Not-for-Profits

AHLBECK & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

403(B) PLANS AND CHARITABLE FUNDS: WHAT'S NEW?

403(b) PLANS: NEW FORM 5500 REPORTING REQUIREMENTS

Currently, a Form 5500 filing is not required for 403(b) retirement plans, although those subject to ERISA may have a limited filing requirement without schedules or an audit. Beginning with the 2009 plan year, the Form 5500 reporting and disclosure exemption granted to ERISA-covered 403(b) plans has been eliminated. These plans will be subject to the same annual reporting and audit requirements that apply to other tax qualified plans like 401(k)s and will need to file a Form 5500 with proper schedules.

ERISA-covered plans usually include any 403(b) plan that provides an employer contribution or matching contribution. Generally, 403(b) plans sponsored by not-for-profits are subject to ERISA, while church or government sponsored 403(b) plans are not covered.

Is an Audit Needed?

An audit may be required depending on the number of eligible participants at the beginning of the plan year:

- Large plan (100 or more eligible participants) – audited financial statements are a required attachment
- Small plan (less than 100 eligible participants) - may be eligible for the new short Form 5500-SF without audited financial statements

Additional Small Plan Qualification

If a 403(b) plan was eligible to file as a small plan under Department of Labor regulations in the prior year and has between 100 and 120 eligible participants at the beginning of the 2009 plan year, it can file as a small plan under the new rules.

Small Plan Audit Waiver

Small 403(b) plans will not require an audit if all of the following are met:

- At least 95% of plan assets are "qualifying assets" (or if not, proper bonding requirements are met)
- Summary annual report includes proper enhanced disclosures
- Financial institution statements and evidence of any required bond are available to participants/beneficiaries without charge

Form 5500-SF

For plan years beginning on or after January 1, 2009, this abbreviated two-page form may be filed instead of Form 5500 (with required schedules) if certain requirements are all met. The plan must:

1. Be eligible to file as a small plan
2. Not hold employer securities and not be a multiemployer plan
3. Be eligible for the "small plan audit waiver" but not due to enhanced bonding
4. Have 100% of its assets in investments with readily determinable market values

If small plans are not eligible to use Form 5500-SF, they will need to file Form 5500 with all required schedules.

Written Plan Document Deferral

403(b) plan sponsors have until December 31, 2009 to fully adopt a written plan (assuming certain requirements are met), allowing more time to address the new rules.

Think Ahead

Plan sponsors should begin to familiarize themselves with these changes and start planning. Talk to your investment/service provider regarding the participant and financial data needed to file Form 5500. Review bonding requirements and consider if the plan may need an audit. Starting this process now will mitigate problems down the road!

Not-for-Profits

CHANGES FOR CHARITABLE FUNDS

Illinois Enacts UPMIFA into Law

Effective June 30, 2009, Illinois enacted the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as the successor to the Uniform Management of Institutional Funds Act (UMIFA). It expands on the standard of prudence for management/investment of charitable funds, updates rules governing endowment expenditures and adopts provisions for the release/modification of fund restrictions.

UPMIFA applies to charities organized as not-for-profit corporations or as trusts (if a charity is the trustee). Charitable funds existing on/created after the enactment date are subject to UPFIMA.

The new law provides updated guidance for investing in a prudent manner, including cost management, diversification and a "whole portfolio" management standard. Investment decisions should be made in relation to the overall resources of the organization and its charitable purpose, giving consideration to the entire portfolio and as part of an overall investment strategy.

The rules on spending endowment funds (funds that cannot be wholly expended on a current basis) have changed significantly and apply to donor-restricted funds (not board-restricted funds).

UPMIFA eliminates the historic dollar value (HDV) concept (the value of endowment contributions made excluding any effect for inflation or market value changes) and no longer restricts spending to amounts above HDV. A charity can spend the amount it deems prudent after considering the donor's intent regarding fund duration, the purposes of the fund (and not just of the charity as under UMIFA) and relevant economic factors, giving charities more spending flexibility during market downturns.

UPMIFA also modifies how a charity can change donor restrictions. Under UMIFA, the only option with respect to a restriction was its release. UPMIFA also allows the charity to ask the court to modify a restriction that has become impracticable, wasteful or may impair fund management. Any change, however, must be consistent with the donor's probable intent.

UPMIFA allows a charity to release/modify a restriction on an old (over 20 years) and small (less than $50,000) fund without going to court by giving notice to the Attorney General. The funds must be used in a manner consistent with the charitable purpose expressed in the gift instrument.

Changes to Financial Reporting and Disclosure Rules

Effective for fiscal years ending after December 15, 2008, FASB Staff Position (FSP) 117-1 provides guidance on:

- net asset classification of donor-restricted endowments under UPMIFA
- enhanced disclosures for both donor-restricted and board-designated funds

Financial statement disclosures include descriptions of spending/investment policies and interpretation of relevant law, composition by net asset class and nature of restrictions. The new requirements are more time-consuming as net assets of each endowment fund must be analyzed.

ABOUT AHLBECK & COMPANY

We have served not-for-profits for over 40 years and excel at going "beyond the accounting" to assist with their unique issues. For assistance with the items mentioned herein or other not-for-profit issues, contact one of our professionals.

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.

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

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