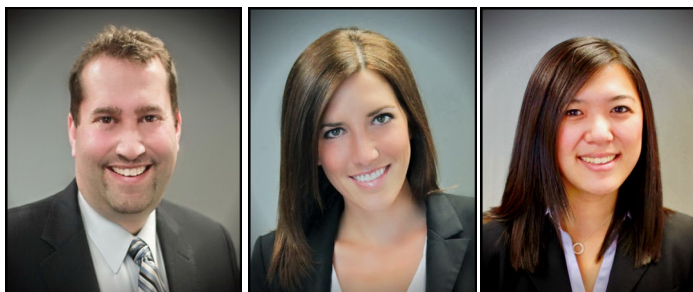




7755 CENTER AVENUE, SUITE 1225 HUNTINGTON BEACH, CA 92647  
OFFICE 310.982.2806 • FAX 323.320.4366 • YHADVISORS.COM

## 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

Janet Wang

**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 almost 30 years.

The YH Exempt Org Advisor is electronically available on a complimentary basis to anyone who is included on our e-mail listing. If you happen to be forwarded a copy of this publication and would like to receive future copies, please contact us with your e-mail address at [info@yhadvisors.com](mailto:info@yhadvisors.com).

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## Ripped from the EO Headlines

### congressional hearings

On May 16, the House Ways and Means Oversight Subcommittee conveyed a panel to provide insight into the Internal Revenue Service's oversight of the tax-exempt sector. Overall, the assembled panel agreed that the Internal Revenue Service was doing as well as they could in overseeing the exempt organization sector based upon the limited resources at their disposal. Additionally, the panelists responded favorably to inquiries from the Subcommittee regarding the Internal Revenue Service's responsiveness to potential revisions to the Form 990. This hearing was the first in a series of hearings exploring issues facing exempt organizations and related IRS compliance efforts according to Subcommittee Chair Charles W. Boustany Jr. of Louisiana.

### reporting investments in pass-throughs on the form 990

In IRS Announcement 2012-19, the Internal Revenue Service set forth that they were backing away from a Form 990 reporting requirement regarding an exempt organization's investment in flow-throughs. Specifically, pursuant to the revised Form 990 Instructions for 2011, it is now NOT required for exempt organizations to report their interests in the income, expenses, and assets of joint ventures and other partnerships in which they have an ownership interest utilizing the information reported on a Schedule K-1. As such, exempt organizations, on the Form 990, can continue to report its proportionate interests in a joint venture's or other partnership's revenue, expenses, and assets in accordance with the organization's books and records.

It appears that the primary motivation for the Internal Revenue Service's change of course in this area was because oftentimes depending on Schedule K-1 reporting can be quite burdensome as a result of some K-1s being distributed many months after the year-end close of the particular flow-through which the exempt organization is invested in.

## Focus on the IRS TE/GE Division

### Lois Lerner's recent "governance" remarks

In late April of 2012, Lois Lerner, the Director of the TE/GE division for the Internal Revenue Service, spoke at the Georgetown Law EO Conference conducted in Washington DC. Please find following some of her statements of note (what follows are not direct quotes):

- The Internal Revenue Service recently completed an exempt organization governance study utilizing the data which they accumulated from completing their Governance Check Sheet at the conclusion of IRS audits of charitable organizations.
- The Governance Check Sheet inquires regarding a charitable organization's governance practices, including mission statements; the use of comparability data when determining compensation; family or outside business relationships between Board members and other insiders, where effective control of the organization resides; policies on conflicts of interest; and whether the charitable organization's Form 990 was reviewed by the Board (or a subcommittee thereof) before filing with the Internal Revenue Service.
- The Board of Directors of an exempt organization should review a draft of the organization's Form 990 before it is filed with the IRS.
- Those exempt organizations deemed to be undertaking and following governance best practices are more likely to be compliant from an IRS perspective as compared to exempt organizations not following the IRS' governance best practices.
- Charitable organizations with written mission statements are more likely to be compliant from an Internal Revenue Service perspective.
- Charitable organizations controlled by one individual or by a small group are likely to be less compliant from an Internal Revenue Service perspective.

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- Surprisingly, charitable organizations are no less compliant if they have not implemented a conflict of interest policy.

## I select check

The Internal Revenue Service recently issued a new tool, Select Check, which can be utilized for undertaking a number of important functions in the exempt organizations world. For instance, Select Check can be used to search for organizations eligible to receive tax-deductible contributions (in effect replacing IRS Pub. 78). Additionally, Select Check can be used to search for organizations whose federal tax exemption was automatically revoked for not filing a Form 990-series return or notice for three consecutive years. Finally, Select Check can be used to search for the Form 990-N (e-Postcard) filings of small exempt organizations.

