THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING
Agenda

• 2017 NFP Tax Update – 35 minutes
• 2017 NFP International Tax Update – 25 minutes
• 2017 NFP State and Local Tax Update – 25 minutes
WHAT HAPPENED AT IRS OVER THE LAST YEAR
The IRS is Contracting

• Over the last years, IRS has seen decreasing funding from the Federal government, with another 2% cut pending for fiscal 2018 (240 million dollar cut).

• IRS has moved resources ($$) into taxpayer service and its cyber unit to combat ID theft issues.

• Suffering a retiring workforce with little to no admissions or growth.

• Knowledge base is dwindling, so the challenge in the future is how to replace that experience.

• Use of technology focus has to be the answer for the IRS in the future.
IRS Accomplishments Last Year

• TE/GE Reorganization occurred May 1, 2017, with the rollout of the compliance, planning and classification posture.

• The reorganization has impacted EO examinations making it better organized.

• Also merged in were the state and local tax examiners unit personnel into EO, to enhance employment tax focus in audits.

• Currently, EO exam is focused on compliance.

• What we are seeing in the field is more manager presence with agents at the beginning of the audit process.

• Also, planning is highlighted, which attempts to set guidelines for time frames to meet in order for the audit to be efficient.

• Agents are preparing a focused “hit list” prior to issuing notice of exam to taxpayers, which highlights the “issues” to be looked over.
Examination Statistics

- Examination program accomplishments over the last year:
  - 6,100 examinations performed (increase of 300 over previous year)
  - 1,600 employment tax examinations
  - There was also a random picking of 1,400 EO’s that may have used the streamlined determination letter process in the above population
    - Streamlined process is for those applications deemed complete in review.
    - Most are closed, 58% were no change, 42% org. doc. Related, 4 entities were revoked
  - For those EO’s recognized using the 1023-EZ process, 1,182 were chosen randomly and from that population 428 were audited and there was 83% no change and 15% advisory notices provided.
  - Revocations as a result of audits remains around 1.0%
Examination Statistics

• Examination program accomplishments over the last year:
  - For 990-Ts, examination of these returns will continue to be a data driven process, driven by 990 data disclosures and matching that is being done electronically.
  - Will continue in future with the “tightly developed audit plan approach.”
  - Goal at IRS related to how long an audit should take place:
    • This is based on quite a few facts and circumstances so there can not be a general rule
    • But as an average time frame, which includes employment tax audits is 200-220 days from start to finish (where start time is not when agent introduces themselves to the taxpayer, but when the agent is given the files internally)
Examination Statistics

• Examination program accomplishments over the last year:
  - There were 1,200 taxpayers tabbed for desk contact reviews for compliance with the section 501(r) provisions to health care organizations.
  - From those contacts, 320 hospitals were referred to field audits with 166 completed to date.
    • Findings: Lack of Community Health Needs Assessment (CHNA), lack of financial assistance policy and/or medical care policy and also failure of the billing and collection requirements.
    • Excise taxes are being assessed for noncompliance with section 501(r) requirements.
Private Foundation Issues

• There was a recent conclusion to a private foundation audit cluster, where 500 PFs were identified (400 via specific identification and 100 randomly selected due to anomaly present).

• 180 of those were referred to examination, where 60 have been closed in 2017 with 47% of the exams issuing advisory letters (some with multiple issues), 23% were no change, 10% results in a change to the tax liability and 20% resulted in material changes to return disclosures/preparation issues.
UBI Focus Areas

• Examination UBI focus areas:
• Gaming/reporting winnings focus
• Nonmember income
• Expense allocation issues
• NOLs (disallowing with no documentation)
• Rental activities
• Debt-financed property rentals
• Advertising
• Investment income from pass-through/partnerships
Form 990 Data Mining

