



Mosherlaw Nonprofit Update

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Understanding the Nonprofit Persona, and Why It Matters	1 What is a persona? Some may call it image, mission, or identity. A nonprofit's persona is a reflection of its public identity and how its essential core values and ethos are perceived by donors, employees, volunteers, and others. Consequently, in the world of charitable, religious and educational nonprofits, an organization's persona is vital to its success. Likewise, a nonprofit's persona has multiple legal ramifications that can contribute markedly to whether it thrives, withers, or merely hobbles.
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reflects its values, a well-defined mission, and both the passion and capability to engage in its mission. Appearing to be something that it is not, with a distorted persona, generally works against a nonprofit's best interests.

The corporate persona includes several aspects of charitable organizations, such as its governing board, staff, and volunteers. A positive *esprit de corps* among a nonprofit's workers is evidence of the organization's effective operation, stability and growth. The governing board should capably drive an organization's mission since it bears the ultimate responsibility for managing its public image, good-will, and community reputation. In turn, new workers and potential donors can gain inspiration and enthusiasm for the organization's mission through a strong, harmonious persona.

Occasionally, a single director is so dominant that the corporate persona becomes the image of that person. Seldom is this situation good for a charity in the long run. A disabling condition known as "founder's syndrome" is an unfortunate result of a governing board that is overly controlled by one or two individuals. A dysfunctional board of directors is often the last group to understand and recognize the potential devastation of "founder's syndrome" to the corporate persona, while donors are often the first.

While in many respects a nonprofit's persona will be reflected in its public image, its persona should also be memorialized in its bylaws and related governing policies. Does the nonprofit's persona reflect a balanced community involvement? If so, the bylaws should require some directors from specific geographic regions, users of the nonprofit's services, or other charitable organizations. Does the nonprofit promote itself as being accountable to others? Then the bylaws should provide structurally for reporting to a parent or other related organization and perhaps have other controls. Does the organization's persona reflect a vested involvement of beneficiaries, such as persons who attend religious services or partake of cultural institutions? Then the bylaws likely should provide for membership in some form. These are just a few examples of the critical ways that bylaws exemplify and help shape a nonprofit's corporate persona. There are few truisms more important than the admonishment to "know thyself" and this wisdom applies to corporations as well as individuals. ❖

Insurance — Planning Ahead



When it comes to insurance, the devil is in the details. Few nonprofit boards have the expertise and patience to review the often lengthy definitions, exclusions, and endorsements that are typical of modern insurance policies. But since each insurance policy is essentially a legal contract, it is imperative to understand the terms and conditions of each policy's coverage. Below are three common insurance mistakes made by nonprofits, even ones that are otherwise well managed.

wise well managed.

The first mistake arises when a nonprofit establishes appropriate indemnification provisions in its bylaws for its directors and officers but fails to secure D & O insurance to effectively fund the indemnification policy. This results in a significant gap in coverage that could force the nonprofit to pay the indemnification costs without the benefit of insurance.

A second and similar mistake is when a nonprofit executes a commercial contract without understanding whether and how its insurance will cover the contractual obligations. Contracts usually require a party to make representations, warranties, and indemnities, including the payment of attorneys' fees. These provisions are common in real estate, joint-venture, and intellectual property agreements.

Nonprofit board members should make sure that the organization's insurance coverage, or reserve assets, will sufficiently satisfy these promises and obligations. The nonprofit must further evaluate if its relationship and activities with the contracting party require listing the party as an "additional insured" or "additional named insured" on one or more of the nonprofit's policies.

The third mistake arises when a nonprofit is organized and operated through more than one legal entity. Great care must be taken to ensure that each entity within a multi-corporate structure contains the insurance necessary and appropriate to its individual operations and risks. Proper measures often include naming the subsidiary or parent as an "additional named insured" or "related organization" on certain policies. Conversely, it could also require maintaining separate and distinct insurance policies, even with different providers, to ensure the nonprofit's organizational structure is adequately protected. Each situation, particularly with multi-organizational structures, is unique and should be carefully evaluated.

