

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 Shareholders, Brian Yacker and Stacey Bergman, have cumulatively worked with exempt organizations for over 40 years.

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RIPPED FROM *the* EO HEADLINES

Much Ado About Nothing: The Johnson Amendment Executive Order

On May 4, 2017, the following Executive Order was signed by President Trump:

Executive Order Promoting Free Speech and Religious Liberty (May 4, 2017)

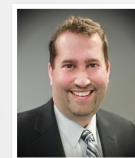
The Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury.

This Executive Order was directed at the Internal Revenue Service to exercise "maximum enforcement discretion" regarding the Johnson Amendment (please see infra for an article regarding what the Johnson Amendment is). Before the issuance of this Executive Order on May 4, 2017, many professionals working in the exempt organization sector had thought that the Executive Order would make it easier for churches to support political candidates without any fear of reprisal from the Internal Revenue Service. Additionally, during the ceremony to sign this Executive Order, President Trump confirmed that he was planning to clear the way for churches to communicate their political views on candidates from the pulpits of their houses of worship.

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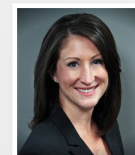
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RIPPED FROM *the* EO HEADLINES

Much Ado About Nothing (cont.)

However, when one reads the actual text of the Executive Order, it is evident that such Executive Order does NOT really change anything in regards to the Johnson Amendment. The Executive Order does seem to set forth that the Internal Revenue Service shouldn't discriminate against religious organizations that engage in campaign-intervention speech. Additionally, the Executive Order directs the Internal Revenue Service to refrain from taking adverse action where speech of a similar character has not ordinarily been treated as prohibited speech for a charitable organization. Said another way, if the Internal Revenue Service has previously treated certain "speech" as permitted, then they should not now treat such "speech" as prohibited for churches. Accordingly, the Executive Order does nothing to prevent the Internal Revenue Service from continuing to interpret the law as it always has as long as that interpretation is not discriminatory against churches. Much ado about nothing!

Just me editorializing here, but if there is to be a loosening of the political campaign restrictions in the Johnson Amendment, then such should not only be saved for churches, such should be equally applicable to all different types of charitable (501(c)(3)) organizations.

Skilled Nursing Facility Denied Property Tax Exemption in Idaho

The Supreme Court of Idaho recently held that a skilled nursing facility operated by the Evangelical Lutheran Good Samaritan Society in Boise is not a charitable organization eligible for a property tax exemption in Idaho. In reaching such determination, the Court utilized the following eight factors as part of their analysis:

- (1) Whether the stated purposes are charitable
- (2) Whether its functions are charitable
- (3) Whether it is supported by donations
- (4) Whether recipients pay for services
- (5) Whether there is general public benefit
- (6) Whether income produces a profit
- (7) To whom assets go upon dissolution
- (8) Whether the charity is based on need

The Court said that in determining whether an organization performs a charitable function, it looks to see if it performs a function that otherwise might be an obligation of the government. Here, the Court concluded that the exempt organization's functions were not charitable because they were not performing a function which would otherwise be the obligation of the government. The Court here focused on the fact that the exempt organization was compensated for all the services it provided, either by the resident or by the government in the case of residents who cannot afford to care for themselves. Finally, it was also noted that the skilled nursing facility here charged residents the same rates as they would be charged at a commercial skilled nursing facility.

Bob Jones University Regains Exempt Status

More than 30 years ago, the Internal Revenue Service revoked the tax-exempt status of Bob Jones University related to the University's refusal to allow inter-racial dating or marriage amongst its students, staff or faculty.

Recently, in a decision that was a long time coming, especially for the University, it was announced that the Internal Revenue Service had reinstated the tax-exempt status (under 501(c)(3) of the Internal Revenue Code) of Bob Jones University. The impetus for this reinstatement was the University's abandonment of the inter-racial prohibition it had previously implemented.

From a Form 990 reporting perspective, since Bob Jones University is a private university, they are required to file the Form 990 along with Schedule E (public schools are not required to file the Form 990 since they are considered to be governmental instrumentalities). A number of the questions contained on Schedule E of the Form 990 inquire regarding racial nondiscrimination policies of the educational institution.

