

BakerHostetler



A View of the Sector

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By: Alexander Reid and Rosemary Fei



Alexander L. Reid
BakerHostetler
Partner
Washington, D.C.
T +1.202.861.1676
areid@bakerlaw.com

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Alexander Reid has practiced tax law for nearly 20 years and has a broad-based tax practice that includes tax controversy, tax planning and tax transactional matters. He previously served as legislation counsel to the Joint Committee on Taxation, United States Congress, and as a Fellow at the Office of Tax Policy, United States Department of Treasury. Alex represents taxpayers of all types under audit and at IRS Appeals, and counsels taxpayers seeking administrative guidance from the Internal Revenue Service and United States Department of the Treasury. He also provides advice to clients under investigation and advice regarding legislative tax matters being considered by Congress.

Alex also serves as national Team Leader of BakerHostetler's Tax Exempt Organizations and Charitable Giving Team. In that role, Alex works with numerous types of tax-exempt organizations, including colleges and universities, charities, foundations, museums and other non-profits and provides advice regarding planning, structuring, governance, investigations, tax compliance and transactional matters.



Rosemary E. Fei
Adler & Colvin
Principal
Washington, D.C.
T +1.415.421.7555
rfei@adlercolvin.com

Rosemary Fei has been representing nonprofit and tax-exempt organizations for over thirty years with the law firm of Adler & Colvin, San Francisco. The firm focuses on the nonprofit sector, and her practice spans the range of legal issues arising from nonprofit or tax-exempt status, with emphasis on political and lobbying activities and nonprofit corporate governance.

Ms. Fei is the Chair of the Exempt Organizations Committee, Tax Law Section, American Bar Association. From 2017 to 2021, she served as a Vice Chair of the Committee; and from 2009 to 2017, she was Co-Chair of its Subcommittee on Political and Lobbying Organizations and Activities. She currently sits on the board of Possibility Labs (a national incubator for racial and economic justice projects); chaired the board of Redefining Progress (a sustainability think tank); and has served as a director of CalNonprofits (California's trade association for charities), The Conservation Campaign (the 501(c)(4) affiliate of The Trust for Public Land), Center for Lobbying in the Public Interest, CompassPoint Nonprofit Services, and The Marine Mammal Center. In addition to being a practitioner, Ms. Fei writes and teaches, and has been an expert commentator in numerous published news stories, including broadcast interviews. Her recent publication, *Practitioner Perspectives on Using § 501(C)(4) Organizations for Charitable Lobbying: Realities and an Alternative*, was published in NYU's Journal of Legislation and Public Policy.

Before joining Adler & Colvin, Ms. Fei was a general business transactional lawyer, a Federal election law compliance officer and deputy budget director for the Dukakis Presidential campaign, and an attorney in the U.S. Department of State.

Treasury and IRS Personnel

Treasury

- Lily Batchelder, Assistant Secretary for Tax Policy, Treasury
- Krishna Vallabhaneni, Tax Legislative Counsel, Treasury
- Amber MacKenzie, Attorney-Advisor, Office of Tax Policy, Treasury

IRS

- William M. Paul, Acting IRS Chief Counsel
- Rachel Leiser Levy, Associate Chief Counsel (EEE), IRS Office of Chief Counsel
- [Vacant], Deputy Associate Chief Counsel Exempt Organizations and Employment Taxes



Tax Exempt & Government Entities

Sunita B. Lough
TE/GE Commissioner

Edward T. Killen
TE/GE Deputy Commissioner

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Message from the Tax Exempt and Government Entities (TE/GE) Commissioners

- **Audit Rate:** EO completed examinations of 3,249 filings in fiscal year 2021 including Form 990 and their associated employment and excise tax returns. According to IRS statistics on income, there were 1,907,711 exempt organizations in 2020, which suggests less than 0.17% audit rate.
- **Audit Results:** 82% of closed examinations resulted in a tax change.
- **Revocations:** IRS proposed revocation for 94 of the examined entities (i.e. 3% of examined returns, and less than 0.005% of organizations).
- **Exemption Applications:** 110,000 applications filed in FY21, of which IRS approved 82,000 (75%) and failed to process 15,000.
- **Staffing:** IRS TE/GE has 1,521 employees, of which it hired 120 employees and has 132 revenue agent vacancies.

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IRS EO Enforcement Priorities

On April 5, 2021, the IRS announced several new EO enforcement areas:

- **Form 990-N Filers/Gross Receipts Model:** The purpose of this strategy is to determine if an exempt organization was eligible to file Form 990-N where related filings indicate the \$50,000 gross receipts threshold was not met.
- **Officers Treating EO as Schedule C Business:** The purpose of this strategy is to determine if officers and insiders of exempt organizations are claiming expenses of exempt organizations as Schedule C business deductions. Issues of focus are potential private benefit and inurement related to the exempt organization and potential adjustments to Forms 1040.
- **Small EOs that Sponsor Retirement Plans:** The focus of this strategy is to review retirement plans of small exempt organizations to determine whether the plan investments are properly administered, whether there are any party-in-interest transactions in the plan trust and whether any participant loans violate Internal Revenue Code (IRC) Section 72(p). Improper transactions between the plan and its participants can result in prohibited transactions under IRC Section 4975, deeming distributions as taxable income, or result in IRC Section 72(t) early distribution penalties.

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