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FASB Not-for-Profit Advisory Committee Activity

The FASB's Not-for-Profit Advisory Committee (NAC) works with the FASB to provide input on how accounting standards impact the nonprofit sector. The NAC typically meets twice a year, first as a committee and then in a joint meeting with the FASB. NAC met most recently on September 13 and 14, 2018. Here are the highlights from that meeting.

Practical Consideration:

Information about the NAC and its activities is available on the FASB website at **www.fasb.org**.

ASU 2018-08

The FASB staff provided an overview of ASU 2018-08, *Not-for-Profit Entities (Topic 958): Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made*, and sought feedback from NAC members on implementation of the ASU. The NAC discussed the interest in analogizing the guidance in ASU 2018-08 by business entities receiving certain transfers of assets from government entities. Even though the FASB staff noted that those transactions are excluded from the scope of the ASU, making that analogy is not prohibited.

Other issues discussed include certain standard terms or clauses in an agreement (such as "satisfactory progress") and the effect on the conditionality of that agreement, and noted that by themselves, such clauses would not indicate conditionality; multiple barriers in agreements and the effect on the timing of revenue recognition; the difference between budgets and qualifying expenses; the classification of certain long-term arrangements with certain types of funders (such as the U.S. Department of Housing and Urban Development) that are typically structured as loans but contain forgiveness provisions based on long-term use; and the desirability of early adoption of the ASU for nonprofit organizations that both receive and make grants.

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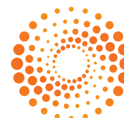

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ASU Implementation Issues

The NAC discussed implementation issues surrounding ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*, ASU 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*, ASU 2016-02, *Leases (Topic 842)*, and ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. The discussion on Topic 606 issues included the extent of preparation activities leading up to the effective date of the ASU and the timing of recording of receivables in connection with tuition agreements when considering the judgements when considering the cancellability of the agreements. For ASU 2016-02, the discussion centered on below-market rent arrangements and if contributions are part of those arrangements. The FASB staff discussed a proposed one-year delay to adopt ASU 2016-13.

Definition of Collections

The FASB staff provided an update on the proposed ASU, *Not-for-Profit Entities (Topic 958): Updating the Definition of Collections*. The NAC discussed if adding a definition for *direct care* is needed but noting that such an addition could cause continued divergence from the current American Alliance of Museums definition of the term *collections*. The NAC also noted the applicability of the proposed amendments to entities other than museums. Your November 2018 edition of this newsletter provided a discussion of the proposed ASU.

Other Items

Other recently issued ASUs and ongoing FASB agenda and research projects. The NAC members supported an option for nonprofit organizations to amortize goodwill and discussed possible ways of determining an amortization period. The NAC also discussed FASB's recent decision on unused lines of credit in the balance sheet classification of debt project and the possible effect on classification of many variable rate demand bonds. Other topics discussed included:

- FASB's responses to the 2017 Tax Cuts and Jobs Act.
- International nonprofit activities.
- Recent trends, concerns, and observations in the nonprofit sector.

Issues Encountered with Implementation of the Lease Accounting Standard

ASU 2016-02 is effective for nonprofit organizations for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. The major focus of the ASU is the recognition of additional lease assets and lease liabilities on the balance sheet, as well as new disclosures about the entity's leasing arrangements.

A couple of the implementation issues noted include the following:

- *Not considering the impact on other departments.* Implementing the lease standard does not just affect the finance department. IT personnel will need to be heavily involved in any system, software, and workflow changes. In addition, lease changes may have a ripple effect on the budgeting, fundraising/grant writing, unrelated business income tax, and regulatory departments.
- *Not researching lease accounting solutions in depth.* Many organizations are discovering that their current solution of tracking and managing leases is not up to the task and can't handle the increased amount of recordkeeping that will be required under the new standard. Therefore, nonprofit organizations should research all the lease accounting software solutions that are available.

Changes to Note Disclosures

