



Philanthropic NEWS

**FALL
2005**

**TABLE OF
CONTENTS**

**IRS ESTABLISHES
LEAVE DONATION
PROGRAM
P2**

**NONPROFITS
MUST COMPLY
WITH ANTI-SPAM
REGULATIONS
P2**

**RECENT STATE
FUNDRAISING
BILLS
P2**

**IRS ISSUES
GUIDELINES
REGARDING NEW
CAR DONATIONS
LAW
P3**

**INDIANA SUBJECTS
DO-NOT-CALL
LAW TO
FUNDRAISERS
P3**

**RECENT AND
UPCOMING
EVENTS AND
APPOINTMENTS
P4**

IRS PROPOSES REGULATIONS FOR INTERMEDIATE SANCTIONS AND TAX EXEMPTION REVOCATION

The IRS has recently proposed a new regulation that would clarify the circumstances under which revocation of tax-exempt status is appropriate when section 4958 excise taxes also apply. Section 4958 of the IRS Regulations imposes liability for excise taxes on disqualified persons (i.e., certain insiders) who receive an excess benefit from, or organization managers (e.g., directors and officers) who knowingly participate in, an excess benefit transaction.

In determining whether to continue to recognize the tax-exempt status of an organization that has engaged in an excess benefit transaction, the IRS will consider all relevant facts and circumstances, including, but not limited to:

- the size and scope of the organization’s regular and ongoing exempt activities before and after the excess benefit transaction occurred;
- the size and scope of the excess benefit transaction in relation to the size and scope of the organization’s regular and ongoing exempt activities;
- whether the organization has been involved in repeated excess benefit transactions;
- whether the organization has implemented safeguards that are reasonably calculated to prevent future violations; and

Continued on page 2



KATRINA ACT REMOVES TAXPAYERS’ CHARITABLE DEDUCTION LIMITATION

In September, 2005, new legislation was enacted providing tax benefits to people and businesses affected by Hurricane Katrina.

The Katrina Emergency Tax Relief Act of 2005 allows, among other items, temporary tax benefits to any individual making a contribution to a “Qualified Charity” between August 28 and December 31, 2005. During that period, taxpayers who itemize their deductions can deduct their charitable cash contributions, up to 100% of their 2005 adjusted gross income. At all other times, the limit is up to 50% of adjusted gross income.

Many nonprofit leaders were reportedly disappointed that the measures did not include other provisions that might do more to help charities raise funds, especially for long-term hurricane recovery efforts.

For more information, contact Daniel Alcott at Dan@perلمانandperلمان.com.

IRS PROPOSES REGULATIONS

Continued from page 1

- whether the excess benefit transaction has been corrected, or the organization has made good faith efforts to seek correction from the disqualified persons who benefited from the transaction.

The factors listed will weigh more strongly in favor of continuing to recognize exemption where the organization discovers the excess benefit transaction(s) and takes action before the IRS Commissioner discovers the transaction(s). Further, the proposed regulations note that correction after the Commissioner discovers the transaction(s) is never a sufficient basis for continuing to recognize exemption.

IRS ESTABLISHES LEAVE DONATION PROGRAM TO AID VICTIMS OF HURRICANE KATRINA

The IRS is encouraging employers to establish Hurricane Katrina Relief leave donation programs by providing special tax treatment to support such programs. Under the leave donation program, employees can elect to forgo their vacation, sick or personal leave in exchange for the employer making cash payments to a qualified tax-exempt organization providing relief for victims of Hurricane Katrina.

The amounts contributed are deducted from the employee's gross wages, so they are not subject to withholding or income tax, and they are deductible to the employer as either a charitable contribution or a business expense.

This program is modeled after a similar program announced after the September 11, 2001 terrorist attacks.

To be eligible for the program, a cash contribution by the employer must be:

- Made to a qualified tax-exempt organization;
- Dedicated to Hurricane Katrina relief; and
- Paid to the recipient organization by Dec. 31, 2006

For employees who have extra vacation, sick or personal leave balances or who just simply want to provide more to the Hurricane Katrina relief effort, a leave program makes it easier for them to help the Hurricane Katrina victims go about the difficult task of rebuilding their lives.

