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IRS Announces Shake-Ups in Chief Counsel's Office and TE/GE.

The IRS announced March 20 that in an effort to "help ensure consistency and efficiency," it will be moving some legal functions, including those responsible for issuing published guidance, from the Tax-Exempt and Government Entities Division to the IRS Office of Chief Counsel.

The rulings and agreements function and technical guidance function will move to the Office of Chief Counsel, the IRS said. Those functions are responsible for issuing revenue rulings and private letter rulings, among other duties.

Marcus S. Owens of Caplin & Drysdale told Tax Analysts the IRS has perceived a need for realignment for procedural and staffing reasons. "This is going to require a wholesale reordering with how the work is done, and in particular how the issues are identified that need to go to chief counsel," for in depth review he said.

It's important to know how transparent the ruling process will be after realignment, Owens said, asking, "Is the taxpayer going to know his or her case is being coordinated with chief counsel, are they going to know what chief counsel says, are they going to have an ability to weigh in on that discussion to make sure that chief counsel fully understands all the facts?"

Starting in the 1980s, the IRS underwent a realignment in which the technical legal rulings functions were transferred to the chief counsel's office. TE/GE did not exist as a division at that time, but since its inception it has retained its legal rulings function. It was only a matter of time before TE/GE transferred its rulings function to the chief counsel's office, Owens said.

Owens wondered how the facts of taxpayers' cases would be communicated to the offices having a role in resolving tough, unprecedented cases under the new alignment. If chief counsel is going to have a role in deciding the cases, will it "get to hear from the taxpayer directly, or is everything going to be filtered through the IRS?" he asked. "I think that's going to be a critical issue for the Service."

"In some respects, the processing of applications is what the service center does, but every now and again, things will turn up in application for exemption that are of critical importance" either for tax administration or beyond the tax system, said Owens. "For example, the rise of politically active [section] 501(c)(4)s couldn't be handled by routine rubber stamping; there are proposed regulations out on those now." (REG-134417-13) Owens also cited racially discriminatory private schools and the mail-order ministries of the 1970's.

The "unanswered questions" are whether the new system "will facilitate the surfacing of those issues and the resolution of them" in a way that is nuanced, legally appropriate, and transparent, he said.

Moving to Cincinnati

Also announced March 20 was that the IRS would be relocating its exempt organizations

headquarters from Washington to Cincinnati. Tamera Ripperda, the new director of exempt organizations in TE/GE, said the move is one of several steps the IRS is taking to improve efficiency.Speaking at the annual Washington Nonprofit Legal and Tax Conference in Arlington, Va., she said the IRS is committed to strengthening and improving its services to tax-exempt organizations, and to getting exemption applications processed more quickly. Ripperda, whose appointment was announced in December and who has been at the IRS since 1988, said the principal reason for the move to Cincinnati is that that is where most IRS exempt organizations employees are located.

Ripperda did not address the role of the Cincinnati office in the IRS exemption applications scandal, in which questions arose regarding that office's communications with Washington and its involvement in much of the controversial activity surrounding conservative groups' applications for section 501(c)(4) status, including what was causing the applications' delays.

Ripperda told conferees that the IRS is working to reduce the backlog of exemption applications, which is a challenge because the agency on average receives about 60,000 applications a year, and that number is rising just as IRS resources have been decreasing. One reason for the applications' increase has been requests for reinstatement of exempt status from organizations that had their exemptions revoked automatically because they failed to file information returns for three straight years, she said.

To address the problem, the IRS in January published Rev. Proc. 2014-11, 2014-3 IRB 411, which contains several processes for seeking reinstatement. Ripperda said the IRS believes the revenue procedure will help reduce a significant portion of reinstatement applications.

The IRS is aggressively pursuing a "first-in, first review" approach through which exemption applications that have been in inventory the longest will be assigned for processing before others, regardless of whether they can be processed quickly or will need more work, according to Ripperda. As a result of that and other streamlining processes, most of the cases that had been open for more than a year at the beginning of 2014 have been closed, and the IRS plans to close almost all the rest of them by the end of June, she said.

Ripperda said that nearly 90 percent of the section 501(c)(4) applications that were eligible for expedited processing after last May's disclosure of mishandled applications by the IRS have been closed.

The IRS is considering establishing a streamlined application process for organizations seeking section 501(c)(3)status, Ripperda said, adding that the process could be used by small organizations whose applications suggest a much lower risk of noncompliance. She reported that initial results from the IRS's interactive Form 1023 exemption application for charities have been promising, with more complete applications being submitted.

The IRS has added a box to the "Where's My Application?" page on its website that shows the average date of applications that are being worked on. Ripperda emphasized that it is an average date and that the IRS is working on applications that it has received before that date and applications received after that date.

There have been many recent personnel changes in the exempt organizations function of the IRS, Ripperda said. Nanette Downing, director of exempt organizations examinations at the agency, next week will assume a position involving governmental entities and shared services, Ripperda said, adding that Steve Martin will be the acting director of rulings and agreements at TE/GE.

Martin will take the place of Holly Paz, who stepped down last June.

Also at the March 20 conference were Janine Cook, IRS deputy division counsel and deputy associate chief counsel (tax-exempt and government entities), and Ruth Madrigal, an attorney-adviser in the Treasury Office of Tax Legislative Counsel. Madrigal declined to speculate on when the controversial proposed regulations on political activities of social welfare organizations will be finalized, though she said Treasury and the IRS intend to hold a public hearing on the proposal. Cook noted that the IRS and Treasury have received a lot of comments on the proposed regs — more than 160,000, according to the latest count — that will have to be reviewed before final regs can be released.

Madrigal reiterated that tax-exempt hospitals may rely on proposed regulations (REG-13026--11, REG-106499-12) on the hospital requirements under section 501(r) until final regulations are published, but she added that contrary to some news reports, they are not required to do so, though they must comply with the statute. She said Treasury and the IRS are "a lot further along" in working on the regs, adding that there probably will be a "fairly generous" transition period when the final regs come out to give hospitals time to adjust to them.

by William R. Davis and Fred Stokeld

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