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Issues on the IRS Horizon for Tax-Exempt Organizations in 2010

As the tax-exempt environment continues to become increasingly complex and focused on compliance and governance, it becomes more important to be aware of issues significant to the IRS. We have highlighted below a few of the issues on the IRS' radar for 2010.

Employment Tax Examinations. In 2010, the IRS Tax-Exempt and Government Entities ("TE/GE") Division plans to conduct full examinations of about 500 exempt organizations to determine compliance with employment tax rules, with information returns randomly selected. Although the program is focused on employment tax rules, it is likely that the examinations of exempt organizations will extend to other compensation-related issues such as excess benefits, self-dealing, and private inurement.

International Activities. The IRS will also focus on international transactions and their potential to divert charitable assets for non-charitable purposes. The IRS plans to release a new publication on international issues with the rules applicable to both foreign and domestic charities, including international grant-making and reporting requirements, and any special organizational or operational tests applicable to charities with international activities.

Governance. Not surprisingly, exempt organization governance will continue to be a focus for the IRS in 2010. Sarah Hall Ingram, commissioner of the TE/GE Division, has referred to the governance area as one of "passionate" interest.

As part of a long-term study to gain a better understanding of the relation between governance practices and tax compliance, Exempt Organization examination agents will begin using a governance check sheet (available on the IRS website) to capture data about governance practices and the related internal controls of organizations being examined.

Revocation for Failure to File Annual Returns. Beginning this year, the IRS will enforce the rule requiring revocation of tax-exempt status for organizations that have failed to file the required Form 990 for three consecutive years (2007-2009), including those required to file the Form 990-N or "e-Postcard." Ingram has indicated that the division is preparing to issue revocation letters. Although the IRS has no discretion regarding revocation, tax-exempt status may be reinstated upon application, and organizations that establish reasonable cause for their failure to file may have their status retroactively restored to the date of revocation.

Transition Period for Revised Form 990. Transitional rules permit certain organizations to continue to file the Form 990-EZ for 2009 in lieu of the revised Form 990. For 2009, an organization may file the Form 990-EZ if its gross receipts are between \$25,000 and \$500,000, and its total assets are less than \$1,250,000. In 2010 and subsequent years, the thresholds are decreased to \$50,000-\$200,000 and \$500,000, respectively. In addition, organizations with gross receipts that are normally less than \$25,000 may still file the Form 990-N or "e-Postcard."

Although it might be tempting for an organization to file the prior version of the Form 990 or to file the revised Form 990 with schedules from the prior version attached, the prior Form 990 (and its schedules) will not be accepted, and submission of the old form may result in failure to file penalties or forfeiture of exempt status.

Charitable Spending Project. The IRS has also indicated that the charitable spending project announced in 2008 will continue to move forward. In the first stage of the project the IRS looked at organizations with unusual fundraising levels and organizations with unrelated trade or business activity and relatively low program service expenditures. The project was expected to gather information including public contributions, grants, revenues from related or unrelated

trades or businesses, types and amounts of direct and indirect unrelated business income expenses, officer compensation, fundraising expenses, and program service activities, and examine the effect each has on funds available for charitable spending.

Other Areas of Focus. According to the 2009-2010 Priority Guidance Plan, the following are among the other guidance projects on which the IRS intends to focus in the upcoming year. However, it is worth noting that several of these items have been on the IRS agenda for a few years already:

- Final regulations on the new requirements for Type III supporting organizations;
- Notice under the excess business holdings rules, as amended by the Pension Protection Act;
- Guidance on program-related investments by private foundations;
- Proposed regulations on excise taxes applicable to donor advised funds;
- Regulations on group returns;
- Proposed regulations relating to disclosure to state charity agencies for changes made by the Pension Protection Act;
- Final regulations on church tax inquiries and examinations;
- Several items of guidance for deferred compensation plans of tax-exempt organizations and state and local governments;
- Final regulations on appraisal requirements for certain charitable contributions of property;
- Update of guidance concerning user fees (user fees will increase as follows for all exemption applications (Forms 1023, 1024, and 1028) postmarked after January 3, 2010: \$400 for organizations with gross receipts of \$10,000 or less annually over a 4-year period; \$850 for organizations with gross receipts exceeding \$10,000 annually over a 4-year period; and \$3,000 for group exemption letters); and
- Terms for hosts of Cyber Assistant software (to generate Form 1023 exemption applications eligible for a reduced user fee).

If you have any questions, please feel free to contact one of the attorneys listed below.

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