

# 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 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

### Blow Dealt in New Jersey to Gay Conversion Entities

Pursuant to CBS News, a Judge in New Jersey ordered a "gay conversion" nonprofit to close. The reasoning behind the order was that the nonprofit violated consumer fraud laws by offering therapy to turn gays into heterosexuals. The organization known as JONAH (Jews Offering New Alternatives for Healing), had been under investigation since 2012 for making claims that they could not back up. The Judge's order specifically requires JONAH to cease all operations and close within 30 days of the effective date of the order.

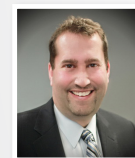
### Spotlight Focused on Professional Fundraisers

Pursuant to the Orange County Register, in an annual study which they conduct, professional fundraisers pocket approximately half of all funds which they raise for the charitable organizations which engage them. Professional fundraisers are non-employee (for-profit) professionals who are engaged by charitable organizations to raise funds on their behalf usually on some sort of percentage commission basis. A private benefit transaction arises when an unrelated organization such as a professional fundraiser is excessively compensated for the services which they render. An exempt organization can lose their tax-exemption if too much private benefit exists.

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## RIPPED FROM *the* EO HEADLINES

### Improper Payouts by San Francisco Charity?

According to SF Gate, the CA Attorney General's office has received whistleblower complaints of financial improprieties at the de Young Museum and the Legion of Honor in San Francisco, centering on whether a Board member improperly paid \$450,000 to an ailing former staffer (this would probably be considered more than incidental private benefit). Accordingly, the Attorney General has asked the organizations to turn over bank statements and other financial records covering the past two years. San Francisco city auditors are expected to follow up with a similar look at the organizations' books. Specifically, the whistleblower complaint alleges that a prominent Board member for each of the organizations had ordered the CFO to cut a \$450,000 "gift" check to an ailing ex-staffer without first receiving the required approval of the 46-member Board of Directors.

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

### EO Selects Check Delays

The Internal Revenue Service recently announced that because of a programming problem, they have been delayed in listing most organizations that received Determination Letters from the Internal Revenue Service in November 2015 (and thereafter) on EO Select Check. Until the programming issue is resolved and they appropriately update EO Select Check, donors and organizations can rely on an organization's federal Determination Letter as proof of its exempt status. Donors and organizations can also confirm an organization's exempt status by calling the IRS (toll-free) at 877-829-5500.

### Recently Issued EO Guidance

While not as extensive as the past couple of months, there still has been some guidance issued by the Internal Revenue Service and Treasury relevant to exempt organizations; please find following a summary of such:

- ▶ **Payout Requirements for Supporting Organizations** – final Regulations were issued regarding the distribution requirements for non-functionally integrated Type III supporting organizations; these Regulations reflect changes to the law made by the Pension Protection Act of 2006; specifically, the minimum distribution requirement of 3.5% for non-functionally integrated Type III supporting organization was retained in these final Regulations.
- ▶ **Notice Requirements for New Social Welfare Organizations** – new Section 506 of the Internal Revenue Code requires new social welfare (§501(c)(4)) organizations formed after December 18, 2016 to provide the Internal Revenue Service with notice of their formation no later than 60 days following their establishment; the Internal Revenue Service then has 60 days from the receipt of this Notice to acknowledge such.

### IRS Considering Changes to Form 1023-EZ

The IRS is considering changes to its streamlined Tax Exemption Application (Form 1023-EZ) process utilized by small organizations seeking recognition of tax-exemption under §501(c)(3) of the Internal Revenue Code. In a recent report posted on their web site, the Internal Revenue Service noted that the most common reason it rejects a Form 1023-EZ during its predetermination process is ineligibility to use the Form. To address that problem, changes to the Form 1023-EZ and its Instructions are being contemplated. The objectives of the proposed changes are to clarify information that is requested on the Form 1023-EZ, enhance the Instructions, obtain additional contact information and provide more guidance to applicants to make sure the information they provide is accurate.

Specific changes under consideration include requiring applicants to identify a person the IRS can contact when it needs additional information, requiring an applicant to attest that annual gross receipts or expected gross receipts are less than \$50,000 and requiring an independent attestation that total assets are less than \$ 250,000.

### Goodbye Schedule B?

It was recently floated by the Internal Revenue Service (EO Division Director Tammy Ripperda in particular) that they might consider eliminating Schedule B (Schedule of Contributors) from the Form 990. In my professional opinion, that will not be happening, most notably because Schedule B is integral in the preparation of the Schedule A public support test on Schedule A, Part II and Schedule A, Part III.

## Summary of Recent EO PLRs / TAMs

**PLR 201552033** – this revocation of an exempt organization by the Internal Revenue Service addresses a §501(c)(2) title-holding company (not a very common type of exempt organization); in this particular situation, the title-holding company's tax-exemption was revoked by the Internal Revenue Service because the organization's Articles of Incorporation were inadequate and the organization provided personal services along with their rental of real property.