The time to realize whether insurance coverage is sufficient is not after an insurable incident arises. Be prudent and plan ahead. In addition, work with legal counsel to ensure that insurance consultants and underwriters understand the nonprofit's legal structure, contractual obligations, operations, and risks. While proper coverage may result in an increased premium, an unintended lack of coverage may be disastrous. Inadequate insurance coverage is not worth any premium. ❖

Provena: Tougher Standards for Charitable Property Tax Exemptions

On March 18, 2010, the Illinois Supreme Court issued a much-anticipated ruling in which it denied charitable property tax exemption to a major hospital. In brief, the Court heavily scrutinized the hospital's fee-based revenue structure. In addition, at least some of the justices insisted on evidence of "relief of government burdens" through provision of charity, which could be problematic for many organizations such as those engaged in certain community activities or the fine arts.

Provena's clear lesson for all charitable organizations seeking property tax exemption is that their "charity" should be real, significant, and quantifiable. Substantial amounts of nonprofit organizations' services and goods should be given away, with accompanying documentation to prove it. Organizations that greatly rely on government contracts should step up efforts to obtain charitable gifts, grants, and other donations demonstrating their charitable support.

For more information on obtaining or preserving your organization's property tax exemption, particularly if the organization charges fees, please contact an attorney in our office. Additional information on this landmark case is also available at www.moshierlaw.com under "Newsletter Archives" (special edition – March 31, 2010). ❖



NOTE: The articles in this newsletter contain legal and tax information of a general nature and may not be relied upon for making decisions concerning tax liabilities or legal issues. Consult your attorney or accountant for professional advice.

Volunteer Tax Deductions



Are expenses incurred for volunteer work deductible? Consider if a person is planning a church mission trip to El Salvador to help build houses, and the church will not cover the airfare. The volunteer may deduct his or

her properly documented travel expenses and possibly other expenses as well. Similarly, if a person serves as a volunteer board member, his or her unreimbursed travel expenses to attend meetings and other functions may be deductible. Several IRS guidelines apply for taxpayers who file an itemized Schedule A with their IRS Form 1040.

First, only expenses that are directly related to qualified volunteer services may be deducted. Examples of related expenses include transportation, lodging, and meals. If items such as food, books, building materials, or other tangible items are purchased for the charity, then these expenses also generally may be deductible.

Second, volunteers may not deduct the value of their services. Thus, if a person spends 40 hours laying brick in El Salvador, he or she may not deduct the hourly wage of the average bricklayer. However, the person may deduct the costs of supplies brought and used on behalf of the charity.

Third, the expenses must be unreimbursed, be reasonable, and not consist of personal expenses.

Fourth, the 2010 charity rate for vehicle mileage is 14¢ per mile. This is significantly lower than the business rate.

Fifth, no out-of-pocket expenses are deductible if there is a significant element of personal pleasure associated with them. Not even partial deductions are permitted. This element is assumed "significant" if the importance and/or duration of the duties to the charity are minor in relation to an entire trip or other service activity. This does not mean that volunteers may not enjoy their work. For a day at the beach during a week-long, labor intensive missions trip, the trip expenses should be deductible. But if the meetings are only one hour per day, the deductibility of these expenses is questionable.

Last, as with other tax deductions, volunteers must maintain reliable records to satisfy applicable substantiation requirements, including pertinent dates, amounts, receipts, and descriptions of the charitable purpose of out-of-pocket expenses. For unreimbursed expenses of more than \$250, a volunteer also must obtain a written acknowledgment from a donee organization with a description of the expenses incurred on behalf of the organization, a statement of whether the donee provided any goods or services in return, and a good faith estimate of any such goods or services provided in return other than intangible religious benefits. ❖

Speaking of . . .

Our attorneys regularly speak at a variety of venues on topics that are germane to nonprofit organizations. Highlights of upcoming events include the following.

"Understanding Tax and Reporting Responsibilities" on June 15, 2010, from 9 a.m. to 12 p.m., and sponsored by CPA's for the Public Interest (1-800-993-0393, course code PI141, 550 W. Jackson Boulevard, Chicago, \$40.00).

