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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.



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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.

The YH Exempt Org Advisor is electronically available on a complimentary basis to anyone who is included in our e-mail database. 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.

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Ripped from the EO Headlines

nyu cutting back on making loans to insiders

After confronting an immense amount of scrutiny and pressure, the New York Times reported that New York University would no longer lend money to top employees to buy vacation homes. NYU's insider vacation home mortgages had become a point of contention, especially since some the loans to the NYU insiders were over several hundred thousand dollars and were forgiven for a number of NYU insiders. Additionally, according to the New York Times, some of the loans were virtually interest-free and others were for homes in resort destinations like the Hamptons or Fire Island.

However, NYU will still continue to make loans to top employees related to their primary residences. As a charitable organization that is not considered to be a private foundation, NYU is not strictly prohibited from making loans directly to the insiders of the organization, however, that being said, by virtue of the loans being made, NYU will need to complete Schedule L, Part II of the Form 990. In our professional opinion, the completion of Schedule L, in and of itself, constitutes a "red flag" from an Internal Revenue Service perspective.

two more states permit public benefit corporations

Both Delaware and Rhode Island have announced that they have enacted legislation to permit the formation of public benefit corporations (also referred to as flexible benefit corporations or B Corps) in their respective states. This now brings to 19 the number of states which permit some form of public benefit corporation (the first state to do so was Maryland back in 2010). It is estimated that public benefit corporation legislation is under serious consideration in approximately 10-12 other states.

Generally, the purpose of public benefit corporations is to create social impact in addition to finance value for the shareholders of the corporation. A public benefit corpora-

tion is generally required to report on social and environmental impacts while holding shareholders accountable to their "public" mission. Directors of a public benefit corporation are generally required to balance the interests of the corporation's stockholders with the "public" benefits identified by the corporation.

new york at forefront of exercising oversight over exempt organizations

The state of New York is again at the forefront of the movement to exercise increased oversight over exempt organizations operating in the Empire State. To wit, the Nonprofit Revitalization Act ("Act"), a bill that makes comprehensive updates to the New York Not-for-Profit Corporation Law, as well as several other statutes related to exempt organizations, was signed into law in mid-December. The Act, which is generally only applicable to exempt organizations incorporated in New York, does contain one provision regarding the audited financial statement requirements applicable for all exempt organizations registered in New York for the purposes of charitable solicitation.

The Act, which primarily will be effective on July 1, 2014, addresses a good number of issues relevant to exempt organizations, including the following:

- New (technological) options for holding meetings and taking Board actions.
- Enhanced standards and limitations regarding exempt organization executive compensation.
- Requirements regarding the implementation of policies such as a conflict of interest policy and a whistleblower policy.
- Tighter definition of what constitutes a related party transaction.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding the foregoing or if you need any additional information whatsoever regarding the exempt organization tax, legal and accounting services which YH Advisors provides.

Focus on the IRS TE/GE Division

dude, where's my exemption application?

For those organizations which have filed exemption applications with the Internal Revenue Service within the past 18 months or are contemplating the filing of a Tax Exemption Application (Form 1023 or Form 1024) with the Internal Revenue Service in the foreseeable future, it is recommended that you bet "the over" on the time it will take for the organization to receive approval of their tax-exemption.

Currently, on www.irs.gov, the Internal Revenue Service sets forth that they are in the process of reviewing Tax Exemption Applications filed in May of 2012. From all indications, the Internal Revenue Service is still confronting a tremendous backlog of Tax Exemption Applications filed over the past couple of years.