**PLR 201552032** – Internal Revenue Service denied recognition of tax-exemption for an applicant who failed to adequately describe their activities in sufficient detail to qualify as a §501(c)(4) social welfare organization. As an aside, the Tax Exemption Application (here, a Form 1024) applicant possess the burden of proof to describe their activities in sufficient detail to permit the Internal Revenue Service to determine whether it meets the definition of the Internal Revenue Code section under which tax-exemption is sought.

**PLR 201551010** – Internal Revenue Service denied the tax-exemption for a §501(c)(7) social club applicant primarily because the earnings of the organization inured to the Founder of the organization and the organization's membership criteria was too broad.

**PLR 201550043** – Internal Revenue Service denied recognition of tax-exemption to an applicant helping people in many different ways by enabling business connections because the organization's proposed activities were too commercial (and hence, not charitable enough).

**PLR 201548025** – Internal Revenue Service denied recognition of tax-exemption to an applicant educational organization because it deemed such to be too commercial and undertaking too substantial of private benefit transactions; additionally, there were indications of prohibited private inurement in that Board members were receiving benefits from financial transactions undertaken with the applicant.

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# EXEMPT ORGANIZATIONS A TO Z

## Donor Advised Funds

This will be a new and continuing feature of the **YH Exempt Org Advisor**, at least for the next 23 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 **D**, it provides the opportunity to define what a donor advised fund is.

A donor advised fund is a fund or account:

- That is separately identified by reference to contributions of a donor or donors;
- That is owned and controlled by a sponsoring organization (exempt organization); and
- For which the donor or donor advisor has or reasonably expects to have advisory privileges in the distribution or investment of amounts held in the donor advised funds or accounts because of the donor's status as a donor.

A donor advised fund does not include any fund or account that makes distributions only to a single identified organization or governmental entity, or in which a donor or donor advisor gives advice about which individuals receive grants for travel, study, or other similar purposes.

If an exempt organization is the sponsor of a donor advised fund, such will generally need to be reported on Schedule D, Part I of the exempt organization's annual Form 990.

# YH CASE STUDIES

## IRS Definition of a Church

Within the past couple of months, we have been approached by two separate exempt organization clients that were classified as religious organizations. They were each wondering whether they qualified as a church from an Internal Revenue Service perspective. One of them wished to qualify as a church so they could take advantage of a particular California property tax exemption and the other wanted to qualify as a church in order to not be required to annually file the Form 990.

As we explained to each of the organizations, a church (or synagogue, mosque, etc.) is a subset of the religious organization classification. Churches generally can take advantage of special rules (for example, no annual Form 990 filing requirement, considered to be a definitional public charity), which religious organizations that are not churches, cannot. Accordingly, it is important to be able to identify those exempt organizations which explicitly satisfy the definition of a church from an Internal Revenue Service perspective.

Certain characteristics are generally attributed to churches. These attributes of a church have been developed by the Internal Revenue Service and the courts. They include: distinct legal existence; recognized creed and form of worship; definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct

religious history; membership not associated with any other church or denomination; organization of ordained ministers; ordained ministers selected after completing prescribed courses of study; literature of its own; established places of worship; regular congregations; regular religious services; Sunday schools for the religious instruction of the young; schools for the preparation of its ministers.

The Internal Revenue Service generally uses a combination of these characteristics, together with other facts and circumstances, to determine whether a religious organization is considered a church from an Internal Revenue Service perspective. Please see IRS Publication 1828, Tax Guide for Churches and Religious Organizations, for more information regarding the foregoing.

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# YH QUICK TIPS

## Preparing Form 1099

Now that we are at the beginning of a new year, please find following some quick tips regarding an exempt organization's annual preparation of the Form 1099 .

1. A Form 1099 needs to be prepared when the exempt organization, cumulatively over the course of a year, compensates a non-employee \$600 or more in exchange for rendering services (NOT products) to the exempt organization.
2. A Form 1099 does not need to be issued to incorporated entities (other than law firms).
3. A Form 1099 needs to be filed with the payee by January 31 of each year and with the Internal Revenue Service by February 28 of each year.
4. The exempt organization needs to make sure to obtain a completed Form W-9 from the non-employee payee before you remit payment to the non-employee; the Form W-9 requests information such as the payee's official name, federal tax classification, taxpayer identification number and address.
5. When some funds paid to the non-employee payee are returned to the exempt organization, the exempt organization needs to be aware that pursuant to IRS rules, the amount of money the payee had custody of during the year is the reportable amount on the Form 1099; the payee accounts for the returned funds as a deduction on their own income tax return.

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# YH PRESENTS

“So Now You Know...”

