

YH EXEMPT ORG ADVISOR

7755 Center Avenue, Suite 1225, Huntington Beach, CA 92647 | Tel 310.982.2806 | Fax 323.320.4366 | yhadvisors.com

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 different types of exempt organizations. YH Advisors, located in Huntington Beach (California), is solely focused on providing value-added services to their exempt organization clientele. The firm's Partners, Brian Yacker and Lauren Haverlock, have cumulatively worked with exempt organizations for over 30 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

Exempt Organizations Worth Almost \$1 Trillion to the US Economy

According to an October 28, 2014 article in *The Nonprofit Times*, the tax-exempt sector in the United States represented 5.4 percent of the nation's gross domestic product (GDP) during 2012, contributing \$887.3 billion to the economy. Not surprisingly, charitable entities accounted for slightly more than three quarters of the exempt organization sector's revenue (\$1.65 trillion) and expenses (\$1.56 trillion) and more than three-fifths of exempt organization assets (\$2.99 trillion) during 2012. Comprised of approximately 1.44 million exempt organizations which were registered with the Internal Revenue Service in 2012, the exempt organization sector has grown approximately 8.6 percent (from 1.32 million) since 2002. That being said, the total number of nonprofit organizations operating in the United States is unknown as a result of the fact that churches are not required to register with the Internal Revenue Service nor annually report anything.

Boy Scouts Win Important Ballot Initiative in West Virginia

Back in November 2014, as reported by *The Nonprofit Times*, West Virginia voters agreed to change the West Virginia state Constitution to allow the Boy Scouts of America to lease its 10,000-acre reserve in West Virginia without putting its West Virginia property tax exemption in jeopardy. An amendment on the West Virginia ballot had asked voters in the Mountain State whether to allow nonprofit youth organizations that build \$100-million facilities in West Virginia to be exempt from property tax. The ballot question was written with the Scouts' Summit Bechtel Family National Scout Reserve in mind. Without a property tax exemption, the property would generate approximately \$5 million annually in property taxes for the state of West Virginia.

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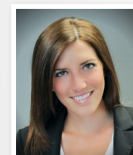
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BROUGHT TO YOU BY:



BRIAN YACKER

Partner, YH Advisors
byacker@yhadvisors.com



LAUREN HAVERLOCK

Partner, YH Advisors
lhaverlock@yhadvisors.com



STACEY BERGMAN

Principal, YH Advisors
sbergman@yhadvisors.com

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Proposal to Allow Deduction for Contributed Services

It was recently proposed (on December 9, 2014) in HR 5811 that certain volunteer emergency workers be permitted to take a charitable contribution deduction when they contribute their time undertaking “qualified” services. Under the terms of the proposed bill, “qualified” services are defined as fire fighting and fire prevention services, emergency medical services, ambulance services, civil air patrol and emergency rescue services. Providers of such services would be entitled to take a \$20 per hour charitable contribution deduction under the terms set forth in HR 5811 (the total amount claimed in any taxable year could not exceed 300 hours). Currently, there is no charitable contribution deduction permitted to any provider of services to charitable organizations.

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 Announcement 2015-02

In Internal Revenue Service Announcement 2015-02, the Internal Revenue Service provided a simplified process for issuers of qualified tax-exempt 501(c)(3) bonds to request a closing agreement in situations in which the exempt organization borrower of the proceeds of the bonds received prospective reinstatement after its tax-exempt status was automatically revoked under §6033(j)(1) of the Internal Revenue Code. The provisions of Announcement 2015-02 can only be utilized by an exempt organization that is not currently under examination by the Internal Revenue Service.

Final Hospital Regulations Issued

In late December 2014, the Internal Revenue Service issued Final Regulations addressing additional requirements for charitable hospitals. Please find following some of the more important provisions of these Final Regulations.

Providing a definition for a “hospital organization”, including addressing when multiple buildings are under a single hospital license and what it means to be “operating” a hospital facility.

Providing for reduced consequences if a charitable hospital violates certain less essential provisions of §501(r) of the Internal Revenue Code and excusing certain failures by a charitable hospital if the hospital corrects such failures and makes adequate disclosures.

Addressing the conducting of the necessary Community Health Needs Assessments.

Addressing the required financial assistance policies and emergency medical care policies of charitable hospitals.

Providing guidance regarding a charitable hospital’s requirement to provide limits on amounts charged for emergency care or other medically necessary care.

These Final Regulations were first effective as of December 29, 2014.

Summary of Recent EO PLRs / TAMs

PLR 201452017 – Organization which operated a web site that was a social network connecting individuals to exempt organizations was denied tax-exempt status by the Internal Revenue Service (probably because fundraising in and of itself is not considered to be an exempt purpose activity).

PLR 201449002 – Entity which was formed to target voter registration and education and candidate endorsements was denied recognition of tax-exemption by the Internal Revenue Service under §501(c)(4) of the Internal Revenue Code. It is not evidence from a reading of this private letter ruling whether the denied organization was either liberal or conservative leaning.

