Henderson Caverly Pum & Charney LLP

EXEMPT ORGANIZATIONS NEWSLETTER

November 2016

Announcement!

Henderson Caverly Pum& Charney, LLP is pleased to announce that on August 15, 2016, Jonathan A.Grissom joined the Firm as a Partner to form and serve as Chair of the Firm'sTax Exempt Organizations Practice Group.

The creation of thispractice group makes Henderson Caverly Pum & Charney, LLP one of a selecthandful of firms in California with a group devoted entirely to therepresentation of tax exempt organizations. Our attorneys represent a widevariety of public charities, family foundations, private operating foundations,community foundations, private schools, and other tax exempt organizations. For more information visit our Tax Exempt Organizations Practice Group webpage! Mr. Grissom may be reached at (858) 755-3000 x250 or JGrissom@hcesq.com.

This newsletter is the first in a series of newsletters we are creating to assist nonprofit organizations stay abreast of issues affecting their operations, including periodic changes to existing laws and regulations. We hope that you find the newsletter helpful and informative.

IMPORTANT DEADLINES FOR YOUR NONPROFIT ORGANIZATION'S CALENDAR

There are a number of state and federal annual filing requirements for nonprofit organizations. To avoid risk of suspension, penalties, or loss of tax exempt status, it is important to ensure your organization has the various deadlines calendared.

1. Statement of Information filing

Nonprofit corporations incorporated in California must file California Secretary of State Form SI-100, Statement of Information (Domestic Nonprofit, Credit Union, and Consumer Cooperative Corporations), every other year after incorporation, in the calendar month during which the organization flied its Articles of Incorporation. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-100 may be filed online at: https://businessfilings.sos.ca.gov/.

Every foreign nonprofit corporation registered with the California Secretary of State to transact business in California must file Secretary of State Form SI-350, Statement of Information (Foreign Corporation). Form SI-350 must be filed annually by the last day of the month in which the corporation qualified to transact business in California. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-350 may be filed online at: https://businessfilings.sos.ca.gov/.

2. Tax Return Due Dates

California:

California law requires a tax-exempt organization to file either a Form 199 Exempt Organization Annual Information Return, or 199-N (California E-Postcard), depending on the organization's gross receipts in the reporting year. Private foundations must file Form 199 every year, regardless of gross receipts.

Form 199 or Form 199-N must be filed with the Franchise Tax Board by the 15th day of the 5th month after the close of the organization's tax year. An organization that cannot file by that date may take an additional seven months to file without submitting a written request for extension, as long as its status is in good standing and not suspended. (If the organization owes any tax for the year, it also may need to file FTB Form 3539, Payment for Automatic Extension for Corporations and Exempt Organizations.)

An organization that fails to file the required Form 199 or Form 199-N for three consecutive years will automatically lose its tax-exempt status in California. The revocation of the organization's tax-exempt status is effective as of the filing due date of the third year. Under existing law, the Franchise Tax Board may also revoke an organization's California tax-exempt status if the IRS suspends or revokes the organization's tax-exempt status.

Federal:

Tax-exempt organizations generally must file an annual information return, Form 990 Return of Organization Exempt From Income Tax, subject to certain exceptions. Most exempt organizations, including those classified as public charities, file either a Form 990, Form 990-EZ, or Form 990-N, depending on the organization's gross revenues in the reporting year and the organization's total assets. Organizations classified as private foundations or private operating foundations must file a Form 990-PF.

Form 990, 990-EZ, 990-N, or 990-PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period. Thus, for a calendar year taxpayer, Form 990, 990-EZ, 990-N, or 990-PF is due May 15 of the following year. An organization may request an automatic extension of time to file a return by using IRS Form 8868.

If an organization does not file a required return or files late, the IRS may assess penalties. In addition, if an organization does not file as required for three consecutive years, it automatically loses its federal tax-exempt status.

3. Attorney General Form RRF-1

Every charitable nonprofit corporation, unincorporated association or trustee holding assets for charitable purposes that is required to register with the California Attorney General's Office is also required to file an Annual Registration Renewal Fee Report (RRF-1). The purpose of the Form RRF-1, as stated on the form itself, is "to assist the Attorney General's office with early detection of charity fiscal mismanagement and unlawful diversion of charitable assets." The Form RRF-1 must be filed four months and fifteen days after the close of the organization's calendar or fiscal year. An entity whose registration is delinquent or has been suspended or revoked is not in good standing with the Registry and is prohibited from engaging in conduct for which registration is required, including solicitation for charitable purposes. Failure to file the Form RRF-1 could result in the loss of California tax-exempt status.

