

YH EXEMPT ORG ADVISOR

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YH Advisors is very proud to continue to publish and distribute the **YH Exempt Org Advisor**, a quarterly publication focused exclusively on the tax, legal and accounting issues of all types of exempt organizations. **YH Advisors**, located in Huntington Beach (California), is solely focused on providing value-added services to their exempt organization clientele. The firm's Partners, Brian Yacker and Stacey Bergman, have cumulatively worked with exempt organizations for almost 35 years.

The **YH Exempt Org Advisor** is electronically available on a complimentary basis to anyone who is included in our e-mail database. If you are forwarded a copy of this publication and would like to continue to receive future copies, please contact us with your e-mail address.

RIPPED FROM *the* EO HEADLINES

Subway Jared's Other Problems

Not that the following is anywhere close to the other problems that former Subway spokesman Jared Fogle is confronting, but USA Today recently reported that his tax-exempt foundation (the Jared Foundation), formed in 2008, has yet to issue a single charitable grant. Notwithstanding the absence of any grantmaking, the Jared Foundation still spent over \$40,000 on executive compensation. When formed, the Jared Foundation was supposed to distribute \$2 million to schools and community organizations to fight the condition that had plagued Fogle for years, childhood obesity. Surprisingly, the Jared Foundation even failed to pay the State of Indiana's annual \$5 registration fee for charities operating in Indiana.

A spokesman for CharityWatch (a charity watchdog) commented that "As with a lot of celebrities, the charity appears to be more about image-enhancement than charitable deeds." The three most recently filed Forms 990 for the Jared Foundation can be found on GuideStar here: <http://www2.guidestar.org/organizations/20-1227896/jared-foundation.aspx>

Oklahoma Senator Pleads Guilty to Fraud

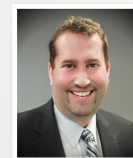
Accounting to newsok.com, Oklahoma State Senator Rick Brinkley recently pleaded guilty to a federal fraud charge and immediately resigned from the Oklahoma Legislature. He agreed to pay \$1,829,033 in restitution to the Better Business Bureau of Tulsa and \$165,625 to the Internal Revenue Service in unpaid taxes. Senator Brinkley, who will be sentenced on November 20, could be facing as much as 37 months in federal prison under sentencing guidelines.

Brinkley was charged with five wire fraud counts and one tax evasion count. He admitted in court that he stole money while an official at the Better Business Bureau of Tulsa for his own personal benefit. Prosecutors said Brinkley used some of the stolen money to fund his gambling habits.

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RIPPED FROM *the EO HEADLINES*

Graham's Annual Compensation Raises Eyebrows (But Not Ours)

According to the *Charlotte Observer*, Franklin Graham's (son of evangelist Billy Graham) annual compensation of \$880,000 is worrying many that top Christian nonprofit leaders, as well as pastors, are seeing themselves as CEOs instead of as God's servants. Graham is the head of Samaritan's Purse, an international relief agency based in Boone, N.C.

According to their 2013 Form 990 (available on GuideStar), Samaritan's Purse is a charitable organization which generated over \$460 million of revenue (of which over \$456 million came from contributions) for the tax year ending December 31, 2013 and possessed total assets at the conclusion of 2013 in an amount exceeding \$309 million.

From our perspective, for such a large entity, both from a revenue generation and total assets perspective, it may be entirely reasonable to pay your top executive \$800,000 a year. If Samaritan's Purse did not do so, they should definitely consider getting a Reasonable Compensation Study prepared by an unrelated third party with the requisite expertise.

The *Charlotte Observer* sets forth that the CEOs at the top 50 U.S. charities earn in the \$350,000 to \$450,000 range. I am not sure how they are defining "top 50 charities", but there is no way that is an accurate statement. Just think of all the colleges, universities, hospitals that compensate their top executives far in excess of those amounts.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization tax, legal and accounting services which YH Advisors provides.