We are often asked about what the heck an NTEE Code is. First off, “NTEE” is an acronym for the National Taxonomy of Exempt Entities. The NTEE system is used by the Internal Revenue Service IRS to classify exempt organizations; it is also used by the Foundation Center to classify both grants and grant recipients. The following benefits are provided by the NTEE system:

- Facilitates the collection, tabulation, presentation, and analysis of data by the types of organizations and their activities
- Promotes uniformity and comparability in the presentation of statistical and other data collected by various public and private agencies
- Provides better quality information as the basis for public policy debate and decision-making for the nonprofit sector and for society at large

The NTEE classification system divides the universe of nonprofit organizations into 10 broad categories as follows:

- Arts, Culture, and Humanities - A
- Education - B
- Environment and Animals - C, D
- Health - E, F, G, H
- Human Services - I, J, K, L, M, N, O, P
- International, Foreign Affairs - Q
- Public, Societal Benefit - R, S, T, U, V, W
- Religion Related - X
- Mutual/Membership Benefit - Y
- Unknown, Unclassified - Z

**So now you know** what the NTEE system is all about.

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# THE EO ACCOUNTING SPOTLIGHT

FASB Financial Reporting Framework Update

In early December 2015, the FASB (“Board”) met to discuss certain provisions of the proposed FASB Accounting Standards Update, Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954): Presentation of Financial Statements of Not-for-Profit Entities (the proposed Update). This first phase of deliberation included discussions surrounding methods of presenting cash flows, net asset classifications and assessing liquidity of not-for-profits.

In summary, the Board decided not to require not-for-profit entities (“NFP”) to use the direct method of presenting operating cash flows, but instead to continue to allow them to use either the direct method or indirect method. Further, the Board decided to no longer require the indirect reconciliation if an NFP chooses to use the direct method.

Additionally, the Board affirmed its proposal to combine temporarily and permanently restricted net assets into net assets with donor restrictions and to rename unrestricted net assets as “net assets without donor restrictions”. Consistent with the proposed Update, this alternative would retain the current generally accepted accounting principles (GAAP) requirement to provide relevant information about the nature and amounts of donor restrictions on net assets (either on the face of the

statement of financial position or in notes). Board-designated net assets are required to be disclosed (both amount and purpose) either on the face of the financial statements or in the footnotes.

Moreover, the Board also solidified decisions surrounding specific recognition and disclosure requirements of underwater endowments as well as long-lived assets. Stay tuned for more developments as they happen!

Further information regarding the full listing of recent determinations can be found on the FASB’s website:

[http://www.fasb.org/cs/ContentServer?c=FASBContent\\_C&pagename=FASB%2FFASBContent\\_C%2FActionAlertPage&cid=1176167713281](http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB%2FFASBContent_C%2FActionAlertPage&cid=1176167713281)

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# YH'S PRACTICAL EO GUIDANCE

## New Revenue Recognition Standards for Exempt Organizations

It's easy to get lost in the literature surrounding Accounting Standards Update (ASU) 2014-09 (Topic 606), Revenue Recognition. It's also easy for exempt organizations to glaze over the fact that this standard will be applicable to many exempt organizations. ASU 2014-09 is the Financial Accounting Standards Board's attempt at aligning accounting standards generally accepted in the United States with those enacted by the International Accounting Standards Board.

The new revenue recognition standards only affect revenue earned by organizations through an exchange of goods or services as outlined in a contract. Forms of revenue earned by exempt organizations may be broad, depending on the nature and of the exempt organization's exempt purposes. ASU 2014-09 outlines various revenue streams that would be exempt if they are addressed in other contract-based accounting standards. For instance, revenue stemming from contributions, investment income, leases, debt and equity securities, guarantees, derivatives, financial instruments and in-kind transactions fall outside of the scope of this specific standard. Revenue streams common to exempt organizations that fall within the scope of ASU 2014-09 include (but are not limited to) membership dues, sales of products or services, royalty agreements, federal and state grants, conferences and seminars, tuition revenue and admission or ticket sales.

Before revenue can be recognized, the likelihood of collection must first be assessed. For instance, health care organizations often net contractual allowances against patient service revenue or write down significant balances of earned revenue. ASU 2014-09 states that only revenue that is "likely" to be collected can be recognized as revenue.

Currently, standards indicate that revenue is (generally) recognized as it is "earned". ASU 2014-09 changes that rule-based system to a principle-based system for determining when revenue is earned by an exempt organization. New standards are causing exempt organization financial and operational management to assess the period in which revenue earned from an exchange transaction is actually "earned". Learning to identify that has been broken down into the following five step process by the FASB:

1. Identify contract
2. Identify performance obligations of both the exempt organization and the customer
3. Determine the transaction price associated with the exchange of goods or services
4. Allocate price to stated performance obligations
5. Recognize revenue as each individual performance obligation is completed

The initial effective date for nonpublic entities (which includes exempt organization's) was the fiscal year beginning after December 15, 2017, however, due to the amount of effort required by some larger organizations to implement requisite tracking mechanisms, the FASB granted an additional one year extension for implementation.

