


Legacy Advisor

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NOT-FOR-PROFIT ORGANIZATIONS

Charitable Giving Issues and Best Practices

As reported to the Committee on Finance of the U.S. Senate



Mark Everson, Commissioner of Internal Revenue Service (IRS), testified on June 22, 2004 before the Committee on Finance of the U.S. Senate on a number of issues and legislative proposals relating to stimulating charitable giving and best practices of tax-exempt charitable organizations. The report is posted on the IRS website. In his report, Mr. Everson explained the role of the Internal Revenue Service in a number of issues relating to tax-exempt entities and addressed areas of concern.

Overall, he stated that most tax-exempt entities carry out their role and mission in full compliance with the laws. However, he addresses areas that need further or additional attention. He stated, "There are abuses of charities that principally rely on the tax advantages conferred by the deductibility of contributions to those organizations. Other abuses involve not only charities, but other exempt organizations that allow themselves to further purposes other than those for which tax-exemption is authorized." It is part of the IRS Strategic Plan for 2005-2009 to improve service and modernize its computer system, but also to

enhance enforcement of the tax law. The IRS expects to spend a significant amount of its enforcement budget to focus on tax-exempt entities.

Some of the highlights of his report follow below:

While Sarbanes-Oxley only directly affects for-profit entities, the issues and concerns are equally important for tax-exempts. Therefore, certain practices brought to the forefront by Sarbanes-Oxley should be reviewed and considered more closely to ensure against ethical or other conflicts of interest as they relate to not-for-profits and their boards.

Another area the IRS plans to review is that of "reasonable compensation" for association executives and the reporting of that compensation. In order to gather standard practices, the IRS plans to contact hundreds of public charities and private foundations to ask these organizations for detailed information and supporting documents on their executive compensation packages and practices. Moving forward, this information will help the IRS focus on specific areas of concern.

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Legacy News

It's been a great year so far for the not-for-profit group at Legacy Professionals LLP. The Firm participated in Association Forum's Association Week, June 21-27 by attending the Annual Meeting and the fabulous Forum Honors Gala at the Field Museum on June 24. We are already looking forward to next year's event! We are busy making plans to attend Association Forum's Annual Holiday Showcase on December 14. More information will be available in our preshow issue which will be published in December.

The IRS has also been busy focusing its attention on tax-exempt organizations. We report on a number of the IRS's hot topics in this issue. Please let us know if you have questions or need any additional information.

If you would like to submit an article to be published in Legacy Advisor, please feel free to contact Julie Tucek, our Marketing Director, or our editor, Rose Doherty, CPA. We sincerely thank you for your continued support of the Firm. Please do not hesitate to contact us at any time if you need anything or if you have any feedback or suggestions for us.

- The partners and staff of Legacy Professionals LLP

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Board Guidelines



Bob Grogan, CPA

The level of formality non-profit boards conduct themselves with can vary greatly, depending on such things as the expertise of its members, its size, mission, structure, and past experiences of the organization. Strict adherence to all of “Robert’s Rules of Order” is not always necessary, but organizations should discuss appropriate board conduct among itself and with an attorney. Standard corporate governance guidelines should be considered for most entities and at a minimum should include:

Written minutes of each meeting should be kept and then approved by a vote of the board at a subsequent meeting. The minutes should record all formal actions of the board. They generally do not have to be a verbatim transcript of the meeting.

All payments to members of the board need to be approved by the board (with the interested parties obviously recusing themselves from the vote). Such payments should not simply be approved by the executive director. Since the executive director reports to the board, this could be viewed as a conflict of interest.

Formal approval/acceptance of financial reports should be done on a regular basis. At a minimum, the annual

financial statements should be discussed and approved at the board level.

How organizations invest surplus capital is a significant area of fiduciary responsibility that rests with the board. An investment policy should be reviewed, approved, and enforced by the board on a regular basis.

Other actions that are appropriate to be dealt with at the board level are: opening of new bank accounts, changing of authorized signers on bank accounts, financing agreements, the sale of assets, the approval of significant contracts, and all payments over a set sum.

This list is not all-inclusive or appropriate for every type of organization; however, it can be used as a guideline for a successful board and thus, entity. If you have any questions, please contact us for further discussion.

By Bob Grogan, CPA, Chicago office

Bob works in the audit department of Legacy Professionals LLP where he was recently promoted to Supervising Senior. He works on many of the Firm’s not-for-profit clients. As well, he is active in numerous charitable and civic organizations in his community. He was recently elected President of the United Way of the DuPage Area. Bob can be reached at rgrogan@legacycpas.com.

