NONPROFIT ADVISOR
Q2 SPRING 2017

WINDES NONPROFIT ADVISOR

The Windes Nonprofit Advisor is a periodic technical publication focusing on the tax, regulatory, and accounting issues that nonprofit organizations routinely confront.

The Windes Nonprofit Group possesses extensive experience in preparing and reviewing more than 150 Forms 990, 990-T, 990-PF, and state tax-exempt forms, in addition to having experience in the preparation and filing of both federal and state tax exemption applications for public charities, private foundations, and other exempt organizations. Furthermore, we can assist in providing valuable guidance (governance / reasonable compensation documentation / public support test / special events / lobbying / transactions with related parties) to nonprofit organizations.

The Windes Nonprofit Group prepares audited financial statements and ERISA audits for more than 85 nonprofit organizations. For retirement plans, Windes has experts on staff for §403(b) plan administration and compliance, including plan document issues, Form 5500 preparation and filing, non-discrimination testing and government compliance programs.

Our Nonprofit Group is composed of the following individuals who are dedicated to providing nonprofit organizations with high-level tax, regulatory and accounting consulting, tax compliance services, and financial statement audit and assurance services:

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Please do not hesitate to contact any member of the Windes Nonprofit Group toll free at **844.4WINDES** (844.494.6337) or via email at nonprofit@windes.com.

While Changing Little, Executive Order Highlights Rules on Political Speech by Exempt Organizations

President Trump, who promised in February to "totally destroy" the law prohibiting churches from engaging in campaign activities, signed an executive order May 5 instructing the IRS to not penalize any house of worship or religious organization for speaking about political issues from a religious perspective, where similar speech has not previously been considered campaign intervention by the Treasury. While many news outlets announced a rollback of the law or an end to IRS enforcement of it (some even stated that churches are now allowed to endorse candidates), the order does not go so far. In fact, it generally restates existing policy.

The Johnson Amendment (Amendment), as the targeted law is called, already allows any organization exempt from tax under Section 501(c)(3) — not just churches — to speak on political issues. It only prohibits participation or intervention in a political campaign, i.e. contributing to or endorsing/opposing a candidate for public office. IRS policy is more general, prohibiting activities "with evidence of bias that … have the effect of favoring a candidate." It is worth noting that only one church has ever lost its tax-exempt status for breaking the rule, and it did so by publishing two full-page newspaper advertisements opposing presidential candidate Bill Clinton. Exempt organizations may advocate in furtherance of their missions, so long as such lobbying does not form a "substantial part" of their overall activities. The IRS considers facts and circumstances or, if an organization elects, the ratio of lobbying expenditures to exempt-purpose expenditures. Individuals affiliated with exempt organizations are also free to both lobby and endorse candidates without limit, so long as they do it in their individual capacity and not as an organization representative.

Opponents of the Amendment cite a curtailing of free speech protections and religious freedom, while opponents of repeal fear an erosion of church-state separation and loss of public confidence in charities. The Alliance Defending Freedom asserts that because the rule is a content-based restriction on speech, it is therefore presumptively unconstitutional. The group has organized political endorsements from pastors in an unsuccessful eight-year effort to get a church penalized. However, the National Council of Nonprofits warns that repeal "would not only allow people to get tax deductions for making political donations, but also force the public to effectively [subsidize] speech by others." In April, a group of 99 nonprofits including the Baptist Joint Committee, the National Council of Churches and the American Jewish Committee delivered a letter to Congress urging leaders to maintain the current law, asserting that it protects the independence and integrity of houses of worship.

Conservative commentators are unsatisfied with the May 5 executive order, contending that it does not go far enough. The National Review notes that, because executive orders can be disregarded by subsequent administrations, "legislative problems demand legislative or judicial solutions." To that end, three bills currently percolating in Congress take aim at the law.

H.R. 172 would repeal it entirely, while S.264 and H.R. 781 would weaken it by allowing leaders of individual charities to endorse candidates in their representative capacities.

With the effect of the order unclear and bills yet to be passed or tabled, 501(c)(3) organizations are advised to stay the course. For more information or questions about how these rules may affect your organization, please contact Megan Lasswell at mlasswell@windes.com or by phone at **844.4WINDES** (844.494.6337).

Megan Lasswell, JD, LLM
Accountant, Tax & Accounting Services

Private Foundation Lessons from the Election

Private Foundations affiliated with certain political aspirants were a key point of criticism during the fall 2016 election cycle. A significant number of accusations arose from public inspection of the Forms 990 and 990-PF associated with these foundations. Windes derived several lessons for private foundations to take away from these political allegations.

