

Even the Regulators are Under Scrutiny: Protecting Your Charity and its Leadership in 2013

Los Angeles, California
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Presented by:

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Dwayne M. Horii

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Mr. Horii's practice has focused on the representation of clients in the areas of California state and local tax, federal tax disputes, and tax-exempt organizations.

Mr. Horii's representation has included matters in the following areas:

- Structuring joint ventures with tax exempt organizations, including for-profit subsidiaries and unrelated business income tax issues
- Technology related tax exempt organizations, including universities and scientific research organizations
- Executive compensation issues involving both for profit and tax-exempt organizations
- Welfare and college property tax exemptions
- California personal income tax and corporation tax matters before the California Franchise Tax Board, Board of Equalization and California courts
- Taxes directly administered by the California Board of Equalization – including sales and use taxes, motor vehicle fuel taxes, and state assessee property tax assessments
- Disputes with the California Employment Development Department, including appearances before the California Unemployment Insurance Appeals Board
- Local tax issues, including documentary transfer taxes, City gross receipts taxes, payroll taxes, transient occupancy taxes, telecommunications taxes and utility taxes
- Federal tax controversy practice at the administrative, Tax Court, Court of Claims and District Court levels

Education

J.D., University of Michigan Law School, 1985

B.S., University of California, Berkeley Business School, 1982

Honors

California Law Business, Top Young Tax Lawyers in California 1992

"AV" rating from Martindale-Hubbell

Southern California Super Lawyer (Tax)

International Tax Review Leading Individual (Los Angeles)

William C. Choi

Partner

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Mr. Choi's practice is concentrated in the area of tax and corporate law, with particular emphasis in the representation of tax-exempt organizations. Prior to law school, Mr. Choi practiced as an accountant with Deloitte Haskins & Sells (now Deloitte & Touche), and passed the C.P.A. examination in 1982.

Mr. Choi's representation of nonprofit organizations has included the following matters:

- Corporate governance issues, including article and bylaw amendments, advising on conflicts of interest, counseling on compensation issues and compliance with statutory requirements, such as the California Nonprofit Integrity Act
- Internal Revenue Service, Franchise Tax Board and Attorney General audits
- For-profit subsidiaries, joint ventures with for-profit organizations and unrelated business income tax issues
- Charitable giving, including use of supporting organizations and donor advised funds, structuring complex gift arrangements and partial interest gifts (such as charitable remainder trusts)
- Private foundation grant agreements, "tipping" issues, foreign grants, scholarships, program-related investments, self-dealing and termination issues
- California state and local taxation, with an emphasis on welfare and other property tax exemption issues

Education

J.D., University of Southern California Law Center, 1985
B.S., San Jose State University, 1981

Honors

Southern California *Super Lawyer* (2005-present)
Named "Best Lawyer" in Non-Profit/Charities Law, *Best Lawyers* (2007-present);
"Lawyer of the Year" in Non-Profit/Charities Law, 2013, Los Angeles
"AV" rating from Martindale-Hubbell (2000-present)

Selected Professional and Business Activities

**RODRIGUEZ, HORII,
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ATTORNEYS AT LAW LLP

- Member, Executive Committee of the Taxation Section of the State Bar of California (2001-2004)
- Chair, State and Local Tax Committee of the State Bar of California's Taxation Section (1999-2000)
- Chair, Exempt Organizations Committee of the Los Angeles County Bar Association's Taxation Section (1999-2000)

Community Activities

- Board of Directors (Chair) of Community Partners (www.communitypartners.org)
- Board of Directors (Secretary) of Kids In Sports (www.kidsinsportsla.org)
- Board of Trustees of the La Canada Flintridge Educational Foundation Endowment Fund (2005-2009)
- Member of Citizens' Bond Oversight Committee of the La Canada Unified School District (2005-2008)
- Board of Directors of the National Asian Pacific American Bar Association Law Foundation (2005-2007)

Reynolds T. Cafferata

Partner

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Reynolds Cafferata is a Partner in the Los Angeles law firm of Rodriguez, Horii, Choi & Cafferata LLP, where he advises charitable organizations and individuals regarding complex charitable gifts, charitable trusts, donor advised funds, private foundations, support organizations, and other gift mechanisms. He also advises charitable organizations with respect to gift acceptance, risk management, unrelated business income, self-dealing and intermediate sanctions, endowment management, and state law compliance issues. Mr. Cafferata advises corporate fiduciaries regard the management of charitable trusts. His representation of charities and fiduciaries includes contested probates and judicial reformation of trusts. Mr. Cafferata also acts as an expert witness on matters related to charities and trusts.

Education

J.D. University of Southern California, 1992; Order of the Coif

B.A. The George Washington University, 1989; summa cum laude, with honors

Honors

Los Angeles Lawyer Super Lawyer

Named "Best Lawyer" in Non-Profit/Charities Law,

The Best Lawyers In America, published by Woodward White, Inc.

"Los Angeles *Best Lawyers* Trusts and Estates Lawyer of the Year" (2011)

"Los Angeles *Best Lawyers* Non-Profit and Charities Law Lawyer of the Year" (2014)

"AV" rating from Martindale-Hubbell

Selected Professional and Business Activities

- Steering Committee, Leadership Institute of Partnership for Philanthropic Planning
- Adjunct Professor, University of Southern California School of Law, Gifts, Wills and Trusts
- Instructor, Certified Specialist in Planned Giving, California State University at Long Beach
- Planning Committee, USC Institute on Federal Taxation
- Fellow, American College of Trust and Estate Counsel
- Board Member, National Committee on Planned Giving (2000-2002)
- Chair, Exempt Organization Committee, Los Angeles County Bar Association (1995-1996)

Selected Publications

- *“Should Pledges Be Enforceable? And Other Questions to Ask About Gift Agreements”* Journal of Gift Planning (1st Quarter 2007)
- *“Summary of the Pension Protection Act of 2006”* Major Tax Planning (2007)
- *“Considerations in Selecting Donor Funds, Private Foundations, and Supporting Organizations”* CEB, Advising California Nonprofit Corporations (2006 and updates to present)
- *“In Re Helen’s Trust: a Tale of How Charities Should and Should Not Respond to Litigation”* The Journal of Gift Planning (Volume 9, June 2005)
- *“IRA Rollover Now!”*, Exempt Organization Tax Review (September 2004)
- *“Donor Advised Funds: The Philanthropic Swiss Army Knife”* Charitable Gift Planning News (Volume 5, May 2004)
- *“The Role of Counsel in Foundations: Choices, Beginnings, and Service”* Foundation Management (2003)
- *“Reflections on the Economic Growth and Tax Relief Reconciliation Act of 2001”* The Journal of Gift Planning (Volume 5, 2001)
- *“CRT.com – Structuring a Charitable Remainder Trust for the High Tech Insider”* The Journal of Gift Planning (Volume 4, June 2000)

Community Activities

- Chancellor, St. Mark’s Church, Altadena (2011-Present)
- Door of Hope volunteer (2010-Present)
- Vice Chair, Barnhart School (2009-2010)
- Board of Advisors, American Jewish University Non-Profit MBA Program (2006-2009)
- Board Member, Barlow Hospital Foundation (2006-2007)
- Chair, St. Mark’s School Board of Trustees (2001-2004)
- President, Church Charitable Foundation Episcopal Dioceses of Los Angeles, (2000-2003)
- President, Altadena Historical Society (1996-1997)
- President, Friends of the Altadena Library (1995-1997)
- Co-Chair, Save Our Altadena Library campaign (1994)

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Jeffrey L. Glassman

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Mr. Glassman's practice has focused on sophisticated estate planning for large estates and the representation of fiduciaries concerning trust and estate administration. He has represented many charitable organizations and has practiced in the area of charitable giving.

Mr. Glassman has practiced law for over 30 years. Mr. Glassman was of counsel to the law firm of Bingham McCutchen LLP and prior to the merger of the firm, a principal of Riordan & McKinzie for 18 years.

Currently, Mr. Glassman is Chairman of the Board of Directors of American Jewish University (formerly known as University of Judaism). He also serves on the Board of Directors of the Wallis Foundation, Jewish Home for the Aging, the Los Angeles Police Foundation, Los Angeles Sports and Entertainment Commission and IFES. Mr. Glassman also serves on the Board of Regents of Loyola Marymount University and is Co-chair of the Advisory Board of the UCLA School of Public Affairs.

Mr. Glassman received his B.A. from the University of California, Los Angeles and his J.D., magna cum laude, from the Loyola Law School of Los Angeles.

