



Nonprofit News Alert

September 2, 2009

Good Governance for Tax-Exempt Organizations - Guidance from the IRS

As many tax-exempt public charities have likely discovered, reporting for the revised Form 990 and understanding the IRS's views on good governance is not an easy task. Many organizations are now developing policies and practices as a result of the new governance section in the revised Form 990. On June 23, 2009, the new IRS TE/GE Commissioner Sarah Hall Ingram confirmed the IRS's commitment to oversee the governance practices of tax-exempt nonprofit organizations. Commissioner Ingram stressed that a well-governed organization is more likely to be a tax-compliant organization and that good governance is an effective tool for managing the risk of noncompliance. Commissioner Ingram's speech emphasized the following:

What Does "Good Governance" Mean to the IRS?

Commissioner Ingram stressed the following key governance principles that are of concern to the IRS:

- The organization should clearly understand and publicly express its mission.
- The organization's board should be engaged, informed and independent (e.g., it must be able to implement the rules against private inurement and self-dealing).
- There should not be a one-size-fits-all set of rules, but rather each organization should develop an appropriate system of internal controls in order to minimize the risk of contravening the Code's requirements for tax-exemption.
- There should be policies in place regarding the proper use and safeguarding of assets (e.g., those addressing executive compensation, protecting against conflicts of interest, and supporting independent financial reviews).
- The organization's proceedings and activities should be transparent (e.g., board decisions should be reflected in minutes, records should be retained, whistleblowers should be protected, and the Form 990 should be complete, accurate and prepared in good faith).

IRS Goals and Training Materials

In late July 2009, the IRS made public its training materials for its Exempt Organizations examination agents, determinations specialists, tax law specialists, and managers. The training materials emphasized the following notable points regarding governance:

- The general purposes of a governing body are: stewardship, mission, oversight, fulfillment of obligations, asset protection, vision and strategic direction, and hiring a CEO.

- The IRS areas of interest regarding governance best practices include:
 - Active and engaged - Governing boards should be composed of informed persons active in overseeing the organization's operations and finances, who are selected with the organization's needs in mind.
 - Appropriately sized - Size is important to ensure that the organization obeys tax laws, safeguards its charitable assets, and furthers its charitable purpose (e.g., organizations with large boards may want to create an executive committee or advisory committees).
 - Composed of primarily independent members - A "sizable majority" of the board members should be free of financial conflicts of interest; the IRS suggests (but does not enforce) that a majority of the board of a public charity be independent.
 - Policies and practices - While the IRS reviews applications for exemption and annual information returns to determine whether the organization has implemented certain policies and practices (conflict of interest, whistleblower, document retention and destruction, compensation, investments), the training materials stress that these are areas of interest and NOT requirements for exemption.

- IRS concerns about management policy items include:
 - Executive Compensation - Compensation should be reasonable and determined by persons who are knowledgeable in compensation matters and who have no financial interest in the determination.
 - Conflict of Interest - The board should adopt and regularly evaluate such a conflict of interest policy.
 - Investments - Charities are encouraged to adopt written policies and procedures requiring the charity to evaluate its investment activities and to take steps to safeguard the organization's assets and tax-exempt status.
 - Fundraising - Compensation of fundraising activities should reflect the skill, effort and time expended rather than on a commission or a percentage of the amount raised basis; charities are encouraged to keep fundraising costs reasonable and to provide information about fundraising costs to the public and their donors.
 - Governing Body Minutes and Records - Meeting minutes and other writings explaining the actions taken of the governing body and sub-committees should be contemporaneously documented (i.e., documented by the later of (a) the next meeting, or (b) 60 days after the date of the meeting or written action).
 - Document Retention and Destruction - A document retention and destruction policy should be in writing and consistently monitored to protect the organization's governance records and administration, as well as its business records required to demonstrate legal compliance.
 - Ethics and Whistleblower Policies - The IRS encourages, but does not require, that every charity have clear policies and procedures for staff, volunteers, or clients regarding the reporting of any suspected wrongdoing without fear of retribution.

The training materials are available at: <http://www.irs.gov/charities/article/0,,id=208454,00.html>.

Form 990 FAQs

The revised Form 990 includes numerous new questions regarding governance, management, policies and practices. In May 2009, the IRS released FAQs and tips for reporting on Part VI of the Form 990 regarding governance, management and disclosure. These FAQs supplement the already very detailed Form 990 instructions and also provide some insight into the IRS's views (e.g., the IRS does not plan to provide model policies for organizations to adopt, and believes that an organization should consider its own particular facts and circumstances, including its size, culture, type and structure, in designing and implementing such policies). The FAQs are available at: http://www.irs.gov/pub/irs-tege/partvi_faqs_tips_05_2009.pdf.

If you have any questions regarding the above information or would like assistance developing policies and procedures for your organization, please feel free to contact [Pamela Grinter](#) or any member of the Nonprofit Group at Riddell Williams. There are [sample policies](#) posted on our website for general information and background purposes.

Save These Dates

September 23, 2009 Breakfast Briefing -

Walking the Wage and Hour Tightrope:
Avoiding Missteps that Lead to Litigation

October 7, 2009 Breakfast Briefing -

Buying and Selling A Business:
Due Diligence and Beyond

November 18, 2009 Breakfast Briefing -

Employee Blogging and Social Networking:
What's All the Twitter About?

Seating is limited so please reserve your space by calling 206.389.1710 or sending an email to ktran@riddellwilliams.com.

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Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154-1192

Telephone: 206.624.3600
Facsimile: 206.389.1708
www.riddellwilliams.com