FOCUS *on the* IRS TE/GE DIVISION

Winds of Change in New York

On May 27, 2017, several amendments to the New York Nonprofit Revitalization Act of 2013 ("Act") went into effect as a means of clarifying certain portions of the four-year old state law. Key provisions of these clarifying amendments addressed the Bylaws and conflict of interest and whistleblower policies of exempt organizations operating in New York.

Specifically, the amendments relaxed the Act's provisions regarding related party transactions by adding exceptions to the "related party transaction" definition, allowing retroactive authorization of related party transactions in limited circumstances and enabling Board Committees to approve related party transactions. The amendments also expand the definition of "related party" to include "key persons" who exercise significant influence over an organization (very much in line with the federal definition of a key employee on Part VII of the Form 990).

Other significant changes set forth by the amendments include the elimination of requirements that "independent Directors" implement and oversee an organization's conflicts of interest and whistleblower policies and a more flexible framework for determining which Directors may qualify as "independent."

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.

Form 1023-EZ: A House Divided

In a story which has certainly now surpassed broken record status, the TE/GE division of the Internal Revenue Service and the Taxpayer Advocate remain divided over the Form 1023-EZ. Such division came to the forefront yet again in late June of 2017 when the Taxpayer Advocate released the National Taxpayer Advocate Mid-Year Objectives Report ("Report") to Congress.

Within such Report, the Most Serious Problem #19 was focused upon the Form 1023-EZ and the conclusion of the Taxpayer Advocate that the Internal Revenue Service's use of the Form 1023-EZ causes it to erroneously grant tax-exempt status under §501(c)(3) of the Internal Revenue Code to unqualified organizations. According to the Taxpayer Advocate, most Tax Exemption Applications are now submitted on Form 1023-EZ and the Internal Revenue Service is approving such at 94% rate. The Taxpayer Advocate believes that the Internal Revenue Service is erroneously approving Forms 1023-EZ at an unacceptably high rate (specifically due to organizations' failure to meet the organizational test under § 501(c)(3)).

As a result of this Report, the Internal Revenue Service has agreed to revise the Form 1023-EZ in 2018 to require a narrative statement of the applicants' exempt purpose activities and also requiring the inclusion of gross receipts and asset values information to ascertain whether the organization meets the qualifications for filing (having an expecting annual income of less than \$50,000 for the first three years of existence and having assets with a fair market value of less than \$250,000) and finally including

an inquiry on the Form 1023-EZ regarding whether the applicant is a church, school or hospital (three types of organizations that may not file the Form 1023-EZ).

However, these additions to the Form 1023-EZ might not be enough to satisfy the Taxpayer Advocate. For example, in the Report, the Taxpayer Advocate suggested that applicants utilizing the Form 1023-EZ to seek recognition of tax-exemption be required to submit their Articles of Incorporation as part of the Form 1023-EZ filing process and also be required to submit summary financial information such as past and projected revenues and expenses.

The Internal Revenue Service's response to not going as far with the Form 1023-EZ additions as suggested by the Taxpayer Advocate is that the launch of the Form 1023-EZ (three years ago) has been quite successful in that such has allowed the Internal Revenue Service to avoid a backlog of Tax Exemption Applications such as existed at the beginning of 2014 (before the introduction of the Form 1023-EZ). The Internal Revenue Service knows that they must balance risks to the Treasury against the resources available when administering the tax law. Simplifying the application process for smaller organizations and applying streamlined processing to all applications allow the Internal Revenue Service to focus resources on more complex Tax Exemption Applications as well as on back-end review of compliance including actual operations.



FOCUS *on the* IRS TE/GE DIVISION

Looking Beyond the Boxscore: IRS Exemption Application Approvals

Pursuant to recent data issued by the Internal Revenue Service in the IRS Annual Data Book for 2016, for the 2016 fiscal year, the Internal Revenue Service approved over 86,000 Tax Exemption Applications. The organizational type breakdown of these approvals was as follows:

Religious, charitable, and similar organizations (\$501(c)(3))	79,545
Social welfare organizations (\$501(c)(4))	1,690
Business leagues (\$501(c)(6))	1,596
Social and recreation clubs (501(c)(7))	1,185
Labor and agricultural organizations (501(c)(5))	620
Other	1,170
Total	86,406

It is important to point out here that only charitable (\$501(c)(3)) organizations are required to file a Tax Exemption Application (Form 1023 or Form 1023-EZ), non-charitable organizations are not required to file such (Form 1024) but may choose to voluntarily do so. That being said, new exempt organizations formed during the 2016 fiscal year certainly well exceeded the 86,406 organizations which actually filed Tax Exemption Applications.