FOCUS *on the* IRS TE/GE DIVISION

Updated Updates from IRS TE/GE

By virtue of Brian's continuing participation of the TE/GE Pacific Coast Council, Brian was again recently part of a quarterly conference call with Tammy Ripperda of the Internal Revenue Service. Tammy is the Director of the Exempt Organization division of TE/GE. During the call, Tammy provided updates on the following EO matters:

- ▶ The introduction of the Form 1023-EZ has been quite successful from the Internal Revenue Service's perspective; Tammy noted that "customer" satisfaction with the federal Tax Exemption Application process improved from 44% to 77% after the introduction of the Form 1023-EZ by the Internal Revenue Service. Additionally, the Internal Revenue Service's determination backlog has been significantly reduced; to wit, the average time to process a Form 1023-EZ is now about 15 days and the average to process the full Form 1023 is now about 100 days.
- ▶ The realignment within TE/GE has essentially been completed, however, Tammy did note that further realignment recently took place within TE/GE; specifically, 30 agents were moved out of determinations and into examinations. Those transferees were in the Internal Revenue Service's El Monte (California), Sacramento and Baltimore offices. Accordingly, pretty much all determinations agents will be based in Cincinnati.
- ▶ The Internal Revenue Service's launch of their Knowledge Network (K-Nets) has been a success according to Tammy. To date, knowledge networks have been created for private foundations and hospitals and planned knowledge networks will soon be launched for §501(c)(3) exemption issues, non-§501(c)(3) exemption issues and the unrelated business income tax. Tammy relayed that each knowledge network will have approximately 14 core team members, Unfortunately, there are no plans as of yet to reinvigorate the IRS EO Textbooks.
- ▶ TE/GE is continuing to follow their recent examination strategy of undertaking strategic issue examinations of exempt organizations. Specifically, TE/GE is focused on undertaking examinations in the following five areas: (1) Exemption issues (private inurement, political activities); (2) Protection of assets (self-dealing, insider transactions, excess benefit transactions); (3) Tax Gap (employment taxes, unrelated business income tax); (4) international activities; (5) Emerging issues (§501(r), non-exempt charitable trusts).

Recently Issued EO Guidance

Within the past couple of months, there have been numerous examples of guidance issued by the Internal Revenue Service relevant to exempt organizations; please find following a summary of such:

Substantiation of Charitable Contributions – the Internal Revenue Service is now proposing new options for the substantiation of charitable contributions under Section 170 of the Internal Revenue Code. Specifically, the Internal Revenue Service is proposing an alternative whereby the recipient charity may elect to file a return with the IRS that includes certain required information as opposed to issuing the donor a charitable contribution acknowledgement. As proposed, the recipient charity's return must provide the charity's name and address, the donor's name and address, the donor's taxpayer identification number, the amount of cash and a description (but not necessarily the value) of any property other than cash contributed, whether the charity provided any goods or services in consideration for the contribution, and a description and good faith estimate of the value of any goods or services provided by the charity. These proposed regulations are not effective at this time, and will not become effective unless and until they are published in final form in the Federal Register.

Equivalency Determinations – regarding equivalency determinations in the private foundation world, final regulations were adopted which expand the class of "qualified tax practitioners" related to the class of individuals who can opine regarding whether a foreign charity meets the basic requirements of §501(c)(3) of the Internal Revenue Code. Additionally,

a private foundation can now only rely on an affidavit as the sole basis for making a good faith determination where "reasonable and appropriate under the facts and circumstances." Finally, the final regulations clarify that foreign counsel may assist in gathering information relevant to the equivalency determination and provide advice to a qualified tax practitioner providing an opinion to the grantor.

Jeopardizing Investments for Private Foundations – In IRS Notice 2015-62, the Internal Revenue Service is attempting to address the issue whether an investment made by a private foundation that furthers its charitable purposes, but is not a program-related investment because a significant purpose of the investment is the production of income or the appreciation of property, could be considered a jeopardizing investment under Section 4944 of the Internal Revenue Code.

