

# 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 Co-Founders, Brian Yacker and Lauren Haverlock, 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

### Clinton Foundation Admits Filing Erroneous Forms 990

According to the New York Times, Washington Post and Reuters, the Clinton Foundation (founded by Bill and Hilary Clinton) had admitted to erroneously filing at least five prior years' Forms 990 with the Internal Revenue Service and is now amending those erroneous information returns. Reuters identified the primary reporting errors are being related to the significant under-reporting or the over-reporting of donations received from foreign governments when reporting their contributions revenue on Part VIII and Schedule B of the Form 990. Specifically, for three consecutive years, starting in the 2010 tax year, the Clinton Foundation reported on their annual Form 990 it received no

contributions of funds from foreign and United States governmental entities, notwithstanding the fact that the Clinton Foundation actually received contributions of tens of millions of dollars from foreign governmental entities during such three-year period.

If you are interested in reviewing the most recently posted Form 990 (2013) for the Clinton Foundation on GuideStar, please know that the official legal name of the Foundation is "The William J Clinton Foundation" although the name reported in Box C of the Form 990 Heading is the "Bill, Hillary & Chelsea Clinton Foundation".

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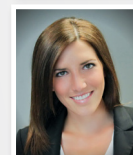
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## RIPPED FROM *the* EO HEADLINES

### Is the National Rifle Association Too Political?

According to a recent exposé published by Yahoo News, it is alleged that the National Rifle Association may have illegally solicited contributions for its Political Victory Fund by not informing donors to the National Rifle Association that their contributions could be used to further the National Rifle Association's political activities. The National Rifle Association is recognized as being tax-exempt under §501(c)(4) of the Internal Revenue Code.

Unlike a §501(c)(3) exempt organization, a §501(c)(4) organization may undertake a limited amount of political activities if such does not constitute their primary purpose. Regardless of whether the §501(c)(4) organization's primary purposes are not to undertake political activities, they are still legally required to disclose to potential donors when soliciting contributions for political purposes. Under federal election law, organizations like the National Rifle Association which have created related ("connected") political action committees must inform potential donors if their political action committee is the intended beneficiary of a solicitation. Additionally, it is alleged that the National Rifle Association illegally solicited donations for their political action committee from the general public.

The most recent Form 990 for the National Rifle Association of America posted on GuideStar is for the tax year ending December 31, 2013. During a quick review of such, two issues immediately jumped out at me, first, the seemingly high compensation for some executives and second, the absence of Schedule C. Finally, the amounts retained by one of the professional fundraisers utilized by the National Rifle Association also jumped out at me on Schedule G, Part I.

### FBI Investigating Defunct Minnesota Charity

It was recently reported in the Minneapolis Star Tribune that the Federal Bureau of Investigations and the Internal Revenue Service are looking into alleged misspending at Community Action of Minneapolis, a now defunct charitable organization that had operated within Minnesota. When operational, Community Action of Minneapolis provided heating assistance and weatherization to low-income residents before a raid shut down the organization in September in 2014. Such raid was precipitated by a Star Tribune report on a state audit that found more than \$800,000 in questionable spending at Community Action of Minneapolis. It was alleged that the organization was spending an increasing share of state aid on soaring administrative costs and less on serving the needs of low-income residents.

More recent allegations regarding senior management of Community Action of Minneapolis using the organization's money for personal medical bills and to pay personal expenses of their friends sparked the investigations by the FBI and IRS. The new inquiry found that close friends of senior management were getting paid as contractors without giving proof they completed any work.

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## FOCUS *on the* IRS TE/GE DIVISION

### EO Nuggets from the 2014 Internal Revenue Service Data Book

Please find following statistics and other information recently made public by the Internal Revenue Service upon their release of the annual IRS Data Book:

- As of December 31, 2014, the Internal Revenue Service has record of there being 1,568,454 exempt organizations in the United States.
- During 2014, the Internal Revenue Service closed 117,538 Tax Exemption Applications.
- During 2014, the Internal Revenue Service approved the Tax Exemption Applications of 110,656 organizations.
- During 2013, the Internal Revenue Service approved 44,274 Tax Exemption Applications.
- During 2014, the Internal Revenue Service denied 89 Tax Exemption Applications and 6,793 Tax Exemption Applications were withdrawn by the applicant.
- During 2014, TE/GE provided technical advice in 23 cases and technical assistance in 10 cases.