PLR 201446025 – Internal Revenue Service holds that a “redomestication” of an exempt corporation from one state to another did not require that the exempt organization complete a new Tax Exemption Application to be filed with the Internal Revenue Service.

PLR 201445017 – Internal Revenue Service ruled that various transactions undertaken by a private foundation were not deemed to be self-dealing under §4941 of the Internal Revenue Code.

PLR 201445015 – Internal Revenue Service ruled that a merger of three existing exempt organizations into a fourth exempt organization would not adversely affect the tax-exemption of the surviving exempt organization nor would any unrelated business income be generated by the undertaking of the merger.

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.

STATE CHARITABLE SOLICITATION REGISTRATION SCOREBOARD

Arkansas – we have recently become aware that the state of Arkansas was tweaked their charitable solicitation registration requirements and as such, are now requiring out-of-state charities soliciting there is re-file certain initial registration documents.

Nevada – the state of Nevada requires for out-of-state charities soliciting in Nevada to file a slew of special registration forms if the word “University” appears in the name of the charity (for example, a university auxiliary).

YH CASE STUDIES

Late Filing of the Form 990

A lot of times when taking on a new compliance client, it comes to our attention that such exempt organization had filed a previous year’s Form 990 (or Form 990-EZ) late with the Internal Revenue Service and now was subject to late-filing penalties being imposed by the Internal Revenue Service. Pursuant to §6652 of the Internal Revenue Code, such late filer is subject to either a daily penalty of \$20 (\$10,000 maximum) for each day the Form 990 is late or a daily penalty of \$100 (\$50,000 maximum) for each day the Form 990 is late if the late-filing exempt organization’s annual gross receipts exceed \$1 million.

In such circumstances, we almost always recommend that the late-filing exempt organization attempt to have the late filing penalties abated by the Internal Revenue Service. This is accomplished by helping the exempt organization correspond with the Internal Revenue Service by providing a “reasonable cause” explanation for the late filing. The Internal Revenue Service Regulations provide that an exempt organization’s request for abatement of penalties based on reasonable cause must be made in the form of a written statement, containing a declaration by the appropriate person that the statement is made under penalties of perjury, setting forth all the facts alleged as “reasonable cause”.

When requesting abatement of penalties for “reasonable cause”, the exempt organization’s correspondence should include supporting documentation and address the following items:

- ▶ The reason the penalty was charged (i.e. was the return filed late or was it filed incomplete).
- ▶ The reasons why the Form 990 was not filed timely.
- ▶ What prevented the organization from requesting an extension of time to file its Form 990.
- ▶ If the exempt organization did not request an extension; how the organization was not neglectful or careless, but exercised ordinary business care and prudence.
- ▶ What steps have been taken by the exempt organization to prevent the same situation from occurring in the future.

Whether an organization qualifies for the reasonable cause exception to the Form 990 late-filing penalties will be determined by the Internal Revenue Service on a case-by-case basis taking into account all relevant facts and circumstances.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding how to best address the consequences of the late filing of a Form 990.

YH QUICK TIPS

Preparing the Form 990-EZ

Please find following a listing of the typical information which is needed when preparing a Form 990-EZ for an exempt organization.

- ▶ Balance Sheet
- ▶ Income Statement
- ▶ Program service activities description(s)
- ▶ Allocation of total expenses to program services
- ▶ Amount of compensation + benefits paid to any Directors or Officers of the exempt organization
- ▶ Income and expense breakdown for each special event conducted by the exempt organization during the applicable tax year
- ▶ Detail regarding any insider transactions undertaken between the exempt organization and any Director or Officer
- ▶ Schedule of contributors who contributed \$5,000 or more to the exempt organization during the course of the applicable tax year
- ▶ Board of Directors listing as of the last day of the exempt organization's tax year

An exempt organization is eligible to file the Form 990-EZ when their annual gross receipts are below \$200,000 and the fair market value of their total assets are below \$500,000.

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YH TIMELY GUIDANCE

Insurance for Exempt Organizations

In Internal Revenue Service Announcement Many exempt organizations which come into contact with are smaller exempt organizations with very tight budgets. That being said, we are oftentimes asked whether it is necessary for an exempt organization, particularly a smaller exempt organization, to have insurance coverage in place. Our response is typical of us: it depends upon the specific size, program service activities, complexity, and other attributes of the exempt organization.

In general, an exempt organization should consider purchasing the following types of insurance:

- ▶ **General Liability Insurance** – covers the organization against all different types of risks, such as someone suffering a physical injury on the exempt organization's premises (I seem to recall reading somewhere that the great majority of claims filed against exempt organizations result from accidents and injuries occurring at the facilities of the exempt organization or during special events conducted by exempt organizations).
- ▶ **Property Insurance** – covers the risk of damage to the real and personal property owned by the exempt organization, such as a building or equipment.

