


# CURRENT ISSUES FOR THE NOT-FOR-PROFIT SECTOR

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## TODAY'S AGENDA:

1. Employment tax audits
2. Health Care Reform
3. Cell phones de-listed
4. Update on selected accounting topics
5. Texas requirements
6. Planned giving overview
7. Unrelated Business Income





## IRS STEPS UP EMPLOYMENT TAX AUDITS



## EMPLOYMENT TAX NATIONAL RESEARCH PROGRAM

It will take place over the next three years and includes the not-for-profit sector.

What are they looking for?

- Worker classification
- Officer compensation
- Fringe benefits
- Reimbursed expenses





## EMPLOYEE VS. INDEPENDENT CONTRACTOR

If an IRS auditor suspects that a worker has been misclassified, the auditor will focus on:

1. To what extent does the organization direct and control what the worker does and how the work is done?
2. How does the worker get paid?
3. Is there a written contract in place?
4. Are expenses reimbursed or does the contractor bear the risk of loss?
5. Who provides the tools and supplies necessary to complete the job?



## OFFICERS' COMPENSATION

The reasonableness of not-for-profit executive compensation has been an ongoing issue for the IRS.

Following recommended guidelines for establishing officer compensation should help this part of the audit go smoothly.

- Establish a compensation committee
- Board approval
- Use of compensation studies (for similarly qualified individuals in comparable positions and at similar size organizations in the area).
- Contemporaneous documentation of deliberations and decision.
- Persons with conflict of interest should not be involved in the decision making.



## FRINGE BENEFITS

First-class or charter travel, companion travel, housing allowances, discretionary spending accounts, payments for the business use of personal property, and social or health club fees are a few high profile benefits that could attract attention.

**Publication 15-B** contains information on the fringe benefit exclusions rules.



## DOES THE ORGANIZATION HAVE AN ACCOUNTABLE PLAN?

An accountable plan requires that the expenses be incurred in performing services as an employee, that the employee adequately account for the expenses within a reasonable time period, and that the employee return any excess amounts within a reasonable period.





## TIPS FOR RUNNING A VALID ACCOUNTABLE PLAN

1. Put it in writing
2. Reimburse correctly
3. Ensure the expense is reasonable
4. Satisfy the criteria for traveling expenses
5. Account adequately for the expenses
6. Keep proper documentation
7. Keep track of mileage



## Health Care Reform



## AFFORDABLE CARE ACT OF 2010

- **2011:** The costs of employer provided health coverage must be included on the W-2 (forms issued in 2012).
- **2012:** Businesses that pay more than \$600 a year to **both** corporate and non-corporate providers for property and service must file a 1099-MISC.
- **2014:** Employers with at least 50 employees in the previous year must offer certain health coverage or pay a penalty.



## SMALL BUSINESS HEALTH CARE TAX CREDIT

A tax credit of up to 25% for NFP's is available for employers with no more than 25 full-time equivalents (FTE's), and with average annual wages of \$50,000 or less per FTE.

This credit is phased out as the FTE's exceed 10, and when average annual wages exceed \$25,000.

[http://www.irs.gov/pub/irs-utl/3\\_simple\\_steps.pdf](http://www.irs.gov/pub/irs-utl/3_simple_steps.pdf)

Credit is also limited to the average premiums for each state published in IRS tables.



## CELL PHONES DE-LISTED



The Small Business Jobs Act of 2010, signed by President Obama on September 27, **eliminates** cell phones from the listed property list effective January 1, 2010.

The IRS is expected to provide further guidance in coming months.

The hope is that cell phones can be considered a *de minimis* fringe benefit and not require any of the value of the phone to be included in an employee's W-2.



## UPDATE ON SELECTED ACCOUNTING TOPICS





## MERGERS & ACQUISITIONS FAS 164

Establishes principles and requirements for NPOs:

- Determine whether combination is merger or acquisition
- Apply carryover method for a merger
- Apply acquisition method for an acquisition, including which entity is the acquirer.
- Determine information to disclose

**MERGER:** Two governing bodies *cede control* to create a new NPO.

**ACQUISITION:** One entity obtaining control over the other.

Goodwill acquired – either an asset or an expense depending on the type of NPO.

