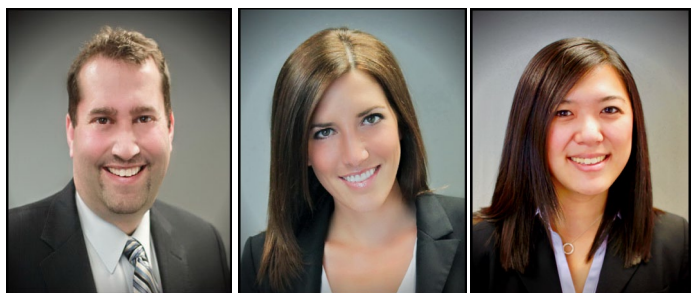




**YH ADVISORS**  
THE EXEMPT ORG EXPERTS

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 INAUGURAL EDITION OF 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 over 25 years.

The YH Exempt Org Advisor will be 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

When the Occupy Wall Street movement commenced in mid-2011, anyone initially providing support to the movement was not legally entitled to take a charitable contribution deduction for their support. However, that changed a couple of months ago when the Alliance for Global Justice, a §501(c)(3) public charity, announced that they would serve as the fiscal sponsor for Occupy Wall Street.

As a fiscal sponsor, the Alliance for Global Justice collects and manages contributions, reports Occupy Wall Street's activities and financial information on their own Form 990, and reviews Occupy Wall Street's activities to make sure the activities are consistent with those of an exempt charitable organization. The Alliance for Global Justice charges Occupy Wall Street a 7% administrative fee on all contributions received. The fee is used to cover any of the time and expenses which the Alliance for Global Justice expends on behalf of Occupy Wall Street.

That being said, current contributors to Occupy Wall Street are entitled to take a charitable contribution deduction when they make contributions to support the Occupy Wall Street movement. Predictably, since Occupy Wall Street came under the "exemption umbrella" of the Alliance for Global Justice, contributions to Occupy Wall Street have appreciably increased.

The Occupy Wall Street situation aptly illustrates that those considering whether to apply for tax-exemption on their own should seriously consider whether to engage a fiscal sponsor as a worthwhile alternative to applying for their own tax-exemption (which can be time-consuming and costly). YH Advisors has a number of fiscal sponsor clients and we also work with a number of clients who have entered into agreements with fiscal sponsors during the initial start-up of their charitable operations.

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 fiscal sponsorship concept or if you need any additional information regarding the exempt organization formation services that YH Advisors provides.

### Focus on the IRS TE/GE Division

#### automatic filing extension

The Internal Revenue Service recently announced that exempt organizations with January and February 2012 initial filing due dates (which would be exempt organizations with August 31 or September 30, 2011 year-ends) will have until March 30, 2012 to file their information returns with the Internal Revenue Service. The Internal Revenue Service is granting this extension of time because their exempt organizations e-filing system will be down for the months of January and February.

This extension of time also applies to exempt organizations whose extended information returns were due either in January or February of 2012. Accordingly, an exempt organization with a June 30, 2011 year-end which obtained a 3-month extension on November 15, 2011, will now not need to file their information return with the Internal Revenue Service until March 30, 2012. The filing of the Form 990-N is not affected by this blanket extension since the filing of the Form 990-N technically cannot be extended.

Exempt organizations not required to file their information returns electronically with the Internal Revenue Service can voluntarily file their returns manually with the Internal Revenue Service during the two-month period beginning in January of 2012. Finally, no extension form needs to be filed with the Internal Revenue Service to receive the extension of time to file until March 30, 2012.

#### schedule h update

The Internal Revenue Service has released a draft version of the 2011 Form 990, Schedule H, along with the Schedule H Instructions. Schedule H is required to be completed by hospitals. For 2011, Schedule H filers will be required to complete all parts and sections of Schedule H other than Part V, Section B, Lines 1-7. Those Lines relate to Community Health Needs Assessments and will remain optional to complete for the 2011 tax year. Please be aware that hospitals will be required to attach a copy of their most recent audited financial statements to the 2011 Form 990.