# FOCUS *on the* IRS TE/GE DIVISION

## Form 1023-EZ Progress Update

As addressed in previous editions of the **YH Exempt Org Advisor**, on July 1, 2014, the Internal Revenue Service introduced a streamlined Tax Exemption Application, the Form 1023-EZ. As a result of this introduction, TE/GE was able to reduce their inventory of open Tax Exemption Applications from more than 270 days old by 91%; from 54,564 in April 2014 to 4,791 in September 2014. By December 26, 2014, TE/GE received 20,103 Forms 1023-EZ, about 49% of the aggregate Forms 1023 and Forms 1023-EZ filed during that same time period. On average, the Internal Revenue Service reported that it now takes them less than 30 days to process a Form 1023-EZ. Based upon our own experiences, we find that a Form 1023-EZ takes about 2-3 weeks for the Internal Revenue Service to review and a full Form 1023 without follow-up issues, about 2-3 months.

As they had proposed, TE/GE has been selecting a statistically valid random sample of 6% of Forms 1023-EZ for what they refer to as a “predetermination review”. From July 1, 2014 (the first day that the Form 1023-EZ was available) through December 26, 2014, 521 Forms 1023-EZ were selected by the Internal Revenue Service for this predetermination review.

TE/GE will continue to monitor the filings and use of the Form 1023-EZ; specifically they will implement a post-determination compliance program in early 2016 by conducting correspondence examinations of a random sample of organizations that obtained exempt status through filing a Form 1023-EZ. These examinations will allow the IRS to determine the compliance of newly exempt small organizations after they have been in operation for a year or more.

## Summary of Recent EO PLRs / TAMs

**PLR 201514013** – the Internal Revenue Service denied recognition of tax-exempt status to an applicant deemed to be undertaking services too commercial to be exempt purpose activities. Specifically, the applicant proposed to equip small businesses, entrepreneurs and not-for-profit organizations with capacity-building strategies for growth, effectiveness, and sustainability by providing resources including software tools, articles, tutorials and online instruction, access to information such as consultations, written communications, funding and networking.

**PLR 201510059** – the Internal Revenue Service ruled that an organization formed to research, manufacture, and sell pharmaceutical products to the public did not qualify as tax-exempt since about half of its activities was related to manufacturing and sales (organization sold its products at market prices; operating in manner similar to private commercial entities).

**PLR 201501016** – the Internal Revenue Service approved a private foundation’s set-aside of funds under the suitability test of Reg. §53.4942(a)-3(b)(2). Approval of a private foundation’s set-aside allows the private foundation to claim a qualifying distribution in a year prior to the year when they actually charitably distribute the funds.

**PLR 201452020** – the Internal Revenue Service ruled that an applicant was not tax-exempt because it primarily ran a travel web site, which was not substantially related to any exempt purpose (the organization sold travel services for a fee set by a for profit company).

**PLR 201442061** – the Internal Revenue Service ruled that a private foundation’s posting of pledged securities was considered to be a program-related investment pursuant to §4944(c) of the Internal Revenue Code and not a jeopardizing investment pursuant to §4944(a) of the Internal Revenue Code.

**PLR 201435017** – the Internal Revenue Service ruled that an exempt organization’s ownership of a single-member LLC that owned a land and building would not generate unrelated business income because the of the rental income exclusion set forth in §512(b)(3) of the Internal Revenue Code.

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# EXEMPT ORGANIZATIONS A to Z

## (Applicable Tax-Exempt Organization)

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.

It is important to understand the definition of an applicable tax-exempt organization in order to accurately determine whether an excess benefit transaction has occurred under §4958 of the Internal Revenue Code. An excess benefit transaction is any transaction with an applicable tax-exempt organization in which an excess benefit is provided by the organization, directly or indirectly to, or for the use of, any disqualified person. An applicable tax-exempt organization is a section 501(c)(3), 501(c)(4), or 501(c)(29) organization tax-exempt under section 501(a), or that was such an organization during the 5-year period ending on the day of the excess benefit transaction.

That being said, charitable organizations (§501(c)(3)) and social welfare organizations (§501(c)(4)) need to be keenly aware of the excess benefit transaction provisions set forth in §4958 of the Internal Revenue Code. It follows that all other types of exempt organizations (save for 501(c)(29) organizations) do not fall under the excess benefit transaction provisions of §4958.

# YH CASE STUDIES

## Reasonable Compensation Study for a Private Foundation

Within the past six months, we have been engaged to conduct a Reasonable Compensation Study for a good number of our private foundation clients. In each of these instances, it was essential that an outsider (here, YH Advisors) be engaged to conduct the Reasonable Compensation Study since all of the Board members for the private foundation were being compensated (a typical situation for family foundations), and hence, there was no one disinterested in order to conduct the requisite reasonable compensation analysis on their own.

Accordingly, we were engaged, in effect, to step in for the Board of the private foundation to undertake the necessary reasonable compensation analysis to satisfy the Internal Revenue Service's rebuttable presumption of reasonableness set forth in the §4958 Regulations. The preparation of a Reasonable Compensation Study is how we conduct the necessary reasonable compensation analysis. In the preparing of a Reasonable Compensation Study for a private foundation, particularly a family foundation, we accessed our ever-growing database of private foundation disqualified person compensation amounts to identify similarly situated private foundations to the one whom we were preparing the Reasonable Compensation Study for. After selecting the similarly situated private foundations, we summarized the applicable disqualified person compensation amounts and prepared the relevant compensation ranges for the disqualified persons of our private foundation client. The final step in the process was the preparing of our reasonableness conclusion and the presenting of such to the Board of the private foundation.

