

SUMMER ASSOCIATE TRANSACTIONAL RESEARCH PROJECT

Summer 2016 Edition

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P A R T N E R S H I P

Fundraising

Question 1

Tax Considerations for Charitable Auctions

Background

Many of our nonprofit clients rely on auctions (both live and silent) to raise funds for their organizations. We frequently get questions from clients regarding donors' eligibility to claim deductions for items donated for auction, bidders' eligibility to claim charitable deductions for items purchased at auction, and the charity's own reporting obligations under federal tax laws.

Research Required

Please prepare a memo for our clients that summarizes the following:

- > The federal tax rules applicable to donors of auctioned property, including donations of inventory by businesses, donations of tangible personal property by individuals, and donations of interests by individuals (such as use of a time-share property)
- > A charity's responsibilities for informing bidders of the value of the items they purchase and their eligibility for charitable deductions
- > A charity's reporting obligations under federal tax law regarding contributions of property to be auctioned
- > Any other relevant considerations under the state laws of Connecticut, New York, and/or New Jersey regarding charitable auctions
- > Suggested tips and best practices for running a legally compliant auction

Fundraising cont'd

Question 2

Corporate Sponsorship and Promotion

Background

In the past, a nonprofit could mention the corporate sponsor(s) of an event and display that corporate sponsor's logo without paying taxes on the income derived from the sponsorship. However, more overt promotion or advertising of a corporate sponsor would be seen as a "pay for play" situation, and the money the nonprofit received from the for-profit entity would be considered taxable unrelated business income for the nonprofit. Now, we see what amount to promotional ads on websites or television. For example, a public television station may run a low-key ad for the financial supporter of a program.

Research Project

Please prepare a research memo addressing the limits on promoting the commercial ventures of corporations that make charitable contributions to a public charity, including paying for the right to sponsor the charity's events or website.

Question 3

Access to Restricted Funds or Gifts

Background

Gifts or donations are sometimes given to nonprofits for very specific purposes. Some gifts are permanently restricted and are to be used for certain very specific uses. Other gifts are temporarily restricted and can be thought of as being donated for a "type" or "class" of use. And, some gifts are given freely and can be used by the nonprofit in whatever manner the nonprofit determines is best. Sometimes, the limitations placed on the gifts can no longer be satisfied, for example, if a gift were given to fund a specific program that is no longer being offered.

Research Project

Please research the steps necessary (in each of Connecticut, New Jersey and New York) to allow a nonprofit to access restricted funds for which the designated purpose can no longer be satisfied.

Corporate Governance

Question 4

Best Practices for International Operations

Background

Some of our clients are small domestic nonprofits that operate or fund programs in other countries. While specific laws will vary from country to country, there are general legal and risk management strategies that are good practices for any nonprofit working or providing funding internationally.

Research Project

Please prepare a research memo summarizing some of the key legal issues nonprofits operating or funding programs abroad should be thinking about and the oversight expectations and suggested best practices for their U.S.-based boards.

Question 5

Head Start Programming

Background

Head Start is a federally funded program aimed at promoting school readiness of young children from low-income families through agencies in their local community. Many different kinds of organizations oversee Head Start programs, including community action agencies, nonprofit organizations, school districts, city or county governments, and tribal governments. The Head Start Act describes and legislates how Head Start programs should be governed. The Act specifies the types of people who should serve on a governing body and their legal and fiscal responsibilities. It also describes the relationship of the governing body to the Head Start Policy Council and the management team.

New York, New Jersey and Connecticut also each has laws setting forth requirements for nonprofit Boards of Directors and corporate governance. These laws overlap and perhaps can be seen to conflict with federal Head Start laws at times.

Research Project

Please prepare a memo addressing the overlap and interplay of each state's (New York, New Jersey and Connecticut) nonprofit laws with the governance requirements of the Head Start Act.

Corporate Governance Cont'd

Question 6

Personal Liability of Nonprofit Board Members

Background

Many nonprofit board members worry about their potential personal liability for actions of the nonprofits on whose boards they sit. While incorporation will shield board members from personal liability in many cases, there are some exceptions.

Research Project

Please prepare a research memo on the potential personal liability of nonprofit board members under federal and state laws in Connecticut, New Jersey and New York. Please take note of the recent Third Circuit decision *In re Lemington Home for the Aged*, 777 F.3d 620 (3rd Cir. 2015) as well as the policy implications and legal history of the Sweet Briar College litigation in 2015.

Question 7

Document Retention Policies

Background

We have recently received several requests from our clients for document retention policies.

Research Required

Please research current "best practices" for document retention and prepare a model document retention policy and sample schedule, including any mandatory document retention dates and note any state-specific distinctions, if any, for Connecticut, New Jersey and New York.

Please include a cover sheet outlining why these policies are important (e.g. litigation holds) and discussion related to maintaining a "paperless office," e.g., how to handle requests for original contracts and loan agreements when everything is electronic.

Real Estate

Question 8

Property Tax Exemption for Affordable Housing

Background

Many of our nonprofit clients provide affordable housing and have multiple real estate holdings. Property tax exemption is available to nonprofits owning property in many states. Federal, state and local governments may provide additional specific benefits to organizations that provide affordable housing.

Research Required

Please research and prepare a memo identifying and analyzing potential tax treatment, advantages or exemptions available to nonprofits developing affordable housing in New York (in particular Westchester County), New Jersey and Connecticut. In addition, please include any particular corporate structure(s) that may be financially beneficial to these nonprofits if uncovered by your research.