501(c)(7) Organization at a Loss

The Internal Revenue Service recently prevailed in Court against a 501(c)(7) social club attempting to obtain a refund of almost \$1.1 million of unrelated business income taxes paid to the Internal Revenue Service. Specifically, in the *Losantiville Country Club Inc. v. United States* case, the Losantiville Country Club (“Club”) attempted to obtain an unrelated business income tax refund of \$1,097,989 by using net operating loss carry-forwards generated from their allocation of the proportionate share of the clubhouse overhead for utilities, operational costs and other expenses in connection with the operation of the Club. The Club desired to offset these allocated expenses against rental income from the conducting of events such as weddings, banquets and other non-member events.

The Club argued that the net operating losses were attributable to the conduct of an active trade or business because the events were promoted and undertaken in a competitive environment, for the sole reason and motive of realizing a profit from the endeavor and that it conducted its non-exempt activity in a business-like manner that was undertaken and overseen by highly qualified professionals with specialized expertise.

IRS Delays Conservation Easement Disclosures

On December 23, 2016, the Internal Revenue Service released Notice 2017-10 identifying syndicated conservation easement transactions as listed transactions. Notice 2017-10 further set forth that in the case of a participant with a disclosure obligation with respect to a syndicated conservation easement transaction, that such disclosure was due to the Internal Revenue Service Office of Tax Shelter Analysis on June 21, 2017. Pursuant to Notice 2017-29, in response to requests for additional time for participants to meet the disclosure obligation with respect to these syndicated conservation easement transactions, the due date for participants filing disclosures was extended until October 2, 2017. This extension only applies to participants in shelters who filed applicable returns prior to December 23, 2016. The due date for material advisors and participants who filed returns after December 23, 2016 remained at May 1, 2017.

FOCUS *on the* IRS TE/GE DIVISION

Issued/Proposed EO Guidance

Proposed Regulations – New Partnership Audit Regulations

Beginning in 2018, new rules for the conducting of IRS audits of partnerships will be instituted. While maybe not immediately obvious why this is relevant for exempt organizations, at least in our world, many of our exempt organization clients are partners in partnerships, particularly investment partnerships.

Under the current partnership audit rules, as a flow-through (partnership's income is passed through to its partners who pay tax on the income at their own marginal tax rates), when a partnership is audited by the Internal Revenue Service, if the Internal Revenue Service has determined that the partnership has underreported its income, the Internal Revenue Service will collect the additional taxes due from the partners.

In tomorrow's world, a new centralized partnership audit regime will be implemented by the Internal Revenue Service to assess and collect tax at the partnership, and not the partner, level. Accordingly, under these new rules, if the Internal Revenue Service determines that a partnership's income was underreported, it will attempt to collect the underpaid taxes from the partnership itself (the partnership generally will pay tax at the highest rate imposed under the Internal Revenue Code).

Accordingly, in real world terms, when an Internal Revenue Service audit adjustment (not involving unrelated business income) arises under the current regime, such will not be taxable to an exempt organization partner when allocated to such. Under the new regime, when the Internal Revenue Service makes an adjustment to a partnership in which an exempt organization is a partner, the exempt organization will not be liable for tax (if the adjustment does not relate to unrelated business income), however, the economic value of the exempt organization's partnership interest will decline.

Proposed Legislation – Charity Act

On June 13, 2017, US Senators John Thune and Bob Casey (both members of the tax-writing Senate Finance Committee) introduced a bill (S. 1343) which they named the CHARITY Act ("Act") which they hoped would encourage year-round charitable giving (the full name of the Act is "Charities Helping Americans Regularly Throughout the Year"). The Act would ostensibly encourage charitable giving and make it easier for private foundations and other exempt organizations to conduct and fulfill their charitable mission. The Act builds on several significant charitable tax provisions that were signed into law in 2015, including one that makes permanent a law allowing taxpayers at least 70.5 years old to make charitable contributions directly from their IRAs.

