Part IV - Items of General Interest

Revocation of Announcement 2001-33

Announcement 2021-18

INTRODUCTION

This announcement revokes Announcement 2001-33, 2001-17 IRB 1137, which deemed organizations exempt from taxation under § 501(a) of the Internal Revenue Code (Code) (tax-exempt organizations) to have reasonable cause for purposes of relief from the penalty imposed under § 6652(c)(1)(A)(ii) of the Code if they reported compensation on their annual information returns in the manner described in Announcement 2001-33 instead of in accordance with certain form instructions.

BACKGROUND

In general, § 6033(a)(1) of the Code provides that every tax-exempt organization must file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary of the Treasury or her delegate may by forms or regulations prescribe. Section 1.6033-2 of the Income Tax Regulations recites the language in § 6033(a)(1), and requires that the organization provide certain specified information, including: (1) the names and addresses of all officers, directors, or trustees (or any person having similar responsibilities or powers), and, in the case of a private foundation, names and addresses of the foundation's managers; (2) a schedule showing the names and addresses and/or total numbers of key employees, highly compensated employees, and independent contractors; and (3) a schedule showing the compensation and other payments made to each of the persons listed. Section 6652(c)(1)(A)(ii) imposes a daily penalty for the failure to include any of the information required to be shown on a return filed under § 6033(a)(1).

The annual information returns required under § 6033(a)(1) are Form 990, *Return of Organization Exempt From Income Tax*; Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*; and Form 990-PF, *Return of Private Foundation* (collectively, for purposes of this announcement, Form 990 series).

Beginning in 1999, in response to concerns that tax-exempt organizations were paying excessive compensation to employees and avoiding reporting by channeling the compensation through management services companies and other entities, the Internal Revenue Service (IRS) added to the Form 990 series instructions the following statement: "If you pay any other person, such as a management services company, for the services provided by any of your officers, directors, trustees or key employees [or foundation managers for private foundations], report the compensation and other items as if you had paid them directly."

The IRS received numerous comments concerning these new instructions and issued Announcement 2001-33 to solicit additional comments. Announcement 2001-33 provided that, until the IRS notifies organizations otherwise by an Announcement published in the Internal Revenue Bulletin, a tax-exempt organization will be deemed to have reasonable cause, for purposes of the penalty imposed under § 6652(c)(1)(A)(ii), if it reports in the compensation section of the Form 990 series[1] return the amount paid to the management company (or other entity or person) for services, rather than reporting the compensation paid to the person(s) who provided services to the tax-exempt organization on behalf of that management company.

In 2007, the IRS extensively redesigned the Form 990 for the tax year 2008, including the parts of the form for reporting of compensation. Specifically, the instructions to new Part VII of the 2008 Form 990 changed the reporting requirements for payments to management companies, treating them as independent contractors to be reported in Form 990, Part VII, Section B, and requiring payments from related management companies (but not other management companies) to a current or former officer, director, trustee, or key employee (ODTKE) or highly compensated employee (HCE) to be reported in Form 990, Part VII, Section A, columns (E) and (F).

In response to questions and comments received from the public, the IRS continued to refine Form 990, its schedules, and instructions for tax years 2009 and 2010, including the instructions on reporting compensation paid through management companies. For example, the 2009 Form 990 instructions added an exception to the direction to report payments to management companies as payments to independent contractors, requiring that employees of a management company be reported as the tax-exempt organization's own employees if they are common law employees of the tax-exempt organization under state law.

[1] Specifically, Announcement 2001-33 deems organizations to have reasonable cause for the "failure to provide the information required by the relevant portions of Parts IV, V, or VII" of Form 990-EZ, Form 990, and Form 990-PF, respectively. At the time Announcement 2001-33 was issued, Part V of the Form 990 addressed compensation and was titled *List of Officers, Directors, Trustees, and Key Employees*. However, beginning with the 2008 Form 990 to the present, Part VII now addresses compensation and is titled *Compensation of Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors*.

In 2011, the IRS issued Announcement 2011-36, 2011-26 IRB 933, to, in part, solicit comments from the public on transitional issues involving the redesigned Form 990, including with respect to the reporting of compensation paid to management and leasing companies. Announcement 2011-36 described Announcement 2001-33, the updated instructions to the Form 990, and the concerns raised by the public (1) that the instructions may allow tax-exempt organizations to shield compensation to highly-paid executives from disclosure by paying those executives indirectly through management companies and (2) that determining whether a person is a common law employee under state law is difficult. Based on some of the comments received in response to Announcement 2011-36, the IRS made additional changes to the Form 990 and its instructions.

Throughout the years, the IRS has continued to make revisions to the Form 990 and its instructions, including with regard to compensation reporting, and to further solicit and consider public feedback. Presently, the Form 990 instructions require reporting on compensation that is similar to the reporting described in Announcement 2011-36. However, the instructions now clarify that if a tax-exempt organization's current or former ODTKEs or HCEs receive compensation from a related management company that provided services to the tax-exempt organization, the tax-exempt organization must report the compensation separately. In addition, the current instructions provide that, if a tax-exempt organization has delegated management duties to a management company (or other entity or person), then the tax-exempt organization must report the details of the arrangement on Form 990, Schedule O, including the name(s) of any of its current or former ODTKEs and HCEs that were compensated under the arrangement, and the amount(s) received by the management company for the services provided to the tax-exempt organization. The current instructions also explain how the tax-exempt organization should treat employees of an employee leasing company, a professional employer organization (PEO) (whether or not a certified PEO), or a management company.

While the Forms 990-EZ and 990-PF[2] were not redesigned to align with the Form 990, minor changes to their instructions regarding compensation reporting have been made over the years, and tax-exempt organizations have had the opportunity to comment on the Forms 990-EZ and 990-PF as well as on their instructions.

ANNOUNCEMENT 2001-33 REVOKED

The Department of the Treasury and the IRS have determined that it is no longer appropriate for tax-exempt organizations that file Form 990 series returns to rely on Announcement 2001-33 rather than follow the specific instructions to the Form 990, Form 990-EZ, and Form 990-PF. Tax-exempt organizations have had multiple opportunities to comment on the Form 990, Form 990-EZ, Form 990-PF, and related instructions over the years, including as part of the Form 990 redesign process and in response to Announcement 2011-36. Having all tax-exempt organizations report compensation in accordance with the specific Form 990 series instructions will improve transparency and compliance by making it easier for the public and the IRS to understand the financial operations, including compensation arrangements, of tax-exempt organizations that file Form 990 series returns. Accordingly, this announcement

[2] The Form 990-PF instructions currently reference Announcement 2001-33; the reference will be removed.

revokes Announcement 2001-33, effective for annual information returns required to be filed for taxable years beginning on or after January 1, 2022.

DRAFTING INFORMATION

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