

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

Big Easy Nonprofit Provides Saints/Pelicans Tickets to Executives

According to NOLA.com, a New Orleans nonprofit, Alternatives Living, provided over \$130,000 of tickets to Saints football games and Pelicans basketball games, Las Vegas trips,, Caribbean cruises and a Mercedes to their senior management as opposed to expending such amounts to further their exempt purposes of providing housing to people struggling with mental, physical and medical issues. Senior management (CEO / CFO / Director of Programs) for Alternatives Living, while admitting that some amounts were utilized for personal enjoyment, claims that the majority of the allegations were innocent mistakes which arose because of faulty internal policies.

In addition to the above, according to NOLA.com, Alternatives Living has incurred expenses of almost \$250,000 for which there was little to no documentation regarding the charitable purpose of such expenditures. For example, there were over \$150,000 of checks simply made out to "Cash" with no corresponding documentation regarding the charitable purpose of such expenditures.

Allegations Made re Minnesota Thrift Store Chain

Pursuant to the Star Tribune in Minneapolis, the Minnesota Attorney General has sued Savers, a secondhand retailer operating in Minnesota, alleging that Savers has been seriously misleading the public about how much of the proceeds from donated clothing and furniture it receives and then sells at their thrift stores actually go to further charitable purposes. The Minnesota Attorney General alleges that only a small fraction of the profits which Savers recognizes from selling used clothes in its stores ultimately ends up at the charities which they purport to help support (for example, the Epilepsy Foundation of Minnesota and the Vietnam Veterans of America). For example, it is alleged that Savers typically pays about 40 cents per pound for donated clothing, which works out to pennies for a shirt that Savers might sell for \$6 (the great majority of which is retained by Savers).

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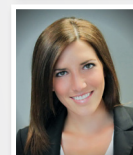
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RIPPED FROM *the EO* HEADLINES

Court Finds New Jersey Exempt Hospital Operated as a For-Profit

According to the Wall Street Journal, in early July, a court ruled that a New Jersey hospital (Morristown Medical Center) essentially was being operated as a for-profit business as opposed to as a tax-exempt hospital, and as such, should not be able to take advantage of property tax exemptions provided by the state of New Jersey to charitable organizations. The Court noted that the hospital of almost 700 beds operated far more like a for-profit hospital in that they provided substantial loans, capital and subsidies to for-profit entities (including physician groups) and “marketed” themselves similar to a for-profit enterprise.

The Wall Street Journal noted that similar situations have been addressed in both Pennsylvania (University of Pittsburgh Medical Center) and Illinois (Provena Covenant Medical Center) where the property tax exemptions of those two hospitals have been challenged as a result of alleged deficiencies in the providing of enough charity care or community benefits.

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

IRS TE/GE Council (Pacific Coast)

By virtue of Brian's participation of the TE/GE Pacific Coast Council, Brian was part of a quarterly conference call with Tammy Ripperda of the Internal Revenue Service. Tammy is the head of the Exempt Organizations division of TE/GE. As usual, Tammy was quite engaging and open, providing updates on the following EO matters:

- ▶ Two new members were recently added to the Advisory Committee to TE/GE (“ACT”).
- ▶ The importance of ensuring that extraneous information (such as Social Security Numbers) does not get reported on the Form 990 or Form 1023; because once it is, the Internal Revenue Service must undertake a burdensome manual process to remove such if they happen to identify the extraneous information.
- ▶ TE/GE has completed their realignment regarding the transferring of their tax lawyers into the Office of Chief Counsel.
- ▶ TE/GE is in the process of a soft launch of a couple of knowledge networks (for example, private foundations) which will help improve the technical capability of Internal Revenue Service staffers.
- ▶ TE/GE has changed their examination focus from one of being a projects approach to a targeted issue approach; this represents a shift to more issue-focused compliance by the Internal Revenue Service; for example, issues that the IRS will focus upon are unrelated business income, employment taxes, foreign reporting, etc.
- ▶ As of March 31, 2015, the Internal Revenue Service had received approximately 31,500 Forms 1023-EZ and closed approximately 30,600 of those; of those closed, approximately 95% were approved; of those not approved by the Internal Revenue Service, the primary reason for rejection was because of an inability of the applicant to satisfy the applicable reinstatement requirements.

