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ON THE NOT-FOR-PROFIT FRONT

What's Included?

WASHINGTON STATE TAX CHANGES AFFECTING NONPROFITS

Washington State tax law changes will impact many nonprofit organizations. Starting January 1, 2010, the State resale certificate was replaced by a Reseller's Permit, issued by the State for a four year period for organizations currently in business. Many nonprofit organizations who sell inventory have used the resale certificate to avoid paying sales tax on items purchased for resale and now will need a Reseller's Permit.

Notices to organizations automatically receiving a Reseller's Permit were mailed in September 2009. If your organization needs a Reseller's Permit but did not receive one automatically, you can apply for one. The Department of Revenue expects the permitting process to take around 60 days, so we recommend applying sooner rather than later. You can find additional information from the Department of Revenue at dor.wa.gov.

It appears that nonprofits who are exempt from sales tax under an artistic/cultural deduction will also have to apply for a Reseller's Permit. Also, if your organization uses the exemption from sales tax for fundraising events (e.g. – items purchased for resale for an auction or gala), you will need to obtain a Reseller's Permit from the Department of Revenue or pay the sales tax and then request a refund of the sales tax paid from the Department of Revenue. ♦

NEW WASHINGTON STATE REPORTING REQUIREMENTS FOR CHARITABLE ORGANIZATIONS

Washington State charitable organizations that solicit the public for donations have additional annual filing requirements for all filings submitted after December 31, 2009. Your specific filing requirements will depend on total gross revenue thresholds. Some organizations will be required to submit a Form 990 that was prepared or reviewed by an independent external party. Larger organizations will be required to submit audited financial statements. Previously, those organizations who filed Form 990, 990-EZ, 990-PF, or 990-T were simply required to attach their latest filing to the Washington State charitable solicitations renewal form.

- Charitable organizations applying for initial registration must provide a Form 990, 990-PF, 990-EZ, or 990-T, or a solicitation report form as prescribed by the Secretary of State.
- Organizations with more than $1,000,000 in gross revenue must submit Form 990 or 990-PF annually. The tax return must be either prepared or reviewed by an independent CPA or other professional 990 tax preparer.
- Organizations averaging more than $3,000,000 in gross receipts per year over the prior three years must also submit audited financial statements (with some limited exceptions). Please note that this requirement is **in addition** to the independent 990 review above.

The impact of this new legislation is that many nonprofit organizations will need to work with an independent CPA or tax preparer for the first time. A 990 prepared internally by organizations over a certain size will not be accepted without external oversight. The changes to the expanded Form 990 may require more outside assistance for many nonprofits.

If you have questions, we would be happy to answer them or you can contact the Secretary of State's Charities Division at 360-725-0378 or charities@secstate.wa.gov. ♦

SIGNIFICANT CHANGES FOR 403(b) PLANS

The Internal Revenue Service has instituted new requirements for 403(b) plan administration which will impact plan reporting for 2009. We recommend that all organizations with a 403(b) plan review it and make any necessary updates to ensure the organization is able to comply with the new requirements.

All organizations who offer participation in a 403(b) plan to their employees should have adopted an official plan document before December 31, 2009, regardless of whether the organization makes an employer contribution to the plan. This plan document is only required for current 403(b) plans. Superseded plan vendors are not required to have a plan document in place. Many 403(b) plan administrators provide a sample plan document that can be customized to accurately reflect the eligibility requirements, matching benefits, etc. specific to your organization. If you have not already adopted a 403(b) plan document, we recommend you do so as soon as possible. In addition to the sample plans available from plan sponsors, the IRS is drafting a sample plan for employer use and procedures to get advance approval of non-standardized plan documents. The current draft of the IRS prototype plan for 403(b) plans is available at: http://tinyurl.com/mg7c35.

An additional requirement which will be effective with the 2009 Form 5500 is electronic filing. The process of electronically filing Form 5500 is more complicated than we have found with other tax returns. Each filing organization must register for their own electronic credentials, which are required to file returns with the Department of Labor. Once a third-party preparer has a return ready to be filed, a representative from the organization will need to log into a specific website or visit the preparer's office to enter their credentials and authorize the filing. Note that this requirement is for all Form 5500s – not just for 403(b) plans.

