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FASB Final Standard Excludes All Nonprofits From "Public Business Entity" Definitions

In December 2013, the FASB agreed that a "public business entity" is an entity that meets any one of the six criteria delineated in its Accounting Standards Update (ASU) 2013-12, *Definition of a Public Business Entity*. Although nonprofits may sometimes meet one of these six criteria, the ASU specifically states that, "Neither a not-for-profit entity nor an employee benefit plan is a business entity." Nonprofits are defined and their accounting requirements are addressed in FASB ASC Section 958, Not-for-Profit Entities.

This definition of public business entity will be used by the FASB, its Emerging Issues Task Force, and the recently formed

Private Company Council (PCC) to specify the scope and effect of future accounting pronouncements. In particular, the definition will be used to delineate all entities that are outside the scope of the PCC's, *Private Company Decision-Making Framework: A Guide for Evaluating Financial Accounting and Reporting for Private Companies*. The PCC has been charged with developing accounting alternatives within US GAAP that would be appropriate to private companies. FASB approval of these alternatives is required.

In its Basis for Conclusions to ASU 2013-12, the FASB notes that it

considered distinguishing between nonprofits on the basis of: (a) whether the nonprofit issues or is an obligor for conduit debt securities that are traded in a public market, (b) whether it receives public donations, or (c) some size threshold. The Board decided that these criteria may not be appropriate in all circumstances and "may create an ineffective bright line among not-for-profits." Instead, the FASB agreed that it will consider on a standard-by-standard basis, whether all, none, or only some nonprofits should be permitted to apply accounting and reporting alternatives in US GAAP intended to limit the cost of compliance for certain entities. The FASB will base its decisions on nonprofit entity user needs and resources.



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Accounting for Donated Auction Items



Some of the most common in-kind donations received by nonprofit organizations are auction items. It is also common for the accounting for these donated auction items to be incorrect.

Generally accepted accounting principles require that items received for fundraising purposes (such as auction items) be recorded at fair value at the time of the contribution. It is also required that any difference between the amount actually received for the donated item at the time of the auction should be recognized as adjustments to the contribution amount.

For example, a nonprofit organization receives a piece of jewelry valued at \$3,000 to be auctioned off to the highest bidder at the nonprofit organization's annual fundraiser. The initial transfer of the piece of jewelry should be reported as a \$3,000 contribution and the piece of jewelry should be reported as an asset. The winning bidder then acquires the piece of jewelry at the fundraiser for \$5,000; an additional \$2,000 contribution should be reported when the piece of jewelry is transferred to the bidder, and the previously reported asset of \$3,000 should be expensed on the statement of activities. If instead a bidder acquires the piece of jewelry in the above example for \$2,500, a reduction of the

initial contribution of \$500 would be reported when the piece of jewelry is transferred to the bidder.

For practical purposes, many nonprofit organizations do not record the contribution when the goods are received, but wait until the sales transaction takes place at auction. This allows the organization to record the transaction in one step instead of two.

For tax return purposes, the value of these auction items must be reported as contributions, as well as an offsetting special event expense on the Form 990. This allows for the tax return to reflect all the donations that were received by the nonprofit organization, and report an accurate picture to the public of the nonprofit organization's fundraising activities. Even though the nonprofit organization is not the end user of the donated items, when the items are received, they are an in-kind donation the nonprofit organization will use to generate additional revenue.

As with all in-kind donations, a nonprofit organization should never include a value of the in-kind item received in the acknowledgement letter sent to the donor. The donor is responsible for obtaining a proper valuation for any in-kind donation.

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Article written
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The Impact of the Affordable Care Act on Nonprofit Employers

Since it was signed into law by President Obama on March 23, 2010, the Affordable Care Act (ACA) has dramatically affected the health care coverage provided to individuals by their employers. It is important to note that nonprofit entities are subject to the provisions of the ACA just as much as for-profit entities are. Some of the more significant consequences of ACA's application to nonprofit entities are discussed below.

Q: DOES THE ACA REQUIRE A NONPROFIT ENTITY TO PROVIDE HEALTH CARE COVERAGE TO ITS EMPLOYEES?