Extensions of time for filing the RRF-1 will be allowed if an organization has received an extension from the IRS for filing the IRS Form 990, 990-PF, or 990-EZ. An organization shall file both forms (RRF-1 and IRS Form 990, 990-PF, or 990-EZ) with the Registry of Charitable Trusts at the same time, along with copies of all requests to the IRS for an extension and, where approval of the extension is not automatic, a copy of each approved extension request. The Form 990-N due date cannot be extended.

4. Annual meeting of Board Directors

The full Board should meet periodically, and at least once annually, to conduct the organization's business, whether in person or by scheduled conference call. If possible, a schedule of Board meetings should be fixed at the beginning of the year. Further, while routine decisions may be made by unanimous written consent, major decisions, such as those affecting an organization's policies and practices, should generally be contemplated and decided upon in the context of a Board meeting, which may be held telephonically.

Reminder: Note the new law adopted as of January 1, 2015, which provides that a California nonprofit corporation may not have non-voting members on the Board of Directors. The new law explicitly states that "[a] person who does not have authority to vote as a member of the governing body of the corporation, is not a director … regardless of title." (California Corporations Code § 5047)

HOW YOUR NONPROFIT COULD LOSE ITS TAX EXEMPTION (without trying)

It's easy for a 501(c)(3) organization to maintain itstax exempt status – and can be just as easy to lose it.Organizations recognized as exempt from federal incometax under this section of the Internal Revenue Code include private foundationsas well as churches, educational institutions, hospitals, and many other typesof public charities.A 501(c)(3) organization can maintain its tax-exemptstatus if it follows the rules affecting these six areas: privatebenefit/inurement, lobbying, political campaign activity, unrelated businessincome (UBI), annual reporting obligations, and operation in accordance withstated exempt purpose(s).

1. PrivateBenefit/Inurement:A 501(c)(3) organization's activities should bedirected toward some exempt purpose. Its activities should not serve theprivate interests, or private benefit, of any individual or organization morethan insubstantially.Inurement:A 501(c)(3) organization is prohibited from allowingits income or assets to benefit insiders – typically board members, officers,directors and important employees of an organization. If an organizationbenefits insiders, the insiders and the organization could be subject topenalty excise taxes and the organization could lose its tax-exempt status.

2. Lobbying:Lobbying is when an organization contacts, or urgesthe public to contact, members or employees of a legislative body (or anyexecutive branch official who may participate in the formulation oflegislation) for the purpose of proposing, supporting, or opposing legislation,or when the organization advocates the adoption or rejection of legislation.While a 501(c)(3) organization is allowed to do somelobbying, too much can hurt its tax-exempt status. Its lobbying activitiescannot be more than an insubstantial part of its overall activities.

3. Politicalactivity:All 501(c)(3) organizations are prohibited fromparticipating in any political campaign on behalf of (or in opposition to) anycandidate running for public office. The prohibition applies to all campaignsat the federal, state and local levels.For more guidance on what constitutes prohibitedpolitical campaign intervention, check out Charities, Churches and EducationalOrganizations - Political Campaign Intervention.

4. UnrelatedBusiness Income (UBI): Earning too much income generated from unrelatedactivities can jeopardize an organization's 501(c)(3) tax-exempt status. Thisincome comes from a regularly carried-on trade or business that is notsubstantially related to the organization's exempt purpose. However, there aresome modifications, exclusions and exceptions.For more information about what constitutes unrelatedbusiness income of an exempt organization and how it is taxed, see Publication598, Tax on Unrelated Business Income of Exempt Organizations.

5. Annualreporting obligation: While 501(c)(3) public charities are exempt fromfederal income tax, the Internal Revenue Code requires most of theseorganizations to report certain information annually.This reporting requirement, fulfilled by completion ofone of the Form 990 series of returns, verifies that the organization continuesto qualify for exemption and informs the public about the organization'sprograms and operations.The Pension Protection Act of 2006 added a new lawthat provides for automatic revocation of an organization's tax-exempt statusif it fails to file a required annual information return for three consecutiveyears.In June 2011, the IRS enforced this provision for thefirst time by publishing a list of approximately 275,000 organizations thatlost their tax-exempt status for failing to meet their annual filingobligations for three consecutive taxable years.Organizations can learn more about their filingrequirements, including new requirements applicable to supporting organizations,at IRS Nonprofits and Charities.

6. Operationin accord with stated exempt purpose(s):An organization must pursue the exempt activities itpromised in its IRS application for exemption. If an organization has deviatedfrom its original purposes, it must inform the IRS to prevent future problems.

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