



# TAX EXEMPT & GOVERNMENT ENTITIES (TE/GE) BUSINESS OPERATING DIVISION

## FISCAL YEAR 2018 ACCOMPLISHMENTS LETTER

### MESSAGE FROM THE TE/GE COMMISSIONERS

In our Fiscal Year 2019 Program Letter released on October 3, 2018, we promised to release the complete fiscal year (FY) 2018 accomplishments under a separate document when final results became available. We are pleased to announce that these results are now available and encourage you to read the information provided to learn more about the contributions of our tax administration programs.

The various functions of TE/GE had many successes throughout FY 2018:

Exempt Organizations (EO) implemented several changes to better serve EO customers and assist employees with processing applications more efficiently for tax-exempt status, as described below:

- [Form 1023](#), Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; [Form 1023-EZ](#), Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; and [Form 1024](#), Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120, were revised during the first quarter and were published in January 2018. These revisions make it easier for organizations to select the correct form when applying for tax-exempt status and help the IRS make the correct determinations on tax-exempt status. On Form 1023-EZ, a 250-character text box has been added where the organization must describe its exempt purpose; this change was recommended by the IRS National Taxpayer Advocate to provide a better understanding of the most significant activities in which an organization engages to further its exempt purpose. This revised form also specifically asks whether an applicant seeks recognition as a church, hospital, or school, because organizations seeking that recognition may not use Form 1023-EZ, and additional questions now request an organization's gross receipts and assets.  
[Form 1024-A](#), Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, was officially released in January 2018. While organizations seeking 501(c)(4) status may self-declare, the Protecting Americans from Tax Hikes (PATH) Act of 2015 authorized this new form for use by organizations for an official determination of their tax-exempt status from the IRS.
- The revised [Form 8718](#), User Fee for Exempt Organization Determination Letter Request (which organizations applying for federal income tax exemption must submit with all applications other than Form 1023, Form 1023-EZ, or Form 8940, Request for Miscellaneous Determination), was published in March 2018. In addition, [Rev. Proc. 2018-5](#) changed several user fees.
- In conjunction with Business Systems Planning and Information Technology, EO also launched the [Tax Exempt Organizations Search](#) (TEOS), which helps users find information about a tax-exempt organization's federal tax status and filings, including (1) organizations eligible to receive tax-deductible charitable contributions; (2) automatically revoked organizations; (3) determination letters for organizations approved for tax-exempt status dated on or after January 1, 2014; (4) Form 990 series returns, including Forms 990, Return of Organization Exempt From Income Tax; 990-EZ, Short Form Return of Organization Exempt From Income Tax; 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation; and 990-T, Exempt Organization Business Income Tax Return, (990-T returns for 501(c)(3) organizations only) filed January 2018 to the present; and (5) organizations that have filed a Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organization Not Required to File Form 990 or Form 990-EZ, filed January 2018 to the present. The webpage was launched on May 7, 2018, and had 676,310 visits by fiscal year end.



David W. Horton  
Acting TE/GE  
Commissioner



Robert S. Choi  
Acting TE/GE  
Deputy  
Commissioner

## COMMISSIONERS' MESSAGE: (cont.)

Employee Plans (EP) implemented several program and processing changes to better serve its customers and assist TE/GE's employees with their cases, as described below:

- Business Systems Planning and Information Technology teamed together to develop the infrastructure needed to convert the submission process of (1) Form 8950, Application for Voluntary Correction Program (VCP) Submission Under the Employee Plans Compliance Resolution System (EPCRS), and (2) Form 8951, User Fee for Application for Voluntary Correction Program (VCP) Under the Employee Plans Compliance Resolution System (EPCRS), to [Pay.gov](#), an online site to make secure electronic payments to federal government agencies.
- Online guidance was provided to the public regarding practices that facilitate quick closures of voluntary compliance (VC) applications, with the expectation that more taxpayers and practitioners will use this information to perfect their applications before submission.
- The Determinations program partnered with the Examinations program on retirement plan audits, wherein determination specialists provide resources for the plan document review, while examination agents focus on operational compliance.
- Determination approval letters for defined benefit pre-approved plans (PAP) were issued in the second quarter.
- The majority of determination-trained employees were cross-trained in examinations and VC work.

