



Nonprofit Alert®

Alerting nonprofit leaders to key legal developments and responsive risk management steps.

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➤ New Regulations

IRS Disclosure Rules Final; Copies of Form 990 Must Be Sent on Request or Posted on Web

The IRS finally released long-awaited regulations on financial disclosures for 501(c)(3) organizations last month, ending almost two years of speculation about how much detail tax-exempt organizations must furnish to the public.

The rules specify that charities must provide full copies of their exemption applications and their three most recent Form 990s (i.e. the annual informational tax returns that most exempt organizations file), plus all attachments filed with such forms.

Note, however, charities may withhold donor information, including names and addresses.

One provision allows charities to avoid the copying requirement if they make their Form 990's "widely available" by posting on their web sites or on another organization's site as part of "a database of similar materials." Several groups now offer such services, including the nonprofit GuideStar web site at <http://www.guidestar.org>.

But Matthew Hamill of Independent Sector, a national coalition of charities, predicts most groups, especially smaller and mid-sized organizations, will probably just send out the copies because it's easier and cheaper.

"The early returns, as they say on election night, indicate most charities are not

rushing to post their Form 990s on the Web," Hamill says.

"Many charities get very few requests for their Form 990s, so it really doesn't justify the effort to The rules allow 30 days to fill requests received by mail, but requests made in person must be filled immediately. This marks a significant change from previous laws that required access only when requests were made in person at a charity's office.

Some exceptions are provided for "unusual circumstances."

For instance, the rules give the example of a request made during a charity's off-site convention when the entire staff is unavailable. In such cases, a charity has up to five days to process the request.

The penalties for failure: \$20 for every day

of non-compliance up to a maximum of \$10,000. "Willful failure" to comply draws an additional \$5,000 fine. The new rules are effective June 8.

Quote of the Month:

"The early returns, as they say on election night, indicate most charities are not rushing to post their Form 990s on the Web."