Tax Filing / Tax Exempt Determination

Question 9

Exceptions to Private Benefit

Background

Nonprofits, by definition, must benefit the general public and not a special, limited pool of potential beneficiaries. Recent federal legislation (the Slain Officers Support Act of 2015) amounts to an exception of this long-standing proscription.

Research Required

Please research and prepare a memo analyzing other situations (e.g., natural disasters) where similar exceptions have been made. Please include a discussion of "earmarking" of funds and its significance, or lack thereof.

Tax Filing/Tax Exempt Determination cont'd

Question 10 IRS Oversight of Unrelated Business Income (UBI) Expense Allocation

Background

Nonprofits that earn unrelated business income (UBI), i.e., income not substantially related to their exempt purpose, must pay unrelated business income tax (UBIT) on that income.

Research Project

In light of the *Rensselaer Polytechnic Institute v. Commissioner*, 732 F2d 1058 (2d Cir. 1984), aff'g 79 T.C. 967 (1982) decision, please research and provide a memo summarizing the various ways the IRS has approved and denied expense allocation by nonprofits in determining taxable income.

Employment

Question 11 Artist as Employee

Background

Many of our clients work with artists or other skilled technicians (e.g., lighting technicians, stage assistants, set designers, etc.) and questions arise regarding proper classification of these individuals as employees versus independent contractors.

Research Project

Please prepare a memo stating the circumstances in which an artist or other skilled technician will be considered an independent contractor in the state of New York. The memo should include a brief analysis of the New York and federal tests for classifying independent contractors and employees, a discussion of case law on those circumstances when New York courts found such workers to be independent contractors, and reference to any relevant New York Department of Labor decisions or guidance on the topic, including decisions from the New York Unemployment Insurance Division.

Employment, cont'd

Question 12a State Mandated Benefits

Background

Many of the Pro Bono Partnership's clients struggle with understanding which state mandated employee benefits (workers' compensation, disability, unemployment insurance) they are required to provide their employees and how to address questions from employees regarding these benefits.

Research Project

The Partnership would benefit from a FAQ Document that addresses, at a minimum, the following questions in this area for Connecticut, New Jersey, and New York:

Workers' Compensation Insurance:

- > Are nonprofits required to carry workers' compensation insurance?
 - o Are there any exceptions?
- > Are there any employee roles that are excepted from workers' compensation?
- > How does a nonprofit obtain workers' compensation insurance?
- > How does an employee put in a claim for workers' compensation benefits?
- > After a claim is filed, what types of information will the nonprofit be required to provide to the insurance carrier?
- > Who makes the determination that an employee is eligible for workers' compensation benefits?
 - o Can a nonprofit appeal that decision?
- > Is a nonprofit required to return an employee who took a leave of absence due to a workers' compensation injury to their same position or a similar position?
- > How much time off is a nonprofit required to allow an employee for a leave related to a workers' compensation injury?
- > Is a nonprofit required to employ someone who has returned from a leave related to a workers' compensation injury and requested to return to work in a different position or with a reduced schedule or with light duty?
 - o If not, what factors need to be considered before they can reject that type of proposal from the employee?
- > Can a volunteer be covered under the nonprofit's workers' compensation policy.

Employment Cont'd

Question 12b State Mandated Benefits

Background

Many of the Pro Bono Partnership's clients struggle with understanding which state mandated employee benefits (workers' compensation, disability, unemployment insurance) they are required to provide their employees and how to address questions from employees regarding these benefits.

Research Project

The Partnership would benefit from a FAQ Document that addresses, at a minimum, the following questions in this area for Connecticut, New Jersey, and New York:

Disability Insurance:

- > Are nonprofits required to carry disability insurance?
 - o Are there any exceptions?
- > Are there any employee roles that are excepted from disability?
- > How does a nonprofit obtain disability insurance?
- > How does an employee put in a claim for disability benefits?
- > After a claim is filed, what types of information will the nonprofit be required to provide to the insurance carrier?
- > Who makes the determination that an employee is eligible for disability benefits?
 - o Can a nonprofit appeal that decision?
- > Is a nonprofit required to return an employee who took a leave of absence due to a disability to their same position or a similar position?
- > How much time off is a nonprofit required to allow an employee for a leave related to disability?
- > Is a nonprofit required to employ someone who has returned from a leave related to a disability and requested to return to work in a different position or with a reduced schedule or with light duty?
 - o If not, what factors need to be considered before they can reject that type of proposal from the employee?
- > Can a volunteer be covered under a nonprofit's disability policy?

Employment Cont'd

Question 12c State Mandated Benefits

Background

Many of the Pro Bono Partnership's clients struggle with understanding which state mandated employee benefits (workers' compensation, disability, unemployment insurance) they are required to provide their employees and how to address questions from employees regarding these benefits.

Research Project

The Partnership would benefit from a FAQ Document that addresses, at a minimum, the following questions in this area for Connecticut, New Jersey, and New York:

Unemployment Insurance (UI):

- > Are nonprofits required to make payments into the unemployment insurance scheme?
 - o If so, how are payments made by the nonprofits?
- > Can nonprofits opt-out of making UI payments and only pay when a claim is made?
- > What does a former employee need to do in order to obtain UI (must they be actively looking for a job, etc.)?
- > How much money can a former employee obtain while on UI?
- > How long can a former employee claim UI?
- > Does the most recent employer have to pay all of the UI payments or are they shared with other former employers?
- > Can a nonprofit appeal a claim for UI?
 - o If so, how does the appeal process work?