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Non-Profit Organization Tax Update  
for the  
American Society of Professional Fundraisers  
Albuquerque Chapter

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## Non-profit Organization Tax Update

- + There were a number of recent news articles warning that a large number of non-profits were going to lose their tax exemption. This was caused by a convergence of two tax provisions:
  - + In 2006, Congress added a provision to the Internal Revenue Code (IRC §6033(j)(1)) that requires the IRS to revoke an organization's tax-exempt status if it fails to file a return or notice for 3 consecutive years.
  - + In the same year, Congress added another provision to the Internal Revenue Code (IRC §6033(b)) requiring certain small organizations (average annual gross receipts of \$25,000 or less) to do an abbreviated Form 990-N "e-Postcard" filing commencing with tax periods beginning on or after January 1, 2007. These organizations' previously did not have a filing requirement.



## Non-profit Organization Tax Update (cont.)

For calendar year small organizations, the 3-year filing period for the new Form 990-N ended as of December 31, 2009. The Dec. 31, 2009 return was due May 15, 2010. Therefore, any small organization that did not file the Form 990-N for these 3 consecutive years would have their tax exempt status automatically revoked as of May 16, 2010. While there was much press on this and *Guidestar* predicted that up to half a million organizations could have their tax-exempt status revoked, the reality was that it was the small organizations that were most at risk, many of which may have ceased to exist. The larger organizations that have a Form 990-EZ or Form 990 filing requirement were most likely current as they would have received notices long ago.

The IRS has indicated that it will offer relief in certain situations if organizations file the Form 990-N, even if it is after the May 15, 2010 due date.



## Non-profit Organization Tax Update (cont.)

- + Most IRC §501(c)(3) organizations must register with the NM Attorney General's charitable division. This registration is now required to be done electronically and there is an amnesty period through February 10, 2011 for organizations to register that have failed to do so. Based upon the NM Attorney General's web site, annual reports will also be e-filed by uploading a pdf copy of the organization's Form 990 using their NM-COROS system.
- + There are revised filing thresholds in place for tax years beginning in 2009 as to when Form 990-EZ is required or when a full Form 990 is required as follows:

<b>May file 990-EZ for:</b>	<b>If gross receipts are:</b>	<b>If assets are:</b>
2009 tax year (filed 2010)	> \$25,000 and < \$50,000	< \$1.25 million



## Non-profit Organization Tax Update (cont.)

- + The new and expanded Form 990 is still presenting challenges for organizations to complete accurately:
  - + Compensation reporting is still presenting difficulties and should be carefully presented in accordance with the Form instructions.
  - + Care and attention should be paid to having good and reliable governance policies in place to protect the organization and to assure the best answers to the governance questions on the Form 990.
  - + It is important that the 990 properly and accurately present the organization to the public and potential donors. With the wide distribution of these forms on the Web, it is important for the organization to tell its story in this report.



## Non-profit Organization Tax Update (cont.)

- + The 2010 Health Care Act as amended by the 2010 Health Care Reconciliation Act has placed new qualification requirements for IRC §501(c)(3) tax-exempt hospitals.
- + The IRS has stepped up their enforcement activities in the tax-exempt area. Exempt returns are now being reviewed and the new Form 990 provides a format for the IRS to accumulate data that will enable them to more efficiently select returns for examination.



## Recent Tax Impacts on Donors

- + For tax years beginning after Dec. 31, 2005 and before Jan 1, 2010, individuals who were 70½ or older were able to contribute up to \$100,000 to qualified charities directly from their IRA's without it flowing through their tax returns. This enabled taxpayers, particularly high net worth individuals, to effectively reduce their estate by \$100,000 while doing it without the limitations that generally apply if the income and charitable contribution deduction runs through an individual's return. We had a number of clients who took advantage of this provision. Unfortunately, it has not been extended. The House has passed a bill that would extend this tax break for one year through Dec. 31, 2010. It must still pass the Senate and then be signed by the President to become law.
- + Congress and the IRS are still interested in how Donor Advisor Funds work and there may be additional legislation enacted to govern these funds in addition to the previous legislation that extended many of the private foundation restrictions and penalties to Donor Advised Funds.