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Robin P. Jamplis

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Ms. Jamplis concentrates her practice in the area of estate planning, charitable giving and advising tax-exempt organizations. Prior to joining Rodriguez, Horii, Choi & Cafferata LLP, Ms. Jamplis was Of Counsel in Bingham McCutchen's Estate Planning Group and Charitable Advising Practice. Ms. Jamplis has considerable experience in advising individuals, families and tax-exempt organizations in the following areas:

- Fundamental estate planning techniques, including revocable trusts and irrevocable trusts designed to minimize gift and estate taxes.
- "Estate Freeze" techniques such as grantor retained annuity trusts and installment sales to defective grantor trusts.
- Asset value discounting techniques such as fractional discounts through the use of limited liability companies and limited partnerships.
- Asset protection planning through the use of domestic and offshore vehicles.
- Administering trusts and estates and preparing estate and gift tax returns.
- Planning complex charitable gifts, including the formation of tax-exempt organizations and partial interest gifts, such as charitable remainder trusts.
- Advising tax-exempt organizations regarding compliance with federal and California law, private foundation rules and grant agreements, including foreign grants.

Education

J.D. University of California, Hastings College of the Law, 1987; cum laude,
Order of the Coif

B.A. University of Hawai'i at Manoa, 1984; Phi Beta Kappa, Phi Kappa Phi

Honors

Hastings College of the Law: Order of the Coif, Thurston Society, American
Jurisprudence Award, Milton D. Green Award

Phi Beta Kappa, Phi Kappa Phi

"AV" rating from Martindale-Hubbell

Selected Professional and Business Activities

- Speaker and panelist for California Education of the Bar and Lorman Education Services on domestic and offshore asset protection planning.

Publications

- *"Trust Distribution Provisions,"* Charitable Gift Planning News (October 2009)
- *"Asset Protection: An Overview of Prudently Managed and Structuring One's Assets,"* California Trusts and Estates Quarterly (Spring 2002)
- *"A Primer on Prudently Managing and Structuring One's Assets for Protection,"* Asset Protection Journal (Fall 2002)
- *"Ethical Lapses Can Lead to Tremendous Liability Exposure,"* Journal of Asset Protection (March 1996)

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Rose C. Chan

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Ms. Chan concentrates her practice in the areas of tax controversy and tax-exempt organizations. Her practice at Rodriguez, Horii, Choi & Cafferata, LLP, has included representation of nonprofit clients in exemption applications, qualifications issues and governance counseling. Ms. Chan has also represented individual clients in structuring their philanthropic giving and in matters before the Franchise Tax Board.

Prior to joining Rodriguez, Horii Choi & Cafferata, LLP, Ms. Chan was a founding member of and a senior tax manager in the Pacific Southwest Tax Controversy Group of Deloitte & Touche, advising large and mid-size clients on all aspects of IRS Examination, Appeals and procedural matters. As a senior tax attorney in the Tax Controversy Group at Atlantic Richfield Co., she represented the company through examination, at Appeals, at Tax Court and in District Court on a wide range of federal tax issues that encompassed corporate, financial products, method of accounting and capitalization, international, and employee benefits issues. Ms. Chan began her legal career at Latham & Watkins, where her tax experience included transactional advice, drafting of ruling requests, federal and state tax controversy work and advice to tax-exempt organizations.

Ms. Chan's interest in nonprofit organizations encompasses volunteer and leadership roles in various organizations. She is currently a trustee and an active volunteer at Flintridge Preparatory School, Vice President-Scholarships of the Community Scholarship Foundation and Vice President-Philanthropy of National Charity League-Glendale. She has been President of the Palm Crest Elementary School PTA and the La Cañada Flintridge Educational Foundation, and she was recently honored by the Foundation with its *Spirit of Outstanding Service Award* for 2011. Ms. Chan has also been on the boards of Stanford Professional Women, the Southern California Chinese Lawyers Association and Lineage Dance Company.

Education

New York University School of Law, J.D. 1986. *NYU Law Review*, Note and Comment Editor

Stanford University, B.A. 1982, Graduated with Distinction. Majors, Communications and International Relations

Shannon M. Paresa

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Mrs. Paresa practices in the areas of federal and California tax exemption and California state and local taxation. Before joining Rodriguez, Horii, Choi & Cafferata LLP, Mrs. Paresa worked as an associate at Latham & Watkins LLP for four years where she worked on federal taxation matters with respect to various business transactions including the representation of tax-exempt organizations, C corporations, partnerships and real estate investment trusts. With respect to her representation of tax-exempt organizations, Mrs. Paresa's experience includes:

- The formation and qualification of nonprofit and tax-exempt organizations
- The operation of nonprofit corporations in California, including corporate governance and charitable solicitation laws
- Merging and dissolving nonprofit organizations
- Charitable giving
- California property tax exemptions, including the welfare exemption
- IRS audits and controversies
- California Attorney General audits

Education

J.D., University of California, Los Angeles, School of Law, 2000

B.B.A., University of Hawai'i at Manoa, 1996; with honors

Honors

Los Angeles Magazine, Southern California Rising Star (Super Lawyers)

Publications

- *Property Tax Exemption for Nonprofit Organizations*, CEB Advising California Nonprofit Corporations (2012)
- *Donor Funds, Private Foundations, and Supporting Organizations*, CEB Advising California Nonprofit Corporations (2009)
- *Choice of Charitable Entity After the Pension Protection Act*, USC Major Tax Planning (2008)
- *Grantmaking After the PPA: Distributions by Donor Advised Funds, Private Foundations and Supporting Organizations After the Pension Protection Act*, Charitable Gift Planning News (May 2008)
- *Summary of the Pension Protection Act of 2006*, USC Major Tax Planning (2007)

Andrew S. Atkin

Associate

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Mr. Atkin concentrates his practice in the areas of income and estate tax planning. Prior to joining Rodriguez, Horii, Choi & Cafferata LLP, Mr. Atkin was of counsel for Pesin & Associates, P.C., and consulted with accounting firms KPMG, LLP, and Deloitte & Touche, LLP.

Mr. Atkin's experience includes:

- Counseling on the formation of family limited partnerships and the utilization of various forms of trusts
- Advising on charitable giving structures including charitable remainder trusts and supporting organizations
- Advising on issues regarding unrelated business income tax and the self-dealing rules
- Analyzing ownership change limitations on net operating losses and other tax attributes
- Supervising the audit process in matters related to the utilization of net operating losses, including the drafting and review of protest letters and appearances before the Internal Revenue Service
- Day-to-day counseling on issues arising out of estate and income tax planning
- Admitted to practice in Florida and Georgia

Education

J.D. Emory University School of Law, 1995, with distinction; Order of the Coif
B.A. State University of New York at Albany, 1991

Community Activities

- Member, Board of Directors for the Program for Torture Victims, Los Angeles
- Founder of the Andrew S. Atkin Charitable Fund, a donor-advised fund that is a component fund to the California Community Foundation

RECENT DEVELOPMENTS IN CHARITABLE GIVING

Reynolds T. Cafferata
Rodriguez, Horii, Choi & Cafferata LLP

Private Foundation Grants to Foreign Organizations, Proposed Regulations 53.4942(a)-3, 2012-47 I.R.B. 553, November 19, 2012

Private foundations making grants to foreign charities that do not have an IRS determination letter must be able to demonstrate that the foreign charity would qualify as a public charity or private operating foundation if it were organized in the United States. The foundation would make this showing with an affidavit from an officer of the foreign charity or an opinion of legal counsel. Under the proposed regulations this determination also can be provided by a certified public accountant or an enrolled agent.

Gifts to Single Member LLC's of Charities, Notice 2012-52

The IRS has ruled that a donor may claim a charitable contribution deduction for property contributed to a single member limited liability company owned by a U.S. charity. The LLC must be treated as a disregarded entity for tax purposes to have the gift to the LLC treated as a gift to the charity. This new option for accepting gifts will make it easier for charities to accept gifts of real estate and other assets that may expose the owner to liabilities.

Holiday Book Reading Event Not an Unrelated Business, PLR 201251019, September 24, 2012

The IRS has ruled that ticket proceeds from an annual Christmas reenactment and reading of a holiday book are not unrelated business taxable income. The event is designed to foster early reading by including young readers in the reenactment. Though the event was not a regularly carried on trade or business, the IRS held that it was related to the exempt purpose of the charity and thus not an unrelated business.

IRA Rollover Extended to December 31, 2013, American Taxpayer Relief Act of 2012

As part of the income and estate tax bill enacted at the start of 2013, the charitable IRA rollover was extended until December 31, 2013. Donors over age 70 ½ may direct an IRA custodian to distribute up to \$100,000 from the IRA to a public charity (other than a donor advised fund or supporting organization). The distribution counts towards the donor's required minimum distribution and is not included in the donor's income. No income tax deduction is allowed for the distribution.

Parking Lot Lease Not Self-Dealing, PLR 201301015, October 10, 2012

The IRS has ruled that parking lot leases involving a private foundation and an LLC owned by disqualified persons are not self-dealing. In one case, a tenant of a building owned by the private foundation leased parking from the LLC. Tenants that chose to lease the parking from the LLC were treated the same as tenants that did not lease the parking. In another case, the private foundation leased parking to tenants of a building owned by the LLC. The parking lease was at market rates. In both cases, because the foundation avoided a transaction with a disqualified person, the IRS ruled no self-dealing occurred. The tenants in all cases were not related to the LLC or the foundation. The LLC and the foundation had various real estate holdings such that their parking was often adjacent to a building owned by the other. The IRS did not see providing access to parking for tenants at fair market value to the owner of the parking on the adjacent building as being a benefit that rose to the level of self-dealing. The ruling does not specifically say it was an incidental or tenuous benefit, but does not raise it as a possible benefit.