*Please do not hesitate to contact Brian Yacker at 310-982-2803 or at [byacker@yhadvisors.com](mailto:byacker@yhadvisors.com) if you have any questions regarding the conducting of Reasonable Compensation Studies.*

# YH QUICK TIPS

## Obtaining an Employer Identification Number

Upon formation, usually immediately after an organization's Articles of Incorporation have been certified, such organization will need to obtain an Employer Identification Number from the Internal Revenue Service. Previously, the organization would have needed to have filed a Form SS-4 with the Internal Revenue Service to obtain such. However, within the past seven years, organizations can obtain their Employer Identification Number electronically from the Internal Revenue Service in a matter of minutes.

That being said, please find following the information needed for an organization to obtain its Employer Identification Number electronically from the Internal Revenue Service by accessing [this link](#) :

- Exact legal name of the organization
- Tax year end for the organization
- When the organization began operating
- Responsible person for the organization
- Whether the organization will have any employees or not

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## YH PRESENTS

### “So Now You Know...”

Throughout the Internal Revenue Code, there are numerous provisions where the definition of a “related person” is applicable; in the majority of those provisions a “related person” includes a sibling. However, in §4946 of the Internal Revenue Code (which defines a “disqualified person” for purposes of the private foundation self-dealing rules), a sibling is NOT deemed to be a related person. The inconsistency between §4946 and other Internal Revenue Code provisions (for example, Reg. §53.4958-3(b)(1)) has never been adequately explained, nevertheless, it is important to be cognizant of the family relationships considered a related person for private foundation disqualified person purposes.

In the recently issued PLR 201510050, the Internal Revenue Service ruled in favor of a private foundation not conducting a self-dealing transaction primarily because a sibling of a disqualified person was not considered to be a related person.

So now you know that for purposes of identifying a disqualified person of a private foundation, a related person is not considered to be a sibling of a disqualified person.

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## THE EO ACCOUNTING SPOTLIGHT

### NEW Federal Audit Requirements

On December 26, 2013, the White House Office of Management and Budget (“OMB”) released the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”). The Uniform Guidance streamlines and supersedes guidance previously contained in eight different OMB Circulars, including A-110, A-21, and A-133. White House OMB intentions were to increase accountability and transparency while reducing the administrative burden on the recipients of Federal funds. The new guidance comprises definitions, uniform administrative requirements (both pre- and post-award), cost principles, and audit requirements. Due to the sheer volume of OMB Circulars included in this new “Super Circular”, many exempt organizations have been left wondering what exactly applies to their specific organization.

First off, application of the Uniform Guidance administrative requirements and cost principles will apply to new funding awarded on or after December 26, 2014. Existing Federal awards will continue to be governed by the terms and conditions under which they were awarded, and carryover funds may be subject to the Uniform Guidance, however, that will depend on which Federal agency awarded the funds. Subpart F, Audit Requirements (previously OMB Circular A-133), applies to audits of non-Federal exempt organizations with fiscal years beginning on or after December 26, 2014. For calendar year exempt organizations, that would be 2015.

Some of the most significant changes in the guidance affect the charging of costs as allowable direct program costs, policies that exempt organizations must have in place, cost sharing guidelines, sub-recipient monitoring, prior approval and disclosures, procurement, internal controls and financial management and reporting requirements.

However, we feel that one of the most notable changes that came with the Uniform Guidance relates to Single Audit requirements. Previously, under OMB Circular A-133, non-federal exempt organizations expending more than \$500,000 of federal awards in a year were required to undertake a Single Audit besides a standard financial statement audit. A Single Audit is far more in-depth than a “regular” audit and requires auditors to test not only financial balances, but also compliance with specific Federal award literature, as well as testing and reporting on the effectiveness of internal controls. Under the Uniform Guidance, the Single Audit threshold has been increased to \$750,000 per fiscal year.

The key take away here: an exempt organization receiving Federal monies, either directly from a Federal agency or as a subrecipient from a state or local agency should ensure that they make themselves familiar with the Uniform Guidance and Subpart F audit requirements.

#### Additional Resources:

- A full cross reference of previous guidance to the Uniform Guidance can be found [here](#).
- A comparison of audit requirements under OMB Circular A-133 and the Uniform Guidance can be found [here](#).