Specifically, the Act would:

- Express the sense of the Senate that the promotion of charitable giving be one of the goals of comprehensive tax reform.
- Make donor-advised funds an eligible charity for purposes of the IRA rollover law that permits an IRA owner at least 70-and-a-half-years old to exclude from his or her gross income up to \$100,000 per year in distributions made directly from the IRA to certain public charities.
- Simplify how private foundations are required to calculate the federal excise tax imposed on investment income.
- Authorize the Treasury Department to adopt Regulations that align the simplified standard mileage tax deduction rate, which applies to the use of personal vehicles for volunteer charitable services, with the mileage rate that applies for medical and moving purposes.
- Promote transparency by requiring nonprofits to file their annual returns electronically.
- Protect donor information and improve tax administration by eliminating alternative rules for substantiating charitable contributions.
- Encourage philanthropic enterprises wishing to donate profits to charity by creating a limited exception to the excess business holding tax rules.

Summary of Recent EO PLRs / TAMs

PLR 201722029 – organization's tax-exempt status was revoked by the Internal Revenue Service because their primary activity was the operation of a gaming hall (for bingo and pull-tab games) and they were paying above market rent to the gaming hall landlord (which constituted more than incidental private benefit).

PLR 201721021 – applicant formed to maintain a building for use by various local fraternal organizations was denied §501(c)(10) tax-exempt status; §501(c)(10) of the Internal Revenue Code provides for exemption of domestic fraternal societies, orders, or associations that operate under the lodge system, devote their net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes and do not provide for the payment of life, sick, accident, or other benefits.

PLR 201719018 – the Internal Revenue Service determined that providing pet visitation as therapy to hospitalized individuals was the undertaking of an exempt purpose activity worthy of recognition of tax-exempt status; specifically, this pet visitation program's goal is to provide playful interaction between therapy dogs and hospital inpatients, particularly children, and elderly nursing home residents (the organization believes that children and the elderly derive a positive and therapeutic psychological and emotional benefit from their interaction with therapy dogs, which lifts their spirits and improves their ability to cope with anxiety).



FOCUS *on the* IRS TE/GE DIVISION

Summary of Recent EO PLRs / TAMs (cont.)

PLR 201718001 – Internal Revenue Service determined that the applicant should be recognized as an exempt organization since the income of the organization was for the facilitating of the effective reclamation, revitalization and return to economic productivity of abandoned or foreclosed real estate (deemed to be an essential governmental function).

PLR 201717045 – the tax-exemption of a §501(c)(6) auto dealer was revoked based upon the fact that the organization was advertising autos to be sold by member dealers of the §501(c)(6) organization. Specifically, the organization failed to satisfy the requirements of Reg. §1.501(c)(6)-1 because they provided advertising services to a limited number of dealers and they did not engage in activities to improve business conditions in the automotive industry as a whole.

PLR 201717044 – the operation of a men's adult baseball league was not deemed by the Internal Revenue Service to be considered a charitable activity since the Internal Revenue Service determined that their activities more than substantially furthered non-exempt purposes and their income inured to the benefit of private shareholders and individuals.

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

YH CASE STUDIES

When is Income Considered “Substantially Related” for UBI Purposes

A good number of our clients are potentially generating unrelated business income. In those instances where such potential exists, we are usually focused on identifying an exclusion to exempt the income from the ambit of the unrelated business income tax. One of those exclusions which we focus upon is whether the income being generated is substantially related to the furtherance of the exempt organization's mission/exempt purposes.

An exempt organization that engages in fee-for-service activities will need to examine the relationship between the activities that generate income and the accomplishment of the organization's exempt purposes in order to determine if a the activity being conducted is “substantially related” or not. A trade or business is considered related to furthering the exempt purposes of a nonprofit only when the conduct of the business activities has a substantial casual relationship to achieving its exempt purposes. The casual relationship must be “substantial” and “contribute importantly” to the exempt purposes (mission) of the organization. If so, the income being generated most likely will avoid the imposition of the unrelated business income tax.