New Form 8283 on its Way January 16, 2013

The Treasury Inspector General for Tax Administration ("TIGTA") recently reported that 273,000 taxpayers potentially are claiming \$3.8 billion of improper deductions for gifts of tangible property resulting in a \$1.1 billion revenue loss. The IRS is not confirming that donors that are required to file a Form 8283 are attaching them to their returns. The IRS will review the Form 8283 instructions to highlight the need to group similar or related items for the valuation threshold. The IRS also will disallow deductions of property gifts over \$500 if Form 8283 is not

attached to returns. The IRS also will be comparing a donor's Form 8283 with any Form 1098-C issued by a charity.

Qualified Appraisal Must be of the Property Donated, Estate of Evenchik v. Commissioner, T.C. Memo 2013-34 (February 4, 2013)

The IRS and Tax Court continue to deny deductions when taxpayers do not have proper appraisals and valuations in a timely manner. In Evenchik, the donor contributed 72% of the shares of a corporation to a charity. The corporation owned two apartment buildings. The donor attached an appraisal of the apartment buildings to the tax return, but did not attach an appraisal of the stock to the tax return. The IRS argued and the tax court held that the appraisal was not a qualified appraisal as required under Section 170 because there was no appraisal of the property contributed, namely the stock. An appraisal of all the assets of the corporation was not in substantial compliance with the requirements of Section 170. It still seems that actual compliance and substantial compliance are the same when it comes to the substantiation rules.

IRS Must Follow Final and Temporary Regulations for Type III Supporting Organization Rulings, TE/GE Memo February 7, 2013

On December 28, 2012, the IRS issued Final and Temporary Regulations for determination regarding Type III Supporting Organizations, particularly with respect to whether the SO qualifies as functionally integrated. The February 7, 2013, memorandum directs the agents processing determinations, regardless of when submitted, to meet the determination on the final and temporary regulations. Generally, the final and temporary regulations are the same or more flexible than the prior guidance so organizations whose applications are subject to the new requirements likely will not be adversely impacted.

Donor Who Controls Recipient Charity Must Write Own Receipts, Villareale v. Commissioner, T.C. Memo 2013-74 (March 12, 2013)

A taxpayer co-founded a ferret rescue and made several advances of more than \$250 to the rescue. Seventeen contributions each exceeding \$250 totaled \$7,629. \$2,393 of contributions were for less than \$250. There was no dispute whether the donor made the payment or whether

the charity qualified for deductible contributions. The sole issue was that the donor who was an officer of the charity did not issue receipts to herself for the payments over \$250. The IRS disallowed the deductions, and the tax court agreed that the taxpayer could not claim the \$7,629 of contributions over \$250.

Religious Organization that Promotes Polygamy is not Exempt from Tax, PLR 201310047

A religious organization was seeking tax exempt status under Section 501(d). Section 501(d) allows a collective religious group to avoid tax if all of its income is taxed to its members. The organization required its members to transfer all of their property to the organization and live communally. It operated 18 businesses in areas of housing, software, clothing and agriculture. It paid expenses for its members including housing, food and medical. The organization believed in polygamy or celestial marriage. Its members, however, did not seek marriage licenses for more than one marriage. The IRS ruled that the additional marriages would be common law marriages so the organization's purpose still violated state law. Charitable purposes do not include activities that are illegal or contrary to public policy. Accordingly, the IRS denied tax exempt status to the group. See also PLR 201325015, March 28, 2013, in which the IRS denied 501(c)(3) status to a charitable organization formed to support a polygamous religious organization. The organization claimed it did not practice bigamy, but one of the leaders had a past conviction of bigamy.

Grant to Employer of Disqualified Person not an Act of Self-Dealing, PLR 201311034

A grant to a university to fund a building was not an act of self-dealing even where the spouse of a director of the foundation was an associate vice president for development at the university. The university was of substantial size, and the IRS held that the associate vice president for development could not yield substantial influence over the university. Based in part on an affidavit from the senior vice president for development stating that the grant would not affect the employment, salary, benefits or bonus of the associate vice president, the IRS ruled the grant was not an act of self-dealing.

IRS Issues Favorable Ruling on State Tax Evasion, PLR 201310002 (November 7, 2012)

In PLR 201310002 the IRS determined that a trust established by the donor is not a completed gift by the donor and is not owned by the donor for income taxes purposes. At the federal level, the tax rates for high income taxpayers and trusts are the same, so taxation of income to the trust instead of the donor did not diminish federal income taxes. If, however, the grantor lived in a state with high income taxes, the trust could be situated in a state with low income taxes, reducing the state income tax burden.

Keeping Lots of Cats in Your Apartment Not Charitable, PLR 201315037 (January 14, 2013)

The IRS denied exemption for a cat shelter that consisted of a person maintaining a large number of cats in a two bedroom apartment. The IRS performed internet research to conclude that the caging conditions were not appropriate. Most of the reported expenses of the shelter were personal expenses for the founder. Same for dogs. PLR 201321040.

Creating Superior Sheep is an Exempt Activity, PLR 201315031 (April 15, 2013)

The IRS ruled that a ranch that is used as a retreat center for clergy and to operate a sheep breeding program to create genetically superior sheep is an exempt activity. The charity uses scientific methods to produce sheep with superior genetics and sell them to ranchers. Inferior sheep are slaughtered. These activities operated at a loss even with meat and wool sales.

Charity Must Seek a PLR for Change of Activity Ruling, IRS Information Letter 2013-004 (January 15, 2013)

The IRS confirmed that if a charity wants protection from retroactive revocation of its tax exempt status related to a change in purpose, it must seek a private letter ruling and pay the \$10,000 user fee. Charities that plan significant changes in operation may wish to form a new organization that can get a determination letter for an \$800 fee.

Truck and Tractor Pull Not Charitable Activity, PLR 201322053, March 6, 2013.

An entity organized to promote and produce a national truck and tractor pull is not charity according to the IRS. The entity was a successor to a for-profit LLC that found the event could not work financially without volunteers. Some of the revenue was given to charity, and the pull was intended to promote tourism in the town. Entity took over loan from for-profit LLC. Such a program might work as a 501(c)(4), but IRS said too much private benefit. IRS found purpose was to bail out for-profit and denied exemption.

Website for Services in Exchange for Charitable Gift Not a Charity, PLR 201323037

An organization set up a website on which individuals could offer to perform services in exchange for a gift to a non-profit. The organization collected service fees, and IRS ruled entity was a commercial fundraiser, not a charity.

Kay Bailey Hutchison IRA Does Not Impact Revenue. Jt. Comm. Tax. Estimate of Revenue Impact of H.R. 2289, JCX-13-13, June 25, 2013

The Joint Committee on Taxation has concluded that if spousal IRAs under code section 219(c) are renamed, Kay Bailey Hutchison Spousal IRAs, this will have no impact on federal revenues from 2013 - 2023.

IRS Rulings on NIMCRUT Terminations Use Lower Value for Income Interests, PLR 201325020, March 27, 2013

Consistent with prior rulings, the IRS has held that when terminating a NIMCRUT and paying the donors the value of the income interest, the income interest is valued at the lesser of the stated payout rate of the NIMCRUT or the 7520 rate for the month of termination. The IRS refers to this as “One reasonable method” for calculating the value for the interest. Other methods might be reasonable, but none have been described in the rulings except one PLR several years ago.

Supporting Organization Exempt Status Revoked for Making Private Benefit Loans, PLR 201325014, March 28, 2013

The SO was granted tax exempt status in the 1990's. Given the SO's loose satisfaction of SO rules it likely would not be granted SO classification by the IRS today. The entity primarily used its assets to make loans for disqualified persons. The IRS revoked the exemption for this substantial non-exempt activity.

Deduction for Easement and Cash Gifts Denied. Graev v. Commissioner 140 T.C. No. 17 (June 24, 2013)

The donors contributed cash and a conservation easement to charity. A side letter with charity provides that charity would return cash and cooperate to remove the easement if the deduction was denied. The court found that the deficiencies in the easement meant there was more than a remote possibility deduction would be denied. The donor tried to argue the side letter was ineffective so should be disregarded. Court found letter was effective and further found that the charity likely would honor spirit of letter even if donor had legal defense to enforcement. The deduction for easement and cash gift both were denied.

