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LIST OF SUBSTANTIVE CHANGES AND ADDITIONS

PPC's Nonprofit Tax and Governance Guide: Helping Organizations Comply

Fifth Edition (July 2014)

Highlights of this Edition

The following are some of the important update features of the 2014 edition of *PPC's Nonprofit Tax and Governance Guide: Helping Organizations Comply*.

- **Board Governance.** The IRS is focused on exempt organization governance, believing that well-governed organizations are more compliant with tax-exempt law. This edition includes enhanced coverage of the contents and execution of good board meeting minutes; communication between the board and audit, tax, and legal professionals; evaluating and identifying the organization's internal control weaknesses; and a new checklist for boards to use to improve their effectiveness.
- **Policies.** Establishing and following policies is critical to good governance. In addition, certain policies may need to be reviewed, and potentially revised, to consider legally married same-sex spouses. This edition includes updated sample policies and procedures for identifying a conflict of interest, retaining documents, accepting gifts, and protecting donor privacy/security. Following these policies will help ensure the organization documents its annual compliance with the conflict of interest policy, retains important records long enough (but not too long), has a process to decline an unsuitable gift without offending a potential donor, and properly protects a donor's personal information.
- **Jeopardizing Tax-exempt Status.** The IRS has recently denied or revoked the tax-exempt status of organizations due to a lack of sufficient independent board members. In addition, an organization's employee expressing their own political opinion (if not done properly) may jeopardize an organization's status. A discussion of these important issues is included in this edition.
- **Unrelated Business Income.** Organizations must analyze activities annually to determine the conditions to be considered UBI. The activity and/or the organizations circumstances may change over time, causing a change in the status of these activities. This edition includes an enhanced discussion of, as well as some examples of, profit motive, sustained losses, annual events requiring significant planning, internet activity associated with annual trade shows, casual sales to nonmembers, and exclusive provider contracts.

In addition to these featured items, this *Guide* includes the following update items.

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
Chapter 1 Board Governance	1. Organizations may need to review/revise certain policies to consider legally married same-sex spouses. Added a discussion of the new federal definition of a spouse and the potential impact on various organization policies and procedures.	Section 100

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	2. The IRS has recently denied or revoked the tax-exempt status of organizations due to a lack of sufficient independent board members. Added a discussion of the danger of too small or tightly controlled board.	Section 101
	3. Employees expressing their personal political opinions may inadvertently jeopardize an organization's exempt status. Added a discussion of desirable guidelines that organizations may need to adopt to avoid an employee representing a political expression on behalf of the organization.	Section 102
	4. Well-governed organizations have clear and effective communication lines between the board and key professional advisors. Enhanced the discussion of effective board communication with auditors, legal advisors, and tax advisors.	Section 103
	5. Identifying potential conflicts of interest is not a task for Form 990 preparation but rather an ongoing governance practice. Updated the annual conflict of interest information form to help organizations identify any relationships that need to be disclosed on Form 990.	Appendix 1O
	6. An organization will sometimes be approached by a potential donor to accept a donation of an item that is not appropriate for the organization. The sample gift acceptance policy has been updated to help prevent an organization from accepting a gift that is a potential liability or offending a donor.	Appendix 1Z
	7. Boards sometimes need clarity of purpose to be more effective, and a great time to start is the beginning of the organization's year. Use the new checklist of items for the board to consider as the New Year approaches.	Appendix 1AH
Chapter 2 Related Parties— Managing the Risks	1. Clarified the definition of spouse to include a legally married same-sex spouse.	Chapter 2
	2. Added an observation on single member LLCs and the exception for not treating them as a disregarded entity.	Section 205
	3. Expanded the definitions of family member and highest compensated employees.	Appendix 2A
	4. Identifying business transactions that need to be disclosed on Form 990 can be a daunting task. Clarified the definition of business transactions that organizations must consider when identifying transactions that may be subject to Form 990 disclosure.	Appendix 2K
Chapter 3 Public Support Tests	1. There is a new form that certain qualifying organizations can use to obtain exempt status. Added an observation about the Form 1023-EZ released by the IRS in 2014.	Section 301
Chapter 4 Contributions	1. Differences between book and tax treatment of certain items cause accounting headaches. Clarified that for tax reporting, contributions do not include donated services or discounts provided.	Section 406
	2. Revised the documentation guide for charitable contributions to make it more concise.	Appendix 4K