Also, beginning for 2009 plan years, organizations with 403(b) plans that include employer contributions will have expanded disclosure requirements when filing their annual Form 5500 with the Department of Labor. For the 2009 Form 5500, plan sponsors are required to provide reconciliations of *participant* balances. These reconciliations include individual opening balances as of January 1, 2009, employee and employer contributions for the year, earnings or losses during the year, distributions from the plan, and individual ending balances as of December 31, 2009. For purposes of the Form 5500, a participant is defined as any past or present employee who may still have a balance in the plan.

We recommend consulting with your 403(b) plan provider to ensure they are able to provide all the information required to complete the 2009 Form 5500.

One more change that could add significant cost is the separate pension plan audit required for 403(b) plans with over 100 participants. The requirement is effective for years ending December 31, <u>2008</u> or later. An exception allows a plan that was not audited in the prior year to remain unaudited until the number of participants exceeds 120.

If your organization is close to this audit requirement and your plan allows it, you may want to force former employees with balances of less than $5,000 in the plan to roll over their balances out of the plan, thereby reducing your number of plan participants. **If your organization might have the pension plan audit requirement, you should discuss this matter with your auditor as soon as possible.** ♦

CHANGES TO ENDOWMENTS UNDER UPMIFA

Washington State adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA) in May 2009. This Act, adopted into law as SHB 1119 changes both the disclosure requirements and certain accounting rules for endowment funds. The law was effective starting July 1, 2009, but was available for early adoption with board consent.

One of the possible benefits of UPMIFA to not-for-profit organizations is that although spending from a permanently restricted endowment fund is required to be "prudent," it is no longer restricted to amounts over the historical value of the original gift. For endowments whose investments have declined below the value of the original gift, this may allow the endowments to continue funding the organization's mission based on a board-approved spending policy despite being "underwater."

Another impact of UPMIFA on not-for-profit financial statements is that earnings on endowment funds should be classified as temporarily restricted until they are appropriated for spending. Appropriation has not yet been legally defined, but it could mean upon approval of an annual budget, or based on board-approved spending. ♦

CHANGES TO THE 2009 FORM 990

After a year's worth of experience with the "new" Form 990, the IRS has made a number of changes to the form. Many of the changes to the Form 990 itself and the instructions appear to have been made to help filers complete the form fully and accurately. Other changes are more substantial. We have highlighted the changes most likely to affect you.

On the 2008 Form 990, many of the questions just referred to particular lines on detailed schedules. The 2009 Form 990 does a better job of explaining the issue, in addition to indicating the detailed schedule reference. This makes understanding which boxes to check Yes or No easier to follow.

Any significant changes in the program services offered by the filing organization should be explained in Part III of the core form – Statement of Program Service Accomplishments.

Any person who meets the definition of officer, trustee, director, or key employee for the organization during any portion of the year should be reported in Part VII of the core form – Compensation. If that person is paid by the organization, his or her compensation for the entire year – not simply the portion during which he or she filled that position – should be reported as well.

Organizations are now asked to specify whether financial statements they issued were prepared on a separate or consolidated basis, or both.

When "anonymous" donor names are known to an organization, the IRS asks that they be provided in the schedule of contributors included in Schedule B. All donor names are omitted from the Public Disclosure Copy of the return, so you do not need to worry about problems with donor confidentiality as a result of this requirement.

Organizations are asked to disclose endowment funds that benefit them but are held and administered externally on Schedule D.

The reconciliation of the tax return information to audited financial statements in Schedule D is now optional for those organizations whose financial statements are audited on a consolidated basis.

All information reported on Schedule O – Supplemental Information should be included on the Schedule itself, rather than on separate attachments. ♦

SIGNIFICANTLY EXPANDED FINANCIAL STATEMENT DISCLOSURES FOR ENDOWMENTS

Effective for fiscal years ending after December 15, 2008, the financial statement footnote disclosures for endowments are substantially expanded. These disclosures are required of all endowments, whether donor restricted or board-designated. The definition of an endowment is much broader than you might think – it includes any assets held for investment for a long-term purpose, including board designated assets.

