



Philanthropic NEWS

**SUMMER
2008**

**TABLE OF
CONTENTS**

INSIDE THIS ISSUE...

**POLITICAL
ACTIVITIES IN AN
ELECTION YEAR**
Page 2

**HAWAII ENACTS
REGISTRATION
REQUIREMENTS**
Page 2

**IRS ROLE IN
NONPROFIT
GOVERNANCE**
Page 3

**PUBLIC COMMENTS
END FOR DRAFT 990
INSTRUCTIONS**
Page 3

**AMERICAN RED
CROSS AND JOHNSON
& JOHNSON SETTLE
DISPUTE**
Page 4



STATE COURTS TACKLE PROPERTY TAX EXEMPTION

In courts across the country, charities, from large universities to small day care centers, are being challenged to prove why they deserve their property tax exemptions.

Two recent cases in Minnesota and New York came to very different conclusions on the issue of property tax exemptions for nonprofit organizations. Last December, the Minnesota Supreme Court held that a small, nonprofit daycare center had to pay property taxes because it did not give away its services, shocking many in the nonprofit world. The daycare center, Under the Rainbow Child Care Center, charged the same price per child regardless of whether the parents were receiving government support. The court found that because the center charged all parents the same amount and did not charge lower rates than its competitors, it was not an institution of “purely public charity” and, therefore, had to pay property taxes. The court held that the extent to which recipients have to pay for the

Continued on Page 2, Column 1

VERMONT ADOPTS “L3C”

Vermont became the first state in the country to recognize the L3C, a limited liability company (LLC) with purposes limited to activities that are undertaken for a social purpose rather than for profit. The L3C may be an appropriate vehicle for projects that involve a combination of state, private and philanthropic support, since it has structural limitations unlike those found in normal business entities. Although these limitations can already be incorporated into an LLC’s organizing documents, state law’s recognition of L3C provides greater certainty to such arrangements. This is a good example of how states are becoming fertile ground for new “hybrid” legal arrangements that allow charities and businesses to come together for the common good.

Like all LLCs, L3Cs are pass-through entities and do not pay tax on their net income but rather pass all income and expenses to the members. For example, if a charity and a business collaborate on a venture that involves activities related to the charity’s tax exempt purpose, the charity’s share of income would be tax-free, while the business would pay ordinary corporate tax on its share. However, the Internal Revenue Service (IRS) has issued several revenue rulings that restrict joint ventures between charities and businesses, and conducting such activities within an L3C does not remove these restrictions. That may change if the IRS issues favorable guidance on charities participating in joint ventures using an L3C, but there is no indication that the IRS will do this any time soon, if ever.

If you would like more information about L3Cs or ways that charities and businesses can work together, please contact Allen Bromberger at allen@perlmanandperlman.com.

COURTS TACKLE TAX EXEMPTION

Continued from Page 1, Column 1

assistance they receive “tests for a value that is fundamental to the concept of charity – that is, whether the organization gives away anything.” Based on this ruling, hundreds of charities in Minnesota could now lose their property tax exemptions. In May, Minnesota passed a one year ban on reversing property tax exemptions of existing nonprofits until the state sets criteria to determine what is a “purely public charity.”

Unlike the Minnesota court, the New York Court of Appeals came out with a decision in March supporting charities. The decision involved two charities – Adult Home at Erie Station, Inc. (AHESI), an adult care facility for the elderly poor, and Regional Economic Community Action Program, Inc. (RECAP), a social work organization combating homelessness and substance abuse. Both charities sought property tax exemptions for their residential facilities. The court’s decision hinged on whether these properties are “used exclusively for carrying out” the organizations’ charitable purposes.

AHESI’s application for tax exemption was denied because some residents paid for their care at a reduced rate and, therefore, the majority of the facility’s residents were not poor enough to make the activity “charitable.” The court rejected the argument that “only SSI recipients are poor enough to be the objects of charity” and found that the facility was entitled to a property tax exemption.