• In the future, focus will continue to be in the private inurement and/or private benefit areas:
  - IRS has internally developed indicators for such behavior.
  - Using Form 990 data mining algorithms.
  - Using external data that is available to the IRS from external sources (and it will not share what this is).
  - IRS continually reaches out to the public for referrals and a large % of its workload comes from referrals.
  - Short Term Focus: supporting organizations filing Form 990N when they are not allowed to file such version and for-profit to 501(c)(3) conversion issues (focusing on private inurement/private benefit/commerciality).
Form 990 Data Mining

• As mentioned, examination is using data driven from 990 disclosures:
  - IRS has developed 200/250 queries applied to returns.
  - It expects to continue to build out its queries into the 990 data disclosed.

• Internal Revenue Manual was reworked in 2017:
  - Completed IRM updates to examiners with revisions
  - Issued 32 audit technique guides, which have been recently posted with the IRS.gov website
• Good news in the application processing division:
  - For 2017 IRS received 95,000 applications (Form 1023/1023EZs/1024)
  - 92,000 of those were closed.
  - When pressed to give timelines to expect, IRS only states it is focused on turnaround, with only 1.5% of all applications received still in inventory after 270 days.
  - IRS believes it’s streamlined determination process is working well.
  - For Form 8976’s for 501(c)(4) notifications, there was a 16% rejection rate for accepting the filing mainly due to lack of user fee attached or that the organization was not required to file.
Good news in the application processing division:

Changes coming to the applications themselves, rollout Jan/Feb 2018–

- Form 1023EZ – add narrative area to type more information and will add a few technical questions related to gross income and assets.
- Form 1023 – updated to add agricultural research organizations added to the c3 lists as a result of the PATH Act 2015 (12/15).
- Form 1024 – dropping reference to c4s to use.
- Form 1024-A – a new application only for section 501(c)(4)s to use.
What to Expect in 2018

• To come in 2018:
  - Procedures in place to reject paper filed Form 990 series returns
    - For incorrect return being filed
    - For submitting incomplete, with missing information or missing schedules

(When pressed for comments, rejection for missing information will be based on material items not being present).
Master File Errors – How to Deal With?

- This is a continuing frustrating area for many EOs.
- Errors may be in official name of the organization or address.
- Usually this is a correspondence unit job to deal with.
- IRM now instructs agents that run into this issue in the field to work with the taxpayer in getting these issues reversed immediately.
- Other than above, it seems to get changes made quickly, filing Form 8822-B, the responsible person disclosure form, seems to result in master file changes being made in a swift manner.
DISASTER TAX RELIEF AND AIRPORT AND AIRWAY EXTENSION ACT OF 2017
On September 29, President Trump signed into law P.L. 115-63, the “Disaster Tax Relief and Airport and Airway Extension Act of 2017.”

- Provides temporary tax relief to victims of Hurricanes Harvey, Irma, and Maria.
- Businesses that qualify for relief may claim a new “employee retention tax credit” of up to $2,400 for qualified wages paid to eligible employees.
Disaster Tax Relief and Airport and Airway Extension Act of 2017

• Relief for individuals includes, among other things, loosened restrictions for:
  - claiming personal casualty losses,
  - AGI and taxable income limitation for certain qualified contributions,
  - tax-favored withdrawals from retirement plans, and
  - the option of using current or prior year's income for purposes of claiming the earned income and child tax credits.
Disaster Tax Relief and Airport and Airway Extension Act of 2017

- If a taxpayer sustains a “net disaster loss”:
  - 10% of AGI limitation removed (usual general rule)
  - Relief available to non-itemizers—it does so by increasing an individual taxpayer's standard deduction under Code Sec. 63(c) by the net disaster loss
  - No reduction for taxpayers subject to AMT - does not apply for the portion of the standard deduction attributable to the net disaster loss
  - Increased floor - increases the $100 per-casualty floor to $500 for qualified disaster-related personal casualty losses
Disaster Tax Relief and Airport and Airway Extension Act of 2017