A: No. However, beginning January 1, 2015 (except as noted below), if any employer (whether for-profit or nonprofit) with 50 or more full-time employees does not provide a minimum level of coverage to its full-time employees, it may be subject to a significant excise tax for each month that coverage does not meet the prescribed minimum. According to recently released Treasury Regulations, employers with 50-99 employees will not be subject to this excise tax until January 1, 2016 provided certain requirements set forth in the Regulations are met. This excise tax is sometimes referred to as the "pay or play penalty", or the "shared responsibility tax". Keep in mind that the IRS has implemented some very complex rules for determining exactly who an employer's full-time employees are.

Q: IF A NONPROFIT EMPLOYER DOES WANT TO PROVIDE HEALTH CARE COVERAGE TO ITS EMPLOYEES, DOES THE ACA OFFER THE EMPLOYER A WAY TO PURCHASE THIS COVERAGE WITHOUT HAVING TO PURCHASE ITS OWN GROUP HEALTH CARE INSURANCE POLICY THROUGH THE PRIVATE MARKETPLACE?

A: Yes. The ACA provides for a "Small Business Health Options Program" (oftentimes referred to as "SHOP") that allows small businesses (those businesses, including nonprofit entities, with no more than 50 employees), to purchase health care insurance through the state-based exchanges authorized under the ACA. These exchanges, sometimes referred to as "Marketplaces" under the ACA, are set up in each state and provide an internet website where businesses, as well as individuals, can go to purchase health care insurance online.

Q: WHAT IS THE INTENDED OBJECTIVE OF THE SHOP MARKETPLACE?

A: The ultimate objective of the SHOP Marketplaces, as well as the ACA Marketplaces that offer health insurance to individuals, is to allow consumers to go to one website and compare and contrast the benefits and costs of different health care policies provided by those insurance companies that choose to participate in that state's ACA/SHOP Marketplace. The hope is that each state's ACA/SHOP Marketplace will make shopping for health care insurance a more transparent process and make it much easier for the consumer, whether an individual or a small business, to make an informed choice of the best policy for it and its employees. It is also hoped that the SHOP process will make purchasing group health insurance less expensive than if the business had to purchase a policy on the basis of its own research. At this time, it is too early to tell whether this ultimate objective will be realized. Many small businesses have noted, however, that the health policies being offered thus far through the SHOP Marketplace have higher premiums and provide less generous coverage than policies

formerly owned by a small business, and require too much paperwork. These problems have tended to encourage many small businesses to stay out of the SHOP Marketplace for now.

Q: WILL THE SHOP EVER BE AVAILABLE TO BUSINESSES, INCLUDING NONPROFIT ENTITIES, WITH MORE THAN 50 EMPLOYEES?

A: Yes. Beginning in 2016, SHOP will be open to businesses with up to 100 employees.

Q: ARE SMALL BUSINESSES, INCLUDING NONPROFIT ENTITIES, REQUIRED TO PURCHASE GROUP HEALTH INSURANCE THROUGH THE MARKETPLACES?

A: No. But, beginning with their 2014 tax year, if a small business purchases group health insurance outside of a state's ACA/SHOP Marketplace, it will not be eligible for the Small Business Health Care Tax Credit. This is a tax credit provided under the Internal Revenue Code available for certain small businesses with fewer than 25 "full-time equivalent employees". The credit is available to help the employer pay for a part of its cost of providing group health insurance to its employees. In other words, beginning in 2014, this tax credit is only available to those small businesses that purchase their group health insurance through a state-based ACA/SHOP Marketplace. For nonprofit entities, the tax credit is limited to the amount of federal payroll taxes the employer withheld for the tax year to which the credit relates. The tax credit is claimed by filing IRS Forms 8941 and 990-T.



Q: IF AN EMPLOYER WANTS TO PURCHASE A GROUP HEALTH POLICY THROUGH SHOP, ARE THERE ANY SPECIAL REQUIREMENTS THAT MUST BE MET?

A: Yes. First of all, the employer must offer coverage under the policy purchased through the SHOP Marketplace to all of its full-time employees (i.e., those employees working an average of 30 or more hours per week). Secondly, in most states, and as a general rule, at least 70% of your eligible employees must enroll in the group health plan funded by the health care insurance policy purchased through the SHOP Marketplace.

