotic process automation” to make processes more efficient and effective, and continuation of comparative data analysis of Form 990-N and 1023-EZ filings to identify trends and emerging issues. Reference is made to collaboration with Research Applied Analytics & Statistics function to improve identification of issues with a “high risk for noncompliance.”

4. A priority for Division is assistance of IRS generally in implementation of Taxpayer First Act. This objective includes expansion of e-filing of Forms 990 series and continuation of work toward “electronic determination letter applications.”

5. Other goals expressed in program letter are review of systems and processes to improve efficiencies and internal controls, proactive communication with communities Division serves to encourage compliance with tax laws, and enhancement of employee and manager development through training and “developmental assignments, coaching and mentoring.”

B. EO Division summarized FY 2019 accomplishments (March 23, 2020) (Pub. 5329):

1. Determinations – closed 101,880 applications.
2. Compliance program overview:
 - a. Compliance strategies.
 - b. Data-driven examinations.
 - c. Referrals, claims, and other casework.
 - d. Compliance contacts.
3. Examination process improvements.

II. TREASURY-IRS 2020-2021 PRIORITY GUIDANCE PLAN PROJECTS (NOVEMBER 17, 2020)

A. Tax-Exempt Organizations Law Projects

1. Guidance on computation of unrelated business taxable income for exempt organizations with separate trades or businesses (IRC § 512(a)(6)) (REG-106864-18) (final regulations issued on Nov. 19, 2020).
2. Guidance on certain issues relating to the excise tax on excess remuneration paid by applicable tax-exempt organizations (IRC § 4960) (REG-122345-18).
3. Regulations on excise tax on net investment income of certain private colleges and universities (IRC § 4968) (proposed regulations published on July 3, 2019).
4. Proposed regulations regarding excise taxes on donor-advised funds and fund management in reflection of 2006 statutory law (IRC § 4966); Notice 2017-73 published on Dec 4, 2017.
5. Guidance regarding private foundations' investment in partnership in which disqualified persons are also partners (IRC § 4941).
6. Final regulations concerning church tax inquiries and examinations (IRC § 7611); proposed regulations were issued on August 5, 2009.
7. Promulgation of final regulations and additional guidance on supporting organizations (IRC § 509(a)(3)); proposed regulations published on February 19, 2016.
8. Regulations concerning qualified ABLE programs (IRC § 529A) (REG-128246-18) (final regulations issued on Oct. 1, 2020).

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