Internal Revenue Service Issues Rev. Proc. 2015-46

Within the past couple of years, the reporting, disclosure and other requirements imposed on tax-exempt hospitals has increased markedly. One example of this is the requirement that a hospital include a provider list in its financial assistance policy. Rev. Proc. 2015-46 provides guidance and clarifies how a charitable hospital may comply with the requirements set forth in Reg. §1.501(r)-4(b)(1)(iii)(F) that a hospital include a provider list in its financial assistance policy. The list must include any providers, other than the hospital itself, delivering emergency or other medically necessary care in the hospital and specify which providers are and are not covered by the hospital's financial assistance policy.

Summary of Recent EO PLRs / TAMs

PLR 201526021 – the Internal Revenue Service denied tax-exemption for an applicant who planned to construct and maintain a private road; the basis for this ruling was that a broad enough charitable class would not be served and benefitted by the applicant.

PLR 201526020 – the Internal Revenue Service denied tax-exemption for an applicant because the proposed activities of the applicant were deemed to be too commercial in nature. In this particular instance, the applicant proposed to publish books and DVDs and manufacture ceramic items for sale to the general public.

PLR 201523021 – the Internal Revenue Service denied tax-exemption for an applicant who planned to limit invitations to a speaking event to candidates of only one political party. Please see Rev. Rul. 2007-41 for further guidance from the Internal Revenue Service regarding the permissible political activities which can be conducted by a charitable organization.

PLR 201519035 – yet another ruling made by the Internal Revenue Service that an organization operating a fund set-up by a sick child's parents to solicit deductible contributions was not considered to be tax-exempt because of the lack of a broad enough charitable class. Please see *Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner (T.C. Memo. 1986-348)* where the Tax Court held that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption since approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim.

PLR 201519034 – the Internal Revenue Service denied recognition of tax-exemption for an applicant which anticipated providing foreclosure counseling to individuals; the Internal Revenue Service based their ruling upon their determination that the applicant was not planning to operate exclusively for one or more exempt purposes since the Internal Revenue Service believed that the applicant's planned counseling services were not educational in nature.

PLR 201514015 – a private foundation lost its tax-exemption when the Internal Revenue Service determined that its scholarship program had not been properly approved by the Internal Revenue Service as is required pursuant to §4945 of the Internal Revenue Code.

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

Better Business Bureau Case

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 B, it provides the opportunity to look at a 70-year old case which is one of the foundational court decisions in the exempt organization world.

In *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the Supreme Court of the United States stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Internal Revenue Code regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit and operations that further nonprofit goals outside the scope of section 501(c)(3) of the Internal Revenue Code.

YH CASE STUDIES

Loans to Insiders

Within the past couple of months, we have been approached by three separate exempt organization clients who desired to make a loan to an insider of the organization. Loans made by an exempt organization (excluding private foundations) to an insider of the organization (Board of Directors | Officers | Key Employees | Related Insiders | Former Insiders), while permissible, are generally not recommended. This is because such loans are highly susceptible to creating prohibited private inurement.

Accordingly, we advised each of the three organizations to undertake the following in order to mitigate a potential finding of private inurement related to the loans which they were making to insiders of the organization:

- Ensure that a written promissory note was prepared before the loan was effectuated.
- Charge the insider a rate of interest that, at a minimum, was equal to the prevailing AFR for the month in which the loan was made.
- Calculate the appropriate gross-up amount if the exempt organization was to forgive any principal amounts on the loan and not want the insider to be liable for the increase tax obligation related to such.
- Ensure that the Board of Directors for the organization (excluding the insider whom the loan was being made to) explicitly voted to approve or disapprove of the insider loan before such was effectuated.
- Ensure that the Board of Directors documented their reasons for approving the insider loan before the loan was made to the insider.
- Follow-Up with the insider in a timely fashion if they are delinquent in making any interest or principal payments.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding insider transactions conducted by an exempt organization.

