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News for Nonprofits

NONPROFIT AGENDAS

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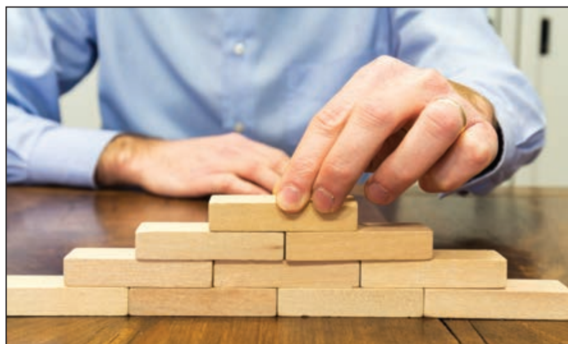
IRS eases rules for nonprofit restructurings

Is your nonprofit thinking about merging or otherwise restructuring? You're not alone. Whether to firm up their financial footing, pursue broader goals or change locations, organizations across the country are mulling restructuring. The good news for such nonprofits is that the IRS has made the process easier for some.

Revising old rules

Under previous IRS rules, a tax-exempt organization was required to file a new exemption application when it made certain changes to its structure. Each of these moves was seen as creating a new legal entity that needed to file an exemption application. An unincorporated association that incorporated generally was considered a new legal entity required to file an application, as well.

Originally, a restructuring organization would need to file a final Form 990 under its initial Employer Identification Number (EIN), obtain a new EIN and apply for exemption for the new entity. This required changing the EIN on all bank and investment accounts, which can be numerous.



The IRS had since eased the rules on obtaining new EINs in many circumstances, but still required new applications for exemption. Moreover, the IRS concluded that requiring a new exemption application after a corporate restructuring often creates an excessive burden on taxpayers. Under Revenue Procedure 2018-15, certain nonprofits that are restructuring need only report significant organizational changes on their Forms 990.

The restructuring must satisfy certain conditions, though.

Meeting reorganization requirements

To avoid having to file a new application, the original organization must be 1) a U.S. corporation or unincorporated association, and 2) exempt as a 501(c) organization. It also must be in good standing in the jurisdiction where it was incorporated or, in the case of an unincorporated association, formed.

The reorganization must:

- Change from an unincorporated association to a corporation,
- Reincorporate under the laws of another state after dissolving in the original state,
- File articles of domestication to transfer a corporation to a new state without dissolving in the original state, or
- Merge a corporation with or into another corporation.

The resulting, or "surviving," organization needs to carry out the same exempt purposes as the original organization. If it's a 501(c)(3) organization, the new articles of incorporation must continue to satisfy the IRS's organizational test for such nonprofits. The test requires that the nonprofit's organizing documents (for example, articles of incorporation) limit its purposes and use of its assets to exempt purposes.

Understanding exceptions and caveats

The new rules don't apply if the surviving organization is a "disregarded entity" (an entity the IRS doesn't consider to be separate from its owner for tax purposes), limited liability company (LLC), partnership or foreign business entity. They also don't cover the incorporation of exempt trusts, or mergers of organizations into LLCs.

Donor reporting requirements loosened

The IRS has announced that it will no longer require tax-exempt organizations that aren't public charities (those other than 501(c)(3) organizations) to report the names and addresses of their donors on Schedule B of Forms 990 or 990-EZ. The revised requirements apply for tax years ending on or after December 31, 2018.

According to the IRS, it doesn't need reporting of personally identifiable information of donors to carry out its responsibilities. Further, the agency says, the reporting requirement increases compliance costs and consumes IRS resources to redact such information. It also poses a risk of inadvertent disclosure of information that's not open to public inspection.

Organizations must continue to keep the information in their books and records, and make it available to the IRS on request.

Nor do the new rules include reorganizations where the surviving organization obtains a new EIN. Surviving organizations that aren't covered by the new rules must submit a new exemption application to be recognized as exempt.

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Covered surviving organizations don't escape without any reporting obligations, of course. The IRS still requires survivors to report the restructuring on any required Form 990 for the applicable tax year. In the case of a domestication or reincorporation in a different state, the surviving organization also must report its change of address on Forms 8822-B and 990.

Note, too, that the surviving organization will need to reapply for exemption *if* there's been a material change to the exempt purpose or type of exemption from the original. An example would be switching from advocacy to providing outreach services.

Critical consideration

The new rules will reduce the burden for many nonprofit restructurings. But, remember, they apply only to federal income tax exemptions. And don't forget to check your state law, which could require additional filings. ■

Do you understand how taxes will affect your donors?

With the first year under the new tax law behind them, your contributors may be looking to structure their charitable giving in new ways. And, although the deductibility of most gifts hasn't changed, some of the record-keeping requirements have. Helping your donors understand the requirements and benefits of their gifts will help you strengthen those relationships.