There is a common misperception that the unrelated business income tax can be avoided if the exempt organization provides their services at cost. Just because the exempt organization provides services at cost does not (in and of itself) make its activities substantially related to its exempt purposes. For the most part, the organization will need to focus upon furthering the organization's exempt purposes by providing such services to the general public in a non-commercial manner.

There are several factors that determine whether a trade or business is substantially related to the furthering of an organization's exempt purposes. Some of the factors that the Internal Revenue Service and the Courts have heavily relied on in concluding that an activity is not substantially related are as follows:

- Fees charged to the general public are comparable to the general industry
- Only those that purchase the goods or services are benefited and the benefits are in direct proportion to the fees charged
- Members of the general public who cannot afford to purchase the goods and services from the organization cannot benefit from the organization's activities
- The organization furnishes and operates its facilities through its own employees who perform substantial services in providing the activity
- Maximization of profit is a predominant element in the exempt organization's conduct of the activity

Please do not hesitate to contact Ruby Pradhan at 310-982-2833 or at rpradhan@yhadvors.com if you have any questions regarding the unrelated business income rules and Regulations for exempt organizations.

EXEMPT ORGANIZATIONS A TO Z

Johnson Amendment

This is a continuing feature of the **YH Exempt Org Advisor**, at least for the next 16 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 J, it provides the opportunity to look at what the Johnson Amendment is.

The Johnson Amendment is essentially the portion of §501(c)(3) of the Internal Revenue Code that prohibits all charitable organizations from endorsing or opposing political candidates for any local, state, national or international office. The Johnson Amendment is named for then-Senator Lyndon B. Johnson of Texas who introduced it in a preliminary draft of the law in July 1954. Please see Rev. Rul. 2007-41 for examples regarding how the Internal Revenue Service has interpreted the Johnson Amendment in “real-world” situations.

YH QUICK TIPS

Church Offering Envelopes

We often receive inquiries from our church clients regarding whether there is any value in them providing offering envelopes to their members. Churches have long confronted the challenge of substantiating cash charitable contributions received during their weekly services. This has been especially true since the passage of the Pension Protection Act of 2006 which altered the small cash charitable contribution substantiation rules. In today’s world, as set forth in the Internal Revenue Code after the enactment of the Pension Protection Act of 2006, all cash contributions, regardless of amount, must be substantiated with one of the following:

- bank record (such as a canceled check)
- written communication from the charitable organization (church) setting forth the church’s name, date of the contribution and the amount of the contribution
- payroll deduction records

In the weekly church service setting, only the written communication alternative is relevant. In the past, before the enactment of the Pension Protection Act of 2006, offering envelopes assisted donors in substantiating cash contributions of less than \$250. However, offering envelopes no longer can be used for this purpose unless specifically crafted with the required “written communication” information.

This is because if the church does not issue the member a written acknowledgment showing the church’s name, date of the contribution and the amount of the contribution, the member will not be able to deduct any of their cash contributions.

That being said, there are still valid reason for a church to utilize offering envelopes, even if such cannot generally be used to substantiate the deduction of contributions:

- They help the church connect cash contributions to individual donors
- They promote privacy in the collecting of contributions;
- They give members the opportunity to designate specific programs or projects
- They provide members with a weekly reminder of the need to make contributions and honor pledges
- They reduce the risk of offering counters pocketing loose bills

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 extensive services which YH Advisors provides to churches and other religious organizations.

YH PRESENTS

“So Now You Know...”

With more §501(c)(3) organizations utilizing lobbying tactics to further their respective exempt purpose activities, it is often essential for these organizations to understand when and when not to make the §501(h) lobbying election. Generally, a charitable organization may engage in lobbying as long as it is an insubstantial portion of its overall activities. There are two alternatives to ascertain whether a charitable organization has undertaken “too much” (more than insubstantial) lobbying. If a §501(c)(3) has exceeded its applicable lobbying limitations, the penalties range from the imposition of excise taxes to revocation of tax-exemption.