Employers must follow a few simple IRS guidelines but no prior approval is required. A leave donation program can be adopted and administered easily.

For more information, contact Allen Bromberger at allen@perlmanandperlman.com.

NONPROFITS MUST COMPLY WITH ANTI-SPAM REGULATIONS

According to the Final Rules released by the Federal Trade Commission (FTC) relating to commercial e-mails, nonprofits may have to comply with the FTC's rules, known as the CAN-SPAM regulations, when sending e-mail messages of a commercial nature, such as a nonprofit hospital offering medical screening in exchange for a fee. To comply with the FTC regulations, charitable organizations must abide by the following:

- E-mails must include a functioning return e-mail address so recipients can opt out of future e-mails.
- E-mails should provide accurate header information, including the original e-mail address, domain name, and IP address.
- The message header and subject lines must not mislead the recipient as to the source or contents of the message.
- An e-mail address must be removed from the organization's e-mailing list within ten (10) days of receipt of the request for removal.
- Any commercial e-mail must: (a) clearly communicate that the message is an advertisement, (b) contain a conspicuous opt-out notice, and (c) display the sender's physical postal address.

For more information, contact Karen Chang at Karen@perlmanandperlman.com.

RECENT STATE FUNDRAISING BILLS

California Senate Bill 878, passed on September 6, 2005, deletes certain charitable fundraiser disclosure provisions from Business and Professions Code section 17510.3.

The provisions currently require charitable fundraisers to disclose the percentage of the amount collected that will be used for charitable purposes, or if paid a set fee, an estimate of the amount that will be used for direct fundraising expenses. The Senate Rules Committee acknowledged that these disclosure provisions were unenforceable under the Supreme Court decision Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781 (1988). The bill is effective immediately.

New York Senate Bill 4745 and Assembly Bill 9061 were introduced this year, and would require full-time, salaried employees of charitable organizations, whose primary responsibilities are fund raising, to complete a course of instruction in the law and ethics of fund raising and philanthropy. Assembly Bill 9061 would extend this requirement to individual professional fundraisers who are required to register and raise over \$1 million per year.

IRS ISSUES GUIDELINES REGARDING NEW CAR DONATIONS LAW

The IRS and Treasury Department have clarified some of the new rules pertaining to the valuation of charitable deductions for donated vehicles. Under the new Law, which took effect on January 1, 2005, the amount that a donor of an automobile to a charitable organization may deduct from income taxes is limited to the actual sales price of the vehicle when sold by the donee charity unless there was a significant intervening use or material improvement by the donee organization in which case the donor can take a fair market value deduction.

The guidance (Notice 2005-44) clarifies (i) the concepts of "significant intervening use" and "material improvement," (ii) the necessary content of written acknowledgments to donors which are required when the donee organization plans a significant intervening use or material improvement, and (iii) the penalties imposed on donee organizations which provide a false or fraudulent acknowledgement of a vehicle donation or fail to furnish the acknowledgment properly.

To constitute a significant intervening use, a donee organization must actually use the qualified vehicle to substantially further the organization's regularly conducted activities, and the use must be significant. Whether a use is a significant intervening use depends on its nature, extent, frequency, and duration. Material improvement includes a major improvement to the condition of the qualified vehicle in a manner that significantly increases its value. To be a material improvement of a qualified vehicle, the improvement may not be funded by an additional payment to the donee organization from the donor of the qualified vehicle.

For a contribution of a qualified vehicle for which the donee organization intends a significant intervening use or material improvement, the donor acknowledgment must contain:

- a certification and detailed description of--
 - the intended significant intervening use by the donee organization and the intended duration of the use, or
 - the intended material improvement by the donee organization; and
- a certification that the qualified vehicle will not be sold before completion of the use or improvement. The acknowledgment is considered contemporaneous if the donee organization furnishes the acknowledgment to the donor within 30 days of the date of the contribution.

