

THE NONPROFIT EDGE

April 2016
Vol. 1, Issue II

Inside this Edition:

- ▶ Corporate Sponsorship Money: Is It Taxable?
- ▶ Code of Ethics Sets the Stage for Decision-Making
- ▶ Not as Simple as A,B,C: Putting Ample Effort Into Your Board Meeting Minutes
- ▶ How Could This Fraud Have Been Prevented?

How Can We Help?

Our firm provides a broad range of services for non-profits, including:

- ▶ Attestation services
- ▶ Corporate governance
- ▶ Tax compliance and consulting
- ▶ Budgeting and cash-flow planning
- ▶ Human resources assistance

*Our News Briefs
are going electronic!*

To receive future editions electronically, please email
jcremerius@swcllp.com.

Corporate Sponsorship Money: Is It Taxable?

Nonprofits have pursued corporate sponsorships for years, and for good reason. Effectively executed, sponsorships can benefit both sponsor and organization. But if your nonprofit isn't careful, a sponsorship can be deemed paid advertising and your organization could end up liable for unrelated business income tax (UBIT). Although the Internal Revenue Code includes an exception from UBIT for certain sponsorship arrangements, navigating the rules can prove tricky.

"Qualified sponsorship payment" exception

Generally, "qualified sponsorship payments" received by a nonprofit aren't income from an unrelated trade or business. A qualified sponsorship payment is a payment of money, transfer of property, or performance of services with no expectation that the sponsor will receive any "substantial return benefit." Benefits returned to the sponsor can include advertising; goods, facilities, services or other privileges; rights to use an intangible asset such as a trademark, logo or designation; or an exclusive provider arrangement.

To be considered "substantial" by the IRS, the aggregate fair market value (FMV) of all benefits provided to the sponsor during the year must exceed 2% of the amount of the sponsor's payment to the nonprofit. If the total benefit exceeds 2% of the payment, the entire FMV of the benefits (not just the excess amount) is a substantial return benefit.

"Use or acknowledgment" provisions

The regulations specify for purposes of the exception that a nonprofit's "use or acknowledgment" (as opposed to promotion, marketing or endorsement) of a sponsor's name, logo or product lines won't constitute a substantial return benefit to the sponsor. Your organization's use or acknowledgment can include:

- Logos and slogans (as long as they contain no qualitative or comparative descriptions of the sponsor's products, services, facilities or company such as "the best sports drink available"),

- A list of the sponsor's locations, telephone numbers or website address,
- Value-neutral descriptions—including displays or visual depictions—of the sponsor's product line or services, and
- The sponsor's brand or trade names and product or service listings.

You can include a sponsor's product at the sponsored activity as long as there's no agreement to provide the sponsor's product exclusively. Mere display or distribution of a sponsor's product at an event, whether for free or remuneration, isn't considered an inducement to purchase, sell or use the product (that is, advertising). It won't affect the determination of whether the qualified sponsorship payment applies.

Say that a nonprofit is holding an annual 10K race and is providing participants with drinks and prizes supplied free of charge by a sponsor. If the organization lists the sponsor's name in promotional materials or includes it in the event name, those activities constitute permissible acknowledgment of the sponsorship. Therefore, the drinks and prizes are an exempt qualified sponsorship payment.

Note that contingent payments aren't qualified sponsorship payments. If a sponsor's payment is contingent on event attendance, broadcast ratings or other measures of public exposure to the sponsored activity, the payment falls outside the exception.

Allocation of sponsor payments

When a sponsorship comes with a substantial return benefit, only the part of the sponsor's payment that exceeds the substantial return benefit is considered a qualified sponsorship payment. The remainder is unrelated business income.

Consider, for instance, a not-for-profit that receives a large payment from a sponsor to help fund an event. The organization recognizes the support by using the sponsor's name and logo in promotional materials.

Continued on page 2

A Code of Ethics Sets the Stage for Decision-Making

Demonstrating commitment to ethical standards is one way your nonprofit can show that it's worthy of the public's trust and your donors' gifts. Developing a code of ethics—and following it—tells your constituents that your organization lives up to its ideals.