Tax Court Relaxes Substantiation Rules Crimi v. Commissioner, T.C. Memo 2013-51 (February 14, 2013)

Donors sold land to a county in 2004 for \$1,550,000 and claimed a bargain sale based on 2000 appraisal that stated value at \$2,950,000. The 2000 appraisal had numerous deficiencies including disregarding sales offers at close to the sale price to the county without reason. Tax preparer knew the appraisal was not qualified, but did not advise taxpayer. A 2007 appraisal valued land at \$5,225,000 on contribution date. After extensive review of several reports and experts, the tax court valued property at \$2,968,840. There were numerous technical deficiencies with the acknowledgement of the gift. The acknowledgement was signed by a representative of a charity that did not receive the property as it was deeded to the county. The court found that the charity representative was an agent of the county. The receipt also contained a typo in the legal description of the property that the court excused. For a variety of reasons

including being out of date, the 2000 appraisal that the taxpayers used was not a qualified appraisal. The court held that since the taxpayers relied on their CPA, the failure to have a qualified appraisal was due to reasonable cause. Because of a long history with the CPA without issues, taxpayer reasonably relied on his advice. This is a very favorable ruling for the taxpayers and a deviation from the court's strict application of the substantiation rules in other cases.

Ideas to Reform (read limit) the Charitable Deduction. Senate Finance Committee Staff Report. June 13, 2013

The Senate Finance Committee Staff has explored several possible changes to the charitable deduction in the name of fairness and efficiency. These include repeal, replacing the deduction with a credit, replacing deduction with a matching payment from the government, capping the deduction rate at 28% or capping the total amount that can be claimed at \$50,000 or some other amount. Some simplification ideas include removing AGI limits, creating a single simplified valuation regime for different abusive gift rules, consolidating limits for appreciated property using private foundation rules, removing deduction AGI limit and allowing gifts made by April 15 to be deducted in prior year. The report covers a number of other proposals relating to taxation of charities and is a comprehensive list of reform proposals over many areas.

Charitable Coalition Responds to Reform Proposals. May 13, 2013

The "Charitable Giving Coalition" sent a letter to the Ways and Means Committee of the House of Representatives saying that in light of this Pease Amendment, no further limits should be imposed on the charitable deductions. Specifically, the letter noted that a 28% cap on the deduction rate, a dollar limit on the amount of itemized deductions, an AGI floor, or converting the deduction to a credit all would significantly decrease charitable giving.

Atheist Organization May Challenge Exemption from Determination and Form 990 Accorded to Churches

A federal district court in Freedom from Religion Foundation v. Werfel, No. 3:12-cv-00946 (W.D. Wis. 2013) has ruled that an atheist organization has standing to challenge the exemption

from requesting a determination letter or filing a Form 990 that is accorded to churches. Because the atheist organization would be required to make these filings it is claiming an equal protection violation. A primary reason for the exemption is that the determination process and the Form 990 would lead to an impermissible government entanglement in a church.

H.R. 2832 – Determination Process for Program Related Investments

H.R. 2832 has been introduced to provide greater certainty regarding program related investments. Program related investments are investments made by private foundations to accomplish a charitable purpose such as an investment in low income housing. The investment counts towards the private foundation's 5% required minimum distribution. Other than an opinion of counsel or private letter ruling, there is no way for a private foundation to have certainty that an investment qualifies as a program related investment. An opinion of counsel is not binding on the IRS. Private letter rulings are costly and take nine months or more to obtain. H.R. 2832 would require the IRS to establish a determination process similar to the exemption determination process be available to program related investments. The IRS would be required to process applications in 120 days. The act also would require financial information to be reported by the program related investment to charities, the IRS and the public.

Senator Schumer Says Let them Eat Bambi

Senator Schumer has again introduced legislation, S. 1194, to allow tax benefits for donations and processing of game for distribution to food banks. Only animals killed in the Wild under applicable hunting regulations are eligible for the tax benefit. Under the bill, taxpayers would be entitled to a deduction or the cost of processing game at a certified packing plant. The processing plant would be entitled to an exemption for income related to processing the game if the fee is paid by a charitable organization.

Special Deduction for Artists

H.R. 2482 would allow artists to claim a fair market value deduction for gifts of artistic works created by the artist. Current law limits the deduction for such a gift to the artist's basis – the

cost of creating the work. The work can be literary, musical, artistic or scholarly. The donor must have held the work for 18 months and must obtain an appraisal. The donee must be a public charity which makes a related use of the work. The deduction would be limited to the donor's artistic income for the year and does not carry forward.

IRS Allows Reformation of CRT to Remove Language Treating Make-up as Liability

In PLR 201332011, the IRS approved a reformation of net income with make-up charitable remainder unitrust to remove language that treated the make-up amount as a liability in valuing the trust. In the mid 1990's, the IRS briefly required such language in trusts that allowed capital going to income. Final regulations issued in 1998 instead prohibited allocating pre-contribution gains to be allocated to income. The IRS noted the trust still qualified as to the initial contribution because of grandfathering rules in the regulations, but additional contributions could not be made to the trust. With court approval, the trustee was exercising power to modify the trust to qualify under Section 664. Eliminating the liability for the make-up would increase the value of the trust and result in larger payouts to the beneficiaries. The IRS said that since no deduction had been allowed for the income of the trust, the adjustment that increased the payout was not an act of self-dealing.

Transfer of Property Between Related Foundations is Qualifying Distribution for Both

In PLR 201335020, the IRS ruled that property transferred between two related foundations that was then used for exempt purpose activities resulted in a qualifying distribution for both foundations. Both foundations had the same trustees. One foundation owned a home and a studio of an architect that was open to the public and highlighted the architect's work. The other foundation owned a lot adjacent to the home which had been part of the home's grounds. This second foundation initially started construction of office buildings on the site, but then cancelled the project. After cancelling the project, the foundation donated the lot to the foundation with the home. The foundation with the home removed the office buildings and restored the lot to its former appearance as grounds for the house and incorporated the lot in its exempt activities. Typically a gift from one foundation to another that is controlled by the same persons is not a qualifying distribution unless the recipient foundation in turn makes a qualifying distribution of

the property, usually to other public charities. In this case, however, the IRS ruled that the conversion of the lot to grounds for the architect's house was a qualifying distribution since the dedication of an asset to the charitable purpose of the foundation is treated as a qualifying distribution. The conversion of the lot to exempt use was the equivalent of distributing it to public charities, so the second foundation had made a qualifying distribution that allowed the first foundation to treat its gift as a qualifying distribution.

Foundation and Donor that Forget Form Given Relief

In PLR 201336019, the donor contributed securities to a private foundation but wanted to treat the gift as made to a public charity. Under section 170(b)(1)(F)(ii), the donor can treat the private foundation gift as made to a public charity if the private foundation distributes 100% of the gift to public charities within 3 months and 15 days of the end of the private foundation's tax year. If the private foundation has carry forward excess qualifying distributions for its 5% distribution requirement, it can elect to use the carry forward amount towards its distribution requirement for section 170(b)(1)(F)(ii). The donor's and the foundation's advisors told the donor this election was being used, but did not prepare or advise the donor and foundation that a statement needs to be attached to the Form 990 PF to make the election. Another firm discovered the error, and the foundation asked for relief to make a late filing of the election. Under section 9100, based on the technical nature of the mistake, the reliance on professionals, and the lack of prejudice to the government, the IRS granted the extension of time to file the election.

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SUMMARY OF 2013 ESTATE TAX RULES

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The American Taxpayer Relief Act of 2012 (Act) was enacted on January 2, 2013. This summary highlights the main estate, gift, generation-skipping transfer (GST) and charitable contribution tax laws, as well as the income tax rate increases included in the Act. The highlights of California Proposition 30 tax increases are also included.

\$5 Million Unified Credit

The Act permanently maintains gift, estate and GST unified exemption amount. Thus, taxpayers continue to have the option of making \$5 million of gifts during their life time or at death or in some combination of life time transfers and transfers at death, including transfers to grandchildren or multi-generational trusts. This exemption amount also is indexed for inflation starting in 2012, with the exemption amount for 2013 being \$5.25 million.

The lifetime gift tax exemption only applies to gifts in excess of the annual gift exclusion (i.e., the annual amount a person may gift to any person tax-free). For 2013, the annual gift exclusion is \$14,000 per person (or \$28,000 per married couple).

Top Estate and Gift Tax Rate of 40%

The Act permanently caps the maximum estate, gift, and GST tax rates at 40%.

This is the same as the top income tax rate and minimizes the benefits of strategies that trade income taxes for transfer taxes. Indeed, in many cases, a gift tax may be cheaper than an income tax.

