

Morgan Lewis

ANATOMY OF AN IRS AUDIT: PRIVATE FOUNDATIONS

Kimberly Eney

kimberly.enev@morganlewis.com

202.739.5825



IRS Enforcement in the EO Sector

- IRS processed 787,339 returns in calendar year 2014
- IRS examined 6,392 tax-exempt organization and related returns in fiscal year 2015
 - Only 119 returns attributable to Forms 990-PF, 1041-A, 1120-POL, 5227
- IRS Office of EO Examinations
 - EO Examinations Programs and Review
 - Compliance Strategies and Critical Initiatives
 - EO Compliance Area
 - Financial Investigations Unit

Morgan Lewis

2

IRS Enforcement in the EO Sector (cont'd)

- The IRS conducts two types of audits
 - Office/correspondence audit: IRS requests delivery of documents by mail
 - Field audit: IRS agent visits the foundation's premises
- IRS compliance checks
- Compliance check questionnaires

Morgan Lewis

3

IRS Selection of Organizations to Audit

- Information on a 990-T or 990-PF appears to be inconsistent or incomplete
- IRS receives a referral about potential noncompliance
- EO Division participates in an IRS-wide examination initiative, such as initiatives generated by the National Research Program
- A return is related to a return of another taxpayer that involves issues or transactions
- A document matching program identifies a discrepancy between information reported by a payor and payee (e.g., Forms 1099 or W-2)
- A claim for refund or request for abatement requires further review

Morgan Lewis

4

IRS Selection of Organizations to Audit (cont'd)

- Five Examination Field Areas
 - Exemption
 - Protection of Assets (including self-dealing)
 - Tax Gap (including employment tax and UBIT liability)
 - International (including oversight on funds spent outside the U.S. and FBAR requirements)
 - Emerging issues
- IRS Work Plan
 - Guidance under Section 4941 regarding private foundation's investment in a partnership in which disqualified persons are also partners
 - Update to Revenue Procedure 92-94 on Sections 4942 and 4945
 - Guidance regarding the excise taxes on donor-advised funds and fund management

Morgan Lewis

5

Examination Stage – Commencement

- Initial phone call and letter from the examining agent
- Initial document request list typically includes:
 - All organizational documents such as articles of incorporation, bylaws, and resolutions of the board;
 - Minutes of board meetings for the last several years;
 - A list of directors and any transactions between the organization and directors;
 - The application for exemption and any subsequent IRS correspondence;
 - Financial statements;
 - Publications of the organization;
 - Correspondence files;
 - Financial and management reports;
 - Accounting manual and a chart of accounts;

Morgan Lewis

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Anatomy of an IRS Audit: Private Foundations

Also available as part of the eCourse

[2017 Nonprofit Organizations Compliance and Internal Review eConference](#)

First appeared as part of the conference materials for the
2017 Nonprofit Organizations Compliance and Internal Review Workshop session
"Anatomy of an IRS Audit for Private Foundations"