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	3. Replaced all forms with the most current version.	Appendixes 4N, 4O, and 4P
	4. Updated the IRS's Tips for Donors to Deduct Charitable Contributions.	Appendix 4R
Chapter 5 Fundraising—Raising Funds without Breaking Rules	1. Updated for the states that allow using the unified registration statement to register their organizations when fundraising in that state and for states that no longer require registration.	Section 503; Appendix 5G
	2. The IRS is looking at fundraising activities that benefit individuals, not the organization. The discussion has been updated for the recent Tax Court case that revoked an organization's exemption because of private inurement/private benefit.	Section 505
Chapter 6 Compensation Issues	1. Updated the discussion for certain inflation indexed amounts including social security wage base, qualified moving reimbursement, standard business mileage rate, and the federal per diem standard CONUS rate.	Sections 601, 602, and 603
	2. Updated the discussion of the notices that employers must provide to new employees regarding health care options offered through the Marketplace.	Section 602
	3. Updated the discussion for the increase in the small employer health insurance credit for years beginning after 2013.	Section 602
	4. Excess benefits are subject to hefty penalties and automatic excess benefits are penalized even if, when paid, the compensation was reasonable. Added a list of common types of unreported compensation that will be deemed automatic excess benefits.	Section 604
	5. Reasonable compensation must be determined using comparable data. Added a discussion of the importance of using good comparable data in setting compensation as highlighted in the IRS's Final Report on Tax-exempt Colleges.	Section 604
	6. Clarified the tax-exempt status election process for a single-member LLCs treated as a disregarded entity.	Section 605
Chapter 7 Basic Tax Reporting Issues	1. Clarified that the public inspection requirements apply to both originally filed and amended returns.	Section 701
	2. Added a discussion of rent payments that are required to be reported on Form 1099-MISC.	Section 705
	3. Updated for the new FinCEN 114 form that has replaced Form TD F 90-22.1 and the electronic filing requirement.	Section 705; Appendix 7A
Chapter 8 Political Activities	1. Clarified that a Section 501(c)(3) or (29) organization can lose its exemption if it directly or indirectly participates or intervenes in a political campaign.	Section 801

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	2. The IRS issued proposed regulations related to the political activity of a social welfare organization. This edition cautions about the proposed definition of a candidate-related activity and alerts the organization and practitioner to monitor legislation.	Section 803
Chapter 9 Protecting the Organization's Exempt Status	1. Included brief information about the importance of following the mission statement. Also updated the checklist to add this question. 2. It is essential organizations understand the concept of private benefit. Expanded and clarified the discussion on private benefit. 3. Added a discussion of the streamlined retroactive reinstatement procedures available for small organizations.	Section 900; Appendix 9A Section 901 Section 909
Chapter 10 Identifying Unrelated Business Income	1. To be considered UBI, an activity must have a profit motive. Enhanced the discussion of whether an activity is engaged in for profit by adding a list of relevant factors used in making the determination. 2. Sustained losses may cause the IRS to determine that an activity is not engaged in for profit, which will result in the losses not being allowed to offset other UBI. Added an example that illustrates a profit motive can be present despite sustained losses. 3. One requirement for an activity to be UBI is it must be regularly carried on. This edition includes an example of an annual activity requiring significant planning, preparation, and promotion; consequently, it is considered regularly carried on. 4. Internet activity associated with an annual trade show may avoid UBI classification. This edition includes an example illustrating an important distinction in this activity. 5. In certain circumstances, casual sales to nonmembers will not be considered UBI. Added an example of cafeteria and vending machine sales that illustrate this situation. 6. Added examples of affinity card and mailing list income that distinguish when these activities are UBI and when exempted. 7. Added an example applying the neighborhood land rule to a church that held debt financed property without building on the property in the requisite amount of time. 8. Enhanced the planning discussion of exclusive provider contracts to help minimize exposure to UBI. 9. Added a discussion of the UBI ramifications of online publications.	Section 1002 Section 1002 Section 1002 Section 1003 Section 1003 Section 1004 Section 1005 Section 1007 Section 1007