—Matthew Hamill, Independent Sector



For a complete discussion of the new requirements, refer to NP9904-1, *Nonprofit Disclosure Rules*, available from Gammon & Grange. See back page to order.

~~~~~ **New Mileage Rate Now Applies** ~~~~~As of April 1, the standard mileage rate dropped to 31 cents/mile from 32.5 cents. The charitable rate at which volunteers are reimbursed for the use of personal autos is unchanged at 14 cents. Review these and other expense rates for your employees and volunteers by ordering Nonprofit Alert® Memo NP9103-3, *Expense Reimbursement for Volunteers & Employees*. See back page to order.

## Liability & Risk Management

### Charity Wins \$16 Million From Unethical Lawyer

The Fundacion Perez Pallares, a charity in Ecuador that operates a school for poor children, is several million dollars wealthier after making a bad investment decision with a Washington, D.C. lawyer who promised to return 1600% on the charity's initial investment. The lawyer, Lewis Rivlin, former husband of Federal Reserve Vice Chairman Alice Rivlin, executed a personal guarantee on the charity's investment, assuring charity officials the returns were secure through a secret investment program managed by the U.S. Treasury. At Rivlin's instruction, the school wired an initial one million deposit to a bishop in Greece, who allegedly had ties to various trading programs that could produce extraordinary returns. However, the bishop soon resigned amid ethics charges; litigation ensued, and the money was frozen in a Greek bank. Last month, a U.S. District Court in Washington ordered Rivlin to honor his personal guarantee by repaying the charity's investment plus the returns he assured them of receiving—a total of \$16 million.

 **Note the classic elements of fraud present here: promises of quick and extraordinary returns amid "secret" dealings that are "guaranteed" not to fail. Regulators warn charities to be leery of any deals that sound too good to be true. Charities should also exercise caution when selecting attorneys or other professionals in whom they intend to place special trust. NP9203-2, 20 Questions to Ask Before You Hire an Attorney can help narrow the field. See back page to order.**

### Volunteer Liability Claim Rejected by Supreme Court

The Supreme Court has refused to hear an appeal from a Ninth Circuit ruling that awarded \$1.09 million in damages against the Cult Awareness Network (CAN). Lower courts found CAN liable for the reference that one of its volunteers gave to an individual for a "deprogrammer," who later abducted and held the individual's son captive during five days of a deprogramming process. (NPA, May '98). CAN was vicariously liable for the offense, the lower courts said, because the connection between the organization and the volunteer was sufficient to assign liability to CAN. Although the Supreme Court did not render an opinion in the case, the refusal to hear the appeal effectively upholds the

Ninth Circuit ruling as precedent. *Scott v. Ross, et. al.*, 140 F.3d 1275 (9th Cir. 1998).

 **Volunteers often create more liability than employees because the same agency liability attaches, but less time and attention is given to screening, training and supervising volunteers. Review the risk prevention steps in NP9301-1, *A Prudent Volunteer Program for Nonprofits*. See back page to order.**

## Employees & Volunteers

### Executive Director Jobs: Not Always a Bed of Roses

The Support Center of San Francisco has released results from a recent study of 137 nonprofit executive directors from around the U.S. The findings may surprise you:

Among those holding CEO positions for the first time, only 20% said they'd want to hold a similar position in their next job.

- Of the total respondents, only 14% actually accepted another nonprofit CEO position after their previous executive experience.

- Average tenure for executive directors in the study was just under 6 years; "burn-out" was the top reported reason for leaving.

- Only 3% of respondents listed compensation as the thing they liked least about their jobs, but 19% said it was one reason they would consider leaving their present CEO job.

 **For more details about the study, contact Tim Wolfred at (415) 541-9000, or visit the Support Center's web site at <http://www.supportcenter.org>.**

### ADA Claim Nets Nonprofit \$550,000 From Landlord

The Justice Department announced settlement last month of a disabilities discrimination suit involving the nonprofit End Dependence Center of Northern Virginia. The Center attempted to rent office space from TrizecHahn, an international realty company, which initially gave the Center positive assurances, then backed out when two disabled members of the Center's board came to inspect the facility. The Justice Department brought charges against the company, alleging violations of the Americans With Disabilities Act (ADA). TrizecHahn agreed to settle the case for a payment of \$550,000 to the Center, plus another \$10,000 in penalties to the government. The company also agreed to train its employees on ADA issues and to prohibit further discrimination.

 **To better understand and apply the ADA to your organization, consult NP9109-3, *Basic Requirements Under the Americans With Disabilities Act*. See back page to order.**

### Court Finds Religious Terminations Discriminatory

Three former employees of the Montrose Christian School in Maryland recently won \$169,000 in lost wages and damages when a jury found their terminations violated religious protections. One employee was Catholic and had held her position as school secretary for 18 years. Her daughter, also Catholic, held a similar secretarial position for 14 years. The third employee, a Methodist, had worked in the cafeteria for six years. They claimed a new

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pastor and principal dismissed them because they didn't belong to the Montrose Baptist Church, which is affiliated with the school. The school said church membership was never required for non-teaching positions and that they were terminated for other reasons.

 **The employees based their claims on a county law that forbids employers from hiring or firing based on religion unless the faith-based criteria are essential and integral to the job. Federal discrimination laws provide similar protections.**

## Tax-Exempt Issues

### *Museum Soars Past UBIT With Lease on Jet Plane*

A tax-exempt aviation museum did not incur unrelated business taxable income (UBIT) when it leased a Boeing 747 jet back to the Boeing Company for testing, a U.S. District Court in Washington has ruled. Boeing built the first modern jumbo jet, known as the "City of Everett" in 1969, which was used for research and development until 1988, then donated to the Everett, Washington Museum of Flight in 1990. Later, Boeing requested to use the jet's airframe to test engines on new 777 jets. The museum entered a lease agreement with Boeing, allowing the company to use the "City of Everett" for \$200,000. After testing was completed, the aircraft returned to the museum, but the IRS assessed the museum with UBIT on the lease income. The district court sided with the museum, finding that the lease was not a business "regularly carried on," but rather "a one-time, completely fortuitous lease of unique equipment."