The Select Check tool can be accessed on the Internal Revenue Service's web site at <http://apps.irs.gov/app/eos>

## I auto-revocation list

In May of 2012, at the American Bar Association Tax Section conference, the IRS provided the latest statistics regarding the automatic revocations of tax-exemption for exempt organizations which did not file anything with the IRS over a three-year period. It is astounding to note that approximately 435,000 heretofore exempt organizations have automatically lost their tax exemptions. Notwithstanding the fact that a great majority of the revoked organizations are defunct or no longer operating, the IRS reported that there were still 17,000 organizations seeking to have their exemptions reinstated. Additionally, since the deadline for smaller exemptions organizations to have their exemptions retroactively reinstated is December 31, 2012, it is fully expected that significantly more exempt organizations will be applying for reinstatement in the coming months.

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.

## I YH Case Study

### I unrelated business income

We were recently approached by a charitable organization inquiring as to whether the income which they generated from the annual conducting of two golf tournament special event fundraisers would be subject to the unrelated business income tax. The entity had been conducting the event for years, but after hearing of the IRS's recent focus on increasing the efforts of the TE/GE Division, wanted clarification as to their compliance.

Please find following the "roadmap" of our analysis which concluded that the income generated from the conducting of two golf tournaments annually would not be subject to the unrelated business income tax.

1. The conducting of a golf tournament which generates revenue is certainly within the definition of a "trade or business".
2. The conducting of a golf tournament is not related to the furthering of the exempt purposes of an exempt organization, regardless of the fact that all of the proceeds from the conducting of the golf tournament are utilized in the furthering of the organization's exempt purposes.
3. The annual conducting of two golf tournament special event fundraisers probably is not considered to be the regularly carrying on of an unrelated business activity.

We reached our conclusion since an important component of the unrelated business income definition was not satisfied; specifically, the activity in question (the conducting of the two golf tournaments on an annual basis) was not considered to be regularly carried on.

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 definition of unrelated business income or if you would like more information regarding the unrelated business income studies which YH Advisors regularly conducts.

## YH Practice Tip

### managing state charitable solicitation registrations

One of the emerging trends in the exempt organizations sector is the ever-increasing focus of certain state charity officials and authorities regarding the state charitable solicitation registration requirements of charities generating contributions revenue from residents of states other than the charity's "home state". In and of itself, the undertaking of an initial or annual renewal registration in a particular state is not a complex task (well, except for perhaps initially registering in Washington DC), however, the undertaking of over 40 initial or annual renewal registrations in different states can be quite burdensome indeed. That being said, it is essential that a charitable organization which is receiving contributions from residents of states other than their "home state" create a strategy for effectuating all of their required initial registrations and annual renewals.

The key is for the charitable organization to be organized and well informed regarding each state's registration and filing requirements. Since the launch of YH Advisors, we have dedicated many hours of research to creating a master control sheet with each state's most updated state charitable solicitation registration requirements. There are published resources out there, however, we have found them to be almost instantly outdated as a result of states continually changing their state charitable solicitation registration requirements.

Amongst the approximately 40 different states (including Washington DC) that require charity solicitation registrations, there unfortunately are all different types of required registration procedures and methodologies. For example, there are states that require all forms to be submitted via the internet, some require snail-mail submissions and some require submissions on a DVD. Additionally, the different states require different documents to be submitted, for example, the charitable organization's Articles of Incorporation, Determination Letter, Tax Exemption Application, Bylaws and conflict of interest policy. Finally, the filing due dates for both the initial registration and the annual renewals are all over the place with essentially no uniformity amongst the states.

Accordingly, it is essential that the charitable organization be familiar with each state's state charitable solicitation registration rules and regulations.

As a result of all the disparate state rules and regulations, the Unified Registration Statement ("URS") was created (see [www.multistatefiling.org](http://www.multistatefiling.org)). While some states solely accept the URS, other states accept the URS in conjunction with additional statements and documents. Since some states' charitable solicitation registration requirements are ever-changing, it is recommended that the charitable organization do much cross checking research to ensure that they are following the most updated rules and regulations. For example, on the above-referenced URS website, it sets forth that Maine accepts the URS, however, after recently calling the proper authorities in Maine, we were notified that Maine no longer accepts the URS.

Regarding the URS, it is a three-page document requiring the submission of all different type of financial, operational and governance information regarding the charitable organization applicant. From our extensive research in the area, it appears that there are five states that require charitable solicitation registrations but do NOT accept the URS.

All in all, staying compliant with all the different state charitable solicitation registration rules and regulations is a burdensome and daunting task. That being said, as long as the charitable organization is organized and is following the most updated rules, then the undertaking of the state charitable solicitation registration filings is fairly manageable. However, the charitable organization should be prepared to devote quite a bit of time to both the initial registration and annual renewal submissions.

Please do not hesitate to contact Janet Wang at 310-982-2805 or at [jwang@yhadvisors.com](mailto:jwang@yhadvisors.com) if you have any questions regarding the state charitable solicitation registration filing requirements or if you would like more information regarding the extensive services which YH Advisors provides in this area.