Indian Tribal Governments (ITG) assists Indian tribes with addressing their federal tax matters, while Tax Exempt Bonds (TEB) administers federal tax laws applicable to tax-advantaged bonds. ITG/TEB implemented several program and procedural improvements, as described below:

- Treasury held a formal Consultation Meeting in December 2017 with tribal leaders to discuss the tax reform bills and impact on tribal governments. Testimony focused on economic incentives needed to spur growth in tribal economies, including the permanent implementation of the Indian Employment Tax Credit and the accelerated depreciation provisions, as well as eliminating the essential governmental function test for tax-exempt bonds.
- ITG collaborated with the Tax Reform Implementation Office (TRIO) on a press release explaining the reporting requirements and tax treatment decisions on Alaskan Native Claims Settlement Act Corps and Settlement Trusts, resulting in the issuance of [IR-2018-16](#) in January 2018.
- ITG partnered with the Taxpayer Advocate Service (TAS) in February 2018 to jointly develop and issue a Govdelivery message regarding the appropriate reporting of tuition and other educational benefits provided by Indian tribes to tribal members under the Tribal General Welfare Exclusion Act of 2014.
- ITG released 12 employment tax videos to help tribal employers properly withhold, deposit, and report federal taxes for their employees. In addition, three [gaming compliance tools](#) were created to provide information and links to resources to comply with federal reporting rules within the gaming industry maintained by Indian tribal governments.
- TEB participated in the pilot testing of the Taxpayer Digital Communication system, a secure messaging program that provides a safe, online environment for the IRS and taxpayers (and their representatives) to interact and exchange documents during examinations.

TE/GE employed its Compliance Units to address potential noncompliance, primarily using correspondence contacts known as "compliance checks," which limited the burden of each taxpayer contacted and allowed TE/GE to establish a presence in the taxpayer community in a manner that reduced the cost to the IRS.

Lastly, TE/GE made a significant hiring push in FY18, partnering with the Human Capital Office to select a total of 111 employees, including new hires, promotions, and laterals.

Thank you for your continued contributions in assisting TE/GE in accomplishing its goals.

Dave & Rob

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TE/GE delivered a compliance platform that was divided into six portfolio programs: Compliance Strategies; Data-Driven Approaches; Referrals, Claims, and Other Casework; Compliance Contacts; Determinations; and Voluntary Compliance and Other Technical Programs. Data was used to identify and address existing and emerging high-risk areas of noncompliance, and steered the decisions on how best to apply optimal resources.

### **Fiscal Year 2019 Compliance Program:**

Compliance Strategies were issues approved by TE/GE's Compliance Governance Board to identify, prioritize and allocate resources within the TE/GE filing population. Using a web-based portal, TE/GE employees submitted suggestions for consideration by the Board. Once approved, these issues were considered to be priority work.

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Data-Driven Approaches used data, models, and queries to select work based on quantitative criteria, which allowed TE/GE to allocate resources that focused on issues that have the greatest impact. TE/GE is committed to integrating data into its processes and procedures, and will use return data and historical information to identify the highest risk areas of non-compliance.

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Referrals alleged noncompliance by a TE/GE entity and have been received from sources within and outside the IRS. Claims were requests for refunds or credits of overpayments of amounts already assessed and paid; they included tax, penalties, and interest or an adjustment of tax paid or credit not previously reported or allowed.

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Compliance Units were employed to address potential noncompliance, primarily using correspondence contacts known as "compliance checks" and "soft letters." These contacts allowed TE/GE to establish a presence in the taxpayer community in a manner that reduced the cost to the IRS, while limiting taxpayer burden.

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Determination letters were issued to exempt organizations on exempt status, private foundation classification, and other determinations relating to exempt organizations, and to retirement plans that satisfied the qualification requirements of federal pension law.

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The Voluntary Correction Program (VCP) enabled eligible plan sponsors (at any time before audit) to pay a fee and receive IRS approval for correction of identified plan qualification failures in accordance with IRS instructions. Knowledge Management worked to ensure the quality and consistency of technical positions, provided timely assistance to employees, and preserved and shared TE/GE's knowledge base

# FISCAL YEAR 2018 COMPLIANCE PROGRAM

## Compliance Strategies

	New Starts	Closures
Employee Plans	808	253
Exempt Organizations	307	165
Indian Tribal Gov./Tax Exempt Bonds	376	246
Totals	1,491	664

Compliance Strategies were issues approved by TE/GE's Compliance Governance Board to identify, prioritize and allocate resources within the TE/GE filing population. Using a web-based portal, TE/GE employees submitted suggestions for consideration by the Board. Once approved, these issues were considered to be priority work. Below we share the strategies that were pursued during FY 2018. TE/GE continuously strives to focus on the highest known priority issues and emerging risks. If you are interested in learning more about the technical issues discussed below, search for the key term in the search box of the [IRS.gov](http://IRS.gov) website.