Lesson 1: Avoid Self-Dealing

The Donald J. Trump Foundation received public scrutiny for violating the IRS rule against self-dealing. On its 2015 Form 990-PF, the organization reported that it engaged in self-dealing by transferring income or assets to a disqualified person. Any business transaction between a private foundation and an officer, director, substantial contributor or other disqualified person is considered self-dealing. Violation of self-dealing can give rise to taxes imposed against the organization and against the disqualified person. Paying self-dealing tax penalties are not only an inadequate use of a foundation's charitable assets, but acts of self-dealing open the door for public scrutiny, as they reflect poorly on the organization's governance and IRS compliance.

Lesson 2: Monitor Grant Funds

U.S. Representative Corinne Brown was accused of fraud for soliciting donations for a scholarship foundation that had used less than 0.2% of its funds for scholarships. Private donors had given more than $800,000 to the charity over a span of five years. Unfortunately, a large portion of the charity's contributions were allegedly used for Brown's personal financial gain. While it is unknown whether the private donors supervised their grants to this charity, private foundations can avoid giving grants to ineffective charities by monitoring the use of grant funds. IRS Publication 4221 requires that private foundations exercise expenditure responsibility by maintaining copies of any reports that demonstrate the grant funds are used for exempt purposes. It is important for private foundations to monitor grant funds to ensure their charitable contributions achieve the greatest possible impact.

LESSON 3: UPDATE BOARD OF DIRECTORS ANNUALLY

Betsy DeVos, now the United States Secretary of Education, was closely questioned during her 2017 congressional nomination hearing after being incorrectly listed as a director on the Form 990-PF of her mother's private foundation. This private foundation had given grants to charities opposing certain Democratic positions, which became the focal point of criticism. This could have been avoided if the Form 990-PF had reported an up-to-date board of directors list on the current and prior-year tax return. Congress, the media, the public, and watchdog organizations are all readers of the Form 990-PF and can use the list of directors to make conclusions about a specific director's political stance. This list should be updated each year the return is filed as a best practice.

LESSON 4: ABSTAIN FROM CONFLICTS OF INTEREST

Large foreign donations to The Clinton Foundation during the years Bill Clinton served as President and Hillary Clinton served as Secretary of State caused political opponents to accuse the Clintons of having a conflict of interest. The alleged conflict was that foreign donors to the foundation might have received political benefits from the Clintons. The IRS strongly recommends that foundations avoid transactions in which an officer, director, or trustee's obligation to further the organization's charitable purposes is at odds with their own financial interests. To abstain from conflicts of interest, private foundations should adopt a conflict of interest policy. The policy should ensure that when conflicts of interest arise, the organization has a process in place mandating that the affected individual advise the governing body about all relevant facts concerning the situation. Once the facts are presented, the policy should lay out appropriate consequences for the conflict (such as removing voting power from the conflicted person) that will allow the governing body to make objective decisions and protect the foundation against any liabilities that could derive from the conflict.

For more information or questions about this article, please see IRS Publication 4221 or contact Chérie Williams at cwilliams@windes.com or toll free at **844.WINDES** (844.494.6337).

Chérie Williams, CPA
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403(b) Plans: IRS Announces New Document Window

A new era has finally arrived for 403(b) documents with the announcement of the adoption period for pre-approved plan documents. The IRS has issued Revenue Procedure 2017-18, which sets March 31, 2020 as the date by which plan sponsors must restate their plans to a pre-approved document.

After the first regulations in forty-three years were issued in 2007, nonprofit plan sponsors were provided a December 31, 2009 deadline to adopt a written plan document incorporating the new regulations. While all 403(b) plans were required to adopt a plan by that date, there was no IRS approval program for the plan documents. The documents were considered valid on a "good faith compliance" basis and could consist of more than one document, including language that might be contained in the group annuity contract.

In 2013, the IRS announced a pre-approved document program for 403(b) plans similar to that available to 401(k) plan sponsors. A significant difference is that there is no avenue for an individually designed plan to gain IRS approval; only pre-approved plans will have reliance that their provisions are compliant in the eyes of the government. Document providers filed their documents for approval by the IRS in 2015 and the IRS approval letters are being issued currently.