In the second case, RECAP’s application for tax exemption was rejected because it received market rents for its residential facilities. RECAP argued that the residences were only available to participants in RECAP’s programs and that providing decent affordable housing furthered the goals of combating homelessness and drug addiction. The court agreed with the charity and found that the fact that the residences are provided solely to people struggling with addiction and homelessness advances the charitable purpose of the organization, regardless of the amount of rent charged. Importantly, the court noted that an economic benefit to a charity does not alone extinguish a tax exemption, saying “the question is how the property is used, not whether it is profitable.”

The New York and Minnesota cases demonstrate how local governments are scrutinizing tax exemptions due to the economic downturn. This may continue to be a hot issue for courts and legislatures and charities should be on the lookout for further developments.

POLITICAL ACTIVITIES IN AN ELECTION YEAR

As momentum builds towards the 2008 Presidential election, compliance issues pertaining to political activities are increasingly important for nonprofit organizations. Failing to comply with the IRS’s regulations on political activities may subject a nonprofit to excise taxes or, more seriously, the loss of tax-exempt status.

In order for an organization to be tax-exempt under Section 501(c)(3) of the Internal Revenue Code, it cannot “participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.” However, deciding where to draw the lines on what is or is not acceptable political activity can be quite complicated, especially in an election year. Compliance with website communications and distinguishing when nonprofit leaders are speaking on behalf of an organization rather than for themselves are currently hot topics. Not “participating in a political campaign” does not entirely ban nonprofits from all political activities. For example, inviting politicians to speak at your organization’s events is not strictly banned. The context in which the candidates are invited is important, as well as the efforts and precautions that the nonprofit takes to appear non-partisan. Nonprofits can also engage in other neutral non-partisan activities, such as sponsoring get-out-the-vote campaigns.

If your organization’s mission is closely tied to advocacy and lobbying that may appear to support a political party or candidate, you should take extra care to comply with all IRS regulations during this election season. We can help advise you on how to best balance carrying out the mission of your organization with ensuring that you are in compliance with the IRS regulations. For more information, please contact our offices at (212) 889-0575.

HAWAII ENACTS REGISTRATION REQUIREMENTS

Hawaii’s lax charitable oversight laws ended on June 13, 2008, when Hawaii enacted a new law that now requires registration for organizations and individuals who were not previously required to register in the state.

As of July 1, 2008, contract requirements were imposed on commercial co-venturers, including the requirement that they file their contracts with the

Attorney General. As of January 1, 2009, any charitable organization that solicits funds in Hawaii will be required to register with the Attorney General's Office, unless covered by an exemption. In 2009, charities will also be required to submit annual financial reports and pay a filing fee of between \$25 and \$750, depending on the charities' annual gross income. The surety bond requirement for professional fundraising counsels was repealed as of July 1, 2008.

To help ease the transition, the Hawaii Attorney General's Office has summarized the important provisions of the law, available on their website at <http://hawaii.gov/ag/charities>. For additional information on the new law and how it may impact your organization, please contact our offices at (212) 889-0575.

IRS ROLE IN EXAMINING NONPROFIT GOVERNANCE

The IRS recently announced that nonprofit governance will remain a priority in its review of exempt organizations, brushing aside questions from the nonprofit community about its lack of jurisdiction to regulate this area. Despite no reference to the term "governance" within Section 501 of the Internal Revenue Code, the IRS believes there is a link between best practices and tax compliance, arguing that a well-governed charity is more likely to comply with the tax laws and promote charitable interests. Steven Miller, the IRS Commissioner of Tax Exempt and Government Entities, declared that "the question is no longer whether the IRS has a role to play in this area, but rather, what that role will be."

An example of the IRS's new scrutiny on nonprofit governance is the governance section of the revised Form 990. This section requests information regarding an organization's governing body and management, its written policies and procedures, and certain disclosure requirements. Currently, the IRS is focusing on board composition, especially the expectation of having independent board members and internal financial controls.