A charitable organization undertaking lobbying activities, by default, is subject to the substantial test, which is a very subjective facts and circumstances based test that the Internal Revenue Service utilizes to determine whether an organization has undertaken “too much” lobbying which could jeopardize their recognition as a tax-exempt entity. Because there is minimal guidance as to what exactly constitutes a substantial amount of lobbying, it is wise for a charitable organization to not subject itself to the whims and discretion of the Internal Revenue Service in determining the definition of “substantial” and opt for the more objective alternative, the §501(h) lobbying election.

When a 501(c)(3) organization chooses to lobby, no matter how insignificant the lobbying expenditures, it should strongly consider making the §501(h) lobbying election for the following reasons:

- ▶ Simple IRS Form to complete (Form 5768) that remains in effect for succeeding years until revoked
- ▶ Clear objective guidelines as to exactly how much lobbying can be undertaken in a taxable year without jeopardizing the organization’s tax-exempt status
- ▶ Cannot lose tax-exempt status for excessive lobbying expenditures in a single taxable year
- ▶ Less detailed documentation required as compared to the substantial test
- ▶ The utilization of unpaid volunteers to help with the lobbying effort will not affect the §501(h) election calculation
- ▶ Simpler reporting on Schedule C, Part II of the Form 990

The only times a §501(c)(3) organization should not consider making the §501(h) lobbying election are as follows:

- ▶ The organization is a large nonprofit with a large budget dedicated to lobbying endeavors
- ▶ The organization wishes to spend more than an overall total of \$1 million on lobbying activities
- ▶ The organization wishes to spend more than \$250k on grass roots lobbying activities

So now you know when it is prudent for a charitable organization to consider making the §501(h) election related to their lobbying activities.

Please do not hesitate to contact Katie Fujita at (310) 982-2778 or kfujita@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization services which YH Advisors provides.

TAX COMPLIANCE FOCUS

The Form 990-N

Regarding the filing of the Form 990-N for smaller exempt organizations, an external source had been hosting such filings until February of 2016. Since then, the Internal Revenue Service has been directly hosting the Form 990-N filing website. That being said, all organizations are now required to register with the Internal Revenue Service prior to filing Form 990-N. Registration is required only for the first year and the same login information can be used every time Form 990-N is filed.

Most exempt organizations whose annual gross receipts are normally \$50,000 or less can choose to file Form 990-N instead of the Form 990 or Form 990-EZ. All Forms 990-N must be completed and filed electronically. Form 990-N is due every year by the 15th day of the 5th month after the close of the tax year. It cannot be filed until after the exempt organization’s tax year ends.

Unfortunately, the Form 990-N due date cannot be extended and the Internal Revenue Service will only accept the Form 990-N for the most recent tax year. Any prior year Form 990-N can be filed through one of the approved e-file service providers. For example, if an organization’s tax year ended on December 31, 2016, the IRS website will only accept Form 990-N for tax year 2016. Any Form 990-N prior to tax year 2016 will have to be filed through one of the approved e-file service providers.

Filing the Form 990-N is an annual requirement. While there is no penalty assessed for filing Form 990-N late, organizations that fail to file the required Forms 990, 990-EZ or 990-N for three consecutive years will automatically lose their tax-exempt status.

Please do not hesitate to contact Ruby Pradhan at (310) 982-2833 or rpradhan@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.



THE WORLD *According to* GAAP

Consolidated Financials

An organization that has a relationship with another entity, either a nonprofit or for-profit, may be required by Generally Accepted Accounting Principles (“GAAP”) to consolidate their financial statements. Consolidated financial statements, also referred to as combined financial statements, arise when the financial information of two or more entities’ assets, liabilities, net assets, revenues and expenses are combined (after eliminating inter-organizational transactions) and shown as belonging to a single reporting entity.

When there is a relationship between two nonprofit entities, the key factors to consider to ascertain whether consolidation is necessary are control and economic interest. As defined by the FASB ACS glossary, control is the direct or indirect ability to determine the direction of management and policies through ownership, contract or otherwise. Economic interest is a nonprofit’s interest in another entity that exists if any of the following criteria are met: (a) the other entity holds or utilizes significant resources that must be used for the unrestricted or restricted purposes of that nonprofit, either directly or indirectly by producing income or providing services, or (b) the nonprofit is responsible for the liabilities of the other entity.