As set forth in this Notice, when exercising ordinary business care and prudence in deciding whether to make an investment, foundation managers may consider all relevant facts and circumstances, including the relationship between a particular investment and the foundation's charitable purposes. Foundation managers are not required to select only investments that offer the highest rates of return, the lowest risks, or the greatest liquidity so long as the foundation managers exercise the requisite ordinary business care and prudence under the facts and circumstances prevailing at the time of the investment in making investment decisions that support, and do not jeopardize, the furtherance of the private foundation's charitable purposes.

Summary of Recent EO PLRs / TAMs

PLR 201538025 – applicant was denied recognition of tax-exemption as a result of being too commercial in nature; specifically, the organization was formed to support the development of medical devices through counseling/advising companies, however, they indicated there are no limitations placed on who may receive these services.

PLR 201535019 – IRS denied tax-exempt status to an applicant based on a finding that too much private benefit existed; specifically the IRS found too much commerciality in the conducting of the organization's consulting activities.

PLR 201534014 – IRS revoked the tax-exemption for a minister's organizations after a finding of private inurement. Specifically, the IRS found that the organization had paid many personal expenses for the President of the organization, including personal massages, gas for personal cars, personal meals and the leasing of a safe deposit box.

PLR 201533022 – IRS revoked the tax-exemption of a Christian Faith organization on the grounds that prohibited private inurement and private benefit existed; for example, there were payments of the President's personal expenses (clothing, jewelry, medical expenses, credit card expenses, car payments, loan payments, personal home expenses) which were approved by the organization's Board.

PLR 201530023 – IRS approved a foundation's program to award scholarships for students intending to pursue a career in theology; the IRS also approved a grant program to repay the loans of individuals who already had graduated from college or university and were pursuing a career in theology.

FOCUS *on the* IRS TE/GE DIVISION

Finally....Just One Extension for Exempt Organizations

It was a long time coming, but finally, the second Form 990 extension requirement has been eliminated and exempt organizations will only need to file for one automatic six-month filing extension (as opposed to two three-month extensions) to file their annual Form 990 with the Internal Revenue Service. However, this new law goes into effect for tax years starting on January 1, 2016 or thereafter, meaning that we still need to deal with the two annual Form 990 extensions for almost another two years. It is believed that the Form 8868 will continue to be utilized as the IRS extension form to be utilized by exempt organizations.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding recent IRS activities in the exempt organizations sector.

EXEMPT ORGANIZATIONS A TO Z

Conflict of Interest Policy

This will be a new and continuing feature of the **YH Exempt Org Advisor**, at least for the next 26 editions. Each quarter, we will define an exempt organization term, starting with A and moving all the way to Z. As we have now reached the letter C, it provides the opportunity to define what a conflict of interest policy from an Internal Revenue Service perspective.

Pursuant to the Glossary contained within the Form 990 Instructions, a conflict of interest policy is a policy that defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that can help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest. A conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, or manager, can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

Part VI, Line 12 of the Form 990 contains three lines addressing whether an exempt organization has implemented a conflict of interest policy. While not legally required, it is certainly a best practice for any exempt organization to have implemented a conflict of interest policy.

YH CASE STUDIES

Schedule B Special Rule

This past month, we were preparing the Form 990 for a charitable organization (new client) that had received over 200 donations of \$5,000 or more during the tax year ending December 31, 2014. The charitable organization (for various reasons) was against reporting all those contributors on their Schedule B. Accordingly, we informed our client regarding our ability to greatly reduce the number of contributors required to be reported on Schedule B by taking advantage of the Schedule B Special Rule.

The Schedule B Special Rule limits the reporting of contributors on Schedule B to those who contributed greater than 2% of the total contributions revenue received by the recipient charitable organization during the applicable tax year as opposed to the oftentimes significantly lower \$5,000 threshold. To qualify for the Schedule B Special Rule, a charitable organization must satisfy the §509(a)(1) public support test (which essentially requires that the organization receives a substantial part of its support from governmental units or from the general public).

