

Ready for the New 990 Pound Gorilla?

All tax-exempt organizations should carefully note that the IRS redesigned the Form 990 annual report and assess the affect it will have on your organization. Small nonprofits (gross receipts under \$25,000) previously exempt from IRS filing must now file the 990-N electronic notice, also known as the e-post card or risk their exempt status. Some larger nonprofits will be able to phase in their transition to the new 990. Organizations with assets under \$2.5 million and revenues under \$1 million may use the simplified 990-EZ for 2008. For 2009, organizations with assets under \$1.25 million and revenues under \$500,000 may use the 990-EZ. Beginning in 2010, those thresholds will be reduced further to assets under \$500,000 and revenues under \$200,000.

Form **990**
Department of the Treasury
Internal Revenue Service
A For the 2004 calendar year
B Check if applicable:
 Address change
 Name change
 Initial return
C Please use IRS label or print or type. See Specific Instructions:
AT
PI
1

Among the numerous changes to the eleven-page Form 990 and sixteen supporting schedules for tax year 2008 are:

- Space for narrative description of accomplishments;
- A section entitled "governance, management and disclosure" soliciting information about an entity's structure and voting practices; and
- Greater disclosure of potential conflicts of interest among board members, significant donors, and the nonprofit's beneficiaries.

Because nonprofit reporting agencies will likely rely heavily on new 990 descriptions, you should take a fresh look at your strategic plan and how you accomplish your mission and goals over time. Instead of thinking of it as another obligation, the

narrative section should become an opportunity for you to highlight your accomplishments. Because it is a public document, it should be viewed as a public relations tool.

These changes reflect IRS's effort to improve nonprofit disclosure, compliance and transparency. IRS warned that filing the wrong form may trigger non-filing penalties.

IRS Eliminates Courtship of Public Charities

Streamlining the exempt organization approval and reporting process, IRS eliminated advance rulings for organizations seeking tax-exempt status as publicly supported charities. Previously, charities seeking such status would receive a preliminary or "advance" ruling. Following an initial five-year period, the charity obtained a determination letter demonstrating compliance with the public support test.

Additionally, the temporary regulations calculate the public support percentage using an organization's normal accounting method and eliminate a secondary form. (Previously, all charities were required to use the cash method to calculate the public support percentage.) IRS Commissioner, Doug Shulman said IRS made the changes because the new Form 990 helps charities establish themselves as publicly supported, rather than private foundations.

The new rules only affect organizations whose advance ruling periods have not expired or expired on or after June 9, 2008. Organizations can use their advance ruling as their determination letter if they were granted an advance ruling prior to the new regulations and have not received a determination letter. An organization will still lose its public charity status if does not satisfy the public support test for two consecutive years. Vigilant record keeping is always necessary to prevent reclassification as a private foundation.

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IRS Reveals Priorities for NGOs

The 2009 IRS Exempt Organizations Division work-plan highlights two IRS initiatives both reflecting the Service's intent to take a broad-brush look at the effectiveness of the tax exempt sector, and not simply focus on the minutia of the tax regulations. Clearly, the IRS is seeking to discern outcomes and ensure that an organization's accomplishments correspond to its charitable purposes.



The charitable spending initiative will conduct a long-range study to reveal the sources and uses of funds in the charitable sector and impact on accomplishing an organization's mission. The initiative will also examine how fundraising expenses, unrelated business revenues and expenses, officer compensation, and other factors affect charitable spending. The IRS will start with organizations having unusual fundraising levels and those with low

program service expenditures.

A second initiative focuses on nonprofit governance. The newly revised Form 990 will provide the IRS with information to assess the relationship of governance practices to various noncompliance issues such as excessive compensation, treatment of noncash contributions, and misuse of tax exempt assets.

Finally, a heads up to relief organizations and others as the IRS also indicated it will begin projects focusing on valuation of non-cash donations.

⇒ As further described below, the [Legal Audit Questionnaire](#) in electronic format ("eLAQ"), is an electronic tool that can assist you ensure good governance and revisit other nonprofit compliance issues.

Eleven-Year Old Boy Loses Narnia Domain Name

In what must have felt like an act of the White Witch of Narnia, the World Intellectual Property Organization ("WIPO") mandated that eleven-year old Comrie Saville-Smith of Scotland give up his domain name www.narnia.mobi. Comrie, an avid Chronicles of Narnia fan, was given the domain name from his father as a birthday present.



