Fricke & Associates, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

2344 Perimeter Park Drive, Suite 100, Atlanta, GA 30341 Phone: 770-216-2226

Hi, . Here are your Articles for November 18, 2014.

A Checklist of Duties with Tax and Governance Implications

Documentation and accountability are always important in business, but even more so for a not-for-profit agency. The sheer number of duties can be daunting. That's why it's crucial to have tools which allow you to stay on top of the details. Here's a chart which may help you stay organized and make tracking easier.

Take Care of Donors with Documentation

Contributions of cash or property of $250 or more require the donor to obtain a contemporaneous written acknowledgment of the donation from the donee Section 501(c)(3) organization. At a minimum, the contemporaneous written acknowledgment must indicate the donee organization's name and address, contribution date, amount of cash contributed, and a description of any property contributed (a good-faith estimate of the value of any goods or services contributed must be provided by the donor).

Most importantly, the contemporaneous written acknowledgment must include a statement as to whether any goods or services were provided (and their estimated value) in consideration for the contribution.

A written acknowledgment is contemporaneous only if it is obtained by the donor on or before the earlier of:

1. The date the donor's tax return (for the year the contribution was made) is filed; or

2. The due date (including extensions) of this return.

Goods or Services Statement

Many charities, especially new ones, have deficient donor acknowledgments. Often, there is a failure to include a statement regarding any goods or services provided. The "no goods or services" required statement is being strictly enforced by both the IRS and the courts, which has resulted in deductions not being allowed if the statement is omitted.

Donations to private foundations are also subject to the strict donor acknowledgment rules. Unfortunately, foundation managers are often unaware of the rule and fail to provide an acknowledgment at all.

Actions to Consider:

- Check for adequate content in your donor acknowledgments.
- Confirm that your records adequately identify the name, address, and contributions of donors who should receive an acknowledgment.
- Furnish the acknowledgment as soon as possible to avoid the possibility that a

donor files his or her tax return before receiving the acknowledgment. A tardy acknowledgment is legally no better than none at all.

Maintain Who's Who Lists

It is essential for an exempt organization to maintain complete lists of relationships for persons connected with it. Such lists can be critical for either tax or governance reasons.

Disqualified Persons

Disqualified persons who receive economic benefits from a Section 501(c)(3) public charity, (c)(4), or (c)(29) organization in excess of the value of the consideration for such benefits are subject to an excise tax of 25 percent of the excess benefit received. Under certain circumstances, organization managers are subject to a 10 percent tax.

A disqualified person is anyone who was, at any time during the five-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the organization's affairs (whether or not there is actual exercise). Also included are members of that person's family and any entity (corporation, partnership, LLC, trust, or estate) in which the disqualified persons and family members have more than a 35 percent ownership interest.

Family members are a person's spouse, siblings (by whole or half blood) and their spouses, ancestors, direct descendants through great-grandchildren, and spouses of these descendants. Ownership of an entity includes constructive ownership (in other words, the indirect holdings of family members are considered).

The list of disqualified persons for an organization that sponsors donor advised funds also includes anyone who provides investment advice regarding fund assets. In addition, if the organization is a supported organization under IRC Sec. 509(a)(3), the disqualified persons of the supporting organization are also disqualified persons for the supported organization.

Note: The previous discussion is not a complete definition of disqualified persons but is intended to indicate the complexity of identifying them.

Conflict of Interest Persons

Persons who should be identified for conflict of interest purposes are basically the same as those who are disqualified persons, as described previously, except that family members include both adopted and natural children.

Related Organizations

Individuals are not the only persons of concern to an exempt organization. Transactions with related organizations require risk management to identify excess benefit transactions, and also to recognize potential unrelated business income and nonexempt activities. Therefore, an organization must identify all related organizations to ensure that all applicable transactions are properly documented and all required disclosures are made on Form 990.

Related organizations (in addition to a parent or subsidiary) include:

- *A Brother/Sister organization* is controlled by the same person or persons who control the filing organization.

- A Supporting/Supported organization is (or claims to be), at any time during the organization's tax year, (a) a supporting organization of the filing organization, or (b) a supported organization.

Control can be established either through influencing the governing board or through ownership. Control may be either direct or indirect (for example, the filing organization controls Entity A, which in turn controls Entity B; therefore, the filing organization is deemed to control Entity B).