Even organizations which are not technically §509(a)(1) public charities (such as hospitals and schools) can still qualify for the Schedule B Special Rule by completing Schedule A, Part II of their Form 990 to document the fact that they are publicly supported and "satisfy" the §509(a)(1) public support test.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding the preparing of the Form 990 core form or any of the Schedules.

YH QUICK TIPS

Charitable Contribution Acknowledgements

Please find following some quick tips regarding the preparation of charitable contribution acknowledgements by a charitable organization. Please see *supra* for a summary of the proposed regulations to provide an alternative to the issuing of a charitable contribution acknowledgement by the recipient charitable organization.

- ▶ Please see Section 170(f)(8) of the Internal Revenue Code; please also see IRS Publication 1771.
- ▶ A charitable contribution acknowledgement should not be issued by a recipient charity when they receive donated services or facilities from a donor.
- ▶ The recipient charitable organization is required to issue a charitable contribution acknowledgement whenever they receive a contribution of \$250 or more from a particular donor.
- ▶ Such charitable contribution acknowledgement needs to include a statement whether the donor received anything of value in exchange for their contribution, and if so, the recipient charitable organization needs to provide the donor with the value transferred to the donor in exchange for their contribution.
- ▶ In those situations where the donor does receive something back in value from the recipient charity (a quid pro quo transaction), the recipient charity is required to issue a charitable contribution acknowledgement to the donor anytime the donor makes a contribution of more than \$75 to the recipient charity.
- ▶ When the recipient charity receives a donated non-cash item from the donor, the recipient charity should NOT be reporting or estimating the value of such non-cash item on the charitable contribution acknowledgement which they provide to the donor; this is true even if the donor provides the value of the non-cash item to the charity at the time of the donation of such.
- ▶ The recipient charity needs to be familiar with the filing requirements of the Form 8282 when they receive donated non-cash items with a fair market value of more than \$5,000.

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YH PRESENTS

"So Now You Know..."

One of the common misperceptions that we continually encounter has to do with the silent and live auctions which are commonly conducted by many exempt organizations, particularly charitable organizations. In almost all cases a charitable auction (whether silent or live) is considered to be a sale or exchange transaction and not a gaming transaction or a programmatic activity.

The consequences of this classification of auctions are numerous:

1. The revenue generated from the conducting of an auction is generally not to be classified as gaming revenue.
2. The revenue generated from the conducting of an auction is generally not to be classified as program service revenue.
3. There is generally not a charitable contributions component of an auction, accordingly, charitable contribution acknowledgements should generally not be issued in regards to the conducting of an auction.
4. In some states, since an auction is considered to be a sale or exchange, the exempt organization undertaking the auction will need to remit sales tax to the state taxing authority.
5. Auctions, if regularly carried on by an exempt organization, could very well generate unrelated business income.

So now you know that a charitable auction (regardless of whether a live auction or a silent auction) is considered to be a sale or exchange transaction and treated consistently with such classification.

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THE EO ACCOUNTING SPOTLIGHT

Now What...

It may sound like a broken record, but all of us here at YH Advisors are firm believers that exempt organizations are businesses and should be operated as such. Both short and long term planning is necessary to ensure a long and successful existence of an exempt organization. Often, when turnover in key management or a significant change in a Board of Directors occurs, this is an opportunity for the new management team to step back and look at the financial and operational health of the exempt organization. If the organization is in poor financial health, where does management go from there, now what?

Examining the overall financial health of the exempt organization is the first step in both uncovering and rectifying the situation at hand. Expenses are typically the first area addressed by new management, simply because it is easiest to “control what you can control”. Just like a sole proprietor or small business owner, every penny going out the door should be analyzed to determine if and how it furthers the mission of the exempt organization. Once the bleeding of funds can be mitigated, new sources of revenue should be discussed and evaluated. The last component of reviewing the overall financial health of the organization would be to review the Statement of Financial Position (aka: the Balance Sheet) line by line. Assets should be questioned to determine if they have been fully and properly recorded. Liabilities reviewed to ensure complete amounts are included as well as not including any outdated or stale amounts.

