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PHILANTHROPY SOUTHWEST**

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**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 nine parts: summaries of (1) the Internal Revenue Service's Exempt Organizations Division's Report on FY 2017 Priorities; (2) the Treasury Department-IRS 2016-2017 Priority Guidance Plan; (3) current developments in the law pertaining to tax-exempt organizations in general; (4) current developments in the federal law of particular pertinence to public charities and private foundations; (5) current developments pertaining to unrelated business activities of exempt organizations; (6) current developments relating to the tax law of charitable giving; (7) current developments relating to the law of fundraising; (8) recent legislation; and (9) miscellaneous other current developments in the law concerning nonprofit organizations.

### I. TE/GE FY 2018 WORK PLAN

#### A. Work plan issued on September 28, 2017. Overall elements:

1. TE/GE Commissioner Sunita Lough wrote in an accompanying message that the Division is "positioned to implement some exciting changes." Referencing "IRS's and TE/GE's declining workforce," she added that "efficiency, effectiveness and transparency" remain Division's "bywords going forward."

2. Accomplishments for FY 2017 are said to be modification of certain eligibility criteria for Form 1023-EZ, alignment of cross-functional Employment Tax Knowledge Network with other five EO K-Nets, issuance of proposed adverse determination letters to organizations that did not provide complete responses to requested information, and processing of Forms 8976.

3. Emphasis is placed on "data-driven approaches," which include improvement in Form 990, 990-EZ, and 990-PF compliance models and examinations of private foundations based on "potential anomalies" found on their annual information return filings.

4. Casework efforts include the continued pursuance of referrals (complaints) alleging noncompliance by tax-exempt organizations and post-determination compliance examination of entities that received recognition of exemption by means of Form 1023-EZ.

#### B. Items of Note:

As is the case in recent years, the work plan is long on management matters and production of online technical products and short on new initiatives involving law of tax-exempt organizations. As to the latter, three items are of note:

1. In early 2018, EO will revise Form 1023-EZ, to include required activity description and additional questions on gross receipts, assets thresholds, and public charity/private foundation classification. Critics will presumably be happier, as the streamlined application becomes less streamlined. IRS dryly (I think) noted that, "as a

result of these changes, EO expects the average processing time for a Form 1023-EZ to increase.”

2. IRS stated that it will examine organizations that operated as for-profit entities prior to their “conversion” to charitable entities. Inclusion of this item is surprise. Current IRS ruling posture is harsh, viewing these situations as evidence of inherent commerciality and private inurement, which is not the law.

3. The IRS also stated that it will examine organizations that “show indicators of potential private benefit or inurement to individuals or private entities.”

## **II. TREASURY-IRS 2016-2017 PRIORITY GUIDANCE PLAN (AUGUST 15, 2016, UPDATED OCTOBER 31, 2016) PROJECTS**

### **A. Tax-Exempt Organizations Law Projects**

1. Proposed regulations (under Internal Revenue Code section (IRC §) 501(c)) pertaining to political campaign activities; project has been suspended because of its prohibition by Congress in omnibus spending legislation.

2. Guidance regarding methods of allocating expenses relating to dual-use facilities (IRC § 512(a)(1)).

3. Issuance of update to Rev. Proc. 2011-33 for EO Select Check.

4. Revenue procedures updating grantor and contributor reliance criteria (IRC §§ 170, 509).

5. Guidance relating to exempt organizations’ reporting of contributions (IRC § 6033).

6. Promulgation of final regulations and additional guidance on supporting organizations (IRC § 509(a)(3)); regulations published in final form on December 21, 2015, and proposed regulations issued on February 18, 2016.

7. Update of Rev. Rul. 67-390 (concerning circumstances when new application for recognition of exemption is required because exempt organization becomes new legal entity).

8. Guidance regarding private foundations’ investment in partnership in which disqualified persons are also partners (IRC § 4941).

9. Proposed regulations regarding excise taxes on donor-advised funds and fund management in reflection of 2006 statutory law (IRC § 4966).

10. Final regulations concerning church tax inquiries and examinations (IRC § 7611); proposed regulations were issued in 2009.

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