Q: IS THE SHOP MARKETPLACE CURRENTLY AVAILABLE?

A: Yes and No. The ability of small businesses to access on-line the SHOP Marketplace in each of the 50 states was supposed to begin October 1, 2013, effective for coverage to be effective January 1, 2014. The Obama administration has, however, delayed until November 1, 2014, the ability of small businesses to access the SHOP Marketplace on-line in those 36 states where the federal government is running the SHOP Marketplace for that state, with coverage not effective until January 1, 2015. Even so, in those states small businesses will still have the option to purchase SHOP health insurance plans through its

own insurance broker or agent, who will assist the employer with filing for SHOP coverage through a paper application (as opposed to applying on-line). Keep in mind, however, these brokers or agents must comply with any federal and state requirements imposed by the state's SHOP Marketplace and the only policies that can be purchased are those otherwise available through that state's SHOP Marketplace. Accordingly, small businesses can still purchase group health insurance through the SHOP Marketplace that is to be effective in 2014, but such purchases cannot be done on-line, just through a paper application.

Q: IN WHICH STATE'S ACA/SHOP MARKETPLACE DOES A NONPROFIT ENTITY PARTICIPATE IF IT HAS EMPLOYEES IN MORE THAN ONE STATE?

A: It is only necessary for the nonprofit entity to set up an account in one state's SHOP Marketplace. However, the entity can only set up an account in a state where it has an office or employee work site.



Article written by Richard Dyo, Tax Principal and Don Hughes, Tax Manager (Houston, TX)

Recent IRS Procedural Developments Related To Exempt Organizations



Exempt organization issues at the IRS have been in unusual limelight in recent months due to the 2013 Tea Party scandal. There have also been more mundane goings-on, some of which may be worthy of note.

Revenue Procedure 2014-11, released on January 2, provides updated procedures for reinstatement of exempt status following an automatic revocation. Prior to 2007, exempt organizations with “normal” (generally the rolling three year average) gross receipts at or below the prescribed threshold (currently \$50,000) were not required to file annual returns on the Forms 990 or 990-EZ. The Pension Protection Act of 2006 instituted a requirement for filing an annual e-Postcard Form 990-N, Electronic Notice for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ. Failure to file the required return or e-Postcard led to an automatic revocation of exempt status from the due date of the return for the third year of non-filing. The revocation is reflected on a monthly updated list maintained by the IRS. The IRS sends a notification

of revocation by mail to the last known address of the organization.

Reinstatement of the revoked exempt status requires a fresh application to the IRS and payment of the applicable fee. For us it is a rarely used procedure, since our business is compliance and not non-compliance, but situations can arise where the default occurs for validly excusable reasons, and we are sometimes approached by organizations which have had their status revoked due to noncompliance with or without good cause. This revenue procedure provides guidance on applications for reinstatement and the acceptable criteria for establishing “reasonable cause.” Applications properly prepared and annotated in accordance with the guidance provided may be expected to be rewarded with a smoother ride through the review process and prompt approval.

The Service has also introduced an interactive version of the Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The

interactive version, found in an instant by searching for “interactive 1023” on the web, allows the application to be completed step-by-step on the screen. It takes you through a checklist of required documents and information, and links to applicable instructions and help on the IRS website. The completed form can be printed for submission to the IRS. Whether this would be a material help must depend on individual experience or preference, or it may even be a generational thing. Sometimes new technologies work wonders that would have been unimaginable before their advent, and sometimes good old ink on paper wins because it is what you know.



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NOT-FOR-PROFIT INDUSTRY INSIGHT

With the increasing complexity of laws and regulations, it's important for associations, foundations, charities, hospitals, schools and other tax-exempt entities to seek out professionals with extensive experience in nonprofit compliance issues. We understand there are many challenges affecting the industry and provide the attention needed to help clients stay focused on their job at hand.

UHY LLP's National Not-For-Profit Practice offers comprehensive audit and assurance, tax planning and compliance and business advisory services to meet the unique, complex needs of nonprofit organizations.

These types of specialized services, which cut across the traditional service lines, demonstrate our philosophy of skilled professionals integrating industry expertise with technical services.

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