YH QUICK TIPS

Form 990 Preparation Sequencing

By virtue of the hundreds of Forms 990 which we annually prepare, we have developed the following sequencing guide to optimally and most effectively prepare the Form 990 since we have found that preparing the Form 990 in the order of which it is presented (Part I, then Part II, then Part III, etc.) is neither effective nor efficient.

1. Heading
2. Part I, Line 1 / Line 6
3. Part III, Line 1
4. Part II – paid preparer information
5. Part XII, Line 1 - method of accounting
6. Part VII, Line 1a - listing of Insiders (voting Board members, Officers, key employees, highly-compensated employees, formers) of the filing exempt organization
7. Schedule R – reporting of all organizations, whether exempt or not, related to the filing organization
8. Schedule L – reporting of insider transactions
9. Part VI – governance + public disclosure
10. Remainder of Part VII – insider compensation
11. Schedule J (if applicable)
12. Part V – information reporting
13. Part VIII – statement of revenue
14. Schedule G, Part II / Part III
15. Schedule A – public support test
16. Schedule B – schedule of contributors
17. Schedule M – non-cash contributions (if applicable)
18. Part IX – statement of functional expenses
19. Schedule C – lobbying + political (if applicable)
20. Schedule G, Part I – professional fundraisers
21. Schedule I – domestic grants (if applicable)
22. Remainder of Part III – program service activities
23. Part X – Balance Sheet
24. Schedule D
25. Part XI – Reconciliation of Net Assets
26. Remainder of Part XII – Miscellaneous
27. Part IV – Schedules checklist
28. Other Schedules as applicable (Schedule E / F / H / K / N)
29. Schedule O

We know this sequencing does not look to be overly efficient, however, based upon our vast experiences with the Form 990 preparation, this ordering is certainly our preferred manner to prepare the Form 990. This ordering is admittedly quite different than what is set forth in the Form 990 Instructions (see General Instruction C of such), however, we are confident in what we set forth above since we certainly prepare far more Forms 990 than the Internal Revenue Service does !!!!

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 compliance services which YH Advisors provides.

YH PRESENTS

“So Now You Know...”

We continually are asked how a small exempt organization (one with annual gross receipts under \$50,000) can file a Form 990-N with the Internal Revenue Service when such organization is not yet on the Internal Revenue Service’s radar screen. This can occur in those situations when a §501(c)(3) organization has just been formed, however, the organization has not yet received their Determination Letter from the Internal Revenue Service. It is essential that the organization under these circumstances file the Form 990-N with the Internal Revenue Service because they do not want to end up in a situation whereby their tax-exemption is revoked by the Internal Revenue Service for failing to file anything with the IRS for three consecutive years.

Accordingly, to be able to file a Form 990-N with the Internal Revenue Service before receiving a Determination Letter from the Internal Revenue Service, a small charitable organization will need to call the Internal Revenue Service at 877-829-5500 and request that the IRS enter the organization into the IRS’s system so that the Form 990-N can be filed. For a noncharitable exempt organization wishing to file the Form 990-N, they do not need to go through this process since noncharitable exempt organizations are not required to file a Tax Exemption Application; these organizations can just go ahead and file the Form 990-N.

So now you know how to make sure a small exempt organization can file their annual Form 990-N with the Internal Revenue Service, even if such organization has yet to receive a Determination Letter from the Internal Revenue Service.

