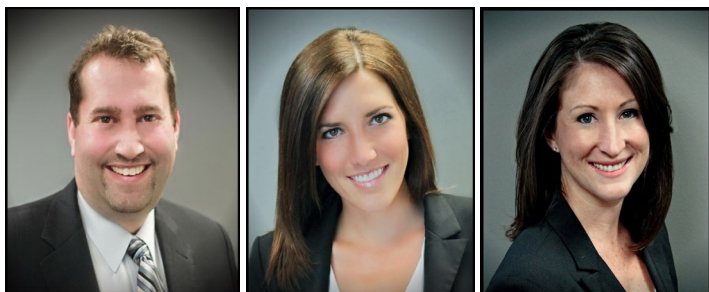




**YH ADVISORS**  
THE EXEMPT ORG EXPERTS

7755 CENTER AVENUE, SUITE 1225 HUNTINGTON BEACH, CA 92647  
OFFICE 310.982.2806 • FAX 323.320.4366 • YHADVISORS.COM

YH ADVISORS IS PROUD 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.



Brian Yacker

Lauren Haverlock

Stacey Bergman

YH Advisors, located in Huntington Beach, California, is solely focused on addressing the tax, legal and accounting needs and issues of exempt organizations. The firm's Partners, Brian Yacker and Lauren Haverlock, have cumulatively consulted with exempt organizations for over 30 years.

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## Ripped from the EO Headlines

### IRS grants tax exemption to two tea party organizations

The “controversy” which surfaced in May of 2013 primarily revolved around accusations that the Internal Revenue Service had been delaying the granting of recognition of tax-exemption to conservative groups such as Tea Party organizations. Fast forward to mid-October of 2014 when it was reported by the American Center for Law & Justice that the Internal Revenue Service had approved the Tax Exemption Applications for two conservative Tea Party groups, the Laurens County Tea Party and the Allen Area Patriots. Both organizations sought recognition of tax-exemption under §501(c)(4) of the Internal Revenue Code; both had initially filed their Tax Exemption Applications with the Internal Revenue Service in July of 2010.

### Average EO insider fraud loss approximately \$600,000

According to an October 10, 2014 article in The NonProfit Times, the average loss suffered by exempt organizations when insider fraud occurs was approximately \$600,000. Additionally, please find following other facts identified related to instances of nonprofit fraud:

- Perpetrators with higher levels of authority cause much larger losses.
- The median loss caused by nonprofit managers was \$85,000.
- The median loss caused by nonprofit employees was \$65,000.
- Most occupational fraudsters (those who defraud their employers or use them to commit fraud) are first-time offenders with clean employment histories.
- Roughly 89 percent had never been charged or convicted of a fraud-related offense.
- Roughly 84 percent had never been punished or terminated by an employer for fraud related conduct.

We will be conducting a webinar at the beginning of 2015 that discusses internal controls for exempt organizations.

### NFL tax exemption in jeopardy?

As is relatively well-known now, the National Football League is considered to be a tax-exempt entity pursuant to §501(c)(6) of the Internal Revenue Code (obviously, the separate teams are not considered to be tax-exempt entities). Section 501(c)(6) of the Internal Revenue Code sets forth that business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private individual will be considered tax-exempt. A business league is deemed to be an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

Other examples of sports leagues considered to be tax-exempt under §501(c)(6) of the Internal Revenue Code include the National Hockey League and the Professional Golfers’ Association. However, the National Basketball Association and Major League Baseball do not currently have tax-exempt status. The speculation regarding why the NBA and MLB are not considered to be tax-exempt entities centers on their respective desires to not having to publicly disclose their finances on the Form 990.

That all being said, several bills have recently been introduced in Congress that would end the tax-exempt status of the NFL and other leagues. The Properly Reducing Over-exemptions for Sports Act (or “PRO Sports Act”), H.R. 3965 and S. 1524, would provide that no entity with more than \$10,000,000 in gross receipts would qualify under § 501(c)(6) if it is a professional sports league. The proposed Tax Reform Act of 2014 would remove the § 501(c)(6) status of any “professional sports league.” Finally, on September 16, 2014, legislation was introduced intended to increase funding for domestic violence prevention programs by \$100 million paid for by closing a decades-old tax loophole used by professional sporting leagues (tax-exemption under §501(c)(6)).

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at [byacker@yhadvisors.com](mailto:byacker@yhadvisors.com) if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding YH Advisor’s exempt organization tax, legal and accounting services.