C.S. Lewis Ltd., filed an arbitration claim with WIPO, alleging that the parents purchased the domain name in bad faith, i.e., that they engaged in "cybersquatting." In August 2008, WIPO agreed with C.S. Lewis Ltd, find-

ing that Comrie and his father had no legitimate rights in the Narnia name, which is a trademark of C.S. Lewis Ltd.

Cybersquatting requires that a trademark owner prove: (1) the domain name is identical or confusingly similar to the trademark it has rights over; (2) the accused party has no rights or legitimate interest in the domain name; and (3) the domain name has been registered and used in bad faith.

Although C.S. Lewis Ltd. accomplished its goal of securing the [narnia.mobi](http://www.narnia.mobi) domain name, it did so only after suffering a highly embarrassing public relations

event. Instead of litigating against grade-schoolers, C.S. Lewis Ltd. could have had the foresight to register all domain names including the name "Narnia".

⇒ Given the low cost of domain names, nonprofit organizations should likewise take the prudent step of registering as many domain names as their budget reasonably allows. Most importantly, organizations should register their organization name and the names of other key trademarks, program or product names, and any recognizable individuals associated with the organization, under all three of the primary top-level domains .com, .org, and .net. In addition, organizations would be wise to register multiple permutations of:

- common misspellings and typos;
- plural/singular alternatives;
- abbreviations, and
- generic words associated with the organization's type of work

On the flip side, to avoid being challenged for using a domain name, organizations should conduct trademark searches before adopting new names and domain names, to avoid infringing on another party's existing trademarks.

Do You Look a Gift-Horse in the Mouth?

While most of us would instinctively accept a multimillion dollar gift without question, this case illustrates the down side when things go wrong. In 1961, \$35 million was donated to support Princeton University's Woodrow Wilson School of Public and International Affairs. The original donor's heirs later claimed that the donation, the corpus of which grew to \$900 million, was to be used solely to

prepare students for U.S. government jobs. Princeton took a much more expansive view of the gift's permitted uses. Princeton recently settled the six-year dispute and paid \$50 million to fund a new foundation to further the mission of preparing students for federal employment. Princeton will maintain the remainder to be used consistently with its interpretation of the 1961 donation.

Failing to meet a donor or his heir's expectations can be an expensive proposition, even if the donor is not legally able to enforce a designation. This case illustrates the importance of:

- Explicitly defining at the outset what the purposes of a gift are;
- Clarifying what will happen in the future if the restriction can no longer be enforced; and
- Ensuring that the designation is not so restrictive as to change the organization's mission.

No Tax Deduction Without Documentation

A recent tax court case highlights the importance for donors itemizing charitable contributions to receive and maintain full documentation. In *Daniel Gomez v. Commissioner*, taxpayers were denied deductions totaling over \$6,000 and incurred significant tax liability due to lack of adequate documentation.

Contributions over \$250 must be substantiated with a contemporaneous written acknowledgment from the nonprofit organization including:

- the name of the organization;
- amount of contribution; and
- statement of whether or not the donor received anything in exchange for the contribution.

Cash gifts under \$250 may be substantiated either by a written communication from the charity or a bank record (such as cancelled check or bank statement).

⇒ **Clearly, most donors that lose a tax deduction for lack of substantiation will reflect negatively on the organization that failed to provide a qualifying acknowledgment. Thus, it is essential that exempt organizations maintain consistent receipting practices. For further information on substantiation and receipting requirements for charitable contributions, order [Nonprofit Alert Memo, Charitable Gifts: Receiving & Receipting](#).**

IRS Upholds Church Protection from IRS

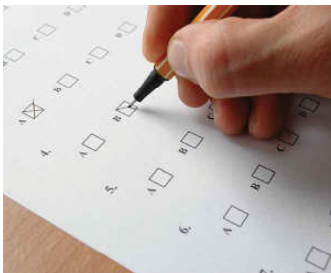
The Church Audit Protection Act provides certain First Amendment protections to churches. In initiating an audit of a Minnesota church, a U.S. District Court judge recently ruled that the IRS failed to follow necessary procedure. Specifically, the Court found that the director of IRS Exempt Organizations Examinations was not, "an appropriate high-level Treasury Official" who could sign off on a determination that the church may not be tax-exempt or has engaged in taxable activities. Given IRS restructuring since the Church Audit

Procedures Act passed, this ruling may clarify which IRS officials are qualified to approve a church audit inquiry. This is an encouraging decision which sends a reminder to churches that if the IRS knocks your door, it is prudent to contact counsel before letting them in.