The lease was also related to the museum's exempt purpose, the court said, because the aircraft's historic significance "derived not just from its status as the first 747, but also from its extensive history as a test aircraft." Testing the new 777 engines "added a fascinating final chapter to that history, and the return of the aircraft with test equipment intact enhanced the display value of the aircraft," the court concluded. *Museum of Flight Foundation v. United States*, No. C98-0029C (W.D. Wash. 2/10/99).

 **UBIT determinations often turn on perception and presentation. Here, the museum wisely negotiated to leave the historic test equipment intact and emphasize the aircraft's enhanced display value as central to the transaction. To understand how strategic planning is key to minimizing UBIT, read NP9110-1, *A UBIT Primer for Nonprofits*. See back page to order.**

### *Investments & Service Payments Aren't Self-Dealing*

A tax-exempt private foundation did not commit an act of self-dealing when it invested in a mutual fund in which some of its trustees maintained holdings, the IRS has ruled. The reason: the trustee's combined holdings were less than 5% in the fund; that was enough to avoid triggering the self-dealing rules, the IRS said. Compensation the foundation paid to an investment firm, a subsidiary of the corporation that established the foundation, also escaped the self-dealing prohibitions because the IRS ruled the payments were not excessive in comparison to fees paid by the general public for the same services. IRS LTR 199905025.

 **Intermediate sanctions rules apply similar restrictions to public charities on private benefit or self-dealing transactions. More guidance is provided in NP9109-4,**

## *NPA Highlight of the Month*

### *After Amending Operations . . .*

## **Gift Fund Wins Appeal of Exempt Status Revocation**

Persistence pays off, so says the Fund for Anonymous Gifts. The IRS revoked the Fund's exemption in 1997, claiming that a significant portion of the fund's activities did not further its exempt purpose. The fund provided investment services to donors on condition that they make contributions, which a Fund trustee then invested according to the donors' directions. Income from those investments went anonymously to charities specified by the donors. The IRS said the fund merely circumvented restrictions on private foundations and charitable deduction limitations. The Fund objected, but a district court upheld the IRS's revocation because the Fund's operating documents permitted donors to impose "conditions subsequent on their donations." The court was concerned that donors retained too much control via that provision. (*NPA*, Dec. '97). The court's concerns provided guidance for the Fund's appeal, since shortly thereafter, the Fund announced it had changed its governing instruments to limit donor control. The appeals court then ordered the IRS to show why the lower court ruling should not be overturned, given the changes in operations. Still the IRS wasn't satisfied; the changes didn't go far enough, the IRS argued, but the appeals court thought differently. Saying it was "baffled by the government's apparent intransigence," the appeals court labeled the IRS's response as "incoherent" and reinstated the Fund's exempt status. *The Fund for Anonymous Gifts v. IRS*, No. 97-5142 (D.C. Cir. 4/12/99).

 **Ever since the concept of donor-advised funds (DAFs) was approved by the U.S. Claims Court in 1987, the prevalence of DAFs has burgeoned. DAFs offer significant fundraising opportunities but equally significant pitfalls for nonprofits. For guidance read Nonprofit Alert® Memo NP9302-1, *Avoiding the Pitfalls of Donor-Designated Gifts*, and then consult with counsel. See back page to order.**

***The Essential Don'ts of Private Inurement.* See back page to order.**

### ***Charitable Tax Relief Sought for Certain Donors***

Congress is again considering the *Charitable Giving Tax Relief Act* (H.R. 1310) that would expand charitable tax deductions to taxpayers who do not itemize their tax returns. The bill would permit non-itemizers to deduct half their annual charitable contributions over \$500. This version is identical to a similar bill introduced last year, but this time, the bill is co-sponsored by a bipartisan group including several members of the House Ways and Means Committee. If passed, the legislation would benefit an estimated 84 million Americans who do not itemize.

 **The text of the bill is available on the THOMAS web site, operated by the Library of Congress at <http://thomas.loc.gov>.**

## State Rules & Regs

### ***D.C. Approves Limited Tax Amnesty for Nonprofits***

The D.C. Office of Tax & Revenue has issued a new policy designed to bring nonprofits into compliance with local registration and tax laws. Officials estimate more than 1,000 nonprofits operate in the District with federal exempt status but without a similar exemption for local tax purposes. The new policy grants a one-year grace period during which nonprofits can obtain District exempt status retroactively. The policy also allows a limited three-year "look back" period in which the District can force a nonprofit to pay back taxes but not penalties on UBIT.

### ***Maryland Y2K Bill Now Pending With Governor***

Last month, Maryland became the latest state to offer protection against Y2K lawsuits. The legislation will protect businesses and other organizations against lawsuits stemming from Y2K problems so long as they make a "good faith effort" to fix the glitches. The bill awaits the governor's signature, but he has

threatened a veto because he feared the bill would provide too much protection when computer problems caused "personal injury or wrongful death."



**Check with local counsel to determine whether your state provides Y2K protection. Refer to NP9812-1, *Defusing the Y2K Timebomb*, and NP9812-2, *Y2K Checklist*, for help on avoiding Y2K problems in your organization. See ordering instructions below.**

### ***Missouri Imposes Taxes on Summer Camp Tuition***

The state Administrative Hearing Commission has upheld an assessment for state sales taxes owed on tuition at five Christian summer camps operated by a nonprofit organization. Tuition didn't qualify for an exemption from sales taxes, the Department of Revenue claimed, because it was in exchange for services rendered. Although the camps offered religious instruction, the commission ruled their primary purpose was to provide athletic and recreational activities, which are a taxable service in **Missouri**. *Kanakuk-Kanakomo Kamps Inc. v. Dir. of Revenue*, Nos. 97-001672 RV & 97-002035 RV (1/7/99).

**CORRECTION:** A story in the Feb. '99 issue of **Nonprofit Alert**® suggested that federal law now *requires* background checks of volunteers. The story should have stated that the law *permits* background checks of volunteers who work with children but does not require such checks. For more information, visit the web site operated by the National Foundation to Prevent Child Sexual Abuse at <http://www.childsexualabuse.org>.

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