That being said, also on www.irs.gov, the Internal Revenue Service sets forth the following regarding their Tax Exemption Application processing and review procedures on a go forward basis. To wit, when the Internal Revenue Service receives a Tax Exemption Application (accompanied by the proper user fee amount), they initially separate the Applications into the following four categories:

- Those that can be approved immediately based on the information submitted
- Those that need minor additional information to be resolved
- Those that are submitted on obsolete forms or do not include all the necessary information
- Those that require further development

If an organization's Tax Exemption Application falls within one of the first three categories immediately above, the organization will either receive a Determination Letter or a request for additional information, via phone, fax, or letter, within approximately 90 days after the date that the Tax Exemption Application was submitted. If a Tax Exemption

Application unfortunately falls within the fourth category, the organization will be contacted once the Tax Exemption Application is assigned to an IRS EO agent for further development. Because these Applications may experience some "wait time" before they are assigned by the IRS, the IRS regularly publishes the receipt date for applications currently being assigned on their web site.

An organization can always call the Internal Revenue Service at 877-829-5500 to ascertain the status of their Tax Exemption Application. However, be prepared for a potential lengthy time listening to "hold music".

expediting? there will be no expediting at the irs!

In recently issued Rev. Proc. 2014-4, the Internal Revenue Service unfortunately extinguished any hope that certain determination requests could be expedited. Included within the parameters of a "determination request" are Tax Exemption Applications, requests for changing public charity status, private foundation terminations, scholarship program approvals and supporting organization type determinations. Probably obvious, but within the provisions of Rev. Proc. 2014-4 was the statement that the Internal Revenue Service processes determination requests in the order of the date such are received.

hope for revoked small exempt organizations

In Rev. Proc. 2014-11 (released in early January), the Internal Revenue Service addressed the ability for smaller exempt organizations to more easily obtain retroactive reinstatement of their tax-exemption if such was automatically revoked by the failure of the exempt organization to file anything with the Internal Revenue Service for three consecutive years.

One of the key elements of Rev. Proc. 2014-11 is the guidance it provides to all organizations seeking reinstatement of their tax-exemption related to the delinquent Forms 990 and 990-EZ which need to be filed before reinstatement of tax-exemption can be undertaken. Another key element of Rev. Proc. 2014-11 is the guidance it provides regarding the definition of "reasonable cause".

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Finally, Rev. Proc. 2014-11 classifies the auto-revoked exempt organizations into the following three groups:

- Entities seeking retroactive reinstatement within 15 months of automatically losing their tax-exemption
- Entities seeking retroactive reinstatement after 15 months of automatically losing their tax-exemption
- Entities applying for reinstatement of tax-exemption as of the postmark date of their Tax Exemption Application.

| new irs te/ge lineup

The events put into motion at the Internal Revenue Service in mid-May of 2013 precipitated a complete turnover at IRS TE/GE. Please find following the new lineup:

- TE/GE Commissioner – Sunita Lough
- TE/GE Deputy Commissioner - Donna Hansberry
- Director of EO Division – Tamera Ripperda

| summary of recent eo plrs

PLR 201336020 - IRS ruled that the excess benefit rules of section 4958 didn't apply to payments made from a clinic and hospital operator to a doctor who never returned to work after taking a leave of absence and was fired.

PLR 201333019 - IRS revoked the tax-exempt status of a trapshooting club because the club's nonmember income exceeded 15 percent of its total gross receipts for years under examination and because the organization advertised its facilities to the general public.

PLR 201323025 – IRS denied tax-exemption to an organization whose mission was to educate others about polygamous families and their culture, encourage empowerment of individuals and families from the polygamous culture; and provide crises referrals and responses to those in the culture.

PLR 201330037 – IRS denied tax-exemption to an organization that sold motorcycle parts and accessories

and used the profits to fund a rehabilitation center for children, concluding that the organization was not operated exclusively for charitable purposes.

PLR 201330041 - IRS revoked the tax-exempt status of a social club (501(c)(7)) because its nonmember income exceeded 15 percent of total gross receipts for years under IRS examination.

PLR 201330039 - IRS ruled that a museum is not a private foundation because its sources of public support from gifts, grants, and contributions exceeded the one-third of total support requirement.

| irs releases form 990 faqs

Recently, the Internal Revenue Service released two sets of Form 990 Frequently Asked Questions, one focused on the preparation of Part VI of the Form 990 and the other focused on the preparation of Part VII of the Form 990.

