

AHLBECK & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

THE WATCH DOGS BARK! (Avoid their bite)

For many years, not-for-profit organizations enjoyed the “benign neglect” of government regulators and tax authorities. In the absence of fraud upon the public or self-enrichment on the part of organization officials, they did not draw too much attention. No longer! The legislative and regulatory reactions to fraud and corporate governance failures in the for-profit sector are having an impact on the not-for-profit arena as well. In the balance of this letter, we will highlight some of the areas receiving particular scrutiny from state and federal authorities; and we will identify some resources available to you to deal with these issues and others which may arise in the near future.

SARBANES-OXLEY

The recent legislation commonly referred to as the Sarbanes-Oxley Act does not apply exclusively to publicly-held for-profit organizations.

The act prohibits all organizations and their personnel from destroying, concealing, falsifying or otherwise tampering with any documents which may be required in the course of an investigation, inquiry, or legal proceeding once the organization is notified that such an action will probably occur.

The act further prohibits any retaliation against “whistle blowers” – persons who provide government officials with information which may indicate a violation of the law.

Other sections of the act do have requirements applicable only to publicly-held companies. However, several of these may represent preferred practices which are worthy of adoption by the not-for-profit community.

For example, the act requires the lead audit partner involved with a company to rotate at least every five years. Certainly a not-for-profit organization can work with its audit firm to implement such a policy. At Ahlbeck & Company, there are several individuals at every level of the firm, from partner on down, who are equipped by education and experience to deal with a variety of not-for-profit organizations. We can work with you to establish a rotation policy which will preserve the expertise and efficiencies built up over the years with your organization.

It is suggested that organizations adopt written policies covering such issues as document destruction, conflicts of interest, use of expense accounts, employee complaints, and “whistle blowing.” As always, we suggest you consult your legal counsel before adopting any new policies.

Further guidance on organizational governance and “best practices” is available in a report from The Panel on the Nonprofit Sector presented to the Senate Finance Committee, from the Donors Forum of Chicago in a booklet directed specifically at Illinois nonprofits, and from several commercial publishers. If you wish, we can assist you in obtaining some of these publications.

Not-for-Profits

INTERNAL REVENUE SERVICE

The Division of Exempt Organizations of the IRS recently ran a test of reporting of executive compensation by not-for-profit organizations. The results did not amuse them. The most common error was improper accounting for taxable fringe benefits. This has the dual effect of understating the compensation for income tax purposes and avoiding Social Security and Medicare taxes. Needless to say, this is receiving immediate attention from the IRS.

Among the other results prompting inquiries are discrepancies between compensation shown on Form 990 and that reported on Forms W-2 or 1099, and compensation which appears to be excessive in relation to the size of the organization.

Another area of inquiry involves fundraising expenses. The IRS has identified numerous organizations which report substantial public contributions, but no fundraising expense. The assumption is that there is some expense associated with these contributions – if only for the receipts or thank-yous sent to donors. This deficiency raises the question of which other expenses are not properly reported.

The lesson is that proper identification and segregation of expenses will help prevent your organization's relationship with the IRS from becoming "up close and personal." Based on our years of experience, Ahlbeck & Company is well-equipped to assist you with this task.

ILLINOIS ATTORNEY GENERAL

The Charitable Trust and Solicitations Division of the Attorney General's office is also interested in the failure to report fundraising expenses. In this case, it is being viewed as a potential violation of either the Solicitation for Charity Act or the Charitable Trust Act.

(as issued on our website www.ahlbeck.com)

Pursuant to Internal Revenue Service Circular No. 230, be advised that the information contained herein was not intended or written to be used and cannot be used by any taxpayer for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on the taxpayer. It was written with the intent of disseminating general information related to the transaction(s) or matter(s) addressed herein.

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As a result of recent court decisions, the Attorney General is increasing the monitoring of solicitation activities. Specifically, either the charitable organization or its hired fundraiser (or both) can face sanctions if representations made to the public about the purpose of the organization or the division or use of the funds being solicited are false or misleading. Note that the charitable organization is ultimately responsible for the accuracy of the solicitation request.

The Attorney General is also particularly concerned about organizations which understate revenue to avoid the reporting or audit requirements. This is most often accomplished by reporting only the net income from a fundraising campaign or event rather than reporting the gross receipts and expenses separately. Once again, proper accounting and identification is the key to avoiding problems, and we can help you with this.

ABOUT AHLBECK & COMPANY

We have served the not-for-profit industry for over 40 years and excel at going "beyond the accounting" to assist with issues unique to not-for-profit organizations.

For assistance with any of the items mentioned herein or any other not-for-profit issues, contact a professional at Ahlbeck & Company.

Ahlbeck & Company offers a diverse menu of services. We are more than an accounting firm. We are your business partner, willing to assist in all aspects of your business needs. From governmental filings and tax compliance to operational efficiency, we can meet your needs.

Updates are published periodically by Ahlbeck & Company. Copies are available upon request. Since the information contained herein is of a general and summary nature, no final conclusion should be made without further review. For additional information on the topics discussed, please contact a member of our firm.