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## revised irs publication 557

The Internal Revenue Service has recently revised IRS Publication 557; this Publication addresses the obtaining of tax-exempt status by providing an overview of the rules and procedures that apply to organizations seeking recognition of exemption from federal taxes. Please do not hesitate to contact any of us here at YH Advisors (Brian - 310.982.2803 / Lauren - 310.982.2804 / Janet - 310.982.2805) if you are considering applying for tax-exempt status with the Internal Revenue Service.

## irs issues new eo form

The Internal Revenue Service has released a new Form applicable to exempt organizations, the Form 8940 ("Request for Miscellaneous Determination"). The Form 8940 allows exempt organizations to apply for the following nine miscellaneous determinations from the IRS.

These nine available determinations are listed with the associated user fees:

1. Advance approval of certain set-asides described in 4942(g)(2) - \$1,000
2. Advance approval of voter registration activities described in section 4945(f) - \$1,000
3. Advance approval of scholarship procedures described in section 4945(g) - \$1,000
4. Exemption from Form 990 filing requirements - \$400
5. Advance approval that a potential grant of contribution constitutes an "unusual grant" - \$400
6. Change in Type (or initial determination of Type) of a section 509(a)(3) organization - \$400
7. Reclassification of foundation status including a voluntary request from a public charity for private foundation status - \$400
8. Termination of private foundation status under section 507(b)(1)(B) – advance ruling request - \$400
9. Termination of private foundation status under section 507(b)(1)(B) – 60 month period ended - \$400

For each type of request being sought, the exempt organization must include an attachment providing a detailed explanation of the request and also submit the corresponding user fee to the appropriate Internal Revenue Service address

## YH Case Studies

We were recently approached by a very large charitable organization (non-client) that feared they were in danger of losing their tax-exemption. Their fears arose because of a blog article alleging that this organization was undertaking too much lobbying and not focusing enough time and money on their program service activities. The charitable organization was starting to note a decrease in their charitable contributions received from new donors and they attributed such decline, at least in part, to the blog entries.

The author of the blog in question had reached his conclusions after reviewing the charitable organization's most recent Form 990 posted on GuideStar. On this Form 990, the charitable organization reported lobbying expenditures of approximately \$1.2 million, which constituted about 11% of their overall expenditures for the applicable tax year. To the best of everyone's recollection, the charitable organization had never made a §501(h) election.

After we were engaged to conduct a lobbying analysis for this charitable organization, we analyzed their more significant lobbying expenditures made during the applicable tax year and concluded that a very significant portion of the expenditures which the charitable organization previously classified as lobbying expenditures were in fact programmatic (educational) expenditures, and therefore, not lobbying expenditures. The Internal Revenue Service has a narrow definition of what constitutes a lobbying expenditure, and because of this, many expenditures which might seem to qualify as lobbying expenditures, in fact do not.

For example, expenditures made to educate the general public (or even legislators) about the organization's recent activities and research results, which falls short of advocating for or against pending or existing legislation and which does not include a call to action, generally will not be considered a lobbying expenditure from an Internal Revenue Service perspective. As such, as part of this particular lobbying analysis, we were able to reduce their reported lobbying expenditures from approximately \$1.2 million to an amount under \$400,000.

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With their lobbying expenditures now being correctly calculated, we recommended that the charitable organization make the §501(h) election to address their lobbying expenditures on a go forward basis. We also recommended that the charitable organization amend their Forms 990 for all open years to correctly report their lobbying expenditures in those open years.

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 what constitutes a lobbying expenditure from an Internal Revenue Service perspective or if you would like more information regarding the lobbying analyses which YH Advisors conducts.

### YH Practice Tip

Earlier this year, the Internal Revenue Service announced that approximately 275,000 exempt organizations had automatically lost their tax exempt status. Section 6033(j) of the Internal Revenue Code, enacted as part of the Pension of Protection Act of 2006, was the impetus for the flood of automatic revocations. Pursuant to §6033(j), an exempt organization will automatically lose their federal tax-exemption if they not do file anything with the Internal Revenue Service for three consecutive years.