Allowable deductions vary widely

Generally, donors can deduct total contributions of money or property up to 60% of their adjusted gross income. The amount of the allowable deduction varies based on the type of donation. Cash donations are 100% deductible, including donations made by check, credit card or payroll deduction if the donor maintains proof on a bank record or written communication from the recipient.

Donations of ordinary-income property are usually limited to the donor's tax basis in the property (usually the amount the donor paid for it). Specifically, donors can deduct the property's fair market value (FMV) less the amount that would be ordinary income or short-term capital gains if they sold the property at FMV.

Property is ordinary-income property when the donor would recognize ordinary income or short-term capital gains if he or she sold it at FMV on the date of donation. Examples include inventory, donor-created works of art, and capital assets (for example, stocks and bonds) held for one year or less.

Fair market value applies in some cases

Donors of capital gains property can usually deduct the property's fair market value. Property is considered capital gains property if the donor would have recognized long-term capital gains had he or she sold it at FMV on the donation date. This includes capital assets held more than one year. But there are certain situations where only the donor's tax basis of the property may be deducted (assuming it is less than FMV), such as when the donation is intellectual property (for instance, a patent or copyright) or, interestingly, "certain taxidermy property."

As the name implies, tangible personal property can be seen or touched. Examples include furniture, books, jewelry and paintings. If your nonprofit uses the donated property for its tax-exempt purpose — for example, a museum displays a donated painting — the donor can deduct its fair market value. But if the property is put to an unrelated use — for example, a not-for-profit children's hospital sells the donated painting at its charitable auction — the deduction is limited to the donor's basis in the property.

For donations of property the substantiation requirements depend on the deductible value. Under $250, a receipt is sufficient; between $250

and $500 the donor must have contemporaneous written acknowledgment; and between $501 and $5,000 the donor must also file Form 8283. Any gifts over $5,000 in value also require a qualified appraisal. The IRS finalized these requirements in 2018.

Vehicle donation limits vary

Generally, if a vehicle has an FMV greater than $500, the donor can deduct the lesser of the gross proceeds from its sale by the organization or the FMV on the donation date. But if the nonprofit uses the vehicle to carry out its tax-exempt purpose — for instance, an animal welfare organization that uses a donated van to transport rescued dogs and cats — the donor can deduct the FMV. Make sure you provide Form 1098-C, which your donor must attach to his or her tax return to take the deduction.

Rules for property donations are complex

Say a supporter donates a one-week stay at his vacation home for an auction. Unfortunately, he can't take a deduction, because generally only donations of the full ownership interest in property are deductible. The right to use property is considered a contribution of less than the donor's entire interest in the property. But there are some situations in which a donor can receive a deduction for a partial-interest donation, such as with a qualified conservation contribution.

Donors also might want to claim a deduction for the donation of their services, such as when a hair stylist donates one free haircut and color for your auction, or a graphic designer lays out each issue of your quarterly newsletter for free. These types of donations aren't deductible as contributions, only as normal costs of doing business. But the related out-of-pocket costs, such as supplies and miles driven for charitable purposes, are deductible as charitable contributions.

Keep donors on board

While tax education may seem beyond your responsibility, you can't afford disgruntled donors. Taking the time to make sure your donors understand the tax implications of their gifts can avoid unpleasant surprises down the road. And this will help keep donors on board as long-term supporters. ■

Enterprise risk management helps nonprofits contain threats

Like their for-profit counterparts, nonprofits face an ever-expanding range of risks. The numerous, sometimes overlapping, types of risk demand a holistic approach. Enter enterprise risk management (ERM). Even organizations with limited resources can — and should — use an ERM process to combat the risks that come with operating in the 21st century.

What is ERM exactly?

ERM is a comprehensive approach to risk that considers the organization's entire portfolio of risks. Rather than attacking every risk equally, ERM compares risks and strategically deploys resources against them. It considers both the organization's strategic objectives and its "risk tolerance" or willingness to accept uncertain outcomes.

Risks, after all, have different types of potential impact — and you might have different tolerances for different kinds of threats. For example, you might be mildly cautious about reputational risks and very averse to financial risks, as they might affect services and the achievement of your mission and goals. With ERM, you can contain those risks with the greatest potential impact and respond nimbly to others.

How can you use it effectively?

Launching an ERM strategy can seem quite daunting, but breaking it down into a four-step process can help:

1. Establish a risk management governance structure. A formal ERM program requires a formal structure, with assigned roles and responsibilities. While ERM encompasses the entire organization, it should start at the top. Leadership should define your organization's risk tolerance *and* make clear its commitment to the program.

Designating a cross-departmental committee responsible for developing the program is critical. Different departments may have different perspectives on the importance of certain risks. For instance, someone from Finance might think inaccurate reporting of program information is inconsequential because it's unlikely to affect revenues or expenses. Your communications or public relations department could have a different perspective.