### Employee Plans

- Discrimination: examined plans that failed to comply with the gateway test or the exception under Treasury Regulations (Treas. Reg.) Section 1.401(a)(4)-8(b), failed both the Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) tests, failed to properly provide timely notice to participants, and/or failed to provide the required safe harbor contribution to all eligible participants.
- Participation/coverage: examined plans that failed to satisfy the minimum age and/or service requirements, met statutory requirements in form but failed eligibility in operation, and/or allowed ineligible participants to participate.
- Trust investments in small plans: examined plans that failed to properly value all assets at fair market value and/or failed to properly reflect all plan assets in the name of the trust (for example, real estate investments).
- Benefit accruals: examined plans that failed to satisfy Internal Revenue Code (IRC) Section 411(b) accrual rules.
- Elective deferrals: examined plans that failed to withhold the proper amount of elective deferrals per plan terms.

### Exempt Organizations

- Non-Exempt Charitable Trusts (NECTs): examined organizations that under-report income or over-report charitable contributions.
- Forms W-2/1099 matches: compared payments reported on Form 1099, Miscellaneous Income, with wages reported on Form W-2, Wage and Tax Statement, and subject to Federal Insurance Contribution Act (FICA) tax and income tax withholding.
- Early retirement incentive plans: examined entities that provides cash (and other) options to employees as an incentive for early retirement to determine if the proper tax treatment was applied to these benefits.
- Notice CP 2100 (backup withholding): examined entities that failed to comply with backup withholding requirements due to mismatched and/or missing taxpayer identification numbers on Form 1099.

### Indian Tribal Governments/Tax Exempt Bonds

- Notice of defeasance: bond issuers may have taken remedial actions under (1) Treas. Reg. Section 1.141-12, or (2) Treas. Reg. Section 1.142-2 without meeting all requirements under the applicable regulations.
- Arbitrage: examined tax-advantaged bonds with guaranteed investment contracts and/or qualified hedges as well as bonds with investments beyond a temporary period.
- Acquisition financing: examined private activity bonds to determine whether the rehabilitation requirement was satisfied.
- Non-qualified use: examined dispositions of financed facilities and/or excessive private business use.
- Other: examined bonds issued with a deep discount and private activity bonds with excessive weighted average maturities.

## FISCAL YEAR 2018 COMPLIANCE PROGRAM (cont.)

### Data-Driven Approaches

	New Starts	Closures
Employee Plans	1,378	762
Exempt Organizations	3,902	3,501
Indian Tribal Gov./Tax Exempt Bonds	267	226
Totals	5,547	4,489

Data-Driven Approaches used data, models, and queries to select work based on quantitative criteria, which allowed TE/GE to allocate resources that focused on issues that have the greatest impact. TE/GE is committed to integrating data into its processes and procedures, and will use return data and historical information to identify the highest risk areas of noncompliance.

#### Employee Plans

- Research, Applied Analytics & Statistics (RAAS) collaboration: sampled the results of data queries and models that tested indicators of noncompliance for various plan types (for example, profit sharing, money purchase, 401(k), and defined benefit).

#### Exempt Organizations

- Models: continued to improve compliance models based on 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 or Section 4947(a)(1) Trust Treated as Private Foundation. Also, identified returns of exempt organizations and government entities containing the highest risk of employment tax noncompliance (for example, substantial credit balances with no returns or zero to minimal Medicare and/or Social Security wages paid compared to Form 1099 distributions).
- RAAS collaboration: continued to review various items and activities, including private benefit/inurement, officer business partnerships, underreported credit card income, and related employees and for-profit partnerships.
- Private foundations: continued to examine private foundations based on potential anomalies found on their Form 990-PF filings. This also included examining organizations that show indicators of potential private benefit or inurement to individuals or private entities.

#### Indian Tribal Governments/Tax Exempt Bonds

- Models: continued to examine Indian tribes with returns selected by sampling the results of data queries and models designed to test indicators of noncompliance. designed to test indicators of non-compliance.