• PENSION RULES HURRICANE RELATED:
  • Allow victims to make “qualified hurricane distributions” from their retirement plans of up to $100,000
  • A “qualified hurricane distribution” as any distribution from an eligible retirement plan, (which includes IRAs), made to an individual who has sustained an economic loss by reason of:
    - On or after Aug. 23, 2017, Sept. 4, 2017, Sept. 16, 2017 and before Jan. 1, 2019, to an individual whose principal place of abode on Aug. 23, 2017, is located in the Hurricane Harvey disaster area; on Sept. 4, 2017, is located in the Hurricane Irma disaster area; and on Sept. 16, 2017, is located in the Hurricane Maria disaster area.
• **PENSION RULES HURRICANE RELATED:**

  • The Act excepts qualified hurricane distributions from the 10% early retirement plan withdrawal penalty.

  • The Act allows taxpayers to spread out any income inclusion resulting from such withdrawals over a 3-year period, beginning with the year that any amount is required to be included (or elect out).
• PENSION RULES HURRICANE RELATED:
• The Act also allows the amount distributed to be re-contributed at any time over a 3-year period beginning on the day after the distribution was received. Treated as an eligible rollover.
• The net effect is that a timely recontribution will allow the taxpayer to recoup the tax he paid on the qualified hurricane distribution (or avoid it entirely if the repayment is made in the same year as the distribution).
• PENSION RULES HURRICANE RELATED:

• For example, if a plan participant receives a qualified hurricane distribution in 2017 he will pay regular tax on it (spread out over 3 years) but not the 10% penalty tax.

• If he recontributes the qualified hurricane distribution amount in 2018, he may file an amended return and get a refund of the tax he paid on his 2017 return for the distribution.
• PENSION RULES HURRICANE RELATED:

- Qualified hurricane distributions aren't treated as eligible rollover distributions (which, unless certain requirements are met, are otherwise subject to 20% withholding rule.

- With respect to retirement plan loans, the Act:
  - increases the maximum amount that a participant or beneficiary can borrow from $50,000 to $100,000;
  - removes the “one half of present value” limitation; and
  - allows for a longer repayment term, by delaying the due date of the first repayment by one year.
CHARITABLE CONTRIBUTIONS HURRICANE RELATED:
- temporarily suspends the majority of the limitations on charitable contributions (AGI or taxable income limits);
- provides that such contributions will not be taken into account for purposes of applying the carryover rules to other contributions;
- provides eased rules governing the treatment of excess contributions; and
- provides an exception from the overall limitation on itemized deductions for certain qualified contributions.
CHARITABLE CONTRIBUTIONS HURRICANE RELATED:

“Qualified contributions” must be paid during the period beginning on Aug. 23, 2017, and ending on Dec. 31, 2017, in cash to an organization for relief efforts in the Hurricane Harvey, Irma, or Maria disaster areas.

Qualified contributions must also be substantiated, with a contemporaneous written acknowledgement that the contribution was or is to be used for relief efforts.

The taxpayer must make an election for the Act. Sec. to apply.

For partnerships and S corporations, the election is made separately by each partner or shareholder.
SOME GENERAL RULES RELATED TO DISASTER RELIEF

Revisit Revenue Ruling 2003 - 12
Revisit Revenue Ruling 2003-12

- Reviews the taxation rules applicable to individuals who may receive certain kinds of monetary financial assistance during the year in three situations:
  - Highlights grants received from a governmental unit for reasonable and necessary medical, temporary housing or transportation expense as a result of a natural disaster.
  - Grants received from a charity to pay or reimburse certain medical, temporary housing, or transportation expense as a result of a natural disaster.
  - Grants received from an employer program to pay or reimburse certain medical, temporary housing, or transportation expense as a result of a natural disaster.
Revisit Revenue Ruling 2003-12

