



Newsletter

OCTOBER 2008

Professional Legal Assistors

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Our office will be closed for the following holidays:

November 27 & 28, 2008 – Thanksgiving Day

December 11 to 26, 2008 – Winter Vacation

December 31 & January 1 – New Year's Day

Note our office will be open on January 2nd, 2009.

Our next newsletter will be mailed out the beginning of January 2009.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than December 15th for our January newsletter.

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- 2** New Reporting Requirements for Non-Profits
- 3** Nevada Hearing on Fraudulent Filings – Bankruptcy and IRS Information

OFFICE WILL BE CLOSED DECEMBER 11TH 2008 AND WILL REOPEN ON DECEMBER 29, 2008

If you want Articles submitted to the state for a filing date of January 1, 2009, you can begin to submit your articles in November. Even though January 1st is a holiday the state will still stamp articles with that filing date.

Submit information for a corporation by either email to dottie@biz-usa.com or fax to 888-232-9022;

Name of the corporation

Number of authorized shares

Agent's name and physical address

Be sure and indicate the state for filing



If you are submitting information for a LLC you can either email or fax the following information;

Name of the LLC

Operated by Managers or Members

Agent's name and physical address

Be sure and indicate the state for filing

We must be able to contact you on December 29th or 30th to verify information and obtain a MasterCard, Visa or American Express card.

Articles filed with California in the month of December will be subject to the California Franchise Tax of \$800 for this year.

NEW REPORTING REQUIREMENTS FOR NONPROFITS WITH FORM 990

In order to increase transparency, accountability and compliance, the federal government has tightened the reporting requirements for Form 990, *Return of Organization Exempt from Income Tax*.

The IRS recently released the revised Form 990 to be used for the 2008 tax year. It also provided a detailed draft of the instructions for the enhanced reporting requirements. Although the IRS may make further changes to the form based on public comments it receives, the new draft provides a clear picture of the government's expectations.

Following are some of the key points in the new Form 990 instruction that not-for-profit managers should know about:

New elements – The draft instructions contain several new elements that are designed to promote uniform reporting and understanding. They include a glossary of key definitions of terms such as an accountable expense allowance plan, nonqualified deferred compensation, and refunding escrow. There is also extensive information about the many types of compensation that must be reported, such as base salary, deferred bonuses, loans with foregone interest or debt forgiveness, contributions to qualified and nonqualified retirement plans, split dollar life insurance, employer-provided housing, tuition assistance for family, social club dues and employer-provided automobiles.

Additional instructions – The IRS has added significantly to the length of the instructions by increasing guidance for both the core form and separate schedules. Some of the changes reflect special instructions for organizations conducting activities through joint ventures and disregarded entities, governance of foreign activities, and relocation of educational materials.

Compensation – Under the draft instructions, a not-for-profit organization must list certain officers, directors, trustees and employees of the organization who have compensation above certain thresholds. The modified rules require reporting for:

- Current officers, directors and trustees (without regard to amount of compensation).
- Current key employees with compensation exceeding \$150,000.
- Current five other highest-compensated employees with compensation exceeding \$100,000.
- Former officers, key employees and highest-compensated employees with compensation exceeding \$100,000.
- Former directors and trustees receiving more than \$10,000 in this capacity.

Hospitals – Hospitals are generally required to complete a new schedule. This applies to hospitals that are licensed or certified by law (or are required to be) whether or not the entity is directly operated by the organization or through a disregarded entity or joint venture.

Deferred compensation – Any amounts must be reported prior to vesting. If an employee is required to perform services over a stated period of time, the compensation is to be treated as being earned ratably over that time period – even if the arrangement is unfunded and subject to substantial risk of forfeiture.

Not-for-profit organizations should take steps now to prepare for the new Form 990 requirements. Here are four practical suggestions:

1. Review all governance policies and procedures.
2. When appropriate, make modifications to existing policies and procedures, which are reflected in the draft instructions.
3. Pay especially close attention to issues involving executive compensation, document retention and whistleblower claims.
4. Develop new internal controls to provide information that will be needed for future reports.

Is the new Form 990 more burdensome than the current form?

According to the IRS, “organizations with complicated compensation arrangements, related entity structures, and activities that raise compliance concerns can expect to see an increase in the effort required to complete the form. This increase should be significant in some cases.”

NEVADA SECRETARY OF STATE WORKSHOP & HEARING ON AB 25 FRAUDULENT FILING REGULATIONS

There are more than 320,000 entities on record in the Nevada Secretary of State's office. As the number of entities has increased, so have the reported instances of fraud in the filing of records. Assembly Bill 25, which passed during the 2007 Regular Session of the Nevada Legislature, added provisions to NRS 225.084, giving the Secretary of State the authority to adopt regulations to correct documents that have been determined to be forged or fraudulently altered, that contain a false statement of a material fact or that are filed in bad faith.

The Secretary of State held a workshop on May 13, 2008, and held a regulation adoption hearing on May 28, 2008, to review and take public comment on the proposed regulations for the correction of a record which is forged or fraudulently altered, contains a false statement of a material fact, or is filed in bad faith. The regulations provide that no records will be removed from the documents on file. Correction of the record will be made through a filing officer statement placed on the record by the Secretary of State and the resulting changes made to the database.