## FISCAL YEAR 2018 COMPLIANCE PROGRAM (cont.)

### Referrals, Claims, and Other Casework

	New Starts	Closures
Employee Plans	4,482	5,305
Exempt Organizations	2,374	2,933
Indian Tribal Gov./Tax Exempt Bonds	3,522	2,171
Totals	10,378	10,409

Referrals alleged noncompliance by a TE/GE entity and were received from internal and external sources. Claims were requests for refunds or credits of overpayments of amounts already assessed and paid; they included tax, penalties, and interest or an adjustment of tax paid or credit not previously reported or allowed.

#### Employee Plans

- Referrals: continued to pursue referrals received from internal and external sources that alleged possible noncompliance by a retirement plan.
- Claims: continued to address requests for refunds or credits of overpayments of amounts already assessed and paid. These claims included tax, penalties, and interest or a request for an adjustment of tax paid or credit not previously reported or allowed.
- Multiemployer plans: continued to examine plans that failed to properly calculate retirement benefits affecting service crediting and/or allocation/accruals, failed to make required minimum distributions, and/or failed to adjust benefits when retirement is delayed beyond the normal retirement age.
- IRC Section 403(b)/457 plans: continued to examine plans that failed to meet universal availability requirements (in other words, coverage for salary deferrals), failed to meet contribution limitations (in other words, IRC Section 414(v) – age 50 and/or 15-year special catch-up contributions), and/or made improper hardship withdrawals.
- IRA plans: continued to examine plans that violated maximum participant rules, failed to meet statutory and matched employer contribution requirements, and/or failed to meet IRC Section 416(i)(6) top-heavy requirements.
- Other casework: continued to address requests from plan sponsors to waive their minimum funding requirement for a plan year, investigated non-bank trustees (NBT) to verify that they have satisfied the NBT regulations, and pursued promoter investigations.

#### Exempt Organizations

- Referrals: continued to pursue referrals received from internal and external sources that alleged noncompliance by an exempt organization, and pursue taxpayer and interagency referrals, including information items from sources within and outside the IRS that allege noncompliance with an employment tax law by a government entity or an exempt organization.
- Claims: continued to address requests for refunds or credits of overpayments of amounts already assessed and paid, including tax, penalties, interest, or an adjustment of tax paid or credit not previously reported or allowed; and also continue to address high-dollar, complex employment tax claims filed by federal, state, and local governments.
- Other casework: continued to examine entities that filed and received exemption using Form 1023-EZ. The scope of these exams included (1) filers who are ineligible to file Form 1023-EZ; (2) filers who donate to (or pay expenses for) individuals; and (3) filers operating bingo or other gaming activities. Also, as required by the Patient Protection and Affordable Care Act (ACA), we continued to review hospitals for compliance with IRC Section 501(r).

#### Indian Tribal Governments/Tax Exempt Bonds

- Referrals: continued to prioritize referrals received from internal and external sources warranting examination resources that allege possible noncompliance by a tribal entity or a bond issuer.
- Claims: continued to address claims for overpayment of rebates and claims for credit payments on Direct Pay Bonds, as well as employment tax claims filed by Indian tribes.
- Other casework: continued to maintain the program to ensure tip reporting compliance of ITG entities and their tipped employees, including (1) securing tip agreements, (2) refreshing expiring tip agreements, (3) revoking tip agreements on noncompliant agreement holders, and (4) conducting tip examinations for entities with low tip reporting and no tip agreements.

### Compliance Contacts

	New Starts	Closures
Employee Plans	2,741	2,768
Exempt Organizations	1,357	1,317
Indian Tribal Gov./Tax Exempt Bonds	222	262
Totals	4,320	4,347

Compliance Units are employed to address potential noncompliance, primarily using correspondence contacts known as “compliance checks” and “soft letters.”

A compliance check is correspondence with organizations to inquire about an item on a filed return, to determine if specific reporting requirements have been met, or to determine whether an organization’s activities are consistent with its stated tax-exempt purpose. A compliance check is not considered an examination, because it does not involve a review of an organization’s books and records.

A soft letter is correspondence with organizations that provides notification of changes in tax-exempt law or compliance issues. A direct response to these letters is not requested. These contacts limit taxpayer burden, while allowing TE/GE to share information with the taxpayer community in a manner that reduces the cost to the IRS.