Identifying your values

Think of your code of ethics as a statement of how you practice ideals. A code of ethics not only guides your organization's day-to-day operations but also your employees' and board members' conduct. The first step in creating a code of ethics is determining your values. Start by reviewing your strategic plan and mission statement to identify those ideals integral to your organization.

Next, look at peer nonprofits to see which values you share with them, such as fairness, commitment to the community, accountability to the public, and adherence to the law. You also may want to include practical standards that address current issues or behaviors that contribute to your workplace, such as cooperation and promptness. Although these principles aren't ethical in nature, they're relevant to your nonprofit's image.

Putting ideals on paper

Now you're ready to document your expectations and the related policies for your staff and board members. The type and size of your organization will help determine the scope of your code of ethics. Most nonprofits should address such general areas as mission, governance and legal compliance.

You also may want to develop policies on openness and disclosure, inclusiveness and diversity, and responsible stewardship of funds. Consider establishing policies on conflicts of interest (such as paying board members for their services), professional integrity in such areas as fundraising and grantwriting, and program evaluation. For each topic, discuss how your nonprofit will abide by the law, be accountable to the public and responsibly handle resources. When the code of ethics is final, your board needs to formally approve it.

Getting staff up to speed

Next, it's time to communicate and implement the code. Training employees and board members is essential, because every nonprofit faces issues that may result in illegal or unethical behavior. With a thorough understanding of the code, your staff and board members will find it easier to make the right decisions.

Be sure to present examples of situations that they'll encounter. For example, what should an employee do if a board member exerts pressure to use his or her company as a vendor? You can integrate your ideals in your policies and procedures by addressing real-life scenarios and how your organization handled them.

Finally, if your nonprofit doesn't already have one, put in place a mechanism, such as a confidential tip line, that staff, board members and others can use to raise ethical concerns. If multiple complaints suggest that your nonprofit has some serious ethical issues, create an open forum for stakeholders to discuss them without repercussions.

Once your policies and procedures are in place, you may think the job is over—but it isn't. Your code of ethics represents a continual process and you'll need to review and revise it once a year. Regularly review how the policies are working, discuss strategies to revise those that aren't, and ensure that your nonprofit is following the law.

Your influence counts

You can't make ethical decisions for your employees, volunteers and board members. But you can make sure that your organization adopts a set of principles to guide them daily in their work.

Corporate Sponsorship Money: Is It Taxable?

Continued from page 1

It also hosts a dinner for the sponsor's executives, and the FMV of the dinner exceeds 2% of the sponsor's payment. The use of the sponsor's name and logo constitutes permissible acknowledgment of the sponsorship, but the dinner is a substantial return benefit. As a result, only that portion of the sponsorship payment that exceeds the dinner's FMV is an exempt qualified sponsorship payment.

Application of the qualified sponsorship payment exception and the rules for unrelated business income are complicated. Your financial advisor can help reduce the risk of incurring UBIT.

Not as Simple as A, B, C

Putting Ample Effort Into Your Board Meeting Minutes

Board meetings are the most crucial activity of your board of directors. And minutes of those meetings are among the most important documents your organization will ever produce. But is your nonprofit doing all it should in preparing its minutes? And is it done in a way that will protect your nonprofit against future problems?

Different states have different rules about board meetings and minutes, so check with your attorney to ensure that you're meeting those requirements. Here are some general best practices to consider when drafting the minutes.

What to include

Starting with the basics, meeting minutes should cover such fundamentals as the date and time, whether it was a special or regular meeting, and the names of directors in attendance as well as names of directors who didn't attend. The minutes also should include:

- Whether a quorum was reached,
- Any board actions (motions, votes for and against, resolutions and so on),
- Whether any board members left and re-entered the meeting—for example, in a case of a possible conflict of interest, and
- Any abstentions from voting or discussions.

Additionally, include in the minutes summaries of key points from reports presented to the board and of alternatives considered for important decisions. For example, describe how you evaluated bids for contractual work on a building project. And here's an important component: The minutes should record action items — that is, follow-up work that will be needed and who'll be responsible. Last, all information in the minutes should be presented clearly and succinctly.

How much is enough?