Organizations will be required to disclose the spending policy for making expenditures from endowment funds.

Disclosures will be required for endowment fund investment policies, including the return objectives, risk parameters, how those objectives related to the spending policies and strategies for achieving the objectives.

Organizations will need to provide the composition of the endowment by net asset class and segregate in the disclosure the portion of the endowment that is board-designated.

A reconciliation of the changes in the endowment activity will be required. This reconciliation must show the beginning and ending balances, investment return broken down into components, net appreciation or depreciation, contributions, expenditures, reclassifications and other changes.

These disclosures will be significantly longer and more detailed than they have been in the past. We would be happy to discuss this further with you to ensure your footnote disclosures will be sufficient. ♦

IRS CREATES VIDEO SERIES TO UNDERSTAND THE REDESIGNED FORM 990

On its website, the IRS has provided a case study and video program to help exempt organizations better understand the 2008 revised Form 990 series. The segments include "The New Form 990: Getting Started", a five part-interactive course on getting and staying exempt and a series of Form 990 filing tips at www.irs.gov/charities. ♦

990-N SMALL ORGANIZATION POSTCARD REQUIREMENTS FINALIZED

The IRS recently issued final regulations for the filing of the e-postcard for organizations with less than $25,000 of gross revenue annually. The final regulations are not significantly different from those previously provided but do provide a reminder to smaller organizations that they need to complete the e-postcard.

There is no monetary penalty for noncompliance. However, an organization that fails to file the postcard for three consecutive years will have its tax-exempt status revoked by the IRS. Since the requirement became effective for years starting after 2006, organizations which have never filed the postcard will have their tax-exempt status revoked in 2010 if the postcard is not filed for the 2009 year. ♦

UNITED WAY FINANCIAL STATEMENT POLICY UPDATED

United Way grantees are required to submit annual financial information within 5 months and 1 day after the organization's fiscal year end. To mitigate the impact on smaller organizations, United Way increased its threshold for requiring audited financial statements for grantees.

If gross revenue exceeds $1,000,000 or United Way funding exceeds $100,000 for the year, then audited statements are required.

If gross revenue is between $300,000 and $999,999 or United Way funding is between $30,000 and $99,999, then reviewed financial statements are required.

If gross revenue is less than $300,000 and United Way funding is less than $30,000, then Form 990 and a reporting summary suffice for United Way.

Please note that compiled financial statements are not acceptable. ♦

ALWAYS FEEL FREE TO CONTACT US!
Call or e-mail us with your ideas for future articles on topics of interest or with names of others who may want to receive *On The Not-For-Profit Front*. Also, note that previous issues of all our newsletters, which include *TMA Report* and *Small Business Outlook*, are included in the newsletter section on our website.

SUGGESTIONS FOR ENSURING A SMOOTH AUDIT

An article from the Nonprofit Advisor had the following general but useful tips for preparing for an audit of your financial statements:

Establish and document accounting policies, procedures, and responsibilities, including internal controls.

Establish and monitor a budget, including tracking estimated grant revenue.

Review spending on contracts and grants, including documenting the source of expenses and showing compliance with terms.

Segregate in-kind, noncash donations in the general ledger.

Document and consider the method of allocating indirect expenses to program services, administrative services, and fundraising.

Maintain documentation of any temporarily or permanently restricted donations received during the year.

Encourage financial oversight by the board of directors, including having them approve the annual budget and draft 990, and oversee the annual audit. ♦

THE MYERS ASSOCIATES, P.C.
STAFF DIRECTORY

Following is a listing of our e-mail addresses and telephone extensions. To reach us, dial (206) 623-6116, wait for the greeting and press the extension of the person you would like to reach.

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If you would like further information on any of the articles in this *On The Not-For-Profit Front* or would like to receive this newsletter in electronic format, please contact us. ♦