Part VI of the Form 990 is the governance section of the core form, asking 20 different questions in the areas of Board oversight, policies and procedures, and public disclosure. Part VII of the Form 990 is the executive compensation portion of the core form; its most prominent element being the compensation table on Line 1a which all preparers of the Form 990 must complete.

Other Form 990 FAQs which have been previously issued by the Internal Revenue Service include the following:

- Schedule A (Public Support)
- Schedule F (Foreign)
- Schedule O
- Public Disclosure

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

Charitable Solicitation Registration Scoreboard

Within the past couple of months, there has been a significant amount of news on the state charitable solicitation registration front.

Arizona - In a surprise, the state of Arizona has repealed their charitable solicitation registration requirements effective September of 2013. This change does not affect the registration requirements of professional fundraisers operating in Arizona.

Maine - With its passage of "An Act to Streamline the Charitable Solicitations Act", the state of Maine has expanded its charitable solicitation registration filing exemptions to now include businesses engaged in commercial co-ventures, charitable organizations annually raising less than \$35,000 of contributions revenue and charitable organizations raising contributions revenue primarily from its membership.

Nevada - Effective January 1, 2014, the state of Nevada has joined the ranks of approximately 40 other states in requiring charities to register in Nevada if such charities will be (or are) soliciting in Nevada. The Nevada Secretary of State is to be the recipient of these charitable solicitation registrations.

New York - Please see above regarding New York's revisions to its audited financial statement filing threshold for non-New York charities soliciting contributions within the state of New York.

YH Case Study

commercial co-ventures

Within the past couple of months, several of our charitable organization clients have been approached by for-profit enterprises regarding whether they wished to enter into a commercial co-venture (also commonly referred to as a "cause marketing" arrangement) with the

for-profit enterprise. Generally, a commercial co-venture is a commercial marketing partnership between a for-profit business and a nonprofit entity (usually a charitable organization) to market an image, product or service linked to a social cause or issue, for mutual benefit. The most typical example is an advertisement or promotion stating that a (for-profit) company will contribute a certain dollar or percentage amount of a product purchased or service used to a specified charity.

There are benefits to be obtained by both the for-profit business enterprise and the charitable organization. The for-profit gets to benefit from the charitable organization's "charitable halo" to potentially significantly increase their sales and the charitable organization benefits financially from the commercial co-venture in terms of a new contributions revenue stream.

When a commercial co-venture is arranged, there are reporting obligations imposed on both the for-profit business enterprise and the charitable organization. These reporting obligations are not imposed on a federal level (Internal Revenue Service), they are imposed on a state level. Not all states require registration and/or reporting of commercial co-venture arrangements, that being said, both the for-profit business enterprise and the charitable organization need to investigate their particular state's applicable laws and regulations. To the best of our knowledge, approximately 20 states require some sort of registration/disclosure by the for-profit involved in a commercial co-venture and approximately 40 states require the charitable organization to make some sort of disclosure related to the commercial co-venture.

From the perspective of the charitable organization involved in a commercial co-venture arrangement, the most essential thing to consider is whether the for-profit business enterprise is adequately registered with the appropriate state authorities, if applicable. Additionally, another significant issue that the charitable organization needs to be cognizant of is to ensure that the specific terms of the commercial co-venture have been adequately disclosed to the general public.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding the participating in a commercial co-venture by a charitable organization.