Unfortunately, scant relief is available for an exempt organization whose tax-exemption has been revoked. Essentially, the only way that an entity can have their federal tax-exemption reinstated is to reapply for such by completing and filing a Tax Exemption Application (Form 1023 or Form 1024) with the Internal Revenue Service. For reinstatement, the Tax Exemption Application is required to be filed even if the entity (for example, a §501(c)(7) social club) was not required to complete a Tax Exemption Application when they were initially formed. The filing of a Tax Exemption Application can be quite burdensome, from both a time and cost perspective, especially for smaller exempt organizations.

A complicating factor in the reinstatement process is whether the entity needs to file as a taxable entity (e.g. corporation) during the period from the loss of their exemption until the effective date of their reinstatement. There is an opportunity for organizations to receive a retroactive reinstatement of their tax-exemption

(by making a reasonable cause argument), however, accordingly to the Internal Revenue Service, this will be very hard to achieve, especially for exempt organizations not considered to be “small” exempt organizations. That being said, for larger exempt organizations (generally those with annual gross receipts exceeding \$50,000), the reinstatement of their tax-exemption will generally be effective as of the date that they file their “new” Tax Exemption Application with the IRS. As a result, most larger exempt organizations will have a time period when they are classified as a taxable corporation unable to receive deductible charitable contributions.

For smaller exempt organizations (generally those with annual gross receipts below \$50,000) that have automatically lost their tax-exemption, pursuant to IRS Notice 2011-43, these exempt organizations are deemed to automatically qualify for retroactive reinstatement of their tax-exemption (without having to set forth a reasonable cause explanation) if they satisfy all of the following criteria:

- The entity was not required to file a Form 990 or Form 990-EZ for the tax years beginning before 2007 because they normally had gross receipts of less than \$25,000;
- The entity was eligible in the tax years 2007, 2008 and 2009 to file a Form 990-N with the Internal Revenue Service; and
- The entity files their Tax Exemption Application with the Internal Revenue Service before December 31, 2012.

One important nuance to note is that some small exempt organizations will not be eligible for retroactive reinstatement pursuant to IRS Notice 2011-43. For example, supporting organizations and private foundations will generally not be able to take advantage of the ability to benefit from retroactive reinstatement without having to persuade the Internal Revenue Service with a reasonable cause argument.

Please do not hesitate to contact Lauren Haverlock at 310-982-2804 or at [lhaverlock@yhadvisors.com](mailto:lhaverlock@yhadvisors.com) if you have any questions regarding retroactive reinstatements, automatic revocations and the Tax Exemption Application process or if you would like more information on the reinstatement services that YH Advisors provides.

## EO Accounting Spotlight

The Financial Accounting Standards Board (“FASB”) recently announced two new projects—a standard setting project and a research project—intending to improve the financial statement reporting for exempt organizations. These projects come on the heels of the significant Form 990 revisions implemented by the Internal Revenue Service first effective for the 2008 tax year. In significantly overhauling the Form 990, the Internal Revenue Service’s primary objective was to require more transparency for exempt organization tax reporting. FASB’s primary objective in undertaking the two new projects is very similar: updating and improving exempt organization financial reporting so that exempt organization financial statements provide more and better information for donors, creditors and the general public.

The two projects are being undertaken by the FASB as a way to implement suggestions of the Not-for-Profit Advisors Committee (“Committee”), an advisory group created by the FASB in 2009 to provide input from the non-profit sector on existing accounting guidelines and current and proposed technical agenda projects. The Committee recently published some key recommendations on ways to improve the current financial statement reporting for exempt organizations. Some of these recommendations, and their rationale, are noted immediately below:

### net asset classification

The Committee recommended that FASB revisit the current manner in which net assets are classified on the audited financial statements of exempt organizations. The current manner for labeling net assets under ASC 958 is to categorize them as Unrestricted, Temporarily Restricted, or Permanently Restricted. The clarification would help to ease confusion in the definition of each category, and most commonly the “Unrestricted” category.

