



The Legal Update

Charitable Sector Increases may be Misleading

Some recent numbers illustrate the rapid growth of the §501(c)(3) charitable tax-exempt sector. A study by students at Stanford University concluded that 99% of public charity applications were approved by the Internal Revenue Service in 2008. The overall number of §501(c)(3) entities increased by 60% during the past decade, far more than any other exempt category, but that may be misleading in part.

The Legal Update response: One reason given by organizers of the tens of thousands of small, specialized entities that apply for charitable tax-exempt status each year (about 40,000 in 2008 for example) is to qualify for cash or in-kind contributions from corporations, foundations, government entities and individuals. They also claim their purpose is too specific or focused or unique to join some other group. So keep in mind that most of the tens of thousands of entities applying for charitable exempt status are very small, focused and unique, and vulnerable because of their limited resource and volunteer base, including many association-affiliated foundations.

Major Charity in Hot Water

The Boys & Girls Clubs of America have attracted unwanted attention on Capitol Hill over its high salaries awarded to its executives and their expensive travel bills. Tax records revealed that in 2008 its CEO was compensated almost \$1 million, and its officials spent \$4.3 million on travel, \$1.6 million on conferences, conventions and meetings, and \$544,000 in lobbying fees – all while closing local clubs for lack of funding. Questioning these numbers, four Senators sent a letter to the head of the charity's board of governors seeking detailed financial information about executive compensation, travel and lobbying expenses, and how the national charity awards grants to local clubs. There is currently a bill in the Senate that would provide up to \$425 million in federal money to the organization over the next five years. Obviously that bill will be tabled until the organization responds to the Senators' questions.

The Legal Update response: All nonprofits are required to list their top 5 staff members and consultants making over \$50,000 on their Form 990's. Organizations should treat their 990's as a public relations document and realize that news reporters can access the information freely. Don't become the 2010 version of The Boys & Girls Clubs of America or be ready to explain if you do!

What Constitutes ‘Filing A Complaint’ Under the FLSA?

The U.S. Supreme Court has agreed to hear a terminated employee’s appeal of a decision by the federal appellate court in Chicago rejecting his claim that his former employer had violated the anti-retaliation provision of the Fair Labor Standards Act (“FLSA”). The court accepted the employer’s argument that the FLSA provision required him to file a written complaint to the employer and the employee’s oral complaints (regarding placement of factory time clocks which the employee claimed resulted in underpayment of time for donning and taking off protective clothing required by his job) were not “filed.”

The Legal Update response: The court’s decision sets up a split between appellate circuits which must be resolved by the Supreme Court or Congress. The issue is basic: what constitutes “filing a complaint?” The Supreme Court’s decision has ramifications for nearly all employers.

IRS Likely to Scrutinize Charitable Deduction Claims

The Internal Revenue Service has announced it will be taking a stricter view of charitable deduction claims on 2009 tax returns. If you contribute cash instead of a check or by credit card, get a receipt or other written evidence. Any contribution of \$250 or more requires a written acknowledgment from the charity. In-kind contributions of articles should be in good condition, and the value is the price the charity can obtain, not what the good cost you. A qualified appraisal is generally accepted by the IRS for more valuable articles.

The Legal Update response: A common error is taking the listed invoice or ticket amount for a charity fundraiser such as a gala, reception or similar event, and not the lower net value to the charity reflecting that the donor received something of value, e.g., the gala dinner at some fancy venue. Charities should be careful to provide written acknowledgments to donors for cash contributions and net value information for fundraiser events.

IRS 2010 Examination Priorities Announced

Internal Revenue Service representatives recently discussed 2010 examination priorities at a Chicago Bar Association committee meeting. Initiatives carried over from 2009 will target colleges and universities for tax compliance, including possible excessive compensation paid to officers and key employees, their reporting of unrelated business income, and their allocation of income and expenses between the schools and for-profit subsidiaries. In addition, the IRS will continue to scrutinize nonprofit political activities; exempt credit counseling services; the classification of nonprofits as supporting organizations; donation of conservation easements; gaming activities as fundraisers; nonprofit governance issues; and whether organizations are spending sufficient money and time on tax-exempt activities. Finally, the IRS will be focusing more on employment tax compliance by nonprofits.

The Legal Update response: The IRS makes these announcements of examination priorities to encourage voluntary compliance with tax laws by nonprofits. But it is worth noting that the IRS is also hiring and training many new employees who will be involved in audits and Form 990 examination in 2010.

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