

Henderson & Caverly Purn LLP

NONPROFIT ORGANIZATIONS NEWSLETTER
November 2017

California Franchise Tax Board - Tax Exempt Organization Activity Check Letters. Is Your Organization in Compliance?

The California Franchise Tax Board periodically reviews the activities of tax exempt organizations to determine if the organizations' current operations are in compliance with their tax exempt purpose. In some cases, the Franchise Tax Board will send an Activity Check letter to the organization.



Tax exempt organizations are required to be organized and operated for nonprofit purposes within the provisions of the California Revenue and Taxation Code (R&TC) under which the organization's tax exempt status is approved. An active organization must meet the operational test under California R&TC Section 23701 in order to be granted tax exempt status or to maintain its tax exempt status. Active organizations may engage in the following activities to support their exempt purpose:

- Perform their exempt activities.
- Seek donations.
- Hold board of directors meetings.
- Carry out activities that help to establish the organization's operations.

Inactive organizations are not entitled to exemption.

When an organization receives the Activity Check letter from the Franchise Tax Board, the following information is requested:

1. A detailed narrative description of the activities presently carried on by the organization, including a description of any services performed.
2. A copy of the financial statements for the last two years.

Based on the information provided, if the Franchise Tax Board determines the organization is active and operating, they will notify the organization, and no further action is required. If an entity is no longer active and operating under its tax exempt purpose, the organization is not entitled to tax exempt status. Therefore the tax exempt status may be revoked. The organization may then be subject to tax that amounts to the greater of its California income multiplied by the appropriate tax rate or \$800 minimum franchise tax. Inactive incorporated or qualified organizations are then provided information on how to formally dissolve with the California Secretary of State. Franchise Tax Board Publication 1038 provides guidance on how to dissolve, surrender, or cancel a California business entity.

If your organization receives an Activity Check letter from the Franchise Tax Board and needs assistance in responding, or needs assistance in formally dissolving, please contact our office.

IRS Focused on Charitable Donation Substantiation Compliance



Recent Tax Court cases have demonstrated the Internal Revenue Service's (IRS) increase in strict compliance with the substantiation requirements for charitable donations. For example, in *15 West 17th Street LLC v. Commissioner* (147 T.C. No 19), December 22, 2016), a \$64.5 million charitable contribution was disallowed because there was no written acknowledgement from the recipient at the time the return was filed. After the donation was made and prior to the return filing, the charity sent the taxpayer a letter acknowledging receipt of a donated facade easement.

Unfortunately, the letter did not state whether the charity had otherwise given the taxpayer anything of value, in exchange for the easement. The taxpayer did include a copy of the appraisal report for the amount of the donation, a copy of the charity's letter, and Form 8283, Noncash Charitable Contributions, executed by the appraiser and by a representative of the charity with the return. The only item missing was the statement "No goods or services were provided in exchange for your deduction" on the acknowledgment letter. These eleven missing words caused the disallowance of the \$64.5 million contribution.

It is important for nonprofit organizations to ensure that written acknowledgment letters they provide contain all the necessary requirements to substantiate a charitable donation. As noted in our [December 2016 Newsletter](#), the contemporaneous written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information:

- Name of the organization;
- Amount of cash contributed;
- Statement that no goods or services were provided by the organization, if that is the case;
- Description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution; and
- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

In addition, a donor may claim a deduction for contributions of cash, check or other monetary gifts only if the donor maintains certain [written records](#). For more information, see [IRS Publication 1771](#) Charitable Contributions Substantiation and Disclosure Requirements.

IRS Resources for Tax Exempt Organizations

The [IRS' website](#) provides a variety of no-cost webinars and other resources for tax exempt organizations. [StayExempt](#) provides mini-courses and other recorded events for 501(c)(3) organizations. StayExempt is an IRS site created especially for 501(c)(3) organizations to help them better understand tax issues that affect tax exempt organizations. The IRS also provides an Exempt Organizations Update. The [EO Update](#) is a periodic newsletter containing periodic developments in exempt organizations law, upcoming IRS webinars, as well as live tax forums and workshops in various areas. Lastly, the [IRS' Video Portal](#) contains video and audio presentations on topics of interest to [Charities & Nonprofits](#).



Visit our Nonprofit Organizations Group's website
[http://www.californianonprofitlaw.com/!](http://www.californianonprofitlaw.com/)





San Diego (Main office): 12750 High Bluff Drive, Suite 300, San Diego, CA 92130

Rancho Santa Fe (by appointment): 16236 San Dieguito Road, Suite 3-10, Rancho Santa Fe, CA 92067

Los Angeles (by appointment): US Bank Tower, 633 W. 5th Street (26th Floor), Los Angeles, CA 90013

Phone: (858) 755-3000 | Email: JGrissom@hcesq.com | Fax: (858) 755-9900

Visit our Nonprofit Organizations Practice website

Legal Disclaimer: This newsletter is prepared for informational purposes only and should not be construed as legal advice. Its contents should not be acted upon without specific professional advice from legal counsel. Transmission of this information is no intended to create, and receipt does not constitute, an attorney-client relationship.