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# Tread carefully this election season

With the 2016 election season picking up steam, nonprofits need to exercise caution not to stray into political activities that could put their tax-exempt status on the line. But while the Internal Revenue Code (IRC) clearly prohibits certain activities and expenditures related to the political process, other activities may be permissible.

## Prohibited campaign intervention

The IRC states that 501(c)(3) organizations can't participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. An organization engages in prohibited political intervention when it:

- › Makes or solicits contributions to or for candidates or political organizations,
- › Endorses a candidate or rates the candidates,
- › Publishes or distributes partisan campaign literature or written statements (including online material), or
- › Lets its representatives speak out about a candidate.

Nonprofits are, however, allowed to conduct non-partisan activities that educate the public and help them participate in the electoral process as long as these activities are in line with their exempt purpose.

## Voter education

Not-for-profits also can provide voter education, including voter registration or get-out-the-vote drives — as long as they're conducted in a nonpartisan manner. To reduce the odds of bias, the nonprofit should avoid mentioning any candidates or political parties in communications about the activity.

For example, communications related to get-out-the-vote efforts should only urge people to register and vote, and describe the hours and places of registration and voting. Any services offered in connection with the activity, such as rides to polling places, should be offered to everyone, regardless of political affiliation.

## Voter guides

Nonprofits might compile the voting records of incumbents or document candidates' responses to questions posed by the organization. Regardless of its form, a voter guide must cover a broad range of issues and refrain from judging the candidates or their positions.

Voting records can be considered political campaign intervention if they identify any incumbent as a candidate or compare an incumbent's positions with those of other candidates or the organization. Such guides are particularly risky if published simultaneously with a political campaign or aimed at areas where campaigns are occurring.



## What about lobbying?

A 501(c)(3) organization may engage in some lobbying to influence legislation, but too much could jeopardize tax-exempt status. (But a 501(c)(4) social welfare organization may further its exempt purposes with lobbying as its primary activity without jeopardizing its tax exemption.)

A nonprofit will be regarded as lobbying if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting or opposing legislation. An organization that advocates the adoption or rejection of legislation also is lobbying.

Organizations can, however, get involved in public policy issues without the activity being deemed lobbying. For example, a nonprofit could conduct educational meetings or prepare and disseminate educational materials.

Whether a not-for-profit's actual lobbying efforts constitute a "substantial part" of its overall activities — and, thus, aren't permitted — is determined on the basis of the relevant facts and circumstances. Those include the amount of time devoted (by both employees and volunteers) and the relative amount of expenditures made by the organization for the activity.

### Candidate questionnaires

Organizations sometimes use questionnaires to collect and distribute information about candidates and the issues. But they also can be a way to intervene in a campaign.

To reduce the risk of prohibited intervention, nonprofits should phrase their questions neutrally, in a way that doesn't suggest a preferred answer. For example, "Do you support saving innocent lives through gun control?" probably won't fly. Further, an organization should send the questionnaire to all candidates for a particular office, publish all responses received (without substantive editing) and avoid comparing the responses to its own positions.

### Candidate appearances

Candidate appearances can take a variety of forms. For example, so-called "noncandidate" appearances take place when candidates appear in a role other than that of the candidate or to speak on a topic other than the election.

To pass muster with the IRS, the host organization should maintain a nonpartisan atmosphere at the event and ensure that no campaigning activity goes on. None of the organization's representatives should mention the campaign or the invitee's

candidacy. And any announcement of the event should clearly indicate the capacity in which the candidate is appearing and, again, avoid mention of his or her candidacy.

If a candidate is invited to speak *as a candidate*, the organization is engaging in political campaign intervention unless it gives all qualified candidates an equal opportunity to speak, meaning substantially similar invitations and events. The organization also must make clear that it neither supports nor opposes any speaker's candidacy.

Candidate forums, with all of the politicians appearing together, are generally permissible. But the organization must see that the candidates are treated fairly and impartially.

### Consequences of political intervention

The IRS itself admits it has only proposed revocation in a few egregious cases. Engaging in political campaign intervention can lead to excise taxes on the amount of money spent on the prohibited activity, reputational damage and even, in the worst case, revocation of your organization's exempt status. When in doubt, make sure your political activity is clearly nonpartisan. ■

# Collaborative activities

## Are you reporting them correctly?

More and more nonprofits are joining forces to better serve their client populations and cut costs. But such relationships can come with complicated financial reporting obligations. Your organization's reporting requirements will depend on the type of relationship you enter.

### Collaborative arrangements

The simplest relationship between nonprofits for accounting purposes may be a collaborative arrangement. These are typically contractual agreements in which two or more organizations are active participants in a joint operating activity. And both are vulnerable to significant risks and rewards that hinge on the activity's commercial success. Examples include a hospital that's jointly operated by two nonprofit health care organizations or multiple organizations that are working together to develop and produce a new medical product.