- ▶ **Auto Insurance** – should be considered if the exempt organization owns any vehicles and/or if the staff of the exempt organization utilize their personal vehicles for exempt organization business.
- ▶ **Directors and Officers Insurance** – protects the Board of Directors and Officers of the exempt organization if personally named in a lawsuit against the exempt organization.
- ▶ **Professional Liability Insurance** – protects non Officers and Directors against liabilities resulting from mismanagement of the exempt organization.

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THE EO ACCOUNTING SPOTLIGHT

Budgeting

Most exempt organizations operate within tight budget constraints. Accordingly, an accurate, realistic and effectively communicated budget is crucial in the financial management of an exempt organization. For smaller exempt organizations, the budget to actual review process itself can also act as a key control in the entity's internal control framework when completed on a regular basis.

The focus of the budget process should be planned maximization of program effectiveness and efficiency, while maintaining appropriate supporting administrative services. Budgeting provides a road map of where the organization wants to focus its resources and can be an effective management tool as well as a component of the entity's internal control structure. Such a process lends opportunities for management, with proper Board oversight, to plan and coordinate the operations and planned activities for the coming year.

When creating a new budget for the upcoming fiscal year, management can determine whether to develop an overall operating budget or a cash flow budget, or perhaps both. Cash flow budgeting is the preparation of a detailed plan which projects when cash will be received and used during the year. This allows management to plan for specific expenditures and receipts and does not take into consideration non-cash expenses such as depreciation. This is helpful for organizations that receive multi-year pledges or grants as the revenue is recorded in the year pledged, even though the cash is not received until future years. A cash flow budget would consider the actual receipt and use of the cash associated with that pledge.

Based on our extensive experience in assisting exempt organizations of varying sizes in their budgeting process, the following basic steps should be followed in the preparation and approval of an exempt organization's annual budget:

- ▶ Identify and document the programs and supporting services that carry out the organizational goals and objectives
- ▶ Estimate the revenue from all revenue sources using historical trends/data as well as known information for the year under budget (for instance, the number and type of special events to be held, etc.)
- ▶ Estimate the cost of each program and supporting service, again, using historical trends/data as well as information regarding planned activities for the coming year
- ▶ Compare estimated income with estimated costs and make necessary adjustments
- ▶ Present the budget to top management for approval
- ▶ The Board of Directors or Finance Committee should review and perform a final approval of the budget. Such approval should be documented in the Board meeting minutes

It is permissible to veer from a budget as specific information about the fiscal year comes to management's attention that perhaps was not known during the budgeting process. Reviewing the budget on a regular basis for necessary changes should be part of an exempt organization's regular financial review process.

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YH'S PRACTICAL EO GUIDANCE

Preparation of the Form 1099

A common misperception is that exempt organizations, in addition to be exempt from the payment of income taxes, are also exempt from the annual requirements to prepare and file Forms 1099 with the Internal Revenue Service. The relevant law (which is the same for taxable entities) sets forth that a Form 1099 must be filed by the exempt organization with the Internal Revenue Service and a non-employee service provider (independent contractor) when such non-employee service-provider is compensated \$600 or more (in aggregate) during the applicable tax year for services rendered (not products provided) to the exempt organization.

Some notable exceptions to the Form 1099 filing requirement are as follows:

- ▶ Payments to corporations (except to incorporated lawyers)
- ▶ Payments for merchandise, goods, telephone, freight, storage and similar items
- ▶ Payments of rent to real estate agents

A Form 1099 must be submitted to recipients by January 31st and electronically filed with the Internal Revenue Service by March 31st (February 28th if paper filing with the Internal Revenue Service).

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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 which are free of charge in the public domain. This quarter we are highlighting a recent phone forum conducted by the Internal Revenue Service titled "Help for Charities". The PowerPoint slides for such presentation can be accessed by following this link:

<http://www.irs.gov/Charities-&-Non-Profits/Phone-Forums-Exempt-Organizations>

NEXT ISSUE OF THE YH EXEMPT ORG ADVISOR

The Spring 2015 edition of the **YH Exempt Org Advisor** will be published in the May 2015 time frame, probably after the very busy May 15, 2015 filing deadline for calendar year ends and fully extended June year-ends.

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Upcoming Presentations

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

February 23-24, 2015
NFP Advisory Council
New York, NY

February 24, 2015
Top Ten Financial Issues for Exempt Organizations
Long Beach, CA

April 10, 2015
Hot Button Financial Issues for Other Exempts
San Luis Obispo, CA

April 11, 2015
Tax Compliance Requirements for Other Exempts
San Luis Obispo, CA

Upcoming YH Webinars

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

Mid March 2015
Ripped from the EO Headlines
(Complimentary)


Late April 2015
2014 Form 990 Update

June 2015
Functional Expenses

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Brian Yacker,
Lauren Haverlock and
Stacey Bergman