There isn't a particular requirement about how much detail should be recorded in your minutes. But attorneys often advise their clients to include enough information so that the minutes can be offered as evidence that an action was properly taken and that directors fulfilled their fiduciary duties.

Conversely, your minutes shouldn't include any information that, if examined, could be used against your organization. When in doubt about the depth of detail to include in your minutes, consult your attorney.

Executive sessions

Executive sessions are handled differently from normal board meetings. At times, your board likely will meet "behind closed doors" to discuss particularly sensitive or confidential issues, such as key person salaries or a staff termination. Details of these sessions shouldn't be included in the board meeting minutes, although a notation that the board moved to an executive session should be made.

Details of an executive session can be communicated to board members in some other form. Nonprofit attorneys sometimes advise their clients not to label this communication as "minutes."

Timing is important

Generally, your minutes should be ready for inspection by the next board meeting or within 60 days of the date of the original meeting, whichever comes first. IRS Form 990 asks whether there is "contemporaneous" documentation of the board and board committee meeting minutes or written actions. IRS rules don't impose a penalty for "non contemporaneous" documentation. But the agency is clearly placing importance on the timeliness factor.



The IRS connection

If your organization is ever audited by the IRS, your meeting minutes likely are among the first documents the agency will request to see. Keep in mind that any attachments, exhibits and reports can be considered part of the minutes.

In addition to providing proof of tax compliance, meeting minutes can serve as evidence in court. For example, if someone alleges that the board made a poor financial decision, board meeting minutes can be used to present the financial data and reasoning used to make that decision.

Reasons enough

Your board meeting minutes deserve special attention for numerous reasons. They're the history of your organization in a nutshell—or at least the board's role in it. Retain your board meeting minutes as permanent records, and make sure that your nonprofit's changing leadership knows how to retrieve past minutes if necessary.



Sciababba Walker & Co., LLP
410 E Upland Road
Ithaca, NY 14850

RETURN SERVICE REQUESTED

Our Partners:

David Iles, CPA, Managing Partner

Linda Bruckner, CPA

Jeff Gorsky, CPA

David Stinson, CPA, MS

Follow Us!



The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented therein. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.

How Could This Fraud Have Been Prevented?

Joe Doe, a beloved associate program director, worked at a nonprofit social service agency for 15 years. When the executive director retired and he was passed over, Joe stayed on with the organization. During the transition between executive directors (EDs), he took on interim ED duties. His responsibilities included signing privileges for the agency's accounts.

When a new ED was hired, she couldn't figure out why the not-for-profit didn't have a positive bottom line. The organization's revenue streams included rent from tenants in its building and it had been financially healthy in previous years. While Joe was initially helpful in responding to her inquiries, as time went on he became evasive in his answers, stopped attending staff meetings, and took on an extremely low profile.

One day, the new director came across some paperwork that included bank wire transfer instructions for a small checking account and a line-of-credit statement from an area bank. An investigation into these documents revealed that, while acting as interim director, Joe had deposited advance rental payments into the checking account and made withdrawals on a regular basis. During that time, he also opened the line of credit, deposited the proceeds in the checking account and withdrew those amounts as well.

After a two-week investigation, the nonprofit determined that Joe had embezzled approximately \$1 million. By that time, Joe had fled the country unnoticed.

Implementing controls

This sad scenario, which caused severe reputational and financial damage to the nonprofit, could likely have been prevented if the following policies and practices had been in place:

- All bank statements should be delivered unopened to a member of management or the board who has no signing authority.
- The finance committee—with members knowledgeable in finance and accounting—should review monthly bank reconciliations and financial statements and question any transactions that are new or unusual.
- New bank accounts, both depository and loan accounts, should be approved by the board prior to opening.

Additionally, employees should be trained to be alert to changes in employee behaviors and possible motivations for fraud. In this case, the fraudster felt entitled to become the next executive director. His fraudulent acts—at first involving small sums—began shortly after he realized he wouldn't be appointed to the position.

Getting expert advice

Do you ever wonder if your operation may be too lax in terms of presenting opportunities for inside fraud? If so, you may want to ask your CPA to review your controls and offer suggestions for improvement.