

Publications

May 15 Tax Deadline and 'Start of the Year' Review – Part II

April 3, 2019 – Alerts

This is the second of a two-part Alert to guide nonprofit organizations in preparing for upcoming filing deadlines and implementing best practices for the onset of a fiscal year.

In **Part I** of the Alert, we discussed Form 990/990-PF requirements, Solicitation of Funds registration requirements, Change in Officer/Director notification requirements, and appropriate insurance coverage.

In Part II, we focus on donor letters, bylaws and corporate records.

Written Acknowledgements and *Quid Pro Quo* Disclosures

A written acknowledgment is the documentation your nonprofit organization must give a donor when a donor provides a donation over a certain value. If the donor does not receive goods or services in exchange for the donation, then the acknowledgment must state that no goods or services were provided to the donor. If the donor receives goods and/or services in exchange for the donation, then your nonprofit organization must provide a *quid pro quo* disclosure.

At the end or beginning of each year, nonprofit organizations should review the written acknowledgment and *quid pro quo* letters they send to donors to ensure that such letters are in compliance with federal rules and regulations. If a nonprofit does not follow these rules, its donors may not be able to deduct their charitable contributions and the IRS may assess fines against the nonprofit.

Bylaws

At the end or beginning of each fiscal year, a nonprofit should review its bylaws to ensure that they remain in compliance with federal and state laws. For instance, a few years ago, the State of New York completely overhauled its Not-for-Profit Corporation Law, forcing many New York-based nonprofit organizations to amend their bylaws.

Bylaws should also be reviewed to ensure that they accurately reflect the organization's corporate governance structure and operations. For example, outdated bylaws may reflect that the board of directors must be composed of five directors, when, in fact, the organization has never had more than three directors serving at a time. Additionally, outdated bylaws may call for director or officer election procedures that are no longer followed.

Further, a nonprofit should review its bylaws to determine whether the threshold for board approval is higher for fundamental decisions (super-majority vote) as compared to ordinary decisions (majority vote).

Keep in mind, too, that the IRS must be notified if your nonprofit organization amends its bylaws.

Corporate Records: Meeting Minutes and Written Consents

If a nonprofit took any of the following actions over the past year, it should confirm that such actions were properly documented, either in meeting minutes or written consents:

- A change in the nonprofit organization's articles/certificate of incorporation or bylaws;

ASSOCIATED PEOPLE



• Richard S. Caputo



• Jacqueline Motyl

ASSOCIATED PRACTICES

- Nonprofit Organizations

- A change in the purpose and/or activities of the nonprofit organization;
- A change in the nonprofit organization's mailing address or registered address;
- A change in the nonprofit organization's registered agent;
- A change in the nonprofit organization's directors, officers or trustees;
- A change in the sources of revenue that were disclosed on the nonprofit organization's Form 1023 Application for Exemption;
- A change in the amount and method of fundraising;
- A change in the nonprofit organization's responsible party; and/or
- A change in the nonprofit organization's governance policies, including but not limited to, its Signatory and Disbursement Policy, Conflict of Interest Policy, Short-Term Investment Policy, Long-Term Investment Policy, Document Retention Policy, Gift Acceptance Policy, etc.

In addition to documenting the approval for the above-listed actions in the form of meeting minutes or written consents, your organization may be required to notify the IRS of the changes. Many of these changes can be disclosed on the organization's Form 990 or Form 990-PF return. However, more fundamental changes, such as amendments to the articles of incorporation or bylaws or modifications to your nonprofit organization's purpose and/or activities, should be disclosed directly to the IRS' Customer Service Group.

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