In FY 2018, TE/GE continued educating taxpayers via compliance checks and soft letters on issues of noncompliance, while seeking to improve return filings and filing accuracy, as described below:

- To determine whether an exempt organization; Indian tribal government; or federal, state, and local governmental entity is adhering to recordkeeping and information reporting requirements, including:
  - Combined Annual Wage Reporting (CAWR) employment tax: tax-exempt employers that had discrepancies between Form W-2 and Form 941, Employer’s Quarterly Federal Tax Return/944, Employer’s Annual Federal Tax Return;
  - CAWR – Federal Unemployment Tax Act (FUTA): exempt organizations that were required to, but failed to file Form 940, Employer’s Annual Federal Unemployment (FUTA) Tax Return;
  - Form 990-T nonfiler: IRC Section 501(c)(7) organizations that reported investment income on Form 990/990-EZ but did not file Form 990-T;
  - Financial Assistance Policy (FAP): tax-exempt hospital organizations that did not comply with IRC Section 501(r)(4);
  - Tribal casino-based Bank Secrecy Act (BSA) information for casinos not selected for BSA examination;
  - Small Indian tribal entities that have not had any other compliance contact on a five-year rotating basis; and
  - Employment tax returns of small federal, state, and local governments and tax-exempt organizations.
- To determine whether a retirement pension plan is adhering to recordkeeping and information reporting requirements, including:
  - Plans with partial terminations;
  - Plans with nonparticipant loans;
  - Plans with minimum funding requirements;
  - IRC Section 457(b) plans with excess deferrals;
  - Data analysis verification regarding returns with missing entries; and
  - SIMPLE IRA plans sponsored by employers with more than 100 employees.

## FISCAL YEAR 2018 COMPLIANCE PROGRAM (cont.)

### Determinations

	Receipts	Closures
Employee Plans	1,886	6,268
Exempt Organizations	95,529	91,981
Totals	97,415	98,249

Determination letters were issued to exempt organizations on exempt status, private foundation classification, and other determinations relating to exempt organizations, and to retirement plans that satisfied the qualification requirements of federal pension law.

For FY 2018, Employee Plans' receipts for individually designed plans were broken down as follows:

- Form 5300, Application for Determination of Employee Benefit Plan, initials (740)
- Form 5300, amendments (35)
- Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, adopters of standardized plans (10)
- Form 5310, Application for Determination Upon Termination, plan terminations (815)
- Form 5316, Application for Group or Pooled Trust Ruling, group or pooled trust rulings (51)

For comparison purposes, total receipts for FY 2016 and FY 2017 were 11,353 and 4,680, respectively. Total closures for FY 2016 and FY 2017 were 7,738 and 10,024, respectively. The decline in receipts over this three-year period is due to FY 2016 being the last year of the cycle system, FY 2017 being the transition year, and FY 2018 being the first year where only initial and terminating plans were accepted.

Receipts for pre-approved plans were:

- Lead plans (7)
- Minor modifications (5)
- Word-for-word adopters (223)

For comparison purposes, total receipts for FY 2016 and FY 2017 were 593 and 286, respectively. Total closures for FY 2016 and FY 2017 were 106 and 750, respectively.

For FY 2018, Exempt Organizations' receipts of applications for tax-exempt status, private foundation classification, and other EO-related determinations were broken down as follows:

- Form 1023 (28,259)
- Form 1023-EZ (59,505)
- Other forms, (for example, 1024, 1024-A, 1025, 1026, 1028, and 8940) (7,765)

For comparison purposes, total receipts for FY 2016 and FY 2017 were 91,158 and 95,177, respectively. Total closures for FY 2016 and FY 2017 were 92,129 and 91,175, respectively.

### Voluntary Compliance and Other Technical Programs

	Receipts	Closures
Employee Plans	3,190	3,848
Tax Exempt Bonds	27	27
Totals	3,217	3,875

The EP Voluntary Correction Program (VCP) enabled eligible plan sponsors (at any time before audit) to pay a fee and receive IRS approval for correction of identified plan qualification failures in accordance with IRS instructions. Key measures for the VCP are shown above, broken down by receipts and closures. In addition, EP focused on actuarial letter rulings, 60-day rollover waivers, and technical assistance work for its taxpayers.

The TEB Voluntary Closing Agreement Program (VCAP) assisted governmental issuers in resolving violations of federal tax laws applicable to their tax-exempt bonds, tax credit bonds, or direct pay bonds (tax-advantaged bonds) through the execution of closing agreements with the IRS.

The TEB Voluntary Closing Agreement Program (VCAP) is a receipt-driven program; FY 2018 receipts were lower than anticipated.