G&G RELEASES UPDATED LEGAL AUDIT QUESTIONNAIRE IN ELECTRONIC FORMAT

Gammon & Grange recently updated and released its comprehensive Legal Audit Questionnaire in electronic format ("eLAQ"). With increasing demands on nonprofits for transparency and proactive demonstration of sound governance, management, and financial practices, many, over the past 20 years have found the LAQ to be a cost-effective tool to assess and address an organization's legal health. Now in its new electronic format, the eLAQ is designed



to streamline preventive legal healthcare, helping nonprofits identify and manage legal risks before serious problems arise.

As recently reported in the Washington Post "almost 40% of the top US donors stopped giving to charities last year for reasons that included [lack of] ... sound business practices." In these turbulent economic times, nonprofits must proactively establish they have sound business practices and are stretching their resources as far as possible. The eLAQ is an important tool for establishing and enhancing organizational effectiveness. For more information and to order, click [here](#) or call Jo-Anne Kehmna at 703-761-5000.

Piercing the Nonprofit Veil

Although the World Wide Web is arguably the best resource of the 21st century, like any form of communication it also exposes your organization to legal liability. To reduce costs and technical glitches, a 501(c)(3) public charity, ("C3"), and an affiliated but separately incorporated 501(c)(4) political action organization, ("C4"), that already shared office space, Board members, and employees decided to "share" a website. Without informing their respective Boards, C4 moved information previously hosted on its own web-site to specific pages hosted on C3's site. Through a cost-sharing agreement, C4 paid C3 a proportional share of web usage. As C3's lobbying and campaign arm, C4 endorsed candidates and distributed campaign materials on its internet pages. Unfortunately, while the content differed, the only visual distinction between C3 and C4's pages was C4's logo. Because C3's banner, logo, general links, disclaimer and copyright notice appeared on both C3 and C4's pages, the IRS found that C3, by hosting C4's pages, itself endorsed candidates and therefore unlawfully supported a political campaign.



⇒ Given that a 501(c)(3) organization may have its exemption revoked for participation in any political campaign intervention, including support of a politically active 501(c)(4), informed Board oversight and competent legal counsel are essentials for navigating the minefields associated with 501(c)(3) / 501(c)(4) relationships.

For more information contact us at:
npa@gg-law.com.

IN BRIEF

Free Web Training. The Exempt Organizations office of the IRS has a user friendly website dedicated to providing online educational resources for tax-exempt organizations. Access the site at www.StayExempt.org. Users are guided through a virtual workshop to become familiar with IRS rules, regulations and tax compliance basics. Workshop topics include required disclosures, employment issues, and maintaining exempt status. This site also offers a fifteen minute mini-course on specific topics such as "Preparing to File the New Form 990," "The Wonderful World of Foundation Classification," and "Political Campaigns and Charities; the Ban on Political Campaign Intervention" amongst others.

403(b) Plans. The IRS extended the deadline for 403(b) retirement plan sponsors to establish or amend written plans for compliance with new regulations. Plan sponsors now have until December 31, 2009 to adopt compliant written plans, but must still operate their plans in accordance with a reasonable interpretation of Section 403(b) and its regulations.

Single-Member LLCs. Also on the 403(b) front, the IRS ruled that employees of a single-member LLC of a tax-exempt health system may be treated as employees of the parent health system for purposes of participation in the 403(b) plan. This result is consistent with IRS treatment of single-member LLCs of tax exempt organizations as disregarded entities for tax purposes. This set up has huge tax advantages for single-member LLCs.

Contact [Steve Kao](#) at Gammon & Grange, P.C. if your organization would like to discuss or if you are interested in operating a high risk endeavor with limited liability yet receive the benefit of your tax exempt status.

2009 Rate Adjustments. The IRS issued 2009 inflation-adjusted rates. The "low-cost article" exception for donor premiums has been raised to \$9.50 for donations over \$47.50. For example, in the context of a fund raising campaign where organizations instruct donors how much of their donation is deductible, this means that organizations do not need to disclose items it provides to donors if

the donor pays at least \$47.50, and the only items it receives are token items (bookmarks, calendars, key chains, mugs, posters, tee shirts, etc.) bearing the organization's name or logo, and the cost, (not the fair market value) of all items received by the donor does not exceed \$9.50. Donors may also



disregard benefits received worth no more than the lesser of \$95 or two percent of their contribution.

The business mileage rate, applicable to reimbursement for mileage related to an exempt organization's activities, is now 55 cents per mile. The rate for deducting non-reimbursed charitable mileage, which is not adjusted to inflation, remains at 14 cents per mile.

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