YH Quick Tips

conflict transactions

As opposed to private foundations which are prohibited, by the self-dealing rules of §4941 of the Internal Revenue Code, from undertaking transactions with insiders (conflict transactions), public charities have more flexibility and ability to undertake transactions with their insider Board members and executives. However, if a public charity (or any other type of exempt organization besides a private foundation) undertakes a conflict transaction with an insider, it is recommended that they do the following, from both a governmental regulator (Internal Revenue Service / state Attorney General) perspective and a transparency perspective:

- The Board of Directors of the charitable organization should explicitly approve any conflict transaction before it is undertaken.
- When the Board of Directors is approving a conflict transaction involving a particular insider of the charitable organization, the particular insider cannot be present for the approval vote, nor can the particular insider attempt to persuade the Board of Directors regarding how to vote.
- Before approving a conflict transaction, the Board of Directors of the charitable organization should explicitly determine that the undertaking of the conflict transaction is in the best interests of the charitable organization.
- A conflict transaction should not be undertaken if there are viable alternatives for getting the transaction accomplished without involving an insider.
- When voting whether to approve a conflict transaction or not, the Board should specifically note and record how each Board member voted regarding their approval or disapproval of the conflict transaction.
- The Board of Directors of the charitable organization should prepare extensive contemporaneous documentation of the whole conflict transaction approval process.

Please do not hesitate to contact Brian Yacker at (310) 982-2803 or byacker@yhadvisors.com if you have any questions regarding the foregoing.

YH Plain English Glossary

§501(c)(7) social clubs

From an Internal Revenue Service perspective, a social club, exempt under §501(c)(7) of the Internal Revenue Code, is organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes, and no part of the net earnings of which inures to the benefit of any private shareholder. Generally, social clubs are membership organizations primarily supported by dues, fees, charges or other funds paid by their members. From an Internal Revenue Service perspective, the central purpose of social clubs is to provide benefits to members, including access to social and recreational facilities such as club houses, golf courses, and swimming pools. When such benefits are funded by members, exemption has been justified by Congress on the theory that the members will be in the same position as if they had paid for the benefits directly. Typical examples include golf clubs, tennis clubs, hobby groups and fraternities/sororities.

Reg. §1.501(c)(7)-1 sets forth that a social club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities. That being said, social clubs are subject to a couple of different income limitations, to wit; a social club's income from the use of the social club's facilities or services by the general public should not exceed 15% of the social club's total income and a social club's non-member income plus investment income should not exceed 35% of the social club's total income.

Please see GCM 39115, Rev. Rul. 58-589 and Rev. Proc. 71-17 for more guidance from the Internal Revenue Service regarding social clubs.

Please do not hesitate to contact Brian Yacker at 310-982-2803 or at byacker@yhadvisors.com if you have any questions regarding §501(c)(7) social clubs or any other types of exempt organizations.

YH Timely Guidance

worker classification

Now that we are all in the midst of the information reporting “busy season”, it is essential to have a good grasp of the relevant worker classification rules. This is because the Internal Revenue Service and various states are very focused upon whether exempt organizations are properly classifying their workers as either independent contractors, employees or volunteers.

Ascertaining the distinction between an independent contractor, employee, or volunteer can often be a difficult endeavor. However difficult, it is important that an exempt organization properly classify their workers since such can materially affect an exempt organization’s employment tax liability. That being said, an exempt organization should carefully undertake their worker classification processes before hiring any new workers and also periodically throughout that relationship as roles can certainly evolve over time.

From an Internal Revenue Service perspective, the following three “control” and “relationship” factors are most relevant when attempting to classify a worker.

First, behavioral control relates to how, when, and where the required work is completed. If an exempt organization provides instructions to a worker as to how the work is to be done, this might suggest an employee-employer relationship exists. However, if a worker is told what is required to be done but isn’t specifically instructed as to how to conduct the job, an independent contractor engagement is potentially present. Additionally, if equipment is provided by the exempt organization to be used by the individual worker, this usually represents an employee-employer relationship.

The second Internal Revenue Service worker classification factor is financial control. If an individual worker has a significant investment in a business, is not reimbursed for business related expenditures, and/or has the opportunity to realize a profit or incur a loss, this suggests that an independent contractor relationship exists. Employees are typically reimbursed for business related expenses and do not have the prospect of financially benefiting directly from a business’ success.

