

October 2011

Hot Federal and State Tax Issues for Nonprofits: Highlights from an Executive Briefing Hosted by JJC

By Howard Donkin, CPA

Nonprofits are increasingly the target of federal and state taxing agencies to help fill the massive revenue gaps in their current budgets. To help organizations better understand federal and state tax issues related to these developments, tax specialists Howard Donkin, CPA, and Mark Hugh, CPA, recently, led an executive briefing and roundtable discussion with a select group of nonprofit executive directors, CFOs, Controllers and Board Treasurers. The purpose of the briefing was to give nonprofit leaders an opportunity to hear about the latest critical tax topics, discuss the implications with peers and share best practices for avoiding the latest tax traps.

Highlights of the discussion included:

- Under Washington State tax rules, all revenue is subject to tax unless it has a specific deduction or exemption. Many nonprofit organizations benefit from lower or no taxes because of these deductions and exemptions. However, billion dollar budget shortfalls in Washington State have created a political battle about whether some of those deductions and exemptions should end.
- Congress has proposed new legislation that would allow states to force online retailers like Amazon to collect the sales tax. The bill is unlikely to pass in the current governing climate, but states continue to pass separate laws to force online retailers to collect the tax. Notably, Amazon recently agreed to collect California tax based upon a new law and it should be an early warning to nonprofit organizations that sell goods over the Internet

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- about possible future implications.
- One of the topics that created considerable discussion was the recent Washington Department of Revenue “Excise Tax Advisory” on the taxability of fees charged for amusement and recreation services. The Advisory presents new guidance for sports organizations, such as volleyball and soccer leagues, to encourage the proper reporting of taxable revenue. Nonprofit youth organizations will remain exempt, but adult programs should be paying the B&O tax and collecting the retail sales taxes on certain fees to participate in sports activities or sports events.
 - On the federal side, the group learned that the IRS has increased employment tax audits, including nonprofit organizations. The Service is looking for independent contractors who should actually be classified as employees. Nonprofits could be liable for thousands of dollars of unpaid payroll taxes. To encourage nonprofits to voluntarily reclassify workers as employees, the Service has created a voluntary settlement program, which could result in big savings on back taxes, interest and penalties because organizations would only pay 10% of the tax liability for the most recent year, if they agree to prospective treatment in the future.
 - Another hot topic was the new IRS cell phone announcement that allows nonprofit employees to exclude the value of a company cell phone from employee compensation. The notice was good news for employees, but now nonprofits need to update the wording in their “accountable plan” to make sure it says that the phones are provided for a “noncompensatory” business purpose, which means they had a substantial business reason other than to provide more compensation.
 - 501(c)(4) lobbying organizations have been in the national news lately because some political candidates may be abusing them to raise funds from anonymous corporations or big spenders. However, there are valid reasons why a nonprofit might consider forming a lobbying affiliate and the group came up with several. For example, your organization might consider forming a 501(c)(4) lobbying affiliate when total lobbying expenses are near the 501(h) election allowance, to perform voter education that is not nonpartisan or if you want to bank your annual lobbying amounts for a

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- future event.
- Finally, the group directed their discussion to the reasons to form a for-profit subsidiary, such as when your activity is not mission related, when UBI exclusions don't apply, or when the activity becomes too large or complex. Make sure your for-profit subsidiary has a valid business purpose, a separate board for governance and policymaking, separate employees running daily activities, board meetings at least three times per year and keeps accurate records of its meetings.

While informative, the above points are only a small sample of the entire program. For a more in-depth look at the executive briefing and roundtable discussion, or to obtain a copy of the materials, please feel free to contact Howard Donkin at howard@jjco.com, or Mark Hugh at mark@markhugh.com.



About the Author

Howard Donkin, CPA, Jacobson Jarvis Tax Partner, has more than 20 years' experience in serving the not-for-profit community. Among his areas of expertise are complex tax issues, state and local tax issues, voluntary compliance issues, strategic planning, investment policies and organizational tax planning.

Howard is a member of the American Institute of Certified Public Accountants (AICPA) and the Washington Society of Certified Public Accountants (WSCP), where he has served as Chairman of the Not-for-Profit Committee and Chair of the Tax Sub-Committee. He volunteers his time to the AICPA Exempt Organization Technical Resource Panel to study tax issues for not-for-profit clients on a national level, chairs the finance committee of the Bellevue Schools Foundation, is a member of the Alliance for Nonprofits' Public Policy Forum and a past Chairman of the Bellevue Arts Commission. Howard has written several articles on not-for-profit tax issues and is on the Advisory Board of The Exempt Organization Tax Review.