## Focus on the IRS TE/GE Division

### release of fy 2015 te/ge program letter

In previous years (notwithstanding FY 2014 when TE/GE was obviously distracted dealing with other issues), TE/GE has issued a Workplan summarizing their achievements from the previous year and setting forth their goals and expectations for the coming year. For FY 2015, TE/GE has issued a Program Letter as opposed to a Workplan.

Such Program Letter comprises the following:

- A message from the TE/GE Commissioner, Sunita Lough; in such, Ms. Lough explains that the Program Letter sets forth the priorities and focus for TE/GE in the coming year.
- Describing TE/GE's continued focus to be as transparent as possible.
- Setting forth that TE/GE will seek to continually improve their efficiency, for example, in the way that they handle the review of Tax Exemption Applications.
- Explaining the continued focus of TE/GE on enforcement (e.g. conducting more audits of exempt organizations).
- Setting forth that TE/GE is attempting to ensure that TE/GE personnel take consistent and correct positions when dealing with exempt organizations.
- Describing TE/GE's continual development of providing a knowledge base in the exempt organization area.

### significant changes to the 2014 form 990 schedules

Please see Page 7 for a link to a draft of the 2014 Form 990 core form. Based upon our cursory review of such, the Form 990 core form for 2014 is very similar to the 2013 version. However, the same apparently cannot be said for a

couple of the 2014 Form 990 Schedules, notably Schedule A and Schedule H.

Specifically, regarding Schedule A, the following revisions are expected to be implemented:

- The great majority of the significant revisions to Schedule A involve the reporting required for supporting organizations.
- Regarding Type III supporting organizations, the organization needs to now report the amount of "other support" which they provided to their supported organization(s).
- Questions regarding contributions from disqualified persons, disqualified person control, notification requirements and foreign supported organizations are now set forth on Part IV of Schedule A (which previously used to be for setting forth explanations and narrative information).
- Non-functionally integrated Type III supporting organizations have to provide a wealth of new financial information on the new Schedule A, Part V.

Specifically, regarding Schedule H, the following revisions are expected to be implemented:

- There are no significant revisions of note to Parts I through IV of Schedule H.
- Enhanced reporting re subordinate organizations as part of a group return.
- Enhanced reporting regarding the timing of becoming a hospital facility.
- More detail regarding the reporting of community health needs assessments.
- More detail regarding financial assistance policies.
- Enhanced reporting regarding a hospital's collection practices.

Additionally, some revisions to Schedule L of the Form 990 are also in the offering. Primarily, the Internal Revenue Service is trying to standardize the definition of "interested person" for Schedule L reporting purposes.

## summary of recent eo plrs

**TAM 201441021** – addresses the §4943 excess business holding excise tax that can potentially be imposed on private foundations and the ability of a private foundation under §4962 of the Internal Revenue Code to have such abated.

**PLR 201440021** – low-income housing cooperative that sought recognition of tax-exemption from the Internal Revenue Service was found not to qualify as a 501(c)(3) public charity as a result of the Internal Revenue Service finding that the organization did not operate exclusively for exempt purposes, did not meet the operational test and possibly allowed its net earnings to inure to private individuals.

**PLR 201440020** – the Internal Revenue Service declined to recognize an applicant (organized to support quality and cost improvements in pediatric health care) as tax-exempt as a result of their finding that the organization's Board of Directors was not representative of the broad interests of the community which they served and their finding that potential private benefit existed.

**PLR 201430014** – the Internal Revenue Service declined to recognize an entity that was organized to protect victims of microwave attacks as tax-exempt.

**PLR 201421026** – the Internal Revenue Service approved a private foundation's procedures for awarding vocational and postsecondary education scholarships to students in need of financial assistance and ruled that awards would not be taxable to recipients if used to pay tuition and related expenses.

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

## IRS Tax Exemption Scoreboard

It was recently reported by TE/GE that the Internal Revenue Service has made substantial progress in the clearing of its Tax Exemption Application backlog (that was at its worst as the beginning of 2014). According to TE/GE Deputy

Commissioner, Donna Hansberry, the Internal Revenue Service has now closed 97 percent of the Tax Exemption Applications which at the beginning of 2014 were more than one year old.

## YH Case Study

### property tax exemptions

In the past couple of months, we have been engaged by three separate clients to help them receive exemption from property taxes in their particular states. In California (where all three clients were located), only charities are generally eligible (some veterans organizations are also eligible) to take advantage of the state's welfare exemption.