• Grants by a governmental unit:
  - Are paid for personal, living, or family expenses within the meaning of section 139.
  - Paid for expenses not compensated by insurance.
  - Thus, in the form of general welfare, as such the general welfare exclusion from income provisions apply to the grant.
  - Because the governmental unit’s intent in making the grants proceeds from its duty to relieve the hardship caused by the disaster, not from a detached and disinterested generosity, the grants made by it do not qualify for exclusion from income as gifts under § 102.
  - Such grants also qualify under section 139 for exclusion as well.
  - No information reporting is required.
Revisit Revenue Ruling 2003-12

• Grants by a charitable organization:
  - Are paid for personal, living, or family expenses within the meaning of section 139.
  - Paid for expenses not compensated by insurance.
  - Because these grants are made out of detached and disinterested generosity rather than to fulfill any moral or legal duty. Thus, the grants are excluded from the gross income of the recipients as gifts under § 102.
  - Payments by non-governmental entities are not considered payments for the general welfare, the grants made by O are not excluded from the recipients’ gross income under the general welfare exclusion.
  - It is not necessary to reach the question of whether § 139 applies to the grants.
  - No information reporting required.
• Grants by an employer to its employees:
  - Are paid for personal, living, or family expenses within the meaning of section 139.
  - Paid for expenses not compensated by insurance.
  - These employer grants are qualified disaster relief payments that are excluded from the gross income of R’s employees under § 139.
  - No information reporting is required.
SECTION 501(c)(3)
GIFTS OF S CORPORATION STOCK

Hidden Traps for Donors
S Corporation Stock Gifts

• Section 501(c)(3) organizations and 401(a) trusts are valid S corporation shareholders.

• Usually see these types of gifts in contemplation of a sale of a company.

• Tax Issues
  - Donee -
    • All income, even passive income, is UBI.
    • Gains from stock sale is all UBI.
  - Donor -
    • Should get an appraisal to value the stock gifted to the charity.
    • Generally will NOT receive the full FMV as a deduction (Section 170(e) limitation).
• Individual Tax Reform
  - Lower rates to everyone.
  - New “zero percent tax rate” being pushed.
  - Half of Americans may be able to file a one page tax form (postcard).
  - Repeal of many provisions in Internal Revenue Code, including Alt. Min. tax.

• Business Tax Reform
  - Lower tax rates to 20% top rate for corporation.
  - Lower tax rates for pass thru businesses partnerships and S corporations to 25%.
  - Write off of asset purchases.
  - Repeal of many provisions in Internal Revenue Code, including Alt. Min. tax.

• Exempt Organization Tax Reform? Recent revelations – “pay for’s may be here?”
Exempt Organization Tax Reform? What will it look like?

The crystal ball is the Camp proposed tax reform legislation written in 2014.

There are many provisions in those Camp proposals that impacted EOs.

Current commentary from the Hill is that tightening up taxation of UBI exclusions for exempts could provide for much needed pay for’s under this suggested whirlwind revamp of the Internal Revenue Code.

So what can we expect..............?
EXEMPT ORGANIZATIONS PROVISIONS

A few 2014 Camp Tax Reform Proposals Revisited
Exempt Organizations Camp Provisions – not law...yet....

• For executive compensation over $1,000,000, excise taxes on amounts over a million at 25% rate payable by the EO.

• Royalties and license fees subject to Unrelated Business Income Tax system.

• Sponsorship income treated as per se advertising income subject to tax.
  - Over $25,000 and have at least 2 other donors, so high payer is not solely recognized.

• Manager level penalties for substantial understatement of unrelated business income (25% up to $20,000 per manager).
Exempt Organizations Provisions - not law….yet….