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THE EO ACCOUNTING SPOTLIGHT

FASB Update

In April of 2015, the FASB (“Financial Accounting Standards Board”) released their exposure draft illustrating the suggested refresh of the current financial reporting model for exempt organizations. The financial framework for exempt organizations was last overhauled about 20 years ago with the implementation of FAS 117. This new round of guidance is expected to improve exempt organization financial transparency in reporting as well as allowing organizations to better “tell their story”.

One of the most significant of the proposed changes, involves the reporting of net assets. Currently, exempt organizations report net assets in three categories: unrestricted, temporarily restricted and permanently restricted net assets. Such restrictions are based on donor requests but there is currently no guidance surrounding the disclosure or illustration of Board designated restrictions. The current exposure draft will change the FAS 117 framework and cut down the “buckets” from three to two. Net assets will be reported as either “With Donor Restriction” or “Without Donor Restriction” on the face of the Statements of Financial Position and Activities. Additional disclosure requirements will result in more detailed restriction descriptions, as well as the requisite disclosure of Board designated restrictions. The result of this is proposed to increase a financial statement reader’s understanding of an exempt organization’s true liquidity, i.e. what funds does the exempt organization currently have available to fund the fulfillment of its mission?

To further clarify the true liquidity of an exempt organization, the FASB has considered changing the terminology used on exempt organization financial statements to “spendable” or “non-spendable” (however elementary that may seem). One example of this clarification is the reporting of investment returns. As the exposure draft currently reads, an exempt organization would be able to net not only direct internal and external investment expenses,

but also an allocation of indirect internal expenses, such as the salary and benefits of an employee that spends time on the organization’s investment strategy.

The amendment that appears to be receiving the most support is the requirement to disclose an exempt organization’s cost allocation framework in the footnotes to their financial statements. The Statement of Functional Expenses is an area where there currently is very little transparency as to how funds are actually spent within an organization and, up until now, disclosure of the methodology involved in the allocation process was not required. Including these qualitative descriptions alongside the Statement of Functional Expenses will enhance the reliability and transparency of the Statement altogether.

The exposure draft will be open for public comment until August 20, 2015. The FASB will then proceed with various roundtable discussions and it is expected that we will see a revised draft of the proposed pronouncement before the end of the year. Implementation of such changes will likely be one to two years out from the finalized date of the pronouncement. We will of course keep you up to date on significant changes affecting the exempt organization financial statement project as they arise.

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

The EO Budgeting Myth

Creating and maintaining a fiscally responsible budget is something that many exempt organizations struggle with on an annual basis. Monitoring financial stability and tracking financial goals is a significant component in any business, possibly more significant for an exempt organization due to the public transparency and the fact that the exempt organization's funds are essentially owned by the general public. In the nonprofit world, we constantly hear about the mandatory (legal) requirement for a balanced budget since the entity is organized as a nonprofit. Yet, this is not only a myth, it can actually be quite harmful for an exempt organization to plan to breakeven (or worse) each year.

Board members, as well as members of an exempt organization's management team, are all too often under the false impression that they cannot generate profits and must spend everything earned (if not more) each year. The reality is that in order to sustain itself long-term, an exempt organization must earn a surplus at some point in its life cycle. Part of the issue we often come across is that executives have been trained to only adopt a balanced or breakeven budget. Oftentimes, projected revenues and expenses simply do not equal each other and forcing a breakeven budget results in "plugging" of figures that will not meet operational expectations. Instead of asking how to balance a budget, management should be asking the more important question of "what are our financial goals and needs this year". Once that has been ascertained, the "type" of budget that is right for an exempt organization will be evident.

No one likes to talk about a deficit budget, so let's start with a surplus budget. If management determines that cash balances or reserve accounts are lower than they desire, they can propose a surplus budget. This is common when an exempt organization wants to pay down debt or simply increase reserve balances. At the end of a surplus year, the exempt organization's net assets (net worth) should increase from the prior year and the organization will generally find itself in a stronger financial position.

