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IRS RELEASES CPE TRAINING MATERIALS ON "GOOD GOVERNANCE" FOR TAX EXEMPT ORGANIZATIONS

On July 23, 2009, the Internal Revenue Services ("IRS") publicly released its continuing professional education training materials on governance ("CPE Materials"), which have been the subject of a training program for IRS examination agents, determination specialists, tax law specialists, and managers who deal with tax-exempt organizations. The release of the CPE Materials follows public comments from the IRS indicating that it does not plan to impose a large set of regulations regarding governance issues, but instead will continue to focus on identifying guiding principles on governance practices for tax-exempt organizations.

The CPE Materials provide useful insight into the types of governance issues the IRS will be considering during audits and examinations, and in future compliance projects. Tax-exempt organizations can utilize the information presented in the CPE Materials to continue to monitor and adjust their governance practices to adhere to principles of "good governance" in the eyes of the IRS.

IRS Areas of Interest

A major focus of the CPE Materials revolves around the IRS Form 990 (the annual information return tax-exempt organizations are required to file) ("Form 990"), which was recently overhauled and became applicable beginning with the 2008 tax year. The revised Form 990 contains many new questions directly involving governance, which are closely related to "areas of interest" the IRS identified in the CPE Materials, including:

- **Mission.** The IRS continues to encourage tax-exempt organizations to establish and regularly review a mission statement. According to the CPE Materials, a clearly articulated mission serves to explain the organization's purpose and guide its work.
- **Governance Body & Management.** The CPE Materials reaffirm that the IRS encourages tax-exempt organizations to maintain an active and engaged board, noting concern that boards be appropriately sized to assure sufficient organizational oversight. In addition, the CPE Materials indicate the board's composition should include independent members and limit the number of

family, relatives or those with business ties and relationships, noting successful boards will include individuals who are not only knowledgeable and engaged, but who are chosen to fulfill an organization's various needs.

- Policies & Procedures. The CPE Materials remind IRS personnel to determine whether an organization has specific policies in place appropriate for the organization, such as conflict of interest, whistleblower, document retention, employee compensation, and joint ventures. The CPE Materials further indicate that the IRS recommends documenting all meetings between an organization's governing body and management team, and that the IRS suggests board review of the Form 990 before filing it with the IRS.
- Transparency. The Internal Revenue Code requires tax-exempt organizations to make available for public inspection the following forms: Form 1023 (exemption application), Form 990, and Form 990-T. However, the CPE Materials reveal that the IRS is interested in how tax-exempt organizations make such information available, and suggest the IRS believes a tax-exempt organization should make its governing documents, policies, financial information, and contact information for directors, officers, and individuals in possession of an organization's books and records available to the public as well.

IRS Next Steps

The IRS has indicated that events like the CPE training are part of the initial phase of a long term study of governance practices of tax-exempt organizations. Notably, the IRS plans to develop an examination checklist regarding various governance topics to explore possible links between good or bad governance and compliance with tax laws. The IRS also plans to incorporate Form 990 questions and responses into future compliance initiatives.

Conclusion

The CPE Materials reinforce that the IRS continues to believe that a well governed organization is more likely to comply with tax laws, safeguard charitable assets, and serve charitable interests. The CPE Materials, however, only reflect suggestions for governance practices, and do not impose additional requirements for tax exemption. Nevertheless, it should be noted that many of these "areas of interest" discussed in the CPE Materials already intersect with tax exemption requirements and prohibitions, including prohibitions on private benefit and inurement, regulations regarding excess benefit transactions, and statutory requirements regarding how organizations are operated and organized. We recommend that tax-exempt organizations regularly review their governance practices in order to ensure best practices in complying with

tax laws, safeguarding charitable assets, and serving their communities.

Should you have any questions, please do not hesitate to contact your regular Hall Render attorney, Rex Killian at rkillian@hallrender.com or 317-977-1540, Calvin Chambers at cchamber@hallrender.com or 317-977-1459 or Andrea L. Impicciche at andrea@hallrender.com or 317-977-1578.

The CPE materials may be found at:

<http://www.irs.gov/charities/article/0,,id=208454,00.html>.

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