Please do not hesitate to contact Melissa Roshnaye at (619) 600-5310 or mroshnaye@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization accounting and attestation services which YH Advisors provides.

When a nonprofit possesses an interest in a for-profit entity, then consolidation is typically required in the following circumstances: the other entity is a Special Purpose Entity, the nonprofit has a controlling financial interest through direct or indirect ownership of a majority voting interest, the nonprofit is a general partner or limited partner that controls a for-profit, the nonprofit controls an entity by contract, the nonprofit has less than a 50% financial interest, but has significant control, or there is a more than minor non-controlling interest in a real estate partnership, limited liability company or similar entity.

Due to the complexities in the structure and substance of when consolidated financial statements are required under GAAP, engaging legal and accounting professionals who have experience working with nonprofit organizations in these capacities, is strongly recommended.

REPORT *from the* TRENCHES

Tia Qi

Since joining YH Advisors three months ago, I have been involved in auditing a number of exempt organizations with different missions; professional associations to charities, animal foundations to private foundations. Soon after I started, I realized that auditing the financial statements of an exempt organization has similarities and differences when compared to auditing the financial statements of a for-profit organization although the core auditing principles/procedures are identical. This is because standard auditing procedures are designed in similar ways so that the independence CPA can obtain sufficient/appropriate assurances that the organization’s financial statements are accurate.

Given the nature of our clients, the reasons an exempt organization is having their financial statements audited vary; it could be a mandatory audit when a California charitable organization’s annual gross receipts exceed \$2 million (pursuant to the California Nonprofit Integrity Act of 2004) or it could be an internal “requirement” of the organization’s Board of Directors when the Board wishes to best ensure that the organization is in compliance with the applicable regulatory standards and laws.

So far, my overall experience auditing exempt organizations has been very enriching. Not only am I continuing to develop my accounting/auditing knowledge and technical skills, but I am also receiving such wonderful opportunities to learn about the many different types of organizations in the exempt organization universe.

Please do not hesitate to contact Tia Qi at (310) 982-2774 or tqi@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization accounting and attestation services which YH Advisors provides.



CALIFORNIA CORNER

50/50 Raffles

Back in November 2015, California enacted into law a provision which makes it legal for certain charitable organizations (foundations of professional sports franchises) operating within California to conduct 50/50 raffles (conducting 50/50 raffles in California are problematic since California law requires a minimum of 90% of the gross proceeds generated from the conducting of an exempt organization raffle to be utilized for programmatic purposes.

Recently, a California legislator was back at it again with the introduction of SB 741 which would allow county fairs to legally conduct 50/50 raffles in California. Essentially, SB 741 would create another carve-out for county fairs to addition to the carve-out for the foundations of professional sports franchises. This new carve-out would only be applicable if the 50/50 raffle is conducted at a county or state fairgrounds by a state fair, a citrus association or a district agricultural association.

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 extensive nonprofit state and local services which YH Advisors provides.

PRACTITIONER TIDBITS

In big news most relevant to tax return preparers, a U.S. District Court, in *Steele v. U.S.*, recently struck down the Internal Revenue Service's authority to charge PTIN (preparer tax identification number) user fees (although the Court held that the Internal Revenue Service can still require tax return preparers to obtain PTINs).

For now, the IRS is enjoined from charging PTIN user fees. Such PTIN user fees were annually charged to registered tax return preparers at an amount of approximately \$60. The Court in *Steele* held that the Internal Revenue Service did not have the authority to create the Registered Tax Return Preparer (RTRP) licensing requirements and because anyone can obtain a PTIN (not just attorneys, CPAs and EAs), the Internal Revenue Service cannot charge a fee for them. It is still unclear whether tax preparers are entitled to a refund of PTIN fees; the Internal Revenue Service will post additional information at www.irs.gov/taxpros as it becomes 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 annually prepared and released ACT Report. The 2017 Report of Recommendations of the Advisory Committee on Tax Exempt and Government Entities (ACT) was posted on the Internal Revenue Service's website in July. Such can be accessed here:

www.irs.gov/pub/irs-pdf/p4344.pdf

YH RESOURCES, NEWS & UPDATES

YH Presentations

Please find following a listing of the presentations which YH Advisors has presented, or will present, during the August 2017 – December 2017 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 3, 2017 | Irvine, CA
Nonprofit Basics