The next step in this assessment process is to evaluate the strength of the exempt organization’s accounting infrastructure. This should include a thorough review of the Chart of Accounts, internal control framework, financial statement review process and personnel involved in the accounting operations. Understanding what needs to be done on a monthly, quarterly and annual basis is key in determining if the right skill sets have been assigned to the appropriate level and amount of work.

Asking the difficult questions and appraising the rationale behind various processes and procedures from an operational standpoint is just as important as reviewing the financial health of a bleeding exempt organization. It is crucial for the management team to have a strategic plan in place for where they see the organization in the short and long term. Each program that is supported should be questioned to ascertain whether it furthers the mission of the organization and what value it provides to the community being served. This will allow management to ensure that resources are not spread too thin in areas that aren’t the key focus of the organization, at least until adequate resources are retained to further additional programs and operations.

Treating an exempt organization like a business will give the management team the best possible view for evaluating key business cycles. Looking at every penny going out the door as if it were their own personal funds will give the right perspective for protecting the public assets of the exempt organization. Taking the time and making the effort to question and challenge current or past decisions will allow management to move forward with an exempt organization they can proudly put their name behind for many years to come.

Please do not hesitate to contact Stacey Bergman at (310) 982-2805 or sbergman@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization accounting services which YH Advisors provides.

YH’S PRACTICAL EO GUIDANCE

Budgeting

In the Summer 2015 edition of the YH EO Advisor, we discussed common budgeting myths for exempt organizations. As most calendar year-end exempt organizations are gearing up now to prepare their next annual budget or review their current mid-year fiscal budget, it only seemed practical to continue this conversation. Accordingly, please find below a brief listing of budgeting quick tips:

- To start, have management determine the current financial “state” of the exempt organization. Meaning, are the operations gearing up to grow significantly? Are programs changing or being realigned? Is a capital campaign or search for major gift(s) on the horizon? This will lead the financial management team to determine whether a surplus, deficit or break-even budget is desired.
- Run the current year actual financial data and annualize it to get an idea of where the current fiscal year will “land”.
- List out all assumptions or known changes to operations or programs that will affect the year being reviewed.
- Using historical financial data and the recognized assumptions for future periods, begin outlining the budget for the year.
- Along the way, be sure to document the methodology and thoughts behind various assumptions and inputs. This will greatly increase the efficiency of budget to actual analysis as well as future year budgeting processes.

Taking this into account should help to ease the stress of the budgeting process. Always keep in mind that an exempt organization’s budget is a management tool, a marketing tool and a significant component of the organization’s internal control framework when used properly.

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CALIFORNIA CORNER

The Welfare Exemption

In order to qualify for the California property tax Welfare Exemption, the property owned by a charitable organization must be irrevocably dedicated exclusively to one or more charitable purposes, and upon the dissolution of the charitable organization, the property must not inure to the benefit of any private person. In order to satisfy these requirements, the Articles of Incorporation of the charitable organization must contain both an irrevocable dedication clause and a dissolution clause.

Regarding the requisite dedication clause, property is deemed to be irrevocably dedicated exclusively to charitable purposes if the organization's Articles of Incorporation contains a statement that irrevocably dedicates its property exclusively to one or more charitable purposes. Regarding the requisite dissolution clause, the organization's Articles of Incorporation must contain a dissolution clause, which specifically states that its property will be distributed to another charitable organization upon its liquidation, dissolution, or abandonment.

Please see Rule 143 of the California Board of Equalization Property Tax Rules for more details regarding these requirements.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding California laws and regulations applicable to exempt organizations operating within California.

YH RESOURCES, NEWS & UPDATES

The YH EO Resource Alert

As a regular feature of the **YH Exempt Org Advisor**, we continue to highlight different exempt organization resources free of charge in the public domain. This quarter we are highlighting the recent correspondence issued by TE/GE titled "TE/GE Priorities for FY 2016". While not as detailed and specific as the correspondence previously issued by TE/GE in the past, the 2016 version is a significant improvement over the Program Letter issued by TE/GE for 2015.