• Certification signature related to contents of Form 990.
• Different income flows treated separately for UBI purposes, thus NOLs from one activity may not offset income from another.
• Donor advised funds distribution requirements after 5 years (20% excise tax for undistributed amounts).
• 1% excise tax for investment holdings of colleges and universities over $100,000 per student.
STATE AND LOCAL TAX (SALT) UPDATE
HOT TOPICS
State charitable regulation and enforcement

• Analysis of state oversight and regulation of charities
  – No consistent oversight law exists.
  – Combination of
    • Charitable trust law
    • Criminal law
    • Solicitation and registration requirements
    • Corporate transaction review
    • Governance
    • Conservation easements
State charitable regulation and enforcement

• 41% of states have 1 office primarily responsible for charity oversight, 59% of states have offices sharing responsibility.

• 13 state attorney general offices have charities bureau, 14 state consumer protection offices have charities bureau.

• 31% of states have less than 1 full time equivalent staff person devoted to charities.
State charitable regulation and enforcement

• Fundraising abuses, trust enforcement and governance are top 3 areas of enforcement.

• During investigations, correspondence and informal resolutions more common than fines or formal litigation.

• Oversight mostly on traditional methods of fundraising – phone, direct mail, special events – rather than newer methods – internet-based and social media.

• Study by the Charities Regulation and Oversight Project at Columbia Law School and the Center for Nonprofits and Philanthropy at the Urban Institute.
State hospital exemptions

• Are state exemptions eroding?
  – States scrutinizing sales tax and property tax exemptions for hospitals more closely.
    – Are the hospitals providing charitable benefits to noninsured residents?
  – ACA providing insurance to more people, fewer uninsured, less benefit to the community.
What’s happening in state and local taxes?

• Sales tax
  – Report all sales made into the state if don’t collect tax – Colorado.
  
  – Required to collect sales tax if make a certain number or a certain dollar amount of sales – South Dakota case.
What’s happening in state and local taxes?

• Sales tax
  – Rate increases.
  – Taxable base broadening
    • Services
    • Intangible/electronically delivered items
What’s happening in state and local taxes?

• Income tax

  – Economic nexus

  – Single factor sales – tangible property

  – Market based sales – services
What’s happening in state and local taxes?

• Property tax
  – Rate increases
  – Valuation increases
  – Property type reviews
  – Drive by appraisals
What’s happening in state and local taxes?

- Other taxes
  - Syrupy beverages
  - Rentals
  - Gross receipts
  - Fees
Polling Question #5

If you rent a vehicle from O’Hare Airport, (located outside the Chicago city limits), can the City of Chicago collect the personal property lease transaction tax on the rental amount?

A. Yes. The tax applies if the rental car travels into the City of Chicago.
B. No. Chicago can’t impose a tax for a transaction that occurs outside the city limits.
C. Yes. The car rental company is required to inquire if the car will be driven in Chicago and collect the tax.
D. No. The city must collect the tax from the person renting the car and not the car rental company.
RECENT CASES, RULINGS AND LEGISLATIVE CHANGES
Income tax

− California

• California recently announced that it will begin administratively dissolving inactive nonprofits that have been suspended or forfeited by the FTB for a period of 48 months or more and are no longer in business.

• Recent California legislation allows taxpayers to sell low-income housing credits for credits awarded between 1/1/16 and 12/31/20. Consideration must be at least 80% of the credit.
Sales and use tax

– North Carolina
  • As of 1/1/17 – sales by nonprofit civic, charitable, education, scientific or literary organizations must collect sales tax on taxable sales. Regardless of how the proceeds are used.

– Washington
  • Online educational program fees not subject to sales tax or B&O tax.

– Georgia
  • Retails sales by nonprofit organizations are taxable.
Sales and use tax

- Arkansas
  - Nonprofit organized to raise funds for shelter animals was denied an AR sales and use tax exemption because organization did not meet definition of “humane society.”

- Arkansas
  - Nonprofit sales and use tax incentive to locate in Arkansas and meet payroll, wage, employment and investment targets has been repealed.

