

# Think You're Done with Your 1023 and Other Organizational Documents?

Operating Your Charitable Organization in Compliance with State and IRS Rules and Regulations

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# The importance of your organizational documents

- Make sure organizational documents are current, and that the board of directors is following the procedures outlined in the Bylaws and other policy statements. If not, update them. Updated Articles of Incorporation or Bylaws need to be provided to IRS to update their files.

# UPDATING THE IRS FOR SIGNIFICANT CHANGES

- If annual return must be filed report on your 990/990-EZ
  - Name
  - Address
  - Structural changes
  - Operational changes
  - (If reported directly to the EO Determination Office, must also include with 990)
- If filing a 990-N, report to the EO Determination Office

# REPORTING CHANGES TO THE IRS

- Attach copies to 990/990-EZ of signed or state certified
  - articles of incorporation, or association, or other organization document
  - bylaws or other governing document showing changes.
    - If signed or state certified copies of a governing document not available
      - an authorized officer may certify that the governing document provided is a complete and accurate copy of the original document.

# SPEAKING OF OFFICERS AND BOARD MEMBERS....

- Conflict of Interest Policy - proper documentation and implement annual review procedure.
- Board members should clearly understand their responsibilities and follow appropriate due diligence. Document due diligence and decision-making in minutes of meetings.

# THE IMPORTANCE OF YOUR SCHEDULE A

- Failure to meet the public support test
- Previously, the public support tests were calculated using cash method.
  - 2008 tax returns, the method of accounting used for its books
- What happens if you don't meet the public support test
  - Qualifying under different 509(a) section
    - 509(a)(1) vs. 509(a)(2)
  - Facts & circumstances test
  - Become a private foundation

## CHANGES IN IRC §509(A) CLASSIFICATION §509(A)(1) (§170(B)(1)(A)(IV) AND (§170(B)(1)(A)(VI))

- 33 1/3% or more of its total support must come from governmental agencies, contributions from the general public, and contributions or grants from other public charities, or
- 10% or more of its total support must come from governmental agencies, contributions from the general public, and contributions or grants from other public charities and the facts and circumstances indicate it is publically supported



# CHANGES IN IRC §509(A) CLASSIFICATION §509(A)(2)

- More than 33 1/3% of its support must come from contributions, membership fees, and gross receipts from activities related to its exempt purpose and that are not UBTI
- No more than 33 1/3% of its support must come from gross investment income and net unrelated business income

# ADVANCED RULING PERIOD CHANGES

- Advance ruling period has been eliminated
  - New 501(c)(3) organization will be classified as a publicly supported charity, and not a private foundation, if it can show that it reasonably can be expected to be publicly supported when it applies for tax-exempt status. This is then verified with the Schedule A

# UBIT

- An activity is an unrelated trade or business if three conditions exist
  1. *Trade or Business.* The organization is conducting a trade or business for the production of income from selling goods or performing services
  2. *Regularly Carried on.* The trade or business is regularly carried on
  3. *Unrelated to Exempt Purpose.* The activity is “not substantially related” to the carrying out of the organization’s exempt purpose

# WHEN TO REQUEST A PRIVATE LETTER RULING OR DETERMINATION LETTER

- Changes to an organization's purposes or activities
- Unsure about whether proposed changes are consistent with your status as a tax-exempt organization
  - [Revenue Procedure 2009-4](#) provides procedures for such requests

# CHANGING YOUR FISCAL YEAR END

- **Simplified method**
  - File return timely
  - Write “CHANGE IN ACCOUNTING PERIOD” at the top of page 1 of the return
  - Close books as of the last day of the last month of the new tax year and keep its books for subsequent years on the basis of the new tax year
- **Certain organizations not permitted to use the simplified procedure**
  - Previously changed their annual accounting period within 10-year period
  - Organizations requesting a change in accounting period on a group basis
    - File 1128

# ACCOUNTING METHOD CHANGES

- Form 3115
  - Most common for non-profits
    - Changing from the cash to accrual
      - If the change only involves adoption of FASB #116 to report pledges receivable and payable, no permission is required
    - Correcting a method of depreciation
    - Inventory valuation
  - Since NFP generally don't pay tax – can use *simplified change procedures*
    - Include Form 3115 with timely filed 990 plus a copy to IRS in Washington DC

# AMENDED RETURNS

- To amend or not to amend
  - Would the public charity status change?
  - Will unrelated business income tax change?
  - For changes that don't affect public charity status or tax liabilities, report in the following year
    - Include an explanation of changes
      - Include your changes on Schedule A
  - You also may want to amend if you want the public reader to see the change

# STAYING OUT OF TROUBLE - GIFTS

- Carefully Consider Any “Out of the Ordinary” Gifts:
  - Follow due diligence regarding real property or business oriented gifts.
  - Consider use of a subsidiary to hold real estate or other complex assets.
  - Carefully review and consider any “strings attached” to the gift.
  - You can say “no thank you.”



# SUBSTANTIATION AND ACKNOWLEDGEMENT OF GIFTS IRS PUBLICATION 1771 ([WWW.IRS.GOV](http://WWW.IRS.GOV))

- Contemporaneous written acknowledgement
- Appraisal requirements and forms required for non-cash gifts – IRS Publication 561 (Form 8282)
- IRS Publication 4302 for vehicle donations

# PRIVATE INUREMENT AND PRIVATE BENEFIT ISSUES/ EXCESS BENEFIT TRANSACTIONS

- The concept of private inurement
- Unreasonable compensation
- Intermediate sanction provisions
- The concept of private benefit/excess benefit transactions
- Nonexempt purpose activities that do not result in private inurement
- Private foundations and private inurement

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# STAY CURRENT WITH ANNUAL FILINGS

- File Annual Registration Statement with Florida Department of Consumer Affairs and Agriculture to Solicit Funds
- If soliciting funds outside of Florida, determine whether it is necessary to register in such other jurisdictions
- 990 PF
- State filings for corporate entities

# SPECIAL RULES RELATING TO PRIVATE FOUNDATIONS

- Private operating foundations vs. private foundation
- Annual distribution requirements
- Prohibited transactions
- Excess business holdings

# QUESTIONS AND ANSWERS



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*Thank you for  
coming!!!*