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Non-Profit Tax Update

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2024 NPO Update Tax Agenda

IRS TE/GE Fiscal Year 2023 Accomplishments

IRS TE/GE Fiscal Year 2024 Program Letter

2023 Form 990/990-PF and 2023 Form 990-T

Current Topics: Q&A

IRS TE/GE Fiscal Year 2023 Accomplishments

TE/GE 2023 Accomplishments Letter

- ❑ <https://www.irs.gov/pub/irs-pdf/p5329.pdf>
- ❑ Released January 2024
- ❑ Covers:
 - Exempt Organizations
 - Employee Plans
 - Government Entities
 - Tax Exempt Bonds

Who's Who at IRS TE/GE now

Source:
<https://www.irs.gov/government-entities/tax-exempt-government-entities-division-at-a-glance>

Edward Killen

- Commissioner

Robert Choi

- Deputy Commissioner

Eric Slack

- Director, Employee Plans

Robert Malone

- Director, Exempt Organizations and Government Entities

Key Accomplishments

- ❑ Use of Document Upload Tool for Taxpayer Facing Employees (DUT-TPFE)
- ❑ Exempt Organization Graph Exploration Tool (EOGET)
- ❑ Publish new TE/GE Consolidated Examination IRM
- ❑ TEOS modernization project

Key Accomplishments (continued)

- ❑ Collaborative work across IRS divisions to update 990-T for IRA elective payment elections; work on related pre-filing registration portal
- ❑ Hired 197 employees
- ❑ Continued work on the [IRS Inflation Reduction Act Strategic Operating Plan](#)

Compliance Activities

- ❑ Private benefit & inurement
- ❑ Nonmember income of recreational and social clubs (501(c)7)
- ❑ Form 990-N filing eligibility
- ❑ ERC claims
- ❑ External and internal referrals
- ❑ Potentially abusive promoter schemes
- ❑ Data-Driven Exams