"Employment Law for Nonprofits" will be offered at the Christian Community Development Association's national conference in Chicago (Sept. 7-11, 2010, www.cdda.org).

"Creative Strategies in Challenging Economic Times" is an all-day attorney seminar on September 16, 2010 in Chicago, sponsored by the Illinois Institute of Continuing Legal Education.

"Getting Your House in Order" is a presentation on legal issues affecting religious organizations on September 23, 2010, at Willow Creek Community Church in South Barrington, Illinois, and sponsored by the Evangelical Council for Financial Accountability (www.ecfa.org).

Michael Mosher also will teach a nonprofit law class this fall at John Marshall Law School. As always, we value the opportunity to provide educational opportunities to our clients and other friends, and we encourage you to partake of them as appropriate. ❖



Employment Tax Credits: Come and Claim Them!



Under recent legislation intended to alleviate labor costs and spur new jobs, new tax credits are available to nonprofit and for-profit employers alike.

1. "HIRE" Act

Under the Hiring Incentives to Restore Employment Act (effective March 19, 2010), employers may qualify for two types of tax credits. The Act applies to persons hired between February 3, 2010 and January 1, 2011 who (a) were previously unemployed, (b) do not replace any laid off employees, and (c) are not related to the employer. For a person to qualify as "previously unemployed," he or she must certify by signed affidavit (IRS Form W-11) that he or she has not been employed for more than 40 hours during the 60-day period prior to the date of new employment. Such persons may include recent school graduates, temporary workers, and previously laid off individuals.

The first tax credit under the HIRE Act is for partial payroll tax forgiveness: employers are exempt from paying the employer's 6.2% share of Social Security taxes on wages paid during 2010 to qualifying new hires. Second, employers who retain these employees for at least 52 consecutive weeks are eligible for an "Employee Retention Tax Credit" (ERC). This credit is limited to the lesser of \$1,000 or 6.2% of wages paid to the qualifying employee. For the ERC to apply, the compensation paid in the second 26-week period must be at least 80% of the compensation paid in the first 26-week period.

Eligible employers must elect between taking the HIRE tax credits or the Work Opportunity Tax Credit (WOTC), which is aimed at helping disadvantaged persons obtain employment. For tax-exempt nonprofits, the WOTC will be of no value unless they have income tax liability such as for unrelated business income tax (UBIT). For more information on UBIT, please visit www.mosherslaw.com at "Featured Articles."

2. Health Insurance Tax Credit for Small Employers

By now, your organization may have received a postcard from the IRS about the tax credit available under the recently enacted Patient Protection and Affordable Care Act. The Act's goal is to encourage new or maintained health insurance for small employers. This new tax credit applies to employers with less than 25 full-time employees and \$50,000 in average annual wages. To be eligible, an employer must cover at least 50% of the cost of health care coverage for some or all workers, at the single (employee-only) coverage rate. For tax years 2010 through 2013, the credit is worth up to 25% of nonprofit employers' premium costs (35% for business employers). The maximum tax credit is available to employers with 10 or fewer employees and average wages of \$25,000 or less.

For 2010, the credit should be claimed on employers' 2011 tax returns. Since tax-exempt nonprofits generally do not pay income taxes, the credit is a *refundable* dollar amount instead of an offset against income tax liability. The maximum "credit" is the lesser of (a) the actual premiums paid by the employer or (b) the total withheld income and Medicare taxes, plus the employer's share of Medicare taxes, on employees' yearly wages. Nonprofit employers may not reduce employment tax payments during the year in anticipation of the credit/refund. Calculating the specific credit amount is complicated, but an excellent FAQ with detailed guidance is available at www.irs.gov under "Small Business Health Care Tax Credit."

Now that's stimulating news! ❖

Mosher & Wagenmaker, LLC
33 N. LaSalle St., Ste. 3400
Chicago, IL 60602
312-220-0019
www.mosherslaw.com