Portability of Estate Tax Credit

The Act makes permanent the “portability” concept, permitted in 2011 and 2012, whereby the unused estate tax exemption amount of the first spouse to die can be passed to the surviving spouse for later use by the surviving spouse (either during life or at death). Under the law prior to 2011, a husband and wife needed to engage in specific tax planning before the death of the first spouse to die in order for the husband and wife to take full advantage of both the husband’s unified credit and the wife’s unified credit. Specifically, the estate plan of the first spouse to die needed to make a gift of an amount equal to the property that can pass under the credit. The gift needed to be structured in such a way that it was not an outright gift to the

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surviving spouse and includable in the surviving spouse's estate. This was often accomplished by creating a trust that benefited the surviving spouse that would make the income and the principal of the trust available to the surviving spouse, but the trust would not be under the surviving spouse's complete control at the surviving spouse's death. If the first spouse died and failed to engage in this planning and the property passed outright to the surviving spouse under a will or trust or intestacy rules, the credit of the first spouse to die was lost. At the death of the surviving spouse only the surviving spouse's credit would be available to shelter the assets from estate tax. Under portability, which is now permanently available, to the extent that the first spouse to die does not use his or her credit, it can be transferred to the surviving spouse who can then add it to his or her credit at his or her death. For couples who fail to plan, portability will provide significant tax savings if their combined assets exceed the credit that would be available to only one spouse (again a 1 in 1000 problem). Some couples may opt for a simplified plan that transfers all of the assets to the surviving spouse along with the deceased spouse's credit. There are trade offs to transferring all of the assets to the surviving spouse, however. The rules for transferring the credit states that the IRS has the ability to examine the estate of the first spouse to die including his or her life time transfers at the death of the second spouse to die to the extent of the credit being used by the surviving spouse. If traditional planning is done, and the first spouse uses his or her entire credit and files an estate tax return, the IRS will be required to challenge that return and that spouse's life time transfers within 3 years of the filing of that return. For some couples it may not be appropriate to give the surviving spouse total control over the disposition of all of the couple's property. This would be particularly true for a couple that has children from other marriages. Under the traditional plan, if the credit is used at the death of the first spouse to die, any appreciation of the property that is subject to that credit after the death of the first spouse to die is effectively sheltered from tax. If the credit is transferred to the surviving spouse with the property of the first spouse to die, the appreciation of that property will be part of the taxable estate of the surviving spouse.

Income Tax Rates

The Act increased income tax rates for the nation's highest earners, while permanently extending Bush-era tax cuts from 2001-2003 for all other taxpayers.

- Raises the top tax rate to 39.6% for married couples earning \$450,000; single taxpayers earning \$400,000. These amounts will be indexed for inflation. The 2013 ordinary income tax rates are now 10 percent, 15 percent, 25 percent, 28 percent, 33 percent, 35 percent and 39.6 percent.
- Raises long-term capital gains and qualifying dividends tax rate to 20% (from 15%) for taxpayers in the 39.6% tax bracket for regular and alternative minimum tax.
- Permanently extends Bush-era tax cuts from 2001 and 2003 for all other taxpayers.

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- Reinstates phaseout of personal exemptions and overall limitation on itemized deductions for married couples filing jointly earning over \$300,000 and single taxpayers earning over \$250,000.

Ira Charitable Rollover

The Act allows taxpayers in 2013 who are age 70 ½ or older to directly transfer up to \$100,000 from their IRAs to charitable organizations without first including the distribution in their taxable income. In addition, a distribution from an IRA to a taxpayer in December 2012 can be treated as an IRA charitable rollover in 2012 if the distribution is transferred by the taxpayer in cash to a charitable organization before February 1, 2013. Also, a direct payment from an IRA to a charitable organization completed by February 1, 2013 can be treated as if made on December 31, 2012.

California Proposition 30

Personal income tax rates for high-income earners are increased effective for taxable years beginning on or after January 1, 2012. Taxpayers, except heads of households and married filing jointly taxpayers, are subject to personal income tax at a rate of 10.3% for income in excess of \$250,000; at a rate of 11.3% for income in excess of \$300,000; at a rate of 12.3% for income in excess of \$500,000; and at a rate of 13.3% for income in excess of \$1,000,000. The above thresholds for married filing jointly taxpayers are double those for single taxpayers except the rate of 13.3% for income in excess of \$1,000,000 is applicable. The state sales tax also increases by ¼ of 1% effective January 1, 2013.

Planning Considerations

Taxpayers with substantial wealth will want to consider using the \$5.25 million gift and generation-skipping transfer tax exemptions to make gifts in 2013 to the extent their exemption amount is still available.

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Accepting Gifts Using a Single Member LLC

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History of IRS Rulings on use of Single Member LLCs by Charities

- A single member LLC is an LLC that only has one member.
- IRS Rulings:
 - Announcement 99-102- a SMLLC whose only member was tax-exempt was disregarded for tax purposes (no EIN or information return required)
 - PLR 200851044- employees of SMLLC treated as member charity's employees for purposes of § 403(b) plan
 - 2010 information letter (2010-0052)- private foundation grant to a charity's SMLLC was treated as made to member charity for purposes of IRC §§ 4942 and 4945
 - Notice 2012-52- contributions to a charity's SMLLC would be treated as if made to member charity

Liability Protection

- LLC Liability Protection- An LLC member (the charity) is not liable for any contract, tort or other obligation of the LLC by virtue of being a member. An LLC member-manager is also not liable for any contract, tort or other obligation of the LLC by virtue of being a manager. As a result, the charity's assets are generally not subject to liabilities that arise from property held in the LLC.
- The liability protection can be "pierced" if the LLC's separate entity status is not respected.

Federal Income Tax Treatment

- SMLLC is a disregarded entity (unless elects otherwise).
- No federal exemption application required.
- Treated as a component of its parent.
- SMLLC's assets and operations treated as the parent's for tax and information reporting purposes.
- Does not file its own federal return and pays no federal income taxes.

California Tax Treatment

- Although an LLC in California is not required to pay tax on its net income, California does assess an annual minimum tax on LLCs and additional fees based on its gross receipts.
- An LLC must pay a minimum franchise tax of \$800 annually regardless of its gross receipts or net income.
- In addition, beginning with gross receipts of \$250,000, the LLC must pay an additional annual fee based on its gross receipts derived or attributable to California for the taxable year.

Gross Receipts	Fee
\$250,000-\$499,999	\$900
\$500,000-\$999,999	\$2,500
\$1,000,000-\$499,999,999	\$6,000
\$5,000,000+	\$11,790

Title Holding Company Exemption

- An LLC that is wholly-owned by an organization (or organizations) exempt from taxation under Section 501(c) of the Internal Revenue Code can qualify as a “title holding company,” entitling it to an exemption from California’s LLC taxes and fees.
- An LLC that is described by Section 501(c)(2) of the Internal Revenue Code is entitled to the exemption. Specifically, it must be organized for the exclusive purpose of:
 - Holding title to property
 - Collecting income therefrom, and
 - Turning over the entire amount thereof, less expenses, to an organization which is exempt under Section 501(c) of the Code.

Title Holding Company Exemption

- No business activities are allowed beyond collecting income from and paying expenses with respect to the property to which it holds title.
 - Cannot operate a manufacturing, service or sales enterprise (even if its activities would further an exempt purpose).
 - Any business must be operated by the parent.
- Type of property
 - Real property, investment stocks, bonds and certain types of oil and mineral interests are acceptable so long as the income it receives from such assets is passive.
 - May hold title in fee simple or as a leasehold interest.

Title Holding Company Exemption

- Cannot accumulate income unless it is for identified future expenses related to the property.
 - Distributions must be made to the parent.
 - The IRS has suggested that distributions be made by the end of the succeeding taxable year.
- Form of the distribution is not important but payment must actually be made.
 - Allowing the parent rent free use of the property is a permissible form of distribution.

Title Holding Company Exemption

- Generally cannot have unrelated trade or business income (“UBTI”) to qualify for the exemption.
 - However, the receipt of certain otherwise disqualifying UBTI will not jeopardize its exempt status (but will be taxable to the parent). Such income includes:
 - Debt-financed income
 - Rent based on income or profits
 - Interest, annuities, royalties and rent of a controlled entity
 - Certain rents from personal property
 - Income incidentally derived from holding real property (e.g., income from vending machines or parking)

California Property Tax Welfare Exemption

- Unless exempt, all real property and certain tangible personal property in California is taxable at a rate of one percent of the assessed value (plus the amount necessary to fund certain voter approved obligations).
- The exemptions that are applicable to a nonprofit corporations include:
 - Church and Religious Exemptions
 - Museum, Library and Educational Exemptions
 - Welfare Exemption
- A SMLLC may be a qualifying organization for welfare exemption purposes if it is wholly-owned by a qualifying organization and if it meets specific organizational and operating requirements.

California Property Tax Welfare Exemption

- Under the welfare exemption, real and personal property is exempt from taxation if:
 - the entity seeking the exemption is a “qualifying organization”;
 - the property is both owned and operated by a “qualifying organization”; and
 - the property is used *exclusively* for religious, hospital, scientific or charitable purposes.

California Property Tax Welfare Exemption

- Definition of a “Qualifying Organization”
 - Must be organized and operated for religious, hospital, scientific or charitable purposes.
 - Being tax-exempt under Internal Revenue Code Section 501(c)(3) is not sufficient.
 - The exemption is not extended to organizations that have an educational purpose so the organization’s purpose must fit within the definition of charitable under the welfare exemption.
 - Must not be organized or operated for profit.