Costs incurred and revenues generated from transactions with third parties should be reported, on a gross basis on its statement of activities, by the not-for-profit who's considered the "principal" for that specific transaction. Generally the principal is the entity that has control of the goods or services provided in the transaction, but follow Generally Accepted Accounting Principles (GAAP) for your particular situation.

Payments between participants are presented according to their nature (following accounting guidance for the type of revenue or expense the transaction involves). Participants in collaborative arrangements also are required to make certain disclosures, such as the nature and purpose of the arrangement and each organization's rights and obligations.

### Mergers

In some circumstances, two organizations may determine that the best route forward is to form a new legal entity. A merger takes place when the boards of directors of both nonprofits cede control of themselves to the new entity. The assets and liabilities of the organizations are combined as of the merger date. Note that the accounting policies of the original entities must be conformed for the new entity.

**Nonprofits in collaborative arrangements must make certain disclosures, such as the nature and purpose of the arrangement and each of their rights and obligations.**

### Ceded control without creation of a new legal entity

Another option is for the board of one organization to cede control of its operations to another entity (for example, by allowing the other organization to appoint the majority of its board) as part of its decision to engage in the cooperative activity — but without creating a new legal entity. In this case, an *acquisition* has taken place, with the remaining organization considered the acquirer. The remaining entity must determine how to record the acquisition based primarily on the current value of the assets and liabilities of the organization acquired.

If there's an excess of value in the acquisition transaction, it should be recorded as a contribution. If the value is lower, the difference is generally recorded as goodwill. But, if the operations of the acquired organization are expected to be predominantly supported by contributions and return on investments, the difference should be recorded as a separate charge in the acquirer's statement of activities.



If your nonprofit assumes control of the other, and GAAP requires you to consolidate financial statements with the other entity, you must account for your interest in the other organization and the cooperative activity by applying an acquisition method described in GAAP.

If the shoe is on the other foot, and it's *your* not-for-profit that cedes control of its operations to another entity, the other organization may need to consolidate your organization (including

the cooperative activity) beginning on the "acquisition" date. If your nonprofit will present its own separate financial statements, you must determine whether to establish a new basis for reporting assets and liabilities based on the other entity's basis.

### **New legal entity to house only this collaboration**

In many cases, if a new legal entity is formed, it's used only to house the cooperative activity instead of all activities of the organizations that are collaborating. This would be neither a merger nor an acquisition. But to determine the proper accounting treatment, it's important to look at which, if any, collaborator has control over the activity.

### **Proceed with caution**

The benefits of collaborating with other nonprofits are usually clear — but the financial reporting rules often are anything but. Your accountant can help you understand the rules and comply with your reporting obligations. ■

## Your employee handbook It may be time for a tune-up

An employee handbook sets the stage for many scenarios, from vacation requests and maternity leaves to performance reviews and termination procedures. As certain situations arise, knowing the rules can prevent surprise, confusion and resentment on both sides of the table.

Regardless of your nonprofit's size, it should offer employees a handbook that's clear, up to date and complete.

### **Update regularly**

To stay current, tune up your employee handbook once a year — more often, if needed. Look at revisions to federal, state and municipal employment laws. Changes over the last few years are far too numerous to detail, and vary widely by state (and municipality). But policies in certain areas may need updating.



### Include health care plan information

To keep your handbook in compliance with current requirements of the Affordable Care Act (ACA), revisions may be needed. For example, if “part-time” employees are excluded from the company health care plan, that should be noted. Also, if your nonprofit chooses to use the look-back periods allowed by the regulation, it should be mentioned. And if the definition of “part-time” is different for health benefits than for other benefits, make that distinction. Examine, too, your health care and benefits policies based on the recent changes in federal law permitting same-sex marriage and partner relationships.

Wellness plans are becoming an increasingly popular staple in nonprofits’ medical plans, and should be described in your handbook. If you have a plan, be sure to stay on top of ACA wellness program regulations. For instance, keep an eye on laws that may affect the design and administration of wellness programs, such as the Americans with Disabilities Act (ADA).



## To keep your handbook in compliance with requirements of the Affordable Care Act, revisions may be needed.

### Keep an eye on protections for pregnant women

Last June the Pregnant Workers Fairness Act (PWFA, S. 1512, H.R. 2654) was introduced in Congress with bipartisan support for the first time. This legislation would provide pregnant women with job protections similar to those available under the ADA. These can include limits on heavy lifting, assistance with manual labor and access to places to sit.