Vehicle Donations

An estimated 4,300 charities have vehicle donation programs. Additionally, in 2000, it is estimated that 773,000 taxpayers claimed deductions for donated vehicles of over \$500.

A recent study showed that charities received less than 10% of the value claimed on the donor’s return in many cases. The IRS has several concerns regarding this issue. One is that individuals are inflating the value of the vehicles donated. Another is the sometimes excessive fees being charged by third parties that administer vehicle donation programs for the charity.

As a result, the IRS has recently released two new brochures regarding car donation programs. The following publications are available on the IRS website:



A Donor’s Guide to Car Donations (IRS Publication 4303) Provides guidelines for individuals who donate their cars. It includes information on state law requirements

and record keeping requirements.

A Charity’s Guide to Car Donations (IRS Publication 4302) Provides guidelines for charities that operate car donation programs.

Visit irs.gov/charities/index.html for these and other IRS publications affecting not-for-profit organizations.

Executive Compensation Reporting



The Internal Revenue Service (IRS) has stepped up enforcement of existing rules regarding disclosure of compensation on Form 990 for organizations exempt under 501(c)(3) and 501(c)(4). The goal is to increase the transparency of transactions between tax-exempt organizations and their top executives.

Under regulations prescribed by the U.S. Treasury, an exempt organization has to disclose on Form 990 the compensation and other payments made during the year to individuals that are includible in their gross income. The instructions to Form 990 state that the payments requiring disclosure (in Part V and Schedule A, Part I) include salary, bonus and severance pay, employer contributions to pension and welfare benefit plans, all forms of deferred compensation, and taxable and nontaxable fringe benefits. Other benefits to be disclosed

include the value of spousal travel expenses and the personal use of housing, automobiles, and other assets provided by the organization without charge.

The IRS has stated that if a 501(c)(3) or 501(c)(4) organization provides an economic benefit to a person with substantial influence over the organization and such benefit is not treated as compensation and reported as such, the IRS will treat the benefit as being automatically subject to the excise taxes applicable to excess benefit transactions, even if the amount of the benefit is reasonable. The excise tax is imposed on the recipient of the benefit at 25% of the amount involved. If the transaction is not corrected before being contacted by the IRS, an additional 200% excise tax can be assessed. The managers of the organization can be charged with a 10% excise tax on the amount of the excess benefit.

The IRS has directed its auditors to review all agreements that provide any economic benefit to any person with substantial influence over the organization, including employment, bonus, retirement, deferred compensation and severance agreements, loans, expense reimbursements, and exchanges of property. Beginning this year, the IRS will review the answers on Form 990 related to these issues and will contact organizations that fail to answer the questions or mark them not applicable.

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Charitable Giving Issues and Best Practices

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The IRS is committed to encouraging and supporting gifts to charity. However, they want to ensure that taxpayers are assigning the proper value to their donations. The IRS has seen some overvaluation by some taxpayers to inflate charitable contributions. While valuation can be difficult, the IRS has several proposals to address these issues. The report specifically mentions vehicle donations, for which an estimated 4,300 charities have programs. In 2000, it is estimated that 773,000 taxpayers claimed deductions for donated vehicles of over \$500. See page 3 for more information on the IRS new brochures covering vehicle donations.

The IRS is also planning to work more closely with the states and other federal agencies, as they all play an important role in regulating and monitoring tax-exempts. For more detailed information on the above and other topics covered in Everson's report to the Senate's Committee on Finance, "Hearing on Charitable Giving Problems and Best Practices," visit www.irs.gov/newsroom. Please let us know if you have any questions or concerns as they relate to your organization.

*By Donna A. Hubert, CPA and Rose G. Doherty, CPA
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Executive Compensation Reporting

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Organizations exempt from tax under 501(c)(3) and 501(c)(4) need to ensure that a full and complete accounting has been made of all components of compensation in order to avoid the imposition of excise taxes. Please contact us for assistance.

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Election Year Reminder

The IRS has issued a report, IR-2004-59, which reminds 501(c)(3) organizations that they need to be careful that their efforts to educate voters are in compliance with the IRS Code requirements concerning political campaign activities.

“501(c)(3) organizations (charities, educational institutions, religious organizations) are prohibited from participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for public office. These organizations cannot: endorse candidates, make donations to

their campaigns, engage in fundraising, distribute statements, or become involved in any other activities that may be beneficial or detrimental to any candidate.”

If the IRS finds a 501(c)(3) organization engaged in prohibited campaign activity, the organization could lose its tax-exempt status and it could be subject to an excise tax on the amount of money spent on that activity.

As reported on www.irs.gov. Please contact us if you have any questions or need any additional information.

Contact us at
info@legacycpas.com
if you'd like to receive
Legacy Advisor via our
email delivery program.