## The YH “Plain English” EO Dictionary

From an Internal Revenue Service perspective, a “compliance check” is a review conducted by the Internal Revenue Service to determine whether an exempt organization is adhering to recordkeeping and information reporting requirements. It is important to note that a compliance check is not an examination since it does not directly relate to the Internal Revenue Service determining a tax liability for any particular period. The TE/GE division of the Internal Revenue Service maintains an active compliance check program. IRS EO specialists conduct the checks by corresponding with or telephoning exempt organization representatives.

When conducting a compliance check, the Internal Revenue Service may inquire about an item on a return, determine if specific reporting requirements have been met or whether an organization’s activities are consistent with its stated tax-exempt purpose. Please be aware that, technically, the exempt organization may refuse to participate in a compliance check without penalty. However, in our experiences, if an exempt organization refuses to participate in a compliance check, we believe it subjects the exempt organization to an increased risk of scrutiny from the Internal Revenue Service.

At the beginning of a compliance check, the Internal Revenue Service will inform the exempt organization that the review is a compliance check and not an examination. As such, the Internal Revenue Service will not ask to examine any books or records of the exempt organization nor ask any questions regarding tax liabilities. If, during a compliance check, the Internal Revenue Service decides an examination of the exempt organization is appropriate, they will notify the organization that the Internal Revenue Service is commencing an examination before asking questions related to tax liability.

To determine which organizations should be targeted for a compliance check, the Internal Revenue Service analyzes information from Forms 990 and other sources and also reviews media reports and receives complaints from the general public and Congress about potential non-compliance by exempt organizations.

## Schedule B Reporting: Anonymous Donors

Oftentimes, exempt organizations and donors alike express anxiety with the reporting of contributors on Form 990, Schedule B. While Schedule B is not subject to public disclosure for public charities, there is often hesitancy to provide something as confidential and proprietary as an entity’s contributor list to an unrelated third party.

At a recent meeting held on June 11, 2012, an IRS spokesperson provided some clarification as to the IRS’ stance on this issue. Unfortunately, there is not much that a charitable entity can do to avoid the reporting of donors on Schedule B. Donors will oftentimes “donate anonymously” requesting that the entity maintain that anonymity through its reporting. Unfortunately as long as the entity knows the identity of the donor, the IRS’ stance is that the entity is still required to list the donor’s name on the Schedule B. To not do so would make the entity’s return technically incomplete or perhaps fraudulently prepared.

If the entity truly does not know the identity of the donor, then reporting of an anonymous donor on Schedule B is completely acceptable. There are certain arrangements that permit a donor to enter into an agency agreement with an unrelated third party, who would then make the contribution for the donor. In such a case, the exempt entity should ensure that any acknowledgement issued is consistent with the donation in that the acknowledgement should be provided to the agent. However, it is important that the acknowledgement letter documents that the charity received the donation from the agent, who had contributed on behalf of an anonymous donor. This will ensure both that the donor has the proper documentation to take a charitable deduction and the entity has the proper documentation to validate the reporting of an anonymous donor.

Please do not hesitate to contact Lauren Haverlock at 310-982-2804 or at [lhaverlock@yhadvorsors.com](mailto:lhaverlock@yhadvorsors.com) if you have any questions regarding the management of donors and donor reporting on Schedule B of the Form 990 or if you would like more information regarding the extensive services which YH Advisors provides in this area.

## The YH EO Brain Teaser

The Internal Revenue Service recently received a Tax Exemption Application (Form 1024) from an organization seeking to be recognized as a §501(c)(7) social club. This social club applicant was formed to protect the property rights of a group of fishing cabin owners. The social club applicant's primary objective was to litigate on behalf of its members. These members are all private, individual property owners.

Do you think that the Internal Revenue Service recognized this entity as being tax-exempt under §501(c)(7) of the Internal Revenue Code? Please e-mail your answer to this YH EO Brain Teaser to [info@yhadvisors.com](mailto:info@yhadvisors.com). We will randomly select a winner from all the correct answers we receive and such winner will be awarded a \$50 gift card.

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## Upcoming Webinars

YH Advisors will continue to periodically conduct (about once every 2 months) 100-minute interactive webinars focusing on the tax, legal and accounting issues most relevant to exempt organizations. Next up is "2011 Form 990 Update: What's New, What's Not and What's Hidden" to be presented on July 19, 2012. As with all the webinars conducted by YH Advisors, 2 hours of CPE credit will be available to all registered attendees. To register, please click here to visit [our post on yhadvisors.com](#).

## YH Presentations

Please find following a listing of the various presentations that YH Advisors made or is scheduled to make in June/July of 2012. Please do not hesitate to contact us for more information if you have interest in attending any of the upcoming presentations.

June 12, 2012	Private Foundation Tax Primer (CalCPA) San Mateo, CA
July 12, 2012	Summer Program for Exempt Orgs (Cal State Fullerton) Fullerton, CA
July 17, 2012	Advanced Private Foundation Tax/Legal Issues (CalCPA) San Mateo, CA

## Next Issue of the YH Exempt Org Advisor

The Summer 2012 edition of the YH Exempt Org Advisor will be published after the relatively busy August 15, 2012 exempt organization information and tax return filing deadline.