- Indiana
  - DOR cannot retroactively impose tax on utilities because blanket exemption certificate issued in 2012. 2016 audit report has no retroactive effect.
Sales and use tax

- Illinois
  - DOR held that a nonprofit hospital affiliate’s sales of TPP to the hospital’s patients were exempt because the affiliate qualified as a charitable institution and possessed its own exemption number.

- Illinois
  - Nonprofit organization’s sales of meals to prison inmates subject to sales tax. The prison doesn’t sell the meals. The inmates are taught cooking skills with the meals sold to the inmates.

- Georgia
  - DOR recently held that charges for admission for a home tour by a tax exempt organization preserving historic homes were taxable.
Sales and use tax

- Hawaii
  - Updated guidance on tax clearance certificates. Any nonprofit organization that plans to sell goods or services to or contract with the state must first obtain federal and state tax clearance certificates.

- Missouri
  - Sales by nonprofit bakery subject to sales tax. Although nonprofit hires formerly homeless individuals and trains them as bakers, sales are made as a competitive commercial business serving the general public.
Sales and use tax

- New York
  - Tickets sales to a charity softball game were subject to sales tax since proceeds were used to benefit a nonprofit organization, and not used for the benefit of an elementary or secondary school, as required by the exemption statute. In addition, sales of the tickets were by a minor league baseball team, not the nonprofit organization.

- Washington
  - Nonprofit was liable for WA sales tax on sales of marijuana because the funds (deposited in a jar by customers) did not constitute donations.
Property tax

- New York City
  - Undeveloped part of exempt organization property exempt for property tax purposes. With the developed land, the property was a single unit.

- Ohio
  - Nonprofit providing free retreat lodgings to church leaders not exempt for property tax. Primary use is residential. Not owned by a church.

- Vermont
  - Supreme Court recently held that a VT college was not eligible for exemption on a campus building that was leased to the state for general commercial purposes.
Property tax

– Michigan
  • Supreme Court recently held that a personal property tax exemption was available to a for-profit educational institution because the clear, unambiguous language of the statute applied broadly to educational institutions and made no mention of non-profit status.

– Ohio
  • Property used by a nonprofit was not exempt from property tax because it was used as a residence and not exclusively for public worship
Other taxes/state issues

• Comp time for non-exempt employees
  
  – Pay attention to state overtime rules if providing comp time to non-exempt employees to avoid paying overtime
  
  – State might have different rules
  
  – California requires overtime pay if work more than 8 hours in a day. Doesn’t use 40 hours per week standard.
INTERNATIONAL TAX UPDATE
Overview of Chapter 3 Withholding

Chapter 3 Withholding

• The U.S. imposes withholding tax on payment made to foreign persons of U.S. sourced Fixed, determinable, annual, periodic (“FDAP”) income. Examples include interest, dividends, royalties, compensations for services, grants, prizes and awards, scholarships, and rents.

• U.S. withholding rate is currently 30%, unless:
  - reduced by income tax treaty
  - Or provision of the IRC (e.g. Portfolio Interest)

• The U.S. also imposes tax on a foreign person’s share of U.S. sourced effectively connected income (ECI)
Overview of Chapter 4 Withholding

Chapter 4 Withholding, Foreign Account Tax Compliance Act (FATCA)

- FATCA is part of a comprehensive U.S. anti-evasion regime designed to locate income and assets held by U.S. persons in offshore accounts or indirectly through ownership of foreign entities and ensure that it is reported to the IRS.

• Why does FATCA matter?
  - FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, such as those held by not-for-profits.
  - FATCA requires U.S. Withholding Agents, including not for profit organizations (“NFPs”), to withhold 30% gross withholding tax on “withholdable payments” made to non-compliant FFIs.
Final and Temporary Chapters 3 and 4 regulations Issued on December 30, 2016

• Form 8655, Reporting Agent Authorization, only required when the agent is named as the filer and files Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons on behalf of one or more other withholding agents.

• Form 1042 and 1042-S, Foreign Person's U.S. Source Income Subject to Withholding may be furnished to a payee electronically if requirements are met.