The notice says that the IRS will be issuing a new Form 1098-C, which may be used to provide the acknowledgment. Form 1098-C can be downloaded from the IRS web site at <http://www.irs.gov>.

The IRS Notice also added the following to the list of circumstances under which a donor can deduct the fair market value of the vehicle: when the gift of the vehicle is made to a needy individual at a price significantly below fair market value, or a gratuitous transfer is made by the donee to a needy individual, in direct furtherance of a charitable purpose of the donee organization of relieving the poor and distressed or the underprivileged who are in need of a means of transportation.

INDIANA SUBJECTS PROFESSIONAL FUNDRAISERS TO DO-NOT-CALL LAWS

An Illinois District Court has upheld an Indiana statute that allows residents to sign up for do not call lists that bar solicitation from professional fundraisers of charities.

The underlying lawsuit, brought by four nonprofit organizations, argued that the application of the Indiana Telephone Privacy Act to their professional fundraisers is an unconstitutional content-based restriction on speech.

The District Court for the Southern District of Illinois granted the Attorney General's summary judgment motion, holding that the Act was a content-neutral restriction, because there was a significant governmental interest in protecting the residential privacy of individuals. The court held that the Act was narrowly tailored to achieve the interest because:

- it only applies to residents who actively request not to be solicited;
- less restrictive regulations have proven ineffective;
- the Act materially furthers the government's interest in protecting residential privacy;
- there is an exception for charities that make such calls using their own employees or volunteers; and
- Act's provisions impose a bright line rule that is not susceptible to arbitrary application.

The Court also found that sufficient alternative modes for alternative expression remain, including communications in person, by leaflet, direct mail, by the internet, or through newsprint, television, or radio appeals.

The Court's decision did not address how the law disproportionately harms and effectively discriminates against smaller, unpopular charities that lack the resources to hire their own employees or amass enough volunteers to make sufficient solicitation calls. This case will almost certainly be appealed.

RECENT AND UPCOMING EVENTS AND APPOINTMENTS

David G. Samuels was one of the event Chairmen for a full day continuing legal education program entitled "Charitable Fundraising & Solicitations in the 21st Century" sponsored by the **New York City Bar Association** on September 23, 2005. **Daniel R. Alcott** participated on the faculty, speaking about registration requirements for multi-state charitable solicitation. The program was attended by more than 100 guests.

Seth Perlman will be attending his 20th consecutive annual **NAAG/NASCO** (National Association of Attorneys General/ National Association of State Charity Officers) meeting this November in Cleveland, Ohio. He will be accompanied by Registration Specialist Nicole Jones. The firm will report to our clients on any significant developments proposed by the state.

David G. Samuels will be speaking on December 6, 2005 at the nonprofit conference of the **New York State Society of CPAs** on compensation issues.

Daniel R. Alcott was appointed by the President of the **New York State Bar Association** to serve on the Special Committee on Sarbanes-Oxley and Governance. On September 21, 2005, Mr. Alcott conducted a workshop on governance at the annual board retreat of the **Women's City Club of New York**.

A Publication of:
Perlman & Perlman, LLP

Attorneys At Law
41 Madison Avenue
Suite 4000

New York, NY 10010

<http://www.perlmanandperlman.com>

(212) 889-0575

(212) 743-8120 (fax)

Attorneys:

Seth Perlman

Clifford Perlman

David G. Samuels

Daniel R. Alcott

Allen R. Bromberger

Karen I. Chang

Registration Department and Paralegals:

Carol Ilsi

Nicole Jones

Cynthia Mercado

Jodi Perlman

James O'Meara

Sammy Mantilla

Aimee Park

Imelda Mercado

Ryan Kominski

Philanthropic News is a quarterly publication published by Perlman & Perlman, LLP. The information provided in this publication does not constitute legal advice, and is not intended to substitute for legal counsel. For further information regarding the issues addressed in this publication, please contact us at info@perlmanandperlman.com.

PHILANTHROPIC NEWS

PERLMAN & PERLMAN, LLP

41 Madison Avenue, Suite 4000

New York, NY 10010