A complaint involving a forged or fraudulent document must be submitted on the Secretary of State's False or Forged Filing Complaint Form. The form must be completed in its entirety and signed by the complaining party for the process to move forward. Examples of complaints addressed include, but not be limited to: An individual with no connection to the entity is named, without consent as an officer, director or resident agent of an entity, the address of an individual is used without consent, a filing made on an entity by an individual with no connection or authority to do so.

This regulation is not intended to resolve disputes between partners, family members or others that have a direct interest in or may be battling for control of an entity. Those disputes remain matters for a court of competent jurisdiction.

WHEN BANKRUPTCY WILL AND WILL NOT END YOUR TAX TROUBLES

There are essentially two types of bankruptcies and two types of taxes. The effect of bankruptcy on your tax obligations depends upon both the type bankruptcy you select and the type tax you owe.

First, you may be liable for either personal income taxes or for withholding taxes (usually due from a business that you owned or managed). Withholding taxes are never discharged through any type bankruptcy. Personal income taxes are discharged in Chapter 7 bankruptcy – but only if assessed at least three years prior to the filing.

Now consider the types of bankruptcies. Income taxes, whether more or less than three years old, are not discharged under a Chapter 13 wage-earner plan or Chapter 11 reorganization. Under Chapter 13 you agree to make monthly payments over a three to five year period to pay off either a portion or all of your debts. Because taxes are a priority claim, you generally pay the entire tax claim under a Chapter 11 or Chapter 13.

A Chapter 7 bankruptcy can be an effective way to rid yourself of old tax claims, but you must move carefully:

- Make certain that the taxes are no less than three years old, measured from date of assessment. More recent taxes are not dischargeable.
- If you negotiated a settlement or had your tax claim adjudicated, you must wait at least 240 days from that date for filing bankruptcy.
- Bankruptcy won't help you if you understated income or filed false tax information for the years you want discharged. The IRS can still come after you for any deficiency found on audit, so make certain your taxes for these years are accurate.
- Filing bankruptcy has no effect on liens already placed against your property. The IRS can, with bankruptcy court approval, sell the property under IRS seizure. Your remaining tax obligation will be discharged.

If you can fully pay your taxes over time, then Chapter 11 or Chapter 13 may work well for you. A Chapter 13 gives you three to five years to pay your taxes and the IRS cannot bother you during this time. In a business or profession? You can elect a Chapter 11 reorganization. This gives you six years from date of assessment to fully pay the IRS. A Chapter 13 or Chapter 11 bankruptcy is recommended only if you have assets you do not want to lose. If you have relatively few assets, and a substantial tax liability, wait the three years and fully discharge the tax under a Chapter 7 bankruptcy.

As powerful as the IRS may be, the federal bankruptcy laws are considerably stronger. Once you file bankruptcy the IRS must stop all further collection action. So bankruptcy can be an effective way to save your

assets and stretch out your payments to the IRS. But don't make that one fatal error: Waiting too long before filing bankruptcy.

Example: If you are in a business, the IRS may have levied your cash and your accounts receivable. Perhaps they seized and closed your business as well. Under a Chapter 11 or Chapter 13 you can compel the IRS to turn these assets back to you. That, however, can take time to enforce. Your attorney must file a complaint against the IRS for turnover. The bankruptcy court may take several weeks, or even months, to act. Meanwhile your business remains closed, employees find new jobs, and customers flock to your competitors. Customers that owe you find the IRS levy a convenient excuse not to pay and take their business elsewhere. Few businesses can survive so serious a disruption.

If you cannot reach a payment agreement with the IRS, then file for bankruptcy protection before the IRS steps in and does its damage. Bankruptcy then becomes an empty remedy.

WHO TO CALL WHEN YOU OWE THE IRS

CPA's and tax attorneys can both represent taxpayers before the IRS. There's one major difference between these professionals. What you tell your accountant is not privileged. If the IRS wanted to press for information it can subpoena the accountant at any administrative proceeding or trial. This extends also to any documents you may have given to your accountant. What you tell your attorney, on the other hand, is privileged. Neither the IRS, nor any other party, can force your attorney to disclose confidential communication without your permission. Thus, you can confide in your attorney the deepest secret, including

Disposition of your assets, without fear of forced disclosure.

Does this mean that you should not use an accountant, or not confide in one that may represent you? Not at all. Have your tax attorney, or family lawyer for that matter, retain the accountant to handle your case. Working under your lawyer, communication to the accountant is an protected as communication to your lawyer.

If you doubt your ability to negotiate a tax resolution on your own behalf, you can hire either a CPA or attorney experienced in such tax matters. But these professionals can be expensive. Do you want to save money? Call an enrolled agent (EA) to assist you. Enrolled agents are neither accountants nor lawyers. They are usually former IRS agents or examiners, so they have a fair idea of how to deal with the IRS. To find an enrolled agent in your area call the National Association of Enrolled Agents at (800)424-4339.

Another excellent source of good tax representation is Taxpayer's Assistance Corporation (TAC). They maintain offices in most major cities and are staffed with highly-qualified accountants who specialize in negotiating installment payments with the IRS. To reach the Taxpayer's Assistance Corporation phone (800)IRS-HELP.

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Your most brilliant ideas come in a flash, but the flash comes only after a lot of hard work. Nobody gets a big idea when he is not relaxed and nobody gets a big idea when he is relaxed all of the time.

Edward Blakeslee

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