The IRS is encouraging nonprofits to review the Panel on the Nonprofit Sector's "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations" for guidelines in adopting best governance practices. This Guide outlines 33 practices for best governance. More information and an electronic copy of these principles are available at www.nonprofitpanel.org.

PUBLIC COMMENT PERIOD ENDS FOR DRAFT 990 INSTRUCTIONS

Draft instructions are now available for the newly redesigned Form 990. The instructions employ new tools and content that were noticeably absent in the instructions to the old version. These tools were developed in response to comments received last year in connection with the draft Form 990.

Some major changes in the draft instructions include:

- A glossary of key terms containing 176 definitions to provide filers with a quick reference guide;
- Additional instructions for those who file group returns;
- Revised instructions relating to compensation, including a compensation matrix, more examples, and clearer definitions, to help increase objectivity and uniformity in reporting executive compensation;
- An increased use of examples throughout the instructions overall; and,
- A sequencing list to help filers complete the form in step-by-step order.

The most obvious downside is the length of the draft instructions. Although the instructions offer comprehensive directions on completing the redesigned 990, the material is voluminous and cumbersome. In addition, some of the new questions in the revised 990 require organizations to track information for purposes of completing the new 990 that until now did not need to be reported. Special transition rules will allow many organizations to file a Form 990-EZ instead of the new Form 990 for the 2008 and 2009 tax years. However, all filers will eventually have to devise new ways of tracking additional information and, as of now, there has been no clear guidance to help filers put systems in place to capture this newly required information.

The IRS received over 600 pages of comments from experts and accountants in the nonprofit sector offering input on the draft instructions. There is no indication of when final instructions will be released; however, it is expected that the IRS will incorporate many recommendations received during the public comment period, as it did with comments on the revised 990.

For more information, please contact Catherine Oetgen at catherine@perلمانandperلمان.com.

AMERICAN RED CROSS AND JOHNSON & JOHNSON SETTLE TRADEMARK DISPUTE

The American Red Cross and Johnson & Johnson have settled their dispute over their use of the Red Cross emblem. The dispute, which we first reported in our Fall 2007 newsletter, arose when the Red Cross began licensing its cross mark to commercial partners to use on health and safety products as part of its fundraising program. Johnson & Johnson filed a lawsuit against the Red Cross in August 2007, claiming that their licensing of the cross mark to for-profit partners infringed upon Johnson & Johnson's exclusive right to use the mark on commercial products sold in retail stores. The settlement announcement came a month after federal district Judge Jed S. Rakoff threw out most of Johnson & Johnson's claims against the Red Cross. Judge Rakoff stated that the Red Cross's Congressional Charter gave it the right to use the cross symbol, even for business purposes. He further noted that the charitable reasons behind the Red Cross's licensing business further legitimized their commercial use. Both parties have stated that they are pleased that the dispute is over so they can return to focusing on their respective missions.

RECENT SPEAKER EVENT

Allen Bromberger presented at the Fourth Sector Network Legal Strategy Group meeting on July 17, 2008 in New York City. He spoke on The Core Attributes of the Fourth Sector Organization.

A Publication of:
Perlman & Perlman, LLP
Attorneys At Law
41 Madison Avenue, Suite 4000
New York, NY 10010
www.perlmanandperlman.com
Ph: (212) 889-0575
Fax: (212) 743-8120

Attorneys:
Seth Perlman
Clifford Perlman
Allen R. Bromberger
Karen I. Chang
Catherine C. Oetgen
Sarah A. Siegel
Jennifer Hu Corriggio

Registration Department and Paralegals:

Carol Iasi	Kyra Welch
Joyce Weyant	Katherine Hogue
Janelle Joseph	Sharon Glover
Cynthia Mercado	Nancy Peru
Beth Mercado	Nicole Gutierrez
Holly Curtis	Miranda Bouwens
Susan Hansen-Ceo	

Copies of this publication and prior editions of Philanthropic News can be downloaded from the firm's website, www.perlmanandperlman.com

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