- If supported predominantly by contributions and return on investment = **Expense**
- If not, **capitalize** per FAS 142 and assign to reporting units and test for impairment.

**EFFECTIVE:** Merger or acquisition date is on or after reporting period beginning on or after **December 15, 2009**.



## SUBSEQUENT EVENTS FAS 165

Guidance changed from audit literature to accounting literature (since management, not auditors are responsible for accounting and reporting of transactions and events.)

**TERMINOLOGY CHANGED:**

- Recognized subsequent event (f/k/a Type I)
- Non-recognized subsequent event (f/k/a Type II)

Being “available to be issued” concept.

Disclosure of date through which evaluated as well as whether financial statements were issued or available to be issued.

**EFFECTIVE:** Years ending after **June 15, 2009**.



## GAAP CHANGED – FASB ADOPTED

Changed to Accounting Standards Codification (ASC)

- No more Statements, Staff Positions or EITF Abstracts.
- Now ASU – Accounting Standards Updates
  - Non-authoritative in their own
  - Only served to update ASC

**EFFECTIVE:** July 1, 2009.



## INCOME TAX UNCERTAINTIES (ASC 740-10) (ASU 2009-6) (Previously FIN 48)

Update addresses some questions that have arisen –

- Pass-through entities' (P/S, S Corp, LLC) treatment
- Nontaxable entities
- Expanded disclosure – all entities:
  - Total penalties and interest
  - Description of tax years that remain subject to examination
  - For positions for which reasonably possible that total unrecognized tax benefits will significantly increase or decrease w/in 12 months:
    - Nature of uncertainty
    - Nature of event
    - Estimate of \$ range or statement – estimate cannot be made
  - Management's opinion – more-likely-than-not criterion

**EFFECTIVE:** Previously adopted FIN 48 for periods ending after September 15, 2009.



## FAIR VALUE MEASUREMENTS (Topic 820) (ASU 2010-6)

### New disclosures:

- Transfers in and out of Levels 1 & 2 (disclose significant transfers and reasons for).
- Activity in Level 3 – present separately information about purchases, sales, settlements, etc. at gross, not net.

### Classification of existing disclosures:

- Level of disaggregation – provide for each class of assets or liabilities.
- Inputs and valuations techniques – for Levels 2 and 3 (recurring and non-recurring).

**EFFECTIVE:** Periods beginning after **December 15, 2009** except the roll-forward activity in Level 3 for which the date is periods beginning after **December 15, 2010**.



## FASB PROJECTS

### Leases -

- Stated problem: on-and-off balance sheet
- Solution proposed – put all leases on balance sheet – lessee and lessor
- Plan to finalize in 2011

### Financial Statement presentation -

- Replace income statement with Statement of Comprehensive Income
- Considering re-cast of balance sheet and income statement – Group income in to 3 categories like SCF.





## TEXAS STATE REQUIREMENTS



## GAMING

If an organization conducts any gaming (e.g. raffles, bingo, etc.) you should visit the Texas Attorney General's website to familiarize yourself with the gaming rules and regulations.





## SALES TAX HOLIDAY

Generally an organization must collect and remit sales tax, even if it has an exemption from paying sales tax. However, an organization is permitted to hold two one-day sales tax-free sales or auctions per calendar year.

You should note that any taxable item (not donated or manufactured) that is sold for more than \$5,000 does not qualify for the exemption.



## PERIODIC REPORTS

Although NFP's may apply for exemption from filing a Texas Franchise Tax Report, even after this exemption is granted, a periodic report must be filed every four years or else the corporation will be involuntarily dissolved for Texas purposes.

### What happens if a report is not filed?

The corporation that fails to file the report within 30 days from the date the SOS sends the report will **forfeit** its right to transact business in Texas and may be involuntarily terminated.

