



Philanthropic NEWS

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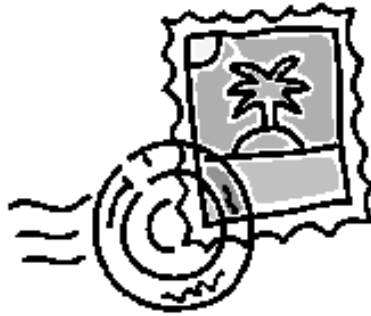
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NONPROFIT POSTAL RATES TO RISE DRAMATICALLY

Effective May 14, 2007, most nonprofit postal rates will rise by an average of 6.7 percent. As usual, the new rates are intended to raise more revenue for the Postal Service. The new rate increases are lower for nonprofits that make mail easier to sort and deliver.

Certain types of mail associated with "premium mailing" may lose their nonprofit classification altogether if specified size, weight and shape restrictions are not met, thus doubling the cost of these mailings.

Nonprofit periodical postal rate increases, which average 11.7 percent, will not take effect until July 15, 2007. Additional time was given to organizations so that they can adjust to the 55 different new prices based on how charities sort their periodical mailings.

According to various reports by watchdog agencies, the Postal Rate Commission may reconsider the nonprofit rates due to the effect it will have on small charities that cannot afford new rates. Any changes in this regard will be posted in future editions of this newsletter.

IRS FORCES CHARITIES TO AMEND 990 EXECUTIVE COMPENSATION REPORTING

In March 2007, the Internal Revenue Service's Exempt Organizations Office of the Tax Exempt and Government Entities issued its findings on its Executive Compensation Compliance Initiative. As part of the initiative, the Office had sent compliance check letters to approximately 1,223 organizations and conducted examinations of approximately 782 organizations focusing on executive compensation for tax years beginning in 2002.

As a result of these examinations, 600 charities and foundations were required to file amended Form 990s to restate the manner in which payments to executives and other employees were reported. In addition, 40 individuals were fined \$20 million in excise taxes for excessive compensation, of which about \$16 million related to individuals associated with private foundations, and \$4 million involved individuals working with public charities.

The Exempt Organizations Compliance Unit sent compliance checks to 1,023 public charities and 200 private foundations. The recipient organizations were divided into five categories:

1. Public charities with assets of \$1 million or more and revenues of \$5 million or more that had reported significant total compensation, but failed to provide complete detailed information regarding the compensation;

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990 EXECUTIVE COMPENSATION

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2. Charities of all sizes that reported receivables/loans from officers, directors, trustees and key employees exceeding \$100,000 or more;
3. Charities that answered “yes” or failed to respond to the question of whether they had participated in an excess benefit transaction;
4. Charities that answered “yes” or failed to respond to the question about transactions with disqualified persons; and
5. Private foundations that did not report any officers compensation in the 990.

The second phase of the project involved examinations of 782 organizations focusing on organizations that reported significant amounts of compensation for one or more of their officers.

The IRS noted that many organizations were confused or did not understand the instructions. The IRS also found significant reporting errors and omissions in public charity responses to questions about excess benefit transactions and transactions with disqualified persons.

The IRS made a number of recommendations including:

- Form 990 compensation reporting needs to be revised to facilitate accurate and complete reporting;
- The IRS should revisit the issue of when penalties should be assessed for filing an incomplete Form 990 or 990 PF; and
- The IRS should communicate to the public the most common return preparation errors identified during the compliance checks and examinations.

The IRS has indicated that it will continue to monitor executive compensation issues and approximately 10% of the examinations remain open.

PINELLAS COUNTY TERMINATES REGISTRATION REQUIREMENT

Pinellas County, Florida announced that effective March 2, 2007, persons or organizations soliciting for charitable purposes will no longer be required to register in the County. The amendment of the Pinellas County Ordinance does not affect the registration requirements under Florida state laws. Persons or organizations soliciting the public in Florida must register with the Department of Agriculture & Consumer Services.

NEW RULES TO GOVERN INSTITUTIONAL FUND INVESTMENT

In July 2006, the National Conference of Commissioners on Uniform State Laws proposed a new law that would change the way that institutional funds, including endowment funds, are regulated and managed. The new law, known as the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), would replace the current Uniform Management of Institutional Funds Act (“UMIFA”), which has been enacted in 43 jurisdictions, including New York. As of March 22, 2007, UPMIFA has been enacted in South Dakota and Utah, and is currently under consideration in a dozen other jurisdictions.

The most significant changes relate to the legal standards that determine whether institutional funds have been managed prudently. These changes bring the law governing charitable institutions in line with modern investment practice. For example, the concept of “historic dollar value” – the idea that the historic dollar value of contributions to a fund should always be maintained and the original corpus of an endowment should never be touched, is eliminated. The new law would replace it with the notion that fund managers should act as any prudent investor would, using a portfolio approach in making investments and considering the overall risk and return objectives of the institution. This change has been welcomed by many portfolio managers, because it gives them greater freedom to make investment decisions that are in the institution’s best interests.

Under UPMIFA, a charity may spend any amount of an endowment that is prudent, consistent with the purposes of the fund, relevant economic factors, and – most importantly – the intent of donors who contributed to the fund. This last point is tricky because the donor’s intent at the time they made their donations is not always explicit, and can never be known if the donor is unavailable or has passed away. While the new law provides some guidance on how to make determinations of donor intent when it is not clear, this is an area we expect to develop more fully with the passage of time.