California Property Tax Welfare Exemption

- No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.
- Must have an acceptable dissolution clause and statement of irrevocable dedication in its articles.
- Must be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or California Revenue and Taxation Code Section 23701d.
 - Title holding companies that are *nonprofit corporations* and have an exemption under Section 501(c)(2) of the Internal Revenue Code will not qualify.
 - LLCs can rely on the exempt status of its parent organization(s).

What are the Alternatives?

- Form a separate, controlled nonprofit corporation
 - To avoid income taxes and to be a qualifying organization for the welfare exemption, must be recognized as a 501(c)(3) organization (*i.e.*, must file a federal exemption application).
 - Must have sufficient exempt activities that will allow it to qualify as a 501(c)(3) organization
 - UBTI allowable (if insubstantial)
 - No requirement that distributions be made to a parent
 - Distributions made to “parent” may not count toward its public support test (if applicable)
 - “Parent” does not have to qualify for welfare exemption

What are the Alternatives?

- Form a Type I supporting organization
 - Must file a federal exemption application
 - More regulated than other public charities
 - Supporting and supported organization must both qualify for the welfare exemption
 - UBTI allowable (if insubstantial)
 - No requirement that distributions be made to the supported organization
 - Distributions made to the supported organization may not count toward its public support test (if applicable)

How Not to Run a Nonprofit

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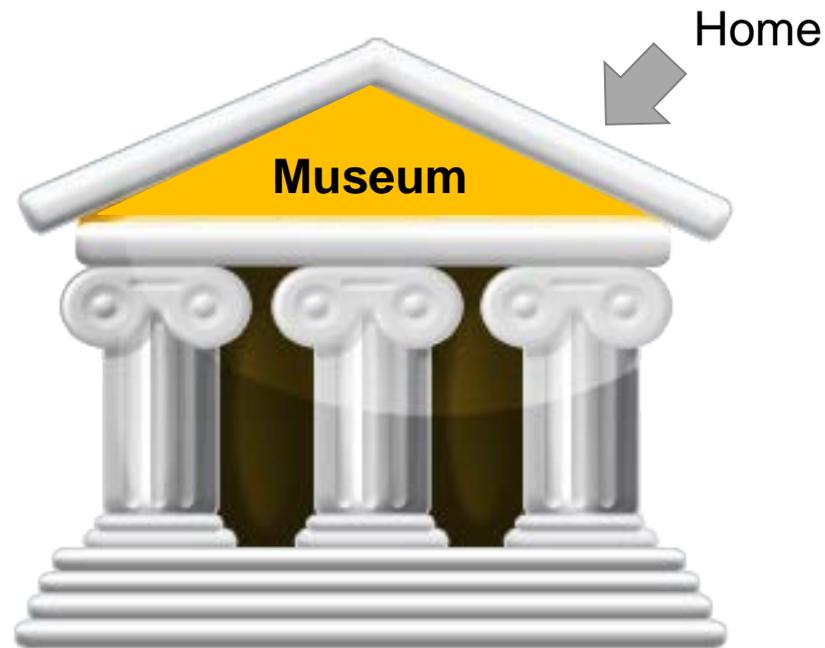
THE BEGINNING

- Husband and Wife start a . . . Museum



THEY BUY A PLACE

- And live on the top floor



DEDICATED

- 24/7
- No Salary
- Lend Money for Operations

SUCCESSFUL

- Thousands of visitors
- Hundreds of volunteers
- Celebrity endorsements
- Large donations

ATTORNEY GENERAL

Kamala Harris

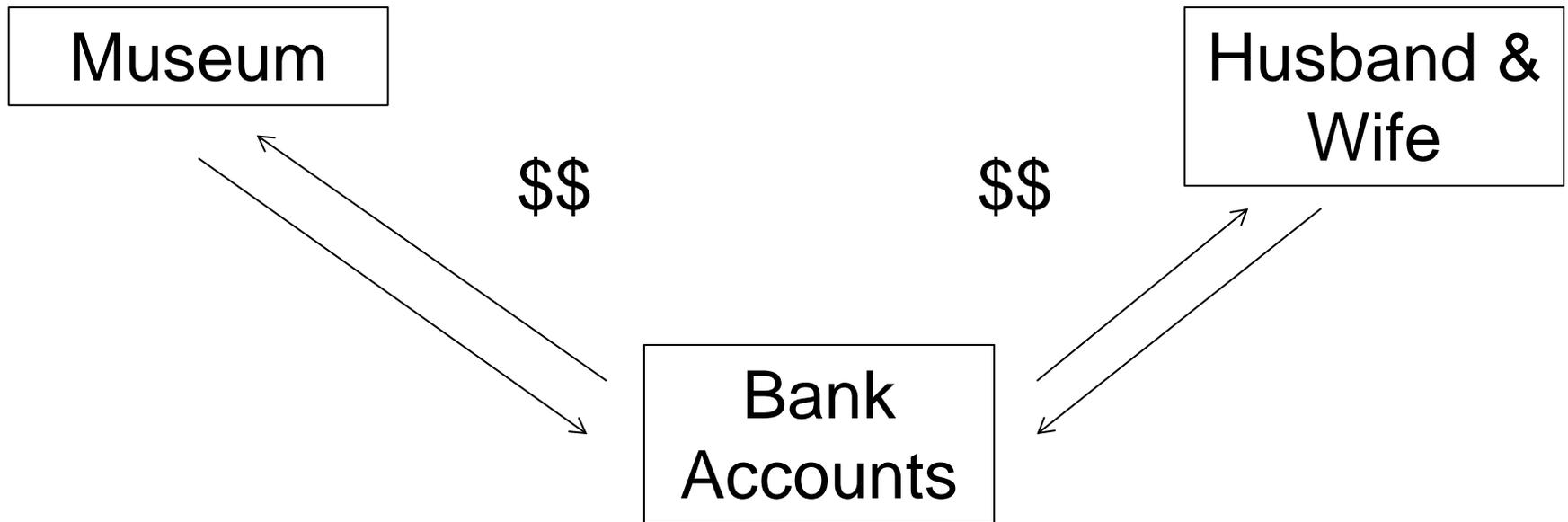


Financial Irregularities

NO BOARD OF DIRECTORS

- Names on 990
- No meetings
- No minutes

NO SEPARATE BANK ACCOUNTS



NO SEPARATE BOOKKEEPING

- One cart at Costco

NO LEASE AGREEMENT

- Museum paid mortgage

NO LOAN AGREEMENT

- Only handwritten notes

Loaned

\$ 77,402.64 in 2003

paid 14,311.00
TO credit cards

OWES

\$ 63091.64 For 2003

owed \$15,000
From the year 2000
so, to date, OWES

\$ 78,091.64

owed 5,169.80 For rent

Total owed to

\$ 83,261.44 For 2003

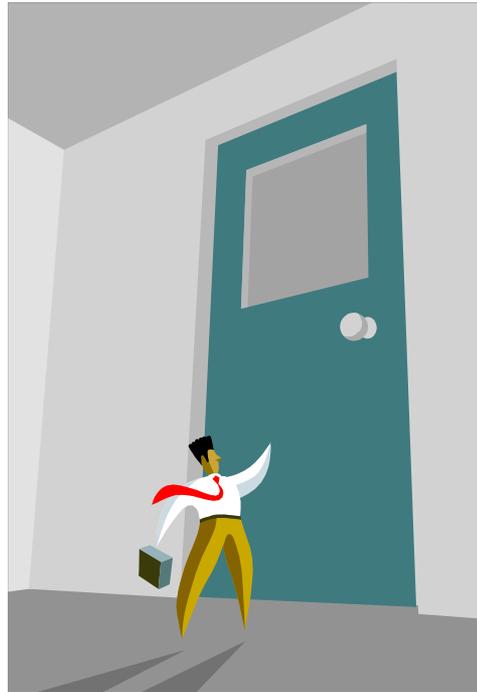
NO COMPENSATION REPORTED

- \$\$ taken from museum = repayment of loan

NO EMPLOYEES REPORTED

- But lots of workers

WHAT NOT TO DO WHEN AG COMES KNOCKING



- Don't make up documents
- Don't destroy documents
- Don't fire all your employees

WHAT WE DID

- File claim against D & O policy
- Hire Forensic Accountant
- Establish Independent Committee of Board
- Cooperate

ISSUES TO RESOLVE

- Excess Benefits/Self Dealing
 - Compensation
 - Loan
 - Rent
 - Travel

ISSUES TO RESOLVE

- Breach of Fiduciary Duty
 - Employment issues
 - AG issues

LESSONS LEARNED

- Board of Directors
 - Majority Independent
- Business vs. Personal
- Hire good help
- Buy Insurance