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# YH'S PRACTICAL EO GUIDANCE

## Document Retention & Destruction Policies

As a best practice, it is recommended that all exempt organizations implement a written Document Retention & Destruction Policy and adhere to such Policy's guidelines. This Policy should outline how essential documents are retained, protected and eligible for destruction. Documents should be stored in a protected environment for the duration of the document retention period outlined in the Policy. At the conclusion of the document retention period, documents should properly destroyed. This typically equates to shredding for paper documents and complete deletion for electronic documents.

The Board of Directors of an exempt organization should review and approve a proposed document retention schedule when implementing a new Policy. The rule of thumb for most financial documents is seven years, however, many items should be maintained in perpetuity.

Below find a summarized listing of documents that should be maintained for the life of the exempt organization:

- ▶ Corporate/formation documents (including Tax Exemption Applications and Determination Letters)
- ▶ Insurance records
- ▶ Loan/mortgage/lease contracts
- ▶ Payroll registers

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## CALIFORNIA CORNER

On May 1, 2015, the Ninth Circuit ruled in *Center For Competitive Politics v. Harris* that the California regulation requiring charitable organizations operating within California to file a complete Schedule B with their Form 990 submission was proper. For the past number of years in California, charitable organizations operating within California (excluding churches, schools and hospitals) were required by the California Attorney General to not redact Schedule B from their Form 990 submissions. The California Attorney General has often set forth that a charitable organization's Schedule B would not be made subject to public disclosure. Charitable organizations not compliant with this regulation often received Notices from the California Attorney General. This recent Ninth Circuit decision continues this requirement.

# 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 listing of Exempt Organization User Fees for 2015. This is unnecessarily hard to find on the Internal Revenue Service's web site, so however, we have included a link to such immediately below.

[www.irs.gov/irb/2015-1\\_IRB/ar14.html#d0e16949](http://www.irs.gov/irb/2015-1_IRB/ar14.html#d0e16949)

The Exempt Organization User Fees for 2015 can also be found in Section 6.09 of Rev. Proc. 2015-8.

## Upcoming Presentations

Please find following a listing of the presentations which YH Advisors has presented, or will present, during the June 2015 – August 2015 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.

**June 3, 2015**  
**Form 990 Challenges (Strafford)**  
Webinar

**June 4, 2015**  
**Form 990 Essentials**  
**(CA Board of Equalization)**  
La Jolla, CA

**July 14, 2015**  
**Guided Tour of the Form 990**  
**(Onsite CPA Firm)**  
Richmond, VA

**July 23, 2015**  
**Nonprofit Accounting Made Easy**  
**(HI CPA Society)**  
Honolulu, HI

**July 24, 2015**  
**Form 990 Made Easy (HI CPA Society)**  
Honolulu, HI

**July 30, 2015**  
**The Hidden Form 990**  
**(CA State Bar Association)**  
Webinar

**Aug 20, 2015**  
**Advanced Private Foundation Issues**  
**(Strafford)**  
Webinar

## 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):

**June 2015**  
**Revealing the Hidden Form 990 + EO Financials**

**August 2015**  
**Functional Expenses**

**October 2015**  
**UBI from an Internal Controls Perspective**

**December 2015**  
**Reporting of Contributions Revenue**

**January 2016**  
**Ratios + Benchmarking**

**March 2016**  
**Public Support Test Revisited**


**April 2016**  
**2016 EO Update**

**June 2016**  
**Private Foundations**

## Where to Find YH Advisors in the Social Media World

 @YHAdvisors

 YHAdvisors

 Please connect with Brian Yacker, Lauren Haverlock and Stacey Bergman

## Recordings to Purchase

To date, we have conducted 19 different exempt organization webinars. We record each of the webinars which we conduct and we are now in the process of making each of our webinar recordings available for purchase. Please find following a listing of each of the different webinar recordings which we will make available for purchase:

1. Essential EO Governance Documents
2. Reporting of Special Events
3. Form 990 Update (2012)
4. Reasonable Compensation
5. Private Foundation Pitfalls
6. Ask the Experts
7. Form 990 Update (2013)
8. Unrelated Business Income
9. Public Support
10. Private Foundations Dirty Dozen
11. EO Tax Update (2014)
12. Form 990 Core Form
13. Form 990 Schedules
14. Form 990-PF
15. Private Foundation Excise Taxes
16. Unrelated Business Income Case Studies
17. Charitable Gaming Events
18. Internal Controls
19. EO Tax Update (2015)

The duration of each of the above webinars is 100 minutes, other than webinar #1 (60 minutes) and webinars #12-#15 (200 minutes each).

Please inquire regarding the pricing and logistics if you are interested in purchasing any of the above webinar recordings (volume discounts are certainly available).

## Next Issue of the YH Exempt Org Advisor

The Summer 2015 edition of the **YH Exempt Org Advisor** will be published in the August 2015 time frame, probably after the relatively busy August 15, 2015 filing deadline for calendar year end exempt organizations on extension

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