The TE/GE Priorities for FY 2016 can be accessed here:
www.irs.gov/pub/irs-tege/TEGE_Priorities_for_FY2016.pdf

Upcoming Presentations

Please find following a listing of the presentations which YH Advisors has presented, or will present, during the November 2015 – February 2016 time period. Please do not hesitate to contact us for more information if you have interest in receiving the presentation materials or attending any of the upcoming presentations.

Nov 3, 2015
Form 990 + UBI + Private Foundations (CalCPA)
Santa Barbara, CA

Nov 12, 2015
Avoid the Ire of the IRS + State AG (Philanthropy Summit)
Lodi, CA

Dec 1, 2015
Form 990 Updates (Mississippi NFP Conference)
Jackson, MS

Dec 1, 2015
Reasonable Comp (Mississippi NFP Conference)
Jackson, MS

Feb. 3, 2016
IRS Hot Buttons for Associations (Nat'l Asso'n Bar Execs)
San Diego, CA

Upcoming YH Webinars

YH Advisors will continue to periodically conduct (about 8 times per year) 100-200 minute interactive technical webinars focusing on the tax, legal and accounting issues most relevant to exempt organizations. Please find following our upcoming YH Webinar schedule (please be aware that this is of course subject to change):

December 2015
Public Support Test Made Easy

January 2016
Ratios + Benchmarking

March 2016
Reporting of Contributions Revenue

April 2016
2016 EO Update

June 2016
Private Foundations

YH RESOURCES, NEWS & UPDATES

YH Webinar Recordings Available to Purchase


To date, we have conducted 22 different exempt organization webinars. We record each of the webinars which we conduct and we are now making each of our webinar recordings available for purchase. Please find following a listing of each of the different webinar recordings which we have available for purchase:

#	Webinar Title	Date Conducted	Duration (Minutes)	Recording Cost
1	The Essential Documents for any Exempt Organization	03/08/12	60	\$99
2	Charity Fundraising Special Events: A Case Study Approach	05/08/12	100	\$179
3	2011 Form 990 Update: What's New, What's Not & What's Hidden	07/19/12	100	\$179
4	The Hottest "Hot Button" Issues in EO Compensation	10/04/12	100	\$179
5	The Most Perilous Traps & Pitfalls for Private Foundations	12/18/12	100	\$179
6	Ask the EO Experts	02/12/13	60	\$99
7	2012 Form 990 Update	05/08/13	100	\$179
8	Tips and Tricks to Avoid the Unrelated Business Income Tax	12/10/13	100	\$179
9	Demystifying the Public Support Test	01/22/14	100	\$179
10	Dirty Dozen Transgressions of Private Foundations	02/27/14	100	\$179
11	EO Tax/Legal Update: The Good, Bad & Ugly	05/06/14	100	\$179
12	Guided Tour of the Form 990 Core Form	07/08/14	200	\$249
13	Form 990: The Schedules	07/15/14	200	\$249
14	Form 990-PF Primer	07/22/14	200	\$249
15	Private Foundation Excise Taxes	07/29/14	200	\$249
16	A Case Study Approach to the Unrelated Business Income Tax	10/01/14	100	\$179
17	Avoiding Trouble when Conducting Charitable Gaming Activities	12/09/14	100	\$179
18	Best Practice Tips for Exempt Organizations re Internal Controls	01/20/15	100	\$179
19	2015 Exempt Org Update (Form 990 + A Whole Lot More)	04/29/15	100	\$179
20	Revealing the Hidden Elements of the Form 990 + EO Financials	06/14/15	100	\$179
21	Functional Expense Allocations + Joint Costs	08/13/15	100	\$179
22	The Unrelated Business Income Tax from an Internal Controls Perspective	10/28/15	100	\$179

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Next Issue of the YH Exempt Org Advisor

The Winter 2016 edition of the **YH Exempt Org Advisor** will be published in the late January time frame before we ramp up for the May 15 information return filing deadline.

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