Aug 16, 2017 | Fullerton, CA
The Nonprofit World According to GAAP

Aug 30, 2017 | Kansas City, MO
Form 990 Core Form

Aug 31, 2017 | St. Louis, MO
Form 990 Core Form

Oct 22, 2017 | Las Vegas, NV
Form 990 Basics

Oct 24, 2017 | Las Vegas, NV
Advanced Unrelated Business Income Issues

Oct 25, 2017 | Las Vegas, NV
Form 990 Traps for the Unwary

Oct 30, 2017 | Missoula, MT
Form 990 Schedules

Nov 2, 2017 | Tustin, CA
Legal Fundraising Issues

Nov 7, 2017 | Appleton, WI
Nonprofit Financials

Nov 8, 2017 | Appleton, WI
Form 990 Schedules

Dec 7, 2017 | Portland, OR
Form 990 Tax School

Dec 8, 2017 | New York, NY
Form 990 Webcast

Dec 11, 2017 | New Orleans, LA
Nonprofit Financials

Dec 12, 2017 | New Orleans, LA
Form 990 Core Form

Upcoming YH Webinars

YH Advisors will continue to periodically conduct (about 6 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):

September 27, 2017
So You Think You Know About the Unrelated Business Income Tax

November 2017
25 Ways to Lose Your Tax Exemption

December 2017
Contributions Revenue


February 2018
Private Foundations

April 2018
2018 Nonprofit Update

Where to Find YH Advisors in the Social Media World

 @YHAdvisors

 YHAdvisors

 Please connect with Brian Yacker and Stacey Bergman

Offsite Presentations

Approximately a half dozen times a year, YH Advisors is engaged to provide customized exempt organization tax, legal and/or accounting presentations to a firm, association or company. For example, in July of 2016, YH Advisors conducted a full-day nonprofit accounting presentation for a CPA firm located in Northern California and also conducted a two-hour presentation for a California private foundation regarding how to interpret an exempt organization's financial statements and Form 990.

Additionally, in the past, we have conducted full-day customized presentations (for which CPE can be awarded) for firms, associations or companies in the following subject areas:

- Form 990: What Your Need to Know
- Form 990: The Schedules
- Form 990-PF Primer
- Advanced Private Foundations Issues
- The Unrelated Business Income Tax
- Advanced Exempt Organization Issues
- Nonprofit Accounting, Part I
- Nonprofit Accounting, Part II

Finally, we can conduct shorter presentations (half-day, 2 hours, 60 minutes) for which CPE can be awarded for firms, associations or companies in the following subject areas (certainly not an all-inclusive listing):

- Reporting of Special Events
- The Schedule A Public Support Test
- What Charity Board Members Need to Know
- Tax & Legal Issues for 501(c)(6) Business Leagues
- How to Avoid the Ire of the IRS + Attorney General

Next Issue of the YH Exempt Org Advisor

The Fall 2017 edition of the **YH Exempt Org Advisor** will be published in late November of 2017 after we have emerged from the very busy November 15 Form 990 filing deadline.



YH RESOURCES, NEWS & UPDATES

YH Webinar Recordings Available to Purchase

To date, we have conducted 31 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
23	The Schedule A Public Support Test Made Easy	12/17/15	100	\$179
24	The Essential EO Ratios + Benchmarks	02/10/16	100	\$179
25	Exempt Organization Tax, Legal & Accounting Update	04/21/16	100	\$189
26	The Most Glaring Form 990 Core Form Errors	07/14/16	100	\$189
27	The Most Glaring Form 990 Schedules Errors	09/07/16	100	\$189
28	Common EO Financial Statement Deficiencies	10/02/16	100	\$189
29	Reporting Disparities: GAAP v. Form 990	01/11/17	100	\$189
30	2017 Exempt Org Tax, Legal & Accounting Update	04/26/17	100	\$189
31	Playing IRS Form 990 Audit Bingo	07/12/17	100	\$189

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