Donor Advised Funds

A distribution from a donor advised fund that results in "more than an incidental benefit" to certain persons can trigger an excise tax on the recipient and, in certain instances, the fund manager. Persons who cannot benefit include a donor or any person designated by the donor who has advisory privileges, family members of these persons, and entities in which the preceding persons have more than a 35 percent interest. In this instance, the definition of family members is the same as the definition for disqualified person purposes.

Observations: The greatest challenge in maintaining current lists of relationships is identifying changes in the identity of family members and their businesses and investments. Ideally, an organization should communicate at regular intervals (no less frequently than annually) with key persons to update the appropriate lists.

Action to Consider:

Maintaining accurate lists is the best way to minimize the likelihood of undesirable tax consequences. Therefore, an organization that has not updated its lists in the last six months should do so.

Engage in Conflict of Interest Oversight

Business transactions of exempt organizations pose potential conflicts of interest when persons responsible for protecting the organization's financial interest stand to benefit personally from dealing with it. Some conflicts of interest are not automatically illegal or unethical. However, independent members of the organization's governing body should be made aware of a potential conflict of interest and evaluate the benefits and risks of conducting business with the related party.

Although there is no statutory requirement that an organization adopt a written conflict of interest policy, the IRS believes that such a policy is required for prudent governance.

Observations. Form 990, Part VI, requests information about an organization's conflict of interest policy. Information requested includes whether the organization has a conflict of interest policy and, if so, how it is monitored and enforced if a conflict arises. A policy must be adopted before the end of the filing year in order for the organization to affirmatively state that it has a conflict of interest policy. If a policy is adopted after the close of the year but before Form 990 is filed, answer "No" to the question in Part VI regarding the existence of a conflict of interest policy, but disclose the post-year-end policy adoption in Schedule O of Form 990.

Actions to Consider:

- An organization that has not adopted a conflict of interest policy should strongly consider doing so. The larger the organization, the greater the potential benefit from having a written policy.
- Those organizations that have a conflict of interest policy should monitor compliance by all persons who are covered by it. Monitoring procedures can vary, but typically would include having each person affirm in writing that he/she is unaware of having engaged in an impermissible transaction other than those, if any, disclosed previously for prospective transactions. The IRS may view having an unmonitored or

unenforced conflict of interest policy as worse than having no policy.

Conduct a Compensation Review

The compensation paid by an exempt organization to its trustees, directors, officers, and key employees and highly compensated employees is generally scrutinized during an IRS audit. The recipients of compensation [from Section 501(c)(3) public charities, (c)(4), and (c)(29) organizations] deemed excessive can be assessed an excise tax on the excess amount. Under certain circumstances, the organization's managers may also be assessed an excise tax.

The organization typically bears the burden of demonstrating that compensation is reasonable. However, an organization can shift the burden of proving that compensation is unreasonable to the IRS if it satisfies certain safe harbor requirements. One of these requirements is that the governing body (or committee) that approves compensation arrangements do so while relying on appropriate data from comparable organizations.

Consequently, compensation will generally be deemed reasonable if the amount is no more than what is ordinarily paid for similar services by comparable enterprises under like circumstances. Comparable data includes compensation paid by similarly situated organizations (both tax-exempt and taxable), the availability of similar services in the geographic area, independent compensation surveys, and actual written offers from similar institutions seeking the services of the disqualified person.

Observations: Satisfying the comparable data portion of the safe harbor rules can be difficult. For example, the IRS's final report on the College and University Project included a portion dealing with the reasonableness of compensation paid by the private schools examined. Although most of them attempted to meet the safe harbor standard, the IRS concluded that about 20 percent did not because their data was not comparable.

Examples of the problems noted included:

- Relying on data from schools that were not similarly situated because of at least one of the following factors: location, endowment size, revenues, total net assets, number of students, or selectivity;
- Using compensation studies that did not document the selection criteria for the other schools, nor explain why they were deemed comparable; and
- Using compensation surveys that did not specify whether amounts reported included salary only or also included other types of required compensation.

The IRS report is a reminder that relying on compensation data that is somewhat generic rather than specific will not satisfy the safe harbor test.

Actions to Consider:

An organization that plans to rely on the safe harbor rules in connection with salary reviews should identify specific criteria for data comparability and possible sources of comparable data.

Feedback

Is this item worthy of implementation?	Yes		No		Maybe	
Is this item worth sharing with other associates?	Yes		No		Maybe	
Did this item present value to you and your business?	Yes		No		Maybe	

Comments:

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