Implementing this process is not something that should wait until an exempt organization is ready to implement ASU 2014-09, but should be discussed well ahead of time due to the significant effect this will have on accounting and reporting operations.

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# CALIFORNIA CORNER

## 50/50 Raffles

In early October of 2015, California Governor Jerry Brown signed Senate Bill 549 into law. This new law allows certain eligible organizations (foundations affiliated with professional sports franchises) to conduct 50/50 raffles (raffles where a lucky winner takes home 50% of all the proceeds from raffle ticket sales).

Pursuant to California Penal Code Section 320.5, certain non-profit organizations are permitted to undertake charitable raffles as long as those raffles are pre-registered with the California Attorney General (Form CT-NRP-1) and the raffle results are reported after the raffle is conducted (Form CT-NRP-2). Additionally, nonprofit organizations are required (pursuant to California Penal Code Section 320.5) to expend a minimum of 90% of the raffle gross proceeds to directly conduct beneficial or charitable activities. Accordingly, before the enactment of SB 549, a maximum of 10% of the raffle gross proceeds could be utilized for non-charitable or exempt purpose expenditures. As such, an organization could not “split the pot” 50/50 because such would be a violation of the California Penal Cod.

This new law now permits a small segment of the exempt organization universe (charities associated with professional sports franchises) to legally conduct a raffle even if at least 90% of the gross proceeds are not spent on charitable or exempt purpose endeavors.

There are many particular requirements of this new law; one of the most significant requirements is that the charity associated with the professional sports franchise would be required to pay the remaining 50% directly to a charitable purpose or to another “private nonprofit” organization. An eligible organization conducting the 50/50 raffle will also have to address strict registration and filing requirements with the California Attorney General. Additionally, the fees to register 50/50 raffles will be \$5,000 a year, with an additional \$100 fee for each 50/50 raffle to be conducted.

While nothing has changed from a legislative perspective here in California, if a nonprofit (exempt) organization is not associated with a professional sports franchise, such organization can still legally conduct a 50/50 raffle in California if they tread carefully and follow certain exacting procedures.

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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 free of charge in the public domain. This quarter we are highlighting the enhanced Tax Exemption Application resources recently provided by the Internal Revenue Service. Such provide a wide range of readily available information to assist applicants with their Tax Exemption Application (Form 1023 or Form 1024) preparation process. Some of the resources address the following topics:

- Before Applying for Tax-Exempt Status
- Top Ten Tips to Shorten the Tax-Exempt Application Process
- Application for Exemption or Misc. Determination: Sample Questions
- Determinations Guide Sheets for Exempt Organizations
- Applying for Tax-Exempt Status

The Form 1023 resources referenced immediately supra can accessed here: [www.irs.gov/uac/About-Form-1023](http://www.irs.gov/uac/About-Form-1023)

# YH RESOURCES, NEWS & UPDATES

## Upcoming Presentations

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

**Jan 6, 2016**

**Form 990, Schedule F (Strafford)**

*Webinar*

**Jan 8, 2016**

**New Laws Affecting Nonprofits (USD Governance Symposium)**

*San Diego, CA*

**Jan 8, 2016**

**Nonprofit Financial Roundtable (USD Governance Symposium)**

*San Diego, CA*

**Jan 27, 2016**

**Compliance Issues for Nonprofits (AICPA)**

*Webinar*

**Feb. 3, 2016**

**IRS Hot Buttons for Associations (Nat'l Asso'n Bar Execs)**

*San Diego, CA*

## Onsite 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 2015, YH Advisors conducted a full-day Form 990 presentation for a CPA firm located in Virginia. 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

Additionally, we 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:

- Reporting of Special Events
- The Schedule A Public Support Test
- What Charity Board Members Need to Know
- How to Avoid the Ire of the IRS + Attorney General

## 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):

**February 10, 2016**

**Ratios + Benchmarking**

**April 2016**

**Top Form 990 Errors**

**June 2016**

**2016 EO Update**

**July 2016**

**Contributions Revenue**

**September 2016**

**Private Foundations**

**October 2016**

**EO Reporting: GAAP v. Form 990**

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



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Please connect with Brian Yacker and Stacey Bergman

## Next Issue of the YH Exempt Org Advisor

The Spring 2016 edition of the **YH Exempt Org Advisor** will be published in the early May time frame notwithstanding the fact that we will be quite immersed in the May 15 exempt organization information return filing deadline.



# YH RESOURCES, NEWS & UPDATES

## YH Webinar Recordings Available to Purchase

To date, we have conducted 23 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

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