Under UPMIFA, states may elect to adopt a provision in which spending over seven percent of the value of an endowment in any one year, measured by a three year average, would create a presumption of imprudence. However, there are numerous ways under the law to calculate that percentage, and there is no clear consensus on which method is best.

For more information about these new rules, please contact Allen R. Bromberger at 212-889-0575.

RECENTLY INTRODUCED STATE LEGISLATION

Hawaii **Senate Bill 1657**, introduced in January, would require the Attorney General's Office to publish the percentage of donated funds raised by professional solicitors that are received by a charitable organization in a daily newspaper of general circulation and on the Attorney General's website. This bill was introduced after recent reporting of professional solicitors to the state's Attorney General indicated that the majority of professional fundraisers working for Hawaii charities pass on less than 50% of the funds raised through telemarketing. While professional solicitors are required to file financial reports with the state at the close of each fundraising campaign, the legislature found that the public is generally unaware of their availability.

Oregon **Senate Bill 110**, introduced in January, would authorize the Attorney General to identify charitable organizations with annual revenues of \$100,000 or more who fail to provide charitable program services that meet or exceed an expenditure threshold of 25% of annual revenues. The organizations would be named on a "Disqualified Charitable Corporations" list to be included in income and corporate excise tax return instructions. Taxpayers would be required to add back to their federal taxable income any deductions made for contributions to disqualified organizations on the list.

New Mexico **House Bill 849**, introduced in February, would require charities to file: (1) the compensation paid to directors and officers; (2) the amount expended for lobbying state and federal agencies; (3) the amount expended for political contributions; and (4) the amount received from any for-profit entity owned by a charitable organization, by May 1 of each year. This information is already currently available on the IRS Form 990 that charities must file with the state annually.

New York **Assembly Bill 4613**, introduced in February, would make numerous changes to the oversight of charitable organizations and solicitations. Among the changes, the bill would require that contracts between professional fundraisers or fundraising counsel and charitable organizations specify that the charities, and not the fundraisers, exclusively own any contributors lists or mailing lists compiled by the fundraiser or fundraising counsel. The bill would also provide charitable organizations with a five day right to cancel contracts entered into with commercial co-venturers.

New York **Assembly Bill 6068**, introduced in February, would entitle professional fundraisers and solicitors who complete a course of instruction in the law

and ethics of fundraising to a waiver of the annual registration fee for one year.

New York **Senate Bill 3587**, introduced in March, would prohibit funding of terrorist activities through donations to nonprofits by providing that any officer or director of a nonprofit who knowingly permits the corporation to support terrorism would be guilty of a felony for soliciting or providing support for an act of terrorism. Among other things, the bill would authorize the attorney general to audit and investigate any nonprofit suspected of soliciting contributions for, or transferring monies to, any person or organization which assists, funds or supports terrorism, and to prosecute any violations.

ONGOING LEGAL COMPLIANCE

A basic responsibility of every nonprofit director and manager is to ensure that the organization's affairs are in order and that it is in compliance with all its legal obligations. For most organizations, that means observing these few basic rules:

1. Make sure all government agencies know your organization's correct name and current address. Many organizations have run in trouble because of a missed notice from the IRS. Updating your address is as simple as filing a notice of address change;
2. Make sure you are exempt from state and local taxes. Getting a federal tax exempt designation does not automatically exempt you from *all* taxes. Filing the right forms with your state and local tax officials can save organizations a significant amount of money.
3. Make sure your financial statements and records are in good order. Financial disclosure is a fact of life for charities in the United States today. Make sure your audit and IRS Form 990 are prepared correctly and copies are available upon request.
4. Follow your bylaws. This includes giving proper notice of meetings, holding them according to any procedures established in the bylaws, and properly documenting them in meeting minutes.
5. Review your organizational documents and major contracts periodically and make sure they reflect your actual practices. Where they diverge, change either the bylaw or the practice.

If you would like help with any of these matters or have any other questions related to nonprofit governance, please contact Allen Bromberger at (212) 889-0575. The firm offers a variety of services designed to keep its clients in legal compliance.

UPCOMING SPEAKING ENGAGEMENTS AND ANNOUNCEMENTS

Seth Perlman gave a presentation at the New York City Bar Association seminar on “Forming and Advising Charitable Organizations” on April 13, 2007. On May 23, 2007, Mr. Perlman will be giving a presentation at the Practising Law Institute, entitled “Advising Nonprofits,” in New York. He will also be giving a presentation on current legal issues facing nonprofits at The American Institute of Certified Public Accountants (AICPA) National Nonprofit Conference on June 19, 2007 in Washington D.C.

Clifford Perlman will be speaking on nonprofit advocacy and electioneering on April 30, 2007 at the Annual Advocacy Conference for National Breast Cancer Coalition in Arlington, Virginia. Mr. Perlman’s article, “Charity’s Grip On the First Amendment Constantly Under Assault,” was recently published in the 20th anniversary special edition of the Nonprofit Times.

Allen Bromberger will be giving a presentation on April 17, 2007 at the Aspen Institute about hybrid legal entities, in Long Beach, California. On April 18, Mr. Bromberger will be speaking on a panel of experts at the 8th Gathering of the Social Enterprise Alliance. On July 19, 2007, Mr. Bromberger will be teaching an advanced workshop regarding “The role of the CEO as intermediary between board and staff” at the Alliance for Nonprofit Management Annual Conference in Atlanta, Georgia.

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