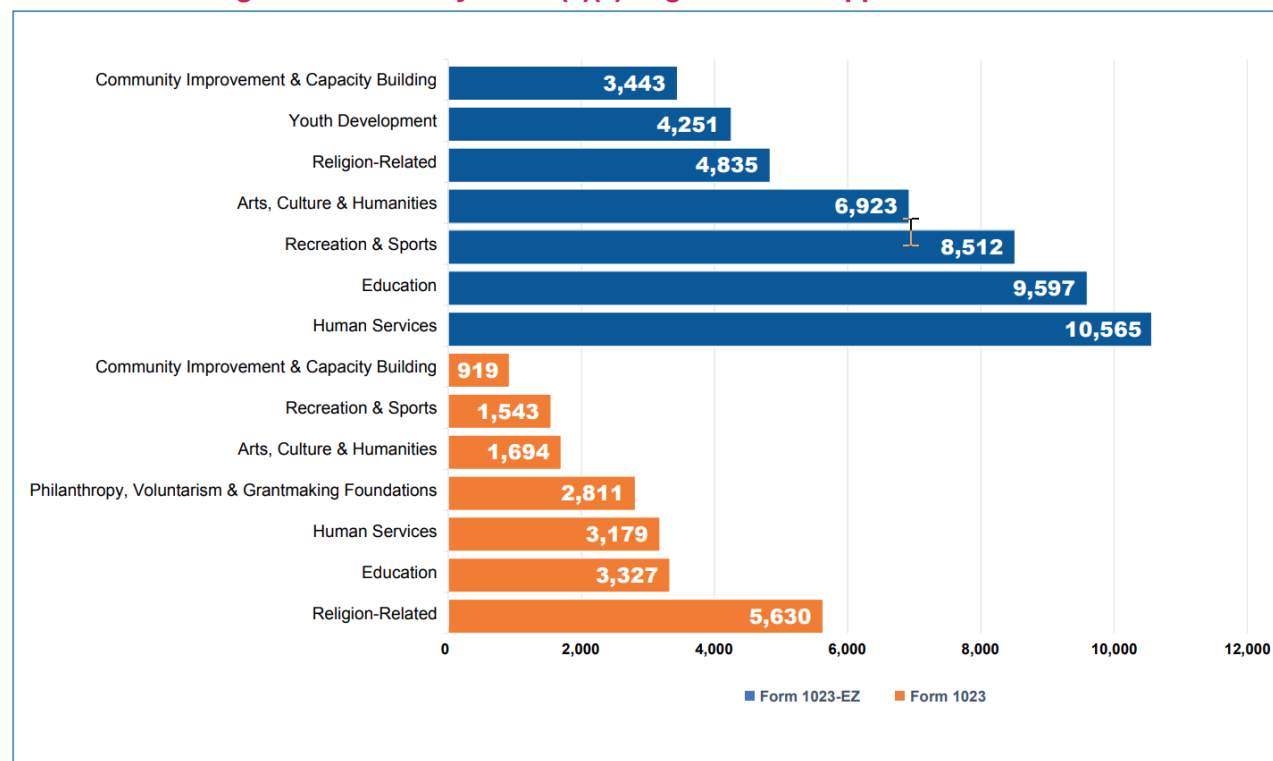
More Compliance Activities

Compliance Checks

- ❑ Discrepancies between Form W-2 and Forms 941 or Form 944
- ❑ Noncompliance with Section 501(r)(4) Financial Assistance Policy by tax-exempt hospitals
- ❑ EO failure to file:
 - Form 940 Fed Unemployment Tax
 - Form 4720 Certain Excise Taxes in connection with IRC 4960
 - Form 990-T filings in connection with investment income

Determinations

Figure 4: Taxonomy of 501(c)(3) Organizations Approved in FY 2023



Outreach and SECI

- ❑ Virtual and in person outreach events
- ❑ Small Entity Compliance Initiative (SECI)
- ❑ IRS Nationwide Tax Forum (live in person 5 locations)
- ❑ <https://service.govdelivery.com/accounts/USIRS/subscriber/new>

**IRS TE/GE Fiscal Year 2024 Program Letter
Publication 5313 (Rev. 9-2023)
<https://www.irs.gov/pub/irs-pdf/p5313.pdf>**

TE/GE's priorities for FY2024

Better Taxpayer Experience

- Identify and better serve small and underserved taxpayers
- Promote use of digital communication vehicles
- Clean energy credit elective payment election outreach

Faster Issue Resolution

- Clean energy credits-pre-filing and filing for elective payments
- ERC claims
- Work to streamline notices

TE/GE's priorities for FY2024 (continued)

Smarter Enforcement

- Collaborate with RAAS to build/refine EO Exam case selection
- New network analysis tools to address potential problematic relationships between entities
- Collaborate across IRS on exams of ESOPs, tax exempt hospitals and high income/high wealth taxpayers and other complex issues

Advanced Technology & Analytics (Modernization)

- Launch digital and mobile [Form 13909](#)
- Develop AI capability to review & prioritize EO referrals
- Support efforts to standardize servicewide examination processes

TE/GE's priorities for FY2024 (continued)

Empowered Employees (Workforce)

- Feedback mechanism for new hires to assess onboarding
- Partner to host direct hiring and recruiting events
- Create detailed career training paths
- Commit resources for critical core training and mentoring
- Build a collaborative team culture
- Build community relationships to market TE/GE & IRS careers and increase visibility

2023 Form 990, 990-PF and 2023 Form 990-T

2023 Form 990, 990-PF and Form 990-T

- ❑ 2023 Form 990, schedules and instructions: Nothing significant
- ❑ 2023 Form 990-PF, schedules and instructions: Nothing significant
- ❑ 2023 Form 990-T, schedules and instructions:
 - Changes related to making IRA tax credit elective payment elections under IRC Section 6417, and clarify how to report various taxes and payments in Part III of Form 990-T

Current Topics: Q&A

BOI

- q Does a nonprofit organization have to file a beneficial ownership form as required by the Corporate Transparency Act (CTA)?



BOI

Generally NO. Corporate Transparency Act rules exempt:

- Any organization described in section 501(c) & exempt from tax under section 501(a) of the Code
- Any organization exempt under section 527
- Trust described in paragraph (1) or (2) of section 4947(a)
- Organizations “assisting” any of the above as defined
- [FinCen BOI FAQs](#) and [Small Entity Compliance Guide](#)



BOI

- q So generally NO, but when might a nonprofit be subject to CTA?



BOI

- An organization that was exempt from the BOI filing as a tax-exempt entity (as defined in prior slide) but lost its tax-exempt status would need to file. Such an organization has 180 days from revocation by the IRS to file a CTA annual report.
- A new organization formed in 2024 that has not yet received tax exempt status should file its BOI form within 90 days of its formation.



Fiscal Sponsorship

- q TreesRUs organization is a fiscal sponsor for a number of unincorporated groups that do not have their own tax status. How does it report the fiscal sponsorship activities on its Form 990?



Fiscal Sponsorship

- The fiscal sponsor is responsible for accounting for donations made under its EIN and for sending donor acknowledgements. These contributions are included in Part VIII, line 1 of the sponsor's Form 990.
- Expenditures of the sponsored activities are included in Part IX and should properly further the sponsor's own tax-exempt purpose. The sponsor exercises supervision and control of funds.
- Related assets and liabilities are reported in Part X.
- No specific fiscal sponsorship disclosures currently required on Form 990



Status of Group Rulings

- q Have the revised group ruling regulations been issued yet? Is the IRS still not accepting new group ruling applications?