Perceptionally, creating a deficit budget is a scary proposition. However, there are scenarios in which a deficit budget is practical for an exempt organization. For example, if management determines that the cash and reserve balances are more than sufficient and some of that money should be spent down. This is typically done by a one-time significant capital expenditure or perhaps paying bonuses to employees. A second reason for a deficit budget is the expansion or growth of programs or fundraising capacity. This is considered an investment in future operations of the exempt organization, but in the first year of this strategic change, expenses will generally exceed revenues, causing a deficit.

During years where growth is not expected, but program retrenchment isn't an option, a breakeven budget may be sufficient to just to keep operations running smoothly from one year to the next. During the budgeting process, the first draft typically involves expenditures exceeding revenues. Staff can be asked to set revenue goals and cut expenses wherever possible to squeeze out the gap.

Most important here is that the intention behind the budgeting process is crucial. An unplanned deficit indicates an error in planning and reflects poorly on management and the Board of Directors. It is safe to assume that the majority of small to mid-sized exempt organizations need and want to build a reserve fund; that may not always be possible. According, the exempt organization must settle for a breakeven budget when opportunities don't exist to increase revenues or further decrease expenses. But that is just it, settling for a breakeven budget, not aiming for it.

Please do not hesitate to contact Stacey Bergman at (310) 982-2805 or sbergman@yhadvors.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.

CALIFORNIA CORNER

Please find following a table referencing the corresponding provisions of the California Code in regards to the tax-exemptions permitted by the Internal Revenue Code:

Exempt Org Type	Federal	California
Title Holding	501(c)(2)	23701(h)
Charitable Organizations	501(c)(3)	23701(d)
Social Welfare	501(c)(4)	23701(f)
Labor Organizations	501(c)(5)	23701(a)
Business Leagues	501(c)(6)	23701(e)
Social Clubs	501(c)(7)	23701(g)
Fraternities	501(c)(8)	23701(b)
Cemeteries	501(c)(13)	23701(c)
Veterans	501(c)(19)	23701(w)
Political	527	23701(r)



YH RESOURCES, NEWS & UPDATES

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):

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

YH Webinar Recordings Available to Purchase

To date, we have conducted 20 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

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



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 report issued by the Advisory Committee on Tax Exempt and Government Entities:

www.irs.gov/pub/irs-tege/tege_act_rpt_14.pdf

While you certainly can pore through all 258 pages of this report in detail, our suggestion from an efficiency perspective is to just review each of the Executive Summaries contained therein.

Upcoming Presentations

Please find following a listing of the presentations which YH Advisors will present during the August 2015 – December 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.

Aug 11, 2015

**Budgeting for EOs
(CSUF Summer School)**

Fullerton, CA

Aug 11, 2015

Accounting 101 (CSUF Summer School)

Fullerton, CA

Aug 13, 2015

**Form 990 Basics
(CA Board of Equalization)**

Fullerton, CA

Aug 18, 2015

Form 990 Challenges (Clear Law)

Webinar

Aug 20, 2015

**Private Foundation Challenges
(Strafford)**

Webinar

Sept 25, 2015

IRS TE/GE Council (Pacific Coast)

Atlanta, GA

Oct 8, 2015

Bar Leaders Conference

Anaheim, CA

Oct 20, 2015

Form 990 Update (AICPA)

New Orleans, LA

Oct 21, 2015

Reporting of Online Fundraising (AICPA)

New Orleans, LA

Nov 3, 2015

Various Exempt Organization Topics

Santa Barbara, CA

Nov 12, 2015

Community 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

Where to Find YH Advisors in the Social Media World



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Please connect with Brian Yacker,
Lauren Haverlock and Stacey Bergman

Next Issue of the YH Exempt Org Advisor

The Fall 2015 edition of the **YH Exempt Org Advisor** will be published in the late October or early November 2015 time frame.

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