• New requirement is now included in the regulations that the taxpayer identify the specific limitation of benefits provision for which they are claiming treaty benefits on withholding certificates.
  - This requirement had already been included on the instructions for Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
Foreign TIN for Treaty Benefits

Chapter 3:
A withholding agent must obtain a foreign TIN on a beneficial owner withholding certificate (e.g. a W-8 Series Form) in the following circumstances:

1. For a foreign person claiming a reduced rate of withholding under an income tax treaty if the foreign person does not provide a U.S. TIN and the income is a type to which the TIN requirement applies

2. In general, for a foreign person that is an account holder of a financial account maintained at a U.S. branch or office of the withholding agent, but only if the withholding agent is a financial institution

Chapter 4:
FFIs and other withholding agents (including U.S. branches of foreign banks) are required to collect Foreign TINs

There is no requirement to validate the correctness of the TIN, including format
Overview of the OECD’s BEPS Action Plan on Country-by-Country (“CbC”) Reporting

- Provides for full disclosure of entity-level financial, tax and functional information by taxpayers to be reported annually and for each tax jurisdiction in which they do business.

- Government-to-government exchange of CbC Reports to be enabled via treaties, Tax Information Exchange Agreements (TIEAs), and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

- Despite a theoretically “unified” approach, potentially high variability in requirements and filing deadlines in different jurisdictions.

- A multinational group is not required to file a CbC Report if the consolidated groups revenue during the previous fiscal year is below the threshold defined in domestic law of the jurisdiction in which it is filing. The revenue threshold at or above which a U.S. multinational group is required to file the CbC Report is $850,000,000.
Overview of the OECD’s BEPS Action Plan on Country-by-Country ("CbC") Reporting (Cont’d)

• Note that U.S. multinational groups may be required to file a CbC Report in a foreign country, even if the U.S. reporting threshold is not exceeded, because the U.S. multinational group’s revenues may exceed the local law reporting thresholds as expressed in the foreign currency.

• Generally, NFPs are not required to file a CbC Report unless they have unrelated business income which when considered alone would exceed the filing threshold. Under the regulations, the term “revenue” with respect to the filing threshold for NFPs only includes revenue that is derived from unrelated business income.

• The Multilateral Convention To Implement Tax Treaty-Related Measures To Prevent Base Erosion And Profit Shifting (BEPS) (the “OECD Model Treaty”)
  - Signed by 68 countries and jurisdictions on June 7, 2017
  - Includes provisional decisions on how the OECDD Model Treaty will treat existing double tax treaties.
Instructions for filing CbC Reports

Rev. Proc. 2017-23

• The Internal Revenue Service has released new guidelines for voluntarily filing Form 8975, *Country-by-Country Report* ; and Schedule A (Form 8975), *Tax Jurisdiction and Constituent Entity Information*, for the “gap year,” beginning after January 1, 2016 but which occurs before the applicability date of the CbC regulations

• The procedures are applicable to NFPs with unrelated business income

• The CbC Report is filed with the IRS along with the U.S. federal income tax return
Treasury Decision 9796 is effective December 31, 2016

• Domestic U.S. disregarded entities owned by foreign persons are now subject to information reporting, including filing an annual return on Form 5472, *Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business*

  - Prior to the regulations, disregarded entities were not subject to U.S. tax reporting.