Status of Group Rulings

- NO NEW REGULATIONS
- The proposed revenue procedure (Notice 2020-36) were issued in May 2020 and the IRS halted processing any requests for group exemption letters as of June 17, 2020 and indicated it won't proceed until final regulations or other guidance is issued. So far that has not happened (as of the date these materials were finalized).

Status of DAF Regulations

- q What is the status of proposed Donor-Advised Fund Regulations?

The slide features a decorative background on the left side. It includes a large light blue shape with a white dotted pattern, a smaller solid blue oval, and a yellow shape with a white cross pattern. There are also several small black wavy lines and a dotted line. The title 'Status of DAF Regulations' is positioned to the right of these elements.

Status of DAF Regulations

- q [REG-142338-07](#) was issued November 14, 2023-first installment of proposed regulations
- 2023-2024 Priority Guidance Plan had 4 DAF projects
 - Effective only for tax years ending after the date final regulations published in the Federal Register
 - Primarily definitional (Donor advised fund, donor, donor advisor, advisory privileges, taxable distributions)

q

ERC status

What is going on with ERC?

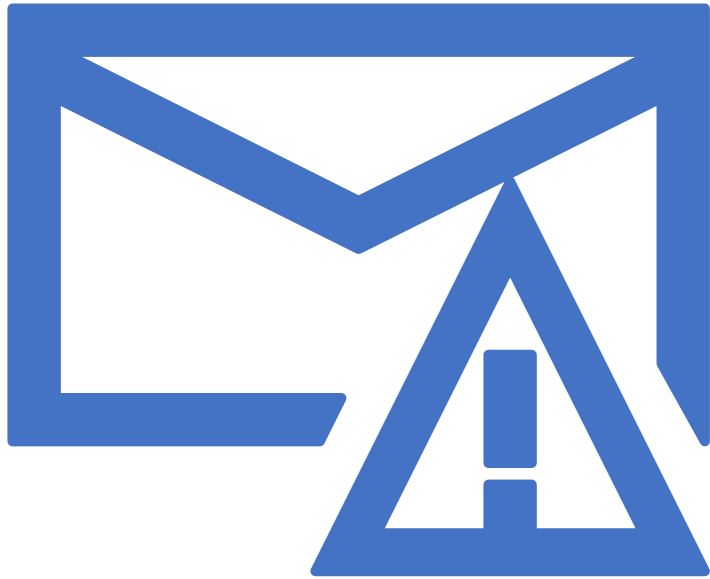
ERC status

- <https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>
- IRS reviewed 1 million claims since 9-14-23 moratorium: 3 buckets (high, medium, and low risk claims) will work on paying out legitimate claims “later this summer”
- Moratorium to continue



IRS Service Issues

- q What key IRS service issues impacting the EO sector are out there?



IRS Service Issues

- Call wait times are better but may not get resolution
- Penalty and levy notices without precursor notices
- EO Business Master File (BMF) Errors
 - Not timely updated
 - Can create issues (notices, e-file rejections)
 - Legacy system utilizing obsolete programming languages

Worker Classification Issues

- Is the IRS currently looking at worker classification on audits?

Worker Classification Issues

YES

Low-hanging fruit for an agent

Look for control factors –
behavioral, financial, relationship

Documentation is key

Retired executives on consulting
contracts

Political Activity

- q PeopleRUS is a section 501(c)(3) entity that provides an array of social services. It employs an individual that is active in a local politician's campaign. Could that result in impermissible electioneering that cause the organization to be penalized with excise taxes?



Political Activity

- ❑ Employees are not prohibited from participating in election activities AS A PRIVATE CITIZEN. They cannot use PeopleRUS publications, electronic communications, or any other resources to do so.
- ❑ [Rev. Rul 2007-41](#) is a resource and for (c)4,(c)5, and (c)6 entities, consult [Rev. Rul 2004-06](#)

What IRA Guidance
is new?

Inflation Reduction Act Guidance

Inflation Reduction Act Guidance



Treasury issued final regulations on March 5, 2024, addressing IRA provisions for direct (elective) pay under Section 6417

Pre-filing registration portal for elective pay open; see IRS Publication 5884



Rev. Proc. 2024-19 provides procedure and clarifying guidance applicable to certain solar and wind facilities placed in service in connection with low-income communities



Notice 2024-9 provides transitional procedures for claiming statutory exceptions to applicable phaseouts for certain elective pay projects

Are there any
ongoing EO
court cases of
interest?

- ❑ Memorial Hermann Accountable Care Organization v. Commissioner
- ❑ Mayo Clinic v. United States
- ❑ Iowa Church of Healing v. Commissioner
- ❑ Students and Academics for Free Expression, Speech, and Political Action in Campus Education (SAFE SPACE) v. Commissioner
- ❑ Buckeye Institute v. Internal Revenue Service



Questions? Contact Me

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