You may check the corporation's status at:

<https://ourcpa.cpa.state.tx.us/coa/Index.html>





## PLANNED GIVING



## REAL PROPERTY

The selected parcel of land may be transferred by deed to a charity. Normally, the charity then sells the real property. The donor bypasses gain on the gift.

There are several planning factors for a gift of appreciated real property to take place:

1. No prearranged sale
2. Determine whether there is debt on the property
3. Determine whether the donor has good title to the property
4. Determine if there are environmental considerations.



## PUBLIC SECURITIES



For publicly held securities the desired number of shares can be transferred directly through a financial services firm to the charity.

### How is the deduction calculated?

Held **more** than one year: FMV of the security, limited to 30% of AGI. The FMV is the average between the high and low sales on the date of the gift.

Held **less** than one year: Deduction is limited to the cost basis.



## PRIVATE STOCK

Privately held stock may also be transferred to the charity. The deduction is calculated in much the same way as that of publicly held securities.

Gifts of privately held stock that are valued at **more than** \$10,000 required a qualified appraisal.

Additionally, there may be a discount for minority interest or lack of marketability.



## EXAMPLE

Donor A owns a parcel of land that was originally purchased for \$25,000 in year 2000. The land is worth \$100,000 in 2010.

Upon selling the property there is a potential realized gain of \$75,000. Assuming the taxpayer is in the 25% tax bracket, the estimated tax is \$11,250 (15% capital gain rate).

If the donor were to donate the property they could get a charitable gift deduction of \$100,000, while also avoiding the tax on the realized gain.



## UNRELATED BUSINESS INCOME



## DEFINITION OF UBI:

A trade or business that is regularly carried on  
and  
not substantially related to the organization's  
exempt purpose.



## WHAT DOES “REGULARLY CARRIED ON” MEAN?

Regularly carried on means the activity has a frequency and continuity. An annual fundraising event is not considered regularly carried on, even if the activity occurs over a period of a few weeks each year (such as operating a booth at the fair).

However, an activity that is only conducted for a few months each year may be considered regularly carried on if the activity is also conducted by commercial organizations seasonally. Examples are a snow cone stand or Christmas tree stand.



## ACTIVITIES THAT DO NOT TRIGGER UBI:



- Those where nearly all the work is done by volunteers
- Those that are carried on primarily for the benefit of members, students, patients, officers, or employees.
- The sale of merchandise that has been donated to the organization.
- The rental of mailing lists of donors or members.
- Distributing incentives that are worth less than \$5.
- Passive income is exempt from UBI unless it is debt-financed



## STATUTE OF LIMITATIONS

Generally, the IRS must assess any UBI tax due within three years of the date the Form 990-T is filed or of when the return is due, whichever is later.

However, there is no time limit on the assessment of the tax if the 990-T is never filed, fraudulent or there is a willful attempt to evade tax.



## RENTAL INCOME



Generally excluded unless any of the following are true:

- The property is debt-financed.
- The property is rented to a controlled corporation.
- Rent is calculated as a percent of the tenant's net income.
- Rent includes compensation for services.
- More than 50% of the rent is attributable to the personal property.



## ADVERTISING

Revenue generated from a periodical published or produced by an organization is generally taxable and must be reported on Form 990-T. Income received from a corporate sponsor may also be subject to UBI.

In addition, advertising for UBI purposes does **not** include advertising where it appears the advertiser does not expect more than a negligible commercial benefit.

**Separate, "blocked in" spaces or full page without a commercial message are considered advertising for UBI purposes.**



## DISCLAIMER

Because the matters contained herein are complicated, this document should not be regarded as offering a complete explanation and should not be used for making decisions. Any decision concerning matters covered herein should be reviewed with a qualified tax advisor.

The information provided is current as of the presentation date.



## CONTACT INFORMATION

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**DISCUSSION**

Questions?

Comments?