## Recent Tax Impacts on Donors (cont.)

- + It is important that contributions be properly receipted by organizations in order to ensure that the donor is entitled to a deduction on their return.
- + Cash donations should be acknowledged and the acknowledgement should contain the name of the organization, the date and amount of the contribution, a statement that no goods or services were provided by the organization in return of the contribution, if this is the case or, if not, a description and good faith estimate of the value of goods and services that the organization provided in return for the donation.
- + Property donations should be acknowledged and the acknowledgement should contain the name of the organization, the date and location of the contribution, a description of the property received in detail reasonably sufficient under the circumstances, a statement that no goods or services were provided by the organization in return of the contribution, if this is the case or, if not, a description and good faith estimate of the value of



## Recent Tax Impacts on Donors (cont.)

goods and services that the organization provided in return for the donation. The organization should not provide a value for the property received. This should be left to the donor and their advisors.

- + The donor has additional requirements for property contributions, other than money and publicly traded securities, where the claimed deduction exceeds \$5,000. In this situation, the donor must:
  - + Obtain a qualified appraisal for the property contributed
  - + A fully completed appraisal summary must be attached to the donor's tax return.
  - + A properly completed Form 8283 must be attached to the donor's return. The charitable organization is responsible for the completion of the donee acknowledgment contained in Part IV of the Form 8283 AFTER the donor has completed the other required parts of the form.



## Recent Tax Impacts on Donors (cont.)

- + The charitable organization has additional reporting requirements if it sells, exchanges, consumes other than in a charitable purpose, or otherwise disposes of certain property contributions within 3 years after the date of the contribution. Generally this applies to property donations, other than money or publicly traded securities, for which the claimed deduction for income tax purposes exceeds \$5,000. Generally, if an organization accepts a property donation, other than money or publicly traded securities, what it does not use in its charitable purpose, the donor will be limited in the amount of the charitable deduction that they can claim.
- + The IRS is likely to audit significant property donations to determine that they are valued properly. Easements and other special types of donations are of particular interest to them.



## Planned Giving

- + Congress did not act by the end of 2009 and, as a result, there is currently no federal Estate Tax on decedents dying in 2010 and there is no step-up in the basis of inherited property.
- + Until Congress acts, I expect to see clients slow to do any kind of planned giving due to all of the uncertainties.
- + As it stands now, if nothing is done, the estate tax will return in 2011 with an exemption of \$1 million and graduated rates topping out at 55% (2009 exemption was \$3.5 million and the top rate was 45%).
- + Congress could enact an estate tax effective Jan 1, 2010 (i.e. reinstate it retroactively), could enact a new estate tax effective Jan. 1, 2011 with new rates and exemption levels, or it could do nothing.
- + 2010 is a difficult year in that many estate plans rely on an estate tax being in place and their provisions will not work well when there is no estate tax. People should really update their estate plans even in this period of uncertainty.



## The Future

- + The IRS should continue to improve their selection criteria as it pertains to the selection of exempt returns to audit.
- + Policies and procedures as it relates to governance should be very important to organizations to ensure the safeguarding of their assets.
- + The reasonableness of exempt organization compensation should continue to be a priority to Congress and the IRS.
- + Universities, colleges and hospitals should be subject to more scrutiny in the future until Congress and the IRS are convinced they are operating in accordance with tax-exempt purposes.
- + The estate tax should return and planned giving should have a tax impact upon high net worth individuals. It should also remain important to those who want to leave a charitable legacy.
- + The valuation of property donations should continue to be an area of interest to the IRS.



“ Today is your  
day!

Your mountain  
is waiting, so...

get on  
your way.”

— Dr. Seuss

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