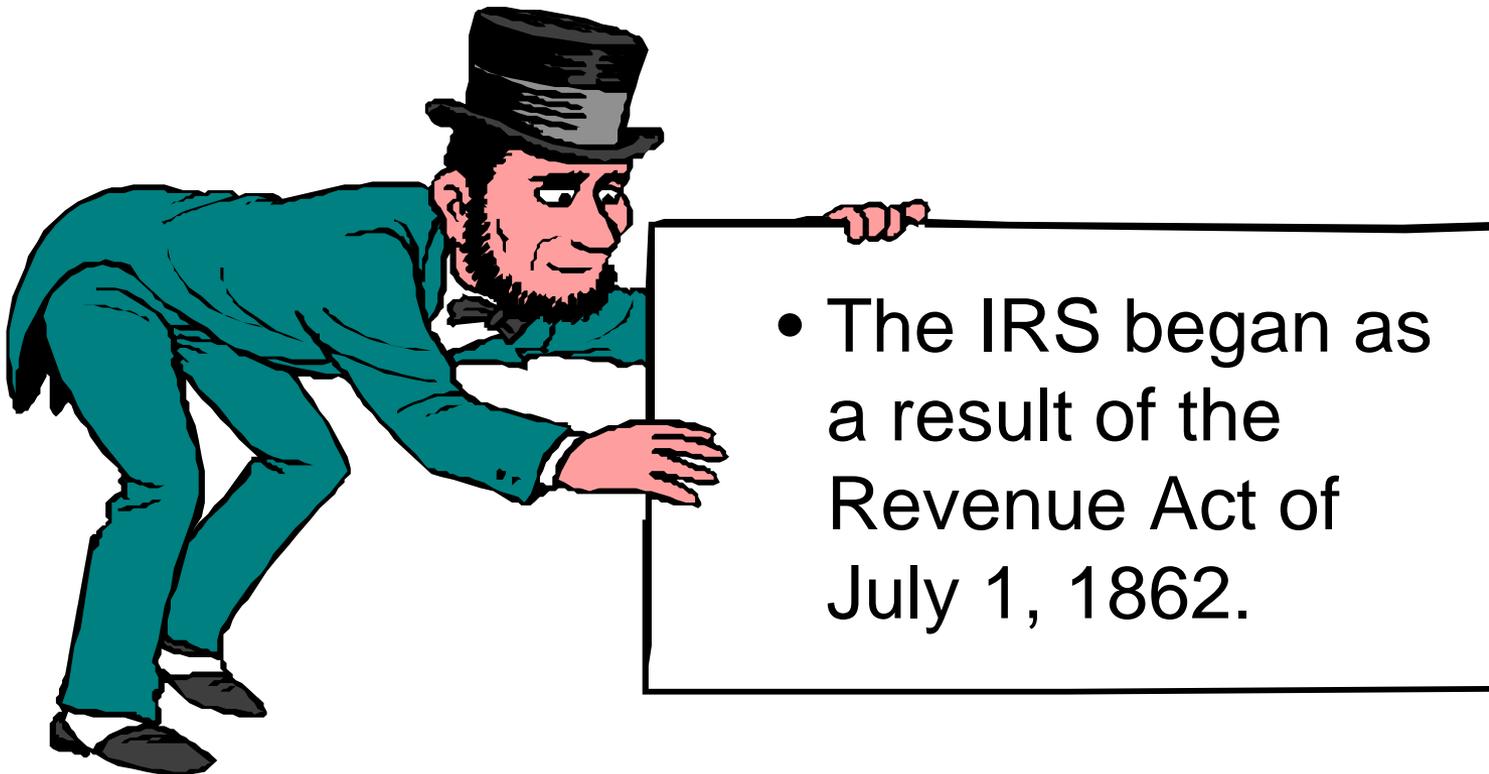
What You Need to Know about Dealing With the IRS

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Overview Of The Internal Revenue Service

Organizational History Of The IRS



Overview Of The Internal Revenue Service

Organizational History Of The IRS

- In the early years of the income tax, the IRS was organized in the Washington, D.C., headquarters and the field offices on a program or “type-of-tax” basis
- After 1951, the IRS became organized along functional lines – operations, administration, technical, etc.
- After 1998, the IRS underwent a significant reorganization along functional lines

Overview of the Internal Revenue Service

Basic Structure Of The IRS

- Current Overview:
 - The IRS is a component of the Department of the Treasury
 - The IRS Oversight Board oversees the IRS (six members appointed by the President)
 - Headed by the Commissioner of Internal Revenue. (5 year term)

Overview of the Internal Revenue Service

Basic Structure Of The IRS

- Organized along the type of taxpayer
- Four operating divisions
 - Large and Mid-size Business
 - Small Business/ Self-Employed
 - Tax Exempt & Government Entities
 - Wages & Investments

Overview of the Internal Revenue Service

Basic Structure Of The IRS

- The TE/GE Division is headquartered in Washington
- Other offices in Brooklyn, Philadelphia, Baltimore, Atlanta, Dallas, Chicago, Denver, St. Paul and Los Angeles

Overview of the Internal Revenue Service

Basic Structure Of The IRS

- The Chief Counsel
 - Serves as the legal adviser to the IRS Commissioner and personnel
 - Provides legal advice to the IRS and to public on matters pertaining to the administration and enforcement of tax laws

Dealing With The IRS: When You Want To Contact Them

Informal Contacts

- National Office
- Taxpayer Advocate

Dealing With The IRS: When You Want To Contact Them

Application for Tax Exemption

- Overview
- Form 1023
- Appeal of Unfavorable Determination
- Declaratory Relief in Court

Dealing With The IRS: When You Want To Contact Them

Application for Tax Exemption

- Case Study:
 - Communities desire to form organizations to take over failing newspapers

Dealing With The IRS: When You Want To Contact Them

Application for Tax Exemption

- Lessons Learned
 - Not all 1023s are alike
 - Not all IRS examiners are alike
 - Be patient
 - Know when to quit
 - Be flexible

Dealing With The IRS: When You Want To Contact Them

Ruling Request

- Overview
 - What is it?
 - When would an exempt organization seek a ruling?
 - What are the pros and cons?

Dealing With The IRS: Audit Of A Tax-Exempt Organization

Types of Audits

- Correspondence or office audit
 - For small exempt organizations
- Field Audit
 - For most exempt organizations

Dealing With The IRS: Audit Of A Tax-Exempt Organization

Pre-Audit Considerations

- Maintenance of good books and records
- Keep privileged materials separate
- Identify sensitive issues
- Tax compliance audit by or under direction of counsel

Dealing With The IRS: Audit Of A Tax-Exempt Organization

Notification of Audit

- Letter from IRS
- Retain counsel
- Designate point person
- Identify potential issues
- Instructions to employees

Dealing With The IRS: Audit Of A Tax-Exempt Organization

Preliminary Meeting With IRS

- Establish operating procedures and ground rules
 - Obtain list of participants from IRS
 - Establish a timetable

Dealing With The IRS: Audit Of A Tax-Exempt Organization

Preliminary Meeting With IRS

- Scope of audit and information needed
- Request all IDRs and other communications go through point person
- Procedures for contacting third parties

Dealing With The IRS: Audit Of A Tax-Exempt Organization

The Audit

- Provide separate room(s) for Revenue Agent(s)
- Requested documents should be taken to the room(s); audit teams should not be permitted to look through files

Dealing With The IRS: Audit Of A Tax-Exempt Organization

The Audit

- Conclusion of Audit
 - Most audits resolved by mutual agreement of parties
 - Typically informal agreements used to close case
 - Closing Agreement

Dealing With The IRS: Audit Of A Tax-Exempt Organization

The Audit

- Appeal
- Court

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

Case Study



Donor has a parcel of real property that he is selling. Before the escrow closes, Donor reads about charitable remainder trusts

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

Case Study (cont.)



In the latest issue of Big Business magazine and decides to gift the real property to his alma mater, Big State U.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

Case Study (cont.)



The planned giving office at Big State U. prepares the charitable remainder trust document and the document is signed a week before closing.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

Case Study (cont.)



Eighteen months later, the donor is audited by the IRS and the IRS contacts Big State U.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Avoid Killing the Golden Goose"



- Manage tax expectations at the front end.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Avoid Killing the Golden Goose"

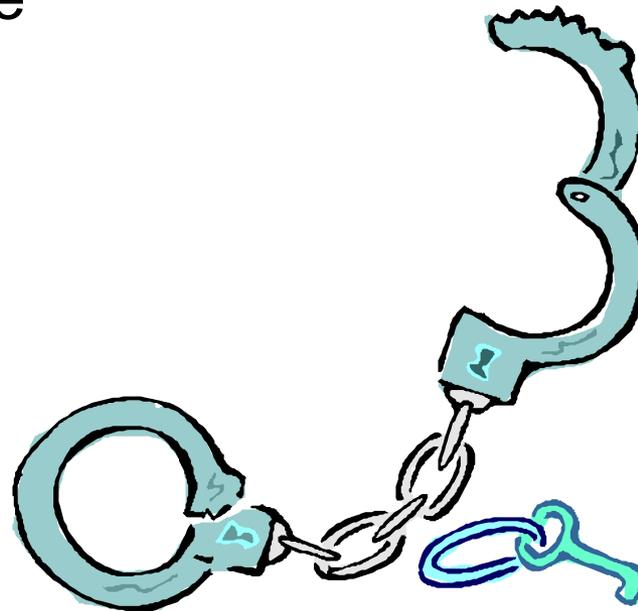


- Communications with Donor after being audited by the IRS.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Thou Shalt Not Lie, It Is A Crime"

- Statements to an IRS Agent are subject to the United States Code provisions on communications with federal employees.



Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Thou Shalt Not Lie, It Is A Crime"



- Always ask for written verification of document requests.
 - IDRs
 - Summons and Subpoena power of IRS

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"An Ounce Of Prevention"



- Document retention policies of charity.
- Separate charity privileged documents from donor privileged documents.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"An Ounce Of Prevention"



- Sometimes less is more.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"An Ounce Of Prevention"

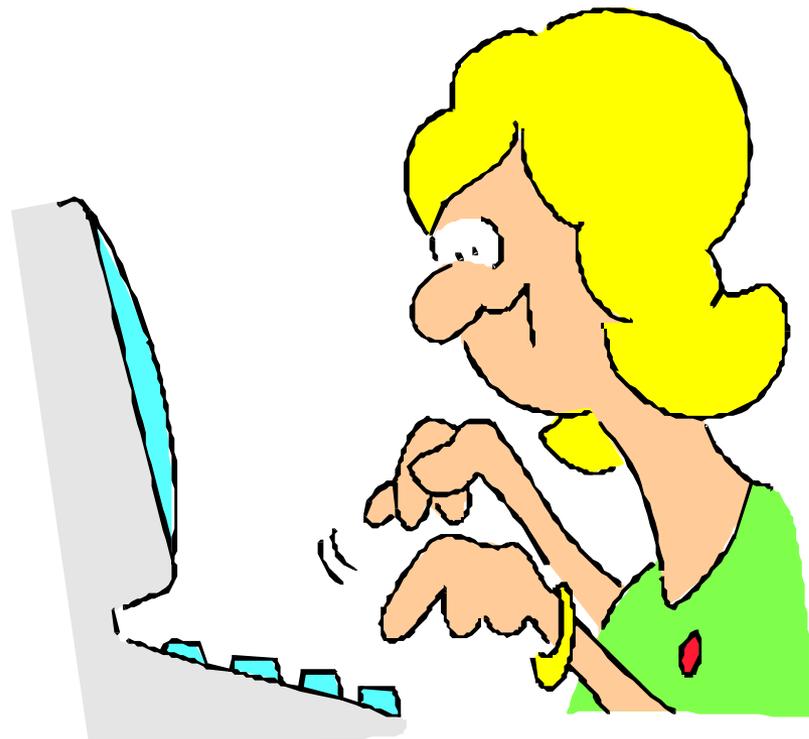


- Confirm that your files are your Donor's files.

Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Well Done Is Better Than Well Said"

- Follow-through on your gifts.
- If the charity was to take some action, document it now.



Dealing With The IRS: Audit Of Donor (Four Principles For Survival)

"Well Done Is Better Than Well Said"



- Memories fade a lot faster than ink/toner.

ROOFTOP RECEPTION

(5:00 P.M. TO 7:00 P.M.)

~HORS D'OEUVRES~

SHRIMP & AVOCADO COCKTAIL FORKS
POACHED BABY PEARS, STILTON CHEESE & CANDIED PECANS
CHICKEN, PROSCIUTTO & SAGE LOLLIPOPS, LEMON GARLIC PARMESAN AIOLI
BEEF & VEGETABLE SHISH KEBOBS

~GLOBAL CHEESE~

CRUMBLERED FETA, DRUNKEN GOAT, TRUFFLE TREMOR BRIE, POINT REYES BLUE,
SPANISH MANCHEGO
GARNISHED WITH DRIED FRUITS, FRUIT GELEES, GRAPES, OLIVES, ROASTED
PEPPERS, CROSTINI, GOURMET CRACKERS AND BREAD STICKS

~DESSERT~

CHOCOLATE DIPPED STRAWBERRIES
MINIATURE FRENCH PASTRIES
FRESHLY BAKED BROWNIES
HOME STYLE COOKIES
COFFEE AND TEA

~WINE SELECTIONS~

TALLEY "ROSEMARY'S VINEYARD" CHARDONNAY, ARROYO GRANDE 2011
DOMAINE SERENE "EVENSTAD RESERVE" PINOT NOIR, WILLAMETTE VALLEY 2008
PÈRE DE FAMILLE BETZ CABERNET SAUVIGNON, COLUMBIA VALLEY 2006
ROAR "SIERRA MAR" PINOT NOIR, SANTA LUCIA HIGHLANDS 2011

IMPORTED AND DOMESTIC BEERS
MINERAL & BOTTLED WATER
FRESH FRUIT JUICES
ASSORTED Soft DRINKS

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Your Charity and its Leadership in 2013**

September 18, 2013
Jonathan Club, Los Angeles

Guest List

Vince Fraumeni	Fraumeni Consulting
Margaret M. Karren	Green Hasson Janks
John Lim	Lim, Ruger & Kim, LLP
Hyepin Im	KCCD
Donella M. Wilson	Green Hasson Janks
Stephanie Hsieh	City of Hope
Nichole Baker	California Community Foundation
Rob Myers	Hathaway Sycamores Child and Family Services
Philip Dunn	Serving California
Renata Simril	Los Angeles Dodgers Foundation
Cris Lutz	The Huntington
Carol A. Bradford	California Community Foundation
Ryan Shumacher	California Community Foundation
Gian F. Brosco	Nevada Community Foundation
Mike Dreyer	Dreyer, Edmonds & Robbins
Matthew L. Rayer	Temo Arjani LLP
Howard Moss	LA Opera
Ryan McDowell	Merrill Lynch
Kenneth Bodenstein	Kenneth Bodenstein, CFA
Farrah Azizi	The Center on Philanthropy and Public Policy, USC
Ron J. Kall	Gavin de Becker & Associates, Inc.
Peter Braveman	Cedars-Sinai Medical Center
Cathi Chadwell	Huntington Memorial Hospital
Jane Haderlein	Huntington Memorial Hospital
Laura Schenasi	Torrance Memorial Medical Center
Pamela R. Ross	Pamela R. Ross, CPA
Paul Vandeventer	Community Partners
Michael Berry	Michael D. Berry, CPA
Carl W. McKinzie	FirstFed Financial Corp.
Carol Widmer	California State University Fresno
Patrick Escobar	LA84 Foundation
Nicole Weaver-Goller	Orthopaedic Institute for Children
Jackie Lantz	Orthopaedic Institute for Children

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Wayne Herron	Glendale Memorial Health Foundation
Nancy Baxter	
Angela Wong	Self-Realization Fellowship
Kathrin Schroeter	Self-Realization Fellowship
Olivia Gahlsdorf	Self-Realization Fellowship
Mary Kenney	Self-Realization Fellowship
Hally Prater	The Huntington
Bonnie Taylor	The Huntington
Maxene Johnston	Johnston & Company
Jay O'Neal	City of Hope
Rusty Robertson	Robertson Schwartz
William C. McMorrان	Green Oak Consulting Group
Jaren Boczan	Dreyer, Edmonds & Robbins
Layne B. Pinkernell	Colburn Foundation
Susan Germer	ExED
Craig Burger	Covington Capital Management
Leilani Beaver	Kaufman Legal Group
René Seidel	The SCAN Foundation
Brent Hunter	California State University San Bernardino
Gregory D. Schetina	City of Hope
Dahni Tsuboi	City of Hope
Simon Rawlinson	Northern Trust
Tim Stinson	Northern Trust
Chang H. Chae	Hoffman Sabban & Watenmaker
Barry C. Peterson	The Private Bank at J.P. Morgan
Alex Ambroz	The Private Bank at J.P. Morgan
Patricia Neville	Asian Americans Advancing Justice
Steve Meier	Pfaffinger Foundation
Deborah J. Stouff	Retirement Housing Foundation
Dina-Marie Kulzer	Retirement Housing Foundation
Allyson B. Simpson	California Institute of Technology
Nichol Whiteman	Los Angeles Dodgers Foundation

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Bill Burford	JP Morgan Private Bank
Steve Cobb	California Community Foundation
Maria Wronski	Broadcom Foundation
Paula Golden	Broadcom Foundation
Bill Hbranchak	Temo Arjani, LLP
Elva Sandoval	Kids in Sports
Lupe Rivera	Kids in Sports
Ryan McDowell	Merrill Lynch
Fraser McAlpine	Merrill Lynch
Marcia H. Suzuki	LA84 Foundation