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Inurement: Avoid the Appearance of Excess Benefits and Improper Use

Kathy Hendrickson, Manager Gainesville Office

The Internal Revenue Service (IRS) rules governing nonprofit organizations provide that the organization must be operated exclusively for the proper purpose. This basic requirement dictates that no part of the organization's income or net assets inure in whole or part to the benefit of any individual having a personal or private interest in the activities of the organization. Such individuals are known as "disqualified persons."

The term "disqualified person" means an individual who is in a position to exercise substantial influence over the affairs of the nonprofit organization. The term also includes certain family members and controlled entities. Common examples are board members, key employees and substantial contributors.

At the most extreme, an organization can lose its nonprofit status if private inurement or benefits are excessive and not corrected.

Transactions with "disqualified persons" that result in an excess benefit to that person can result in fines and penalties imposed on the recipient of the benefit and on the managers (such as the board of directors) who participate in the transaction. At the most extreme, an organization can lose its nonprofit status if private inurement or benefits are excessive and not corrected. For this reason, transactions with persons having any position of influence in the organization are under scrutiny by the IRS and organizations should use extreme caution in these situations.

Some examples of the types of transaction of particular interest to the IRS are:

Excessive compensation – Items at issue in a determination of total compensation and excessive benefits includes cash, salary and/or payments as well as non-cash compensation, such as deferred benefits, expense allowances, loans advances, fringe benefits and other items of value. It is important that the organization document that the compensation paid to "disqualified persons" is not unreasonable.

Loans – Loans to insiders, directors, officers or trustees may trigger scrutiny. Private inurement is likely to result from loans with inadequate interest, security or documentation.

Asset transactions – Sales, purchases, transfers or leases of assets can give rise to private inurement. Thus, sales of nonprofit assets for less than fair market value, purchases for more than fair market value, unfair leases, or gratuitous transfers can jeopardize tax-exempt status.

Furtherance of individual interests or tax avoidance – The use of a nonprofit organization to further the interest of or avoid taxes of an individual can jeopardized tax-exempt status.

Joint ventures – Inurement can result from a joint venture if the arrangement is unfair or confers an excessive or unusual benefit upon the for-profit partner.

None of the transactions listed above are forbidden to the nonprofit organization. Compensation can be paid to officers and key employees, loans may be made to and from individuals from time to time, assets may be sold or purchased. However, to avoid any of the negative results of transactions with “disqualified persons”, the nonprofit organization must be diligent in ensuring that every dealing with such a person are at arms-length. The keys are adequate research for determining reasonableness of compensation or interest rates and documentation of the results of the research.

Nonprofits Need to Consider Branding *by Tim Penning, APR*

Mention branding and most people might think of Coca Cola, McDonalds, or Nike, in other words, corporations with products to sell. Corporations work hard on brand development, because there’s a lot of competition in the marketplace. Consumers don’t only choose products, they choose which specific brand of soft drink or athletic shoe to buy. And they associate brands with value, quality, prestige, or some other attribute.

The same principle is important in the nonprofit sector, where there is ever-increasing competition for attention, for concern for a particular cause, for board members, volunteers and donations. But what is a nonprofit brand, and how do you build it? It boils down to three things—LOOK, LORE, and LIFE.

- **LOOK.** The original brand came from ranchers who burned distinctive marks on their cattle to set them apart from the herd. So today, many brands are associated with symbols, or a certain graphic look. Think of the white on red swirl of coke, the golden arches of McDonalds, or the Nike “swoosh.” Nonprofits also have distinctive looks. The American Red Cross and the United Way come to mind. But, looks aren’t everything.
- **LORE.** A symbol is meaningless unless it represents something people know and believe about you. You build the lore of your brand with consistent messages. Newsletters, web sites, brochures, speeches and other tactics should consistently present not only the same logo and colors, but the same messages. And these messages should reach all the publics who have a stake in your organization, including staff, volunteers, board members, donors, community, clients of your services, legislators, funders and others.
- **LIFE.** The brand will fail if it is only an external message strategy. It is vital that the branding messages come from your mission and values and resonate in the culture of the organization. Branding is not an exercise in creating an image, but in reflecting reality and, ultimately, earning a reputation. You—and everyone in the organization—need to “live the brand.”

Think about the look, lore, and life of your organization and you’ll think about the relationships with each of your publics in a “brand” new way.

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