### statement of activities and cash flow

The Committee believes that the reporting on the Statement of Activities and Cash Flows should be adjusted to more effectively communicate the financial performance of exempt organizations. In that regard, Committee

members agreed that more clearly segregating and defining “operating” versus “non-operating” activities would result in greater comparability in the financial reporting of exempt organizations.

### operation and financial health commentary

One recommendation that received unanimous support from the Committee was the creation of commentary and analysis framework for managers and directors of exempt organizations to use to tell their financial story more effectively. This is something that has already been effectively implemented on the tax side with the enhanced Form 990 reporting requirements.

### not-for-profit specific disclosure requirements

Because of the public disclosure requirements of exempt organizations, the Committee recommended additional measures to make an exempt organization’s financial statements more relevant, clear and transparent.

Each of FASB’s two projects will use the above recommendations of the Committee to guide its focus. The standard setting project will focus more on the financial statements and related notes that are unique to exempt organizations. It will reexamine existing standards for financial statement presentation by exempt organizations with a focus on addressing and improving the net asset classification as well as information provided in financial statements and notes about an organization’s liquidity, financial performance, and cash flows.

The research project will focus more on governance issues as they relate to the best practices followed by exempt organizations and their Board of Directors in telling the financial story of an exempt organization. The project will look at how the communication of the financial story enhances the understanding of donors, creditors, and other stakeholders about the financial health and performance of the exempt organization.

Please do not hesitate to contact Lauren Haverlock at 310-982-2804 or at [lhaverlock@yhadvisors.com](mailto:lhaverlock@yhadvisors.com) if you have any questions regarding these two new FASB projects.

## ■ Upcoming Webinars

Starting in late February or early March 2012, YH Advisors will commence the conducting of quarterly webinars on various exempt organizations tax/legal topics. Our first webinar, titled "The Essential Documents for Any Exempt Organization" will be conducted on a complimentary basis. Please keep an eye out for the registration notices related to this complimentary webinar which should first be forwarded shortly.

After this complimentary webinar has been conducted, we anticipate that our next webinar, addressing the accounting and tax reporting of special event fundraisers, will be conducted in May of 2012. Details for that webinar will be forthcoming in March.

## ■ YH Advisors – New & Notable

Brian Yacker was recently appointed to the AICPA EO Tax Technical Resource Panel. Brian attended his first meeting for such in Washington DC in late November 2011. Brian also participates on monthly conference calls for the AICPA EO Tax Technical Resource Panel and he recently moderated a Form 990 web rebroadcast for the AICPA.

The web site for YH Advisors is now up and running. Please check it out at [yhadvisors.com](http://yhadvisors.com) when you have the chance. Additionally, if you are a Tweeter, please follow us on Twitter [@YHADvisors](https://twitter.com/YHADvisors). Finally, you can check out our Home Page on [Facebook](https://www.facebook.com/yhadvisors).

## ■ YH Presentations

Please find following a listing of the various presentations that YH Advisors is scheduled to present during the first quarter of 2012. Please do not hesitate to contact us for more information if you have interest in attending any of these upcoming presentations.

Jan 3, 2012	Advanced Tax Issues for Exempt Orgs (CalCPA) San Francisco
Jan 6, 2012	Governance Symposium (University of San Diego) San Diego
Jan 11, 2012	Advanced Issues for Private Foundations (CalCPA) San Francisco
Jan 17, 2012	Form 990 – What You Need to Know (CalCPA) Universal City
Jan 18, 2012	Form 990 – What You Need to Know (CPA Firm) San Francisco
Jan 20, 2012	Hot Topics in Charitable Giving (AAA-CPA) San Diego
Feb 22, 2012	Form 990-PF Preparation Issues (Strafford) Webcast

## ■ Next Issue of the YH Exempt Org Advisor

The Spring 2012 edition of the YH Exempt Org Advisor will be published immediately after the very busy May 15, 2012 exempt organization information and tax return filing deadline.