2. Conduct a risk assessment. The committee's first task is to identify all of your organization's risks. It shouldn't rely on its own knowledge, though — interviews of management and surveys of lower-level staff can prove invaluable. You also might solicit input from the population you serve.

One of the most crucial aspects of ERM is then ranking risks based on your organization's risk tolerance and the potential impact of each risk. Which are most likely to occur and which will cause the most harm? For a nonprofit, this usually comes down to the question, "Which risks are most likely to affect our ability to accomplish our mission?"

3. Create and implement a risk management plan. Once risks are identified and prioritized, the committee should devise a plan to mitigate them appropriately. For each risk, it must determine whether to accept, reduce or avoid it. And it should implement controls, processes and procedures accordingly.

The committee is then charged with rolling out the plan. This should include communicating it throughout the organization.

4. Review and revise. ERM is an ongoing process, with continual monitoring of key risks and key performance indicators to ensure appropriate adjustments. Updating your initial risk assessment to reflect organizational changes (for example, new staff or services), as well as changes in the legal and regulatory environment, is critical.

You can't afford not to

The risk universe facing nonprofits calls for you to proactively manage threats to your organization and apply resources wisely. ERM provides the tools to do just that. ■

NEWS FOR NONPROFITS

Push continues for universal charitable deduction

Nonprofits remain worried about the effects of the federal income tax overhaul on charitable giving. But some organizations, such as the Council on Foundations and Independent Sector, intend to keep the pressure on Congress to help mitigate the damage.

Federal lawmakers already have taken some steps to alleviate the potentially negative repercussions. In 2018, for example, Rep. Chris Smith (R-NJ) introduced the "Charitable Giving Tax Deduction Act," which would allow taxpayers to deduct from gross income charitable contributions that are now allowed only as an itemized deduction. The bill is supported by a consortium of charitable organizations and philanthropic networks and has drawn five bipartisan sponsors in Congress since its introduction.

In the Senate, Sen. James Lankford (R-OK) has introduced similar legislation — dubbed the "Universal Charitable Giving Bill." While Smith's bill wouldn't limit the deduction, Lankford's would cap it at one-third of the taxpayer's standard deduction. ■

Funders turning to competitions

More and more big funders — including private companies, government agencies and other nonprofits — are staging competitions to determine where best to direct their dollars. As the business magazine *Fast Company* reports, a variety of entities are experimenting with everything from prize competitions and challenges to "hackathons."

Major funders like the Rockefeller Foundation, Bloomberg Philanthropies, the MacArthur Foundation and the Chan Zuckerberg Initiative (CZI) have hosted competitions to find groups with effective formulas or concepts that might otherwise go unnoticed. For example, the Rockefeller Foundation and CZI teamed up on the Communities Thrive Challenge, paying out $1 million each to the 10 winning community groups that proposed scalable ways to build greater economic opportunity for low-income and financially insecure people in their areas. More than 1,800 organizations participated. ■

Study links lack of trust in government with use of nonprofit services

Opinions and attitudes about government may influence the use of nonprofit services by individuals in need. A new analysis of the Human Needs Index (HNI) by researchers at the Indiana University Lilly Family School of Philanthropy found that states with lower levels of trust in government had higher levels of need as measured by the HNI.

When a state's citizenry is less trusting of government, they prefer lower government spending on programs such as welfare and Social Security, and they're more likely to turn to a nonprofit to meet basic human needs. The effect goes both ways — when state-level trust in government is higher, use of nonprofit services is lower. ■

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The support you need. The service you're looking for.

Succeeding in the not-for-profit sector today requires more than a strong commitment to your mission. It takes shrewd fiscal management, careful regulatory compliance, skillful use of technology and the assistance of advisors who know the issues nonprofit organizations face and how to address them.

This is where Sechler Morgan CPAs, PLLC comes in. Our team of experienced professionals cherishes the opportunity to support nonprofit organizations, meet their management challenges and fulfill their missions. We offer a variety of specialized accounting, tax and consulting services including:

- Audit intermediary services
- Budget and policy design
- Outsourced accounting/bookkeeping
- Tax form preparation (990, etc.)
- Strategic and management consulting
- Speaking on financial literacy and other topics
- Technology and virtual system design

RESPONSIVE QUALITY

We are committed to providing responsive, personalized service to the highest quality. We take time to truly understand your Organization so that we can customize our recommendations to your specific situation. Our goal is to make your processes easier, streamline your operations and ensure your success in reaching *your* goals.

We welcome the opportunity to discuss your mission and vision so that we may assist you with our expertise. Please call us at 602-230-2700 or e-mail info@azcpa.com and let us know how we may support you. Be sure to visit our website at www.azcpa.com for additional tools and information, as well as our archive of this newsletter.

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