Please find following the requirements for taking advantage of California's welfare exemption related to obtaining exemption from paying property taxes:

- The property must be used exclusively for religious, hospital or charitable purposes.
- The property must be owned by a nonprofit organization which is organized for religious, hospital or charitable purposes.
- Two separate applications must be filed for an organization to take advantage of the welfare exemption in California, first, an organization must prove that they are a charitable entity (Board of Equalization), and second, the organization must prove that they exclusively utilize the particular property for charitable purposes (county assessor).
- Certain uses of the property generally do not qualify for the welfare exemption (for example, fundraising / unrelated business activities / private benefit activities).
- The following documents generally need to be provided when requesting the welfare exemption:
  - Articles of Incorporation
  - Determination Letter
  - Financial statements
- Documentation supporting the exempt/charitable activities of the organization

CONTINUED ON PAGE 5

Notwithstanding that the above addresses California issues, it is likely that your particular state's property tax exemption laws are somewhat analogous.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at [byacker@yhadvisors.com](mailto:byacker@yhadvisors.com) if you have any questions regarding property tax exemptions for exempt organizations.

## YH Quick Tips

### benefit corporations

Within the past year, the instances where we have been approached by prospective clients to help them set-up a benefit corporation have increased exponentially. At the end of the day, we rarely move forward with creating a benefit corporation since the prospective client almost always has misconceptions regarding what a benefit corporation is and what the advantages are of setting such up.

That being said, please find following a summary of what a benefit corporation generally is and what it generally is not:

- Benefit corporations are generally not exempt organizations, they are generally treated as for-profit entities.
- Benefit corporations are generally taxed similar to for-profit entities.
- Benefit corporations are generally described as for-profit entities hardwired to possess a social conscience.
- Benefit corporations generally attempt to balance the maximizing of profits for shareholders with the doing of social good.
- Directors of benefit corporations are generally required to consider other factors than profitability when fulfilling their duties as Directors.
- Currently, 22 states authorize benefit corporations in their particular states; a total of 31 states authorize some form of social enterprise corporations.

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## YH Timely Guidance

### employment taxes

In July of 2014, the Treasury Inspector General for Tax Administration (TIGTA) released an audit report titled, "Some Tax-Exempt Organizations Have Substantial Delinquent Payroll Taxes". Such report concluded that exempt organizations that do not pay their payroll (employment) taxes result in millions of dollars in lost tax revenue to the Internal Revenue Service. While the majority of exempt organizations pay their federal payroll taxes, the report identified a small percentage of exempt organizations that did not pay their payroll taxes. For example, as of June of 2012, it was found that more than 64,000 exempt organizations had nearly \$875 million of federal tax debt related to unpaid payroll taxes. While some exempt organizations owed minor amounts, approximately 1,200 exempt organizations owed more than \$100,000 each.

That being said, please find following some guidance for exempt organizations to help ensure that they remain current and compliant regarding their federal payroll tax obligations:

- Maintain contemporaneous documentation which supports classification of certain workers as independent contractors.
- Make sure that any independent contractors are issued a Form W-9 (and such is completed and returned) before any payment is made to the independent contractor.
- Ensure that all amounts of \$600 or more paid to non-employees are investigated for possible information reporting requirements.
- Make sure that the exempt organization is well aware of the required backup withholding rules.

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# YH EO Accounting Spotlight

## recording contributions

A contribution is an unconditional, voluntary, nonreciprocal transfer of cash or other assets to an entity or settlement or cancellation of its liabilities. Sounds simple enough, however, while the Financial Accounting Standards Board (“FASB”) Codification definition of a contribution makes sense in theory, the real world application and guidelines for recording contributions are significantly more complex.

Before a contribution can be recorded, a few characteristics need to be analyzed. The distinguishing characteristic that differentiates a contribution from an exchange transaction (a reciprocal transfer in which each party receives and sacrifices approximately equal value) is the lack of value received by the donor. For instance, the purchase of tickets to attend a special event would not be considered a contribution as the purchaser receives value in the dinner or entertainment provided at the event. Conversely, if this same patron gives an additional amount above the asking price of the ticket, that would be considered a contribution as no value is received in exchange for the additional amount paid. Another example of an exchange transaction is membership dues. Members pay a specified amount on a periodic basis, and in return, they receive tangible and possibly intangible benefits for being part of the organization (please note that the classification of membership dues is often different for Form 990 reporting purposes).

In order for a contribution to be recorded as revenue by an exempt organization, the transfer must be unconditional. FASB defines a donor-imposed condition as “a donor stipulation that specifies a future and uncertain event whose occurrence or failure to occur gives the promisor a right of return of the assets it has transferred or releases the promisor from its obligation to transfer its assets.” Essentially, the exempt organization’s right to keep the asset (whether cash or another asset) is dependent on some future event that may or may not occur. In instances where this is the case, a contribution does not exist and should not be recorded.