• The regulations do not affect the entity’s classification for any other purpose.
United States - Argentina Agreement for Information Exchange

- An Agreement for the Exchange of Information Relating to Taxes was signed by the United States and Argentina on December 23, 2016 (Awaiting Final Approval)

- Purpose: To provide assistance to each other through the exchange of information that is relevant to the administration and enforcement of the domestic laws for taxes covered by the agreement

- Taxes covered:
  - All U.S. federal taxes
  - National taxes administered by the federal Administration of Public Revenue

- Methods of information exchange:
  1. Exchange upon request
  2. Automatic exchange
  3. Spontaneous exchange
New Regulations on Ownership of Passive Foreign Investment Companies and Foreign Corporations

The IRS has issued final regulations with the following guidance:

• Under the final regulations, a U.S. person is not treated as a shareholder of a passive foreign investment company ("PFIC") to the extent the U.S. person owns PFIC stock through a tax-exempt organization;

• U.S. persons that own PFIC stock that has made a mark-to-market election is not required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund; and

• Solely for purposes of determining whether a person owns 50% or more in value of the stock of a foreign corporation that is not a PFIC, a person who directly or indirectly owns 50% or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation.
Reminder: PFIC Regime Applicability to NFPs

• If a foreign corporation is classified as a PFIC then by default an interest charge is imposed on all “excess distributions” (distributions that exceed 125% of the average distributions of the prior three tax years).

• A shareholder, including a NFP, that makes a QEF election is taxed on its pro rata share of the PFIC’s earnings and profits in the year the income is earned. The income may be ordinary or capital depending on the underlying character.

• If the shareholder of a PFIC is a tax exempt organization, the PFIC regime only applies if the dividend from the PFIC would be taxable to the organization under Subpart F. Subpart F generally dictates the taxation of exempt entities, including unrelated business taxable income (“UBIT”) (e.g. debt financed).

• If a QEF election is made, any income is UBIT and therefore by default not includible in the calculation of a net investment income excise tax.
Government Targets H-1B Program

• What is an H-1B Visa?
  - H-1B is a visa geared towards foreign workers in specialty occupations (e.g. biotechnology, chemistry, engineering, medicine, accounting).
  - New guidance on whether computer programmers is considered a specialty occupation.

• The U.S. Department of Labor (“DOL”) will increase investigative and prosecutorial efforts of H-1B program violators.

• More common random site visits of H-1B employers

• Employers now will need to certify workers’ wages, job duties, and work locations during site visits
Executive Orders on Immigration

• President Trump as issued multiple Executive Orders that restricted the admission of refugees and anyone from one of six designated countries.

• The most recent travel ban expired in September, 2017

• The Supreme Court can’t rule on the legality of the travel ban(s) as they are no longer ongoing issues

• A new travel ban is likely forthcoming so stay alert to any effect it may have on the operations of your organization
QUESTIONS AND ANSWERS?
Questions for the presenters

James Sweeney  
Partner  
Tax-Exempt Tax Services  
RSM US LLP

Todd Hendricks  
Senior Manager  
State and Local Tax Services  
RSM US LLP

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Before we conclude

Make plans to join us for our next webcast series:

Optimizing your nonprofit’s outsourcing strategy

Part 1 - Improve your IT outsourcing strategy for maximum value today and tomorrow
Thursday, November 16, 2017
Noon EST | 11 a.m. CST | 10 a.m. MST | 9 a.m. PST
60 minutes | One CPE credit will be issued to eligible participants

Part 2 - Enhance your finance and accounting outsourcing strategy to maximize everyday operations
Tuesday, November 30, 2017
Noon EST | 11 a.m. CST | 10 a.m. MST | 9 a.m. PST
60 minutes | One CPE credit will be issued to eligible participants
Before we conclude

How did we do?

• Please take a moment to participate in the attendee survey by following the link in the Resource List to the right of your screen

CPE credit

• Eligible participants will receive 1.5 credit for attending today’s event

• Visit the Certification panel to the right of your screen
  - Be sure to download and save your certificate to your computer before the event concludes
  - Certificates are not available for download from a smart phone. Download your certificate from any computer using the same link you are using to view the webcast
  - You must have Javascript and Cookies enabled to download the certificate
  - RSM employees: CPE will automatically appear on your on MyTranscript

Follow-up

• We will respond to all questions following today’s event

• The presentation slides and a link to the call recording will be sent to all participants within a few days