The new Revenue Procedure establishes a Remedial Amendment Period (RAP) for retroactive changes to the plan document back to January 1, 2010. A restated plan document can correct for any document errors over a ten-year period to bring the plan into compliance. To gain reliance on the plan approval letter, the document must contain all of the plan provisions for each change back to the beginning of the RAP. All 403(b) plans will be required to restate their documents onto a pre-approved plan (such as the plan sponsored by Windes) by March of 2020. Once the RAP is concluded, 403(b) plans and 401(k) plans will be on a level playing field with respect to compliance requirements and correction methods. With the similar treatment, 403(b) plans will be subject to the same scrutiny by plan regulators upon examination. Please contact us with any questions about your plan document.

For more information or questions about this article, please contact Richard Green at rgreen@windes.com or toll free at **844.4WINDES** (844.494.6337).

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Revisiting the New Revenue Recognition Standard and Practical Steps for Implementing It

Background on the New Standard

After a long period of relative stability, nonprofit organizations find themselves in the position of implementing several new pieces of accounting guidance over a short period of time. It began with the recent implementation of the new OMB Uniform Guidance rules and continues with the eventual adoption of the new nonprofit financial statement update, the new leases update, and new rules relevant to revenue recognition.

Unlike the updates to nonprofit financial statement reporting and the OMB Uniform Guidance rules, the new rules for leases and revenue were not specifically written with nonprofit organizations in mind. While the treatment of operating leases is not likely to be very different in a nonprofit or a for-profit business, the same is not true about revenue recognition. Nonprofits have several unique types of revenue recognition that are prevalent in their industry and many observers were left wondering, upon review of the released revenue recognition standard, how exactly it applied to nonprofits. In recent months, more and more guidance has been coming out from the AICPA and others that provide guidance to nonprofit organizations evaluating the impact of the new standard, and it is now clear that the standard only applies to what are known as exchange transactions.

The most typical types of nonprofit revenue that appear to be within the standard include membership dues, tuition and fees, licenses and royalties, and government grants and contracts. Basically, anything considered, in nonprofit terminology, an exchange transaction would be included. The new guidance calls for contracts like these to be evaluated by using the following steps to apply the core principles of the standard:

1) Identify the contract
2) Identify the performance obligations
3) Determine the transaction price
4) Allocate the transaction price
5) Recognize revenue when (or as) a performance obligation is satisfied

Practical Implementation Steps to Consider

The AICPA recently released some guidance on how an organization might go about implementing the standard. They include the following:

1) Read the standard and all relevant commentary from audit firms and attend related CPE

2) Assign individual staff members to become subject matter experts on specific revenue categories or by section to lead a group of staff to understand and implement the new standard

3) Compile a list of all organizational revenues that might fall under the standard (excludes contributions and investment income) such as membership dues, royalties, advertising revenue, sponsorship revenue, federal, state or private grants, retail sales, fees, pass-through funds, tuition, fees for services, etc.
4) Develop and document a position paper on each revenue stream by documenting current process; support your position with facts; document your conclusion on how to recognize revenue; review with your external auditor and finalize the new policy
5) Consider discussing issues with similar organizations within your industry
6) If a change is required, is it material? If not, document, discuss the impact with your auditors. Perhaps no actual change will be necessary and prior recognition methodology can continue.
7) If a change is required, consider whether related contracts need to be updated, changes need to be made to monthly annual close process and internal financial reporting and forecast and budget processes
8) Communicate changes to the CFO, board, audit/finance committee, senior staff, auditors, key stakeholders, etc.
9) Determine requirements to retrospectively adopt the new standard or prepare comparative financial statements
10) Develop a plan for staff training

The new standard applies to organizations with fiscal year ends beginning after December 15, 2018, so there is still ample time for organizations to evaluate the impact on their operations. In addition, more and more examples that apply to nonprofits are being released and can be used to evaluate the new standard. If you have a revenue stream that you are unsure how to analyze under the above process, feel free to reach out to me and I may be able to assist or provide you with some relevant examples released by the AICPA.

For questions or more information, please contact Michael Barloewen at mbarloewen@windes.com or toll free at **844.4WINDES** (844.494.6337).

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Windes is a recognized leader in the field of accounting, assurance, tax, and business consulting services. Our goal is to exceed your expectations by providing timely, high-quality, and personalized service that is directed at improving your bottom-line results. Quality and value-added solutions from your accounting firm are essential steps toward success in today's marketplace. You can depend on Windes to deliver exceptional client service in each engagement. Since 1926, we have gone beyond traditional services to provide proactive solutions and the highest level of capabilities and experience.

The Windes team approach allows you to benefit from a wealth of technical expertise and extensive resources. We service a broad range of clients, from high-net-worth individuals and nonprofit organizations, to privately held businesses. We act as business advisors, working with you to set strategies, maximize efficiencies, minimize taxes, and elevate your business to the next level.

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