The IRS and Nonprofits: Trends and Potential Concerns

North Carolina Association of Independent Schools
March 15, 2013

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Form 990, Part VI (Governance, Management and Disclosure)

- Standards only
- Generally not legal requirements
- Audit trigger?

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Scrutiny of Insiders

- “Insiders” include:
  - Directors
  - Trustees
  - Officers
  - Key employees ($150,000+ compensation <u>and</u> responsibility test <u>and</u> top 20 employee)

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Board of Directors (Lines 1a-b)

- Number
- Independence:
  - Compensation as employee <u>or</u>
  - Compensation as independent contractor ($10,000+) (exceptions for payments made to directors for services as such), <u>or</u>
  - Other financial transactions (Schedule L)
- Use of executive committees

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Related Insiders (Line 2)

- Family = spouse; ancestors; siblings, children, grandchildren, great-grandchildren and their spouses
- Business
  - Employer-employee
  - Certain contractual relationships ($10,000+ annually, not ordinary course) (privilege exception)
  - Common control of business (officer, director or 10%+ owner)

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Material Diversion of Assets (Line 5)

- Disclosure relates to tax year when discovered
- Material = the lesser of:
  - $250,000
  - 5% of gross receipts
  - 5% of total assets
- Describe embezzlement/theft and corrective action

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Form 990 Review (Line 10)

- Provide final copy to board of directors before filing
- Opportunity for review by directors or management
  - Who
  - When
  - Extent
- Include schedules

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Mail to Insiders (Line 11)

- Disclose names and addresses if can’t be reached at filer’s mailing address
- USE ORGANIZATION’S ADDRESS!

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Written Conflict of Interest Policy (Lines 12a-c)

- Scope of policy:
  - define conflict of interest
  - identify covered persons
  - facilitate disclosure
  - specify procedures to manage conflicts
- Advance disclosure of potential conflicts by Insiders
- Monitor and enforce compliance

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Conflict of Interest (cont.)

- Financial transactions between the organization and its Insiders
- Also Insiders' family and "closely associated" businesses
- Materiality threshold unclear

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Written Whistleblower Policy (Line 13)

- Credible information
- Illegal practices or violations of policy
- No retaliation
- Compliance officer

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Written Document Retention and Destruction Policy (Line 14)

- Maintain
- Document
- When to cease destruction

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Executive Compensation (Lines 15a-b)

- Section 4958 Safe Harbor Compliance
  - Review and approval by independent persons (governing body or compensation committee)
  - Comparability data
  - Contemporaneous documentation
- Scope
  - Top management official
  - Officers
  - Key Employees

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After the Durden Case – Solicitation Acknowledgement

- Acknowledgement *required* when:
  - for all gifts of $250+, and
  - receive gifts of $75+ for which you provide valuable goods or services
- Best practice to send contemporaneous written acknowledgment of each and every gift received

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Acknowledgment of Gifts of $250+

- "Qualifying contemporaneous written substantiation" should include the following:
  - Name and Address of Donor:
  - Name and Address of Donee:
  - Description of Contribution: Cash Contribution: ___________

    Charitable Portion: ___________
  - Description of Personal or Real Property Contributed: [*do <u>not</u> provide valuation*]
  - Date Donee Received Contribution: ______________________________
  - **[Description and Good Faith Estimate of Value of Goods or Services Provided to Donor in Consideration of the Contribution:] or [Insert the following statement: "The estimated value of the item given is insubstantial, and the full amount of the donor's gift is tax-deductible to the extent permitted by law."]**
  - Signature (optional); Name and Title of Representative of Donee
  - Date of Acknowledgment:

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Acknowledgment of Gifts of $250+ (cont.)

- Donor must receive acknowledgement on or before the donor's tax filing deadline for the calendar year in which the contribution is made

- $250 threshold includes the deductible and nondeductible portions of the contribution

- Multiple gifts of less than $250 made in a single taxable year by the same donor are not aggregated for purposes of this rule (but best practice to acknowledge all gifts)

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Acknowledgment of “Quid Pro Quo” Gifts of $75+

- Good faith estimate of the value of the goods or services provided to the donor by the organization
  - *Required to include value of items donated to the organization*

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Acknowledgment of “Quid Pro Quo” Gifts of $75+ (cont.)

- Not required to deduct value of certain items: (1) the fair market value of the benefit provided to the donor is not more than 2% of the total amount of the gift, or $102.00, whichever is less, or (2) the amount contributed is $51.00 or more and the only benefits received in connection with the gift are token items that bear the organization’s logo and have an aggregate value of less than $10.20
  - *Adjusted annually for inflation; the amounts included here are for the year 2013*
  - *May disregard value of items donated to the organization*

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Protecting Your Donors from Themselves

- Private foundation self-dealing
- Valuation of non-cash contributions
- Raffles

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Tax Incentives for Giving in Peril?

- Charitable deduction
- Estate tax
- IRA rollover
- Tax simplication

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Questions? Comments?

Dianne Chipps Bailey
Robinson, Bradshaw & Hinson, P.A.
704-377-8323
dbailey@rbh.com

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