Lastly, the Internal Revenue Service indicates that the perceived relationship between the parties should also be re-

viewed prior to, and during, the engagement. If the individual worker receives benefits, such as insurance, paid leave, or the like, this would generally only occur within an employee-employer relationship. If the exempt organization is the only entity with which an individual works, that may also indicate an employee relationship (typically, independent contractors work for multiple organizations simultaneously).

A volunteer (and in some cases, an intern) is not an employee. Volunteers typically serve on a part-time basis and do not replace paid workers or perform duties that would otherwise be performed by paid workers. It is a common misconception that volunteers are always unpaid. According to the Internal Revenue Code, volunteers may receive a “nominal fee” without being classified as an employee. This “nominal fee” is typically not tied to a specified number of hours or work product and cannot be more than 20% of the cost of wages that an employer would normally pay to an employee.

States are not bound by the above-referenced Internal Revenue Service guidelines, as such, an exempt organization should also consider state specific worker classification laws and regulations. Not classifying an employment relationship correctly can certainly expose the exempt organization to federal and state fines and penalties.

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

YH EO Resource Alert

This quarter we are highlighting a couple of resources that can be accessed on the Internal Revenue Service’s web site. First, the Internal Revenue Service has produced a Power-Point presentation titled, “Charities and Their Volunteers: Working Together to Help the Public”. This presentation can be found by following this link:

http://www.irs.gov/pub/irs-tege/Charities_Volunteers_phoneforum_071713.pdf

Second, the Internal Revenue Service has also produced a resource titled “Tax Guide for Veterans’ Organizations”. This publication (officially Internal Revenue Service Publication 3386) can be found by following this link:

<http://www.irs.gov/pub/irs-pdf/p3386.pdf>

YH Presentations

Please find following a listing of the various presentations which YH Advisors has presented, or will be presenting, during the September 2013 through February 2014 time period.

Sept 12, 2013	Intro to Private Foundations (Family Wealth Conf), Newport Beach, CA
Sept 17, 2013	Form 990 Basics (CA Board of Equalization), Lake Forest, CA
Sept 23, 2013	Form 990 Overview (AICPA) Spokane, WA
Sept 24, 2013	Form 990 Workshop (Long Beach Nonpft P'shp), Long Beach, CA
Sept 26, 2013	Form 990 Workshop (CalCPA No. Orange Chap), Anaheim, CA
Oct 10, 2013	Form 990 – Complex Issues (Strafford) Webcast
Oct 15, 2013	Form 990 Intro Course (OH CPA Society) Columbus, OH
Oct 16, 2013	Ohio Nonprofit Conference Cleveland, OH
Oct 17-18, 2013	YH Exempt Org University San Francisco, CA
Oct 21-22, 2013	AICPA Governmental & NFP Conference Orlando, FL
Oct 25, 2013	Form 990-PF Intro Course (CalCPA) Orange County, CA
Nov 1, 2013	Mississippi Nonprofit Conference Jackson, MS
Nov 12, 2013	Form 990 Workshop (Comm. Fdn San Joaquin), Lodi, CA
Nov 21, 2013	Private Foundations Primer (AICPA) Portland, OR
Dec 3, 2013	Form 990 Basics (CA Board of Equalization), Oceanside, CA
Dec 4, 2013	Form 990 – What You Need to Know (CalCPA), Palm Springs, CA

Jan 10, 2014	Finance Considerations for Board Members (USD Governance Symposium) San Diego, CA
Jan 21, 2014	Form 990 Essentials (CPAAI) Webcast
Jan 23, 2014	Pro Bono EO Workshop (ABA) Phoenix, AZ
Feb 19, 2014	Hospital Volunteers Presentation Sacramento, 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):

January 22, 2014	Demystifying the Public Support Test
February 26, 2014	Dirty Dozen Transgressions of Private Foundations
May 6, 2014	2013 Form 990 Update
June 24, 2014	Governance

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The Spring 2014 edition of the YH Exempt Org Advisor will be published after the extremely busy May 15, 2014 exempt organization information tax return filing deadline.