Contributions are required by Generally Accepted Accounting Principles (“GAAP”) to be recorded in the period pledged. This means that multi-year pledges should be recorded as contribution revenue in full in the year promised, even if the receipt of the promised assets will not occur until future years. Furthermore, GAAP also requires that multi-year pledges be discounted using the net present value of future cash flows. The theory behind this requirement is that a promise to make a contribution in the future is worth less than an immediate contribution due to the time value of money. Payments received in future years would be recorded as a reduction to the pledge receivable that was created when originally pledged and recorded as revenue. Subsequent payments would not be recorded as revenue in future years.

Contributions to exempt organizations are not always in the form of cash (or a promise to pay cash in the future). Many times, donors contribute services or other noncash items. Non-cash assets received by exempt organizations should be recorded as a noncash contribution as of the date of the gift. Further complicating this accounting transaction, non-cash contributions should be recorded at their fair market value (“FMV”). Determining FMV for non-cash assets can be quite difficult, depending on the nature of the asset.

Recording contributed services differs from contributed assets. In order to book contributed services as revenue from a GAAP perspective, the services received need to meet the following criteria:

- The services contributed require specialized skills,
- They have been provided by individuals possessing those skills, and
- Would typically have been paid for if not provided by the donor.

If all three of the above criteria are satisfied, the contributed services should be recorded as a contribution (and an offsetting noncash expense) valued at the FMV as of the date of service. As a reminder, contributed services and facilities are not reported as contributions on an exempt organization’s Form 990, however, GAAP requires that these contributions be included as revenue in the exempt organization’s financial statements.

CONTINUED ON PAGE 7

When recording contributions revenue, it is important to ensure that all amounts are properly recorded as unrestricted, temporarily restricted, or permanently restricted. Keep in mind that only donors can impose restrictions on contributions. Board members or other committees may designate or set reserve funds aside for a specified purpose, but for both financial statement and Form 990 reporting purposes, those would not be considered restrictions.

Please do not hesitate to contact Stacey Bergman at (310) 982-2805 or [sbergman@yhadvisors.com](mailto:sbergman@yhadvisors.com) if you have any questions regarding the accounting or audit services that YH Advisors provides or if you need any additional information.

## YH EO Practical Accounting Guidance

### maintaining books and records for contributions

In line with the previous article regarding contributions, below is a brief list of quick tips for maintaining proper books and records for contributions:

- Review all documentation provided with a contribution to identify potential conditions or restrictions.
- If restrictions are present, GAAP requires that due care is made to properly track the use of restricted funds. For exempt organizations using off the shelf accounting software, the tracking of restricted funds is typically done outside of the accounting software.
- Create (and follow) a system to send charitable contribution acknowledgement letters in a timely manner. Additionally, if contributions are restricted for a specified program, donors often require reports illustrating how their funds furthered an exempt organization's charitable programs or mission.
- For any noncash assets received, determine the FMV as of the date of the gift and maintain contemporaneous supporting documentation as to how the value was derived along with the original contribution documents.

- If donated or pro bono services are received, analyze them based on the criteria identified in the previous article to ascertain whether a reportable contribution exists. If so, maintain appropriate documentation to support the value assigned to the services.

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## YH EO Resource Alert

This feature of the YH Exempt Org Advisor will highlight different exempt organization resources which are free of charge in the public domain.

This quarter we are highlighting the issuance by the Internal Revenue Service of a draft of the 2014 Form 990 core form. You can download such by accessing the following link:

[www.irs.gov/pub/irs-pdf/f990.pdf](http://www.irs.gov/pub/irs-pdf/f990.pdf)

## YH Presentations

Please find following a listing of the presentations which YH Advisors has presented, or will present, during the December 2014 – February 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.

Dec 4, 2014	Form 990 Core Form Preparation Basics (AICPA) Reno, NV
Dec 5, 2014	Form 990 Core Form Preparation Basics (AICPA) Las Vegas, NV
Dec 10, 2014	Private Foundations Tax Primer (AICPA) Albuquerque, NM
Jan 9, 2015	Financial Hot Buttons for Board Members (USD) San Diego, CA
Jan 13, 2015	Fundraising Legal Issues (OneOC) Tustin, CA

## Upcoming 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):

- |               |  |
|---------------|--|
| Dec. 9, 2014  | Charitable Gaming Events                   |
| Jan. 20, 2015 | Internal Controls for Exempt Organizations |
| Feb 2015      | Ripped from the EO Headlines               |

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The Winter 2015 edition of the YH Exempt Org Advisor will be published in the February 2015 time frame, probably after the somewhat busy February 15, 2015 filing deadline for extended June year-ends.