### Follow legislative and regulatory trends

Besides current laws and regulations, a prudent employer will keep an eye on proposed federal legislation and Department of Labor (DOL) regulations that, if enacted, will affect employment law — and, hence, the policies in your employee handbook. This year, you should follow developments in connection with:

- › The Family and Medical Leave Inclusion Act, a bill that would allow employees to take leave for care of a same-sex spouse or partner, parent-in-law, adult child sibling, grandchild or grandparent, if that person has a serious medical condition,
- › The Fair Credit Reporting Act, which could prohibit employers from using consumer credit reports to make hiring or job-related decisions, or obtain consumer or investigative reports on job candidates, and
- › The DOL rule changing the overtime exemption, which could require employers to reclassify certain workers as nonexempt from overtime, depending on their salary and duties.

Once a new president takes office in January 2017, a flurry of legislative and regulatory change is possible in his or her early days on the job.

### Your attorney's advice

A finely tuned employee handbook can help protect your nonprofit against a range of employee misunderstandings and liabilities. Have your attorney review your handbook regularly to make sure important legal and regulatory changes aren't overlooked. ■

## NEWSBITS

### Public confidence in nonprofits varies

A survey conducted by the *Chronicle of Philanthropy* — the first to measure public confidence in charities since 2008 — has found that two-thirds of Americans have a fair amount of confidence in charities. More than 80% indicated that charities do a “very good” or “somewhat good” job helping people.

A significant number of respondents, however, expressed concerns about charities’ money management. One-third said charities do a “not too good” or “not at all good” job spending money wisely, and 41% said their leaders are paid too much. Notably, half said that, when deciding where to donate, it’s “very important” to know that charities spend a low amount on salaries, administration and fundraising. And 34% said such knowledge is “somewhat important.”

Consider these statistics when you complete your next Form 990 or draft your next annual report. Are you clear about how you help your constituents while you manage your nonprofit’s money wisely? ■



### Pro bono marketing marathons offered to charities

Nonprofits in need of help with their advertising, marketing and communications work may have a new resource. CreateAthon, a nonprofit based in Richmond, Va., recruits creative professionals and students in the communicating arts to serve nonprofits using a 24-hour marathon format called CreateAthon Events.

Each event rallies teams of 20 to 240 “creatives” to deliver the pro bono services needed by up to 12 nonprofits to fulfill their missions. Nonprofits interested in participating apply to the companies and colleges that host the events three to four months beforehand. CreateAthon hopes to deliver \$100 million in free marketing services to charities by 2020. ■

### The IRS definition of “interested persons”

Nonprofits who file Schedule L, “Transactions with Interested Persons,” with Form 990 or 990-EZ should pay attention to the definition of “interested person.” With 2015 being only the second year that the IRS’s new approach to the definition of “interested persons” applies, nonprofits may still harbor some confusion about the changes.

Previously, each part of the schedule had its own definition of the term. The Part I definition hasn’t changed — an “interested person” is still a disqualified person under Section 4958, the provision addressing the tax on excess benefit transactions.

The definition for Parts II-IV now includes the organization’s founder and his or her family members; substantial contributors and their family members; and 35% controlled entities of creators, founders, substantial contributors or any of their family members.

For more information on how your organization should report transactions on Schedule L, contact your CPA. ■





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## THE LAPORTE NONPROFIT SUMMER SERIES: BACK BY POPULAR DEMAND

LaPorte CPAs & Business Advisors has a proud history of serving the nonprofit community. A principal component of that commitment is sharing our technical knowledge and resources with nonprofits in the communities we serve. We have demonstrated this over the years – including outreach related to Form 990 revisions and changes brought on by the Report of Foreign Bank and Financial Accounts (FBAR).

Driven by our ongoing desire to share our knowledge and help keep nonprofits abreast of the issues that impact them, last year we offered to regional nonprofits our first **Nonprofit Summer Series**, three free “Lunch and Learn” videoconferences held at our offices. Qualified for CPE credits, these conferences were presented by LaPorte nonprofit industry leaders and addressed the following topics:

- An update on proposed accounting standards for nonprofits

- The most frequently asked questions about nonprofit boards
- Nonprofit ethics and the Form 990

The continuing enthusiastic response to the series has been rewarding. In response to numerous requests, the LaPorte Nonprofit Industry Group is very pleased to announce that we are offering another series this summer.

To be certain that your organization’s executive director, CFO, or board chair receives an invitation, please contact one of our Nonprofit Industry Group leaders below.

Audit Director Lance Moran, CPA, at [lmoran@laporte.com](mailto:lmoran@laporte.com)

Tax Director Bonnie Wyllie, JD, LL.M., at [bwylle@laporte.com](mailto:bwylle@laporte.com)

We are just now in the early planning stages for Summer Series 2016 and have high expectations for an equally successful event. We look forward to keeping you informed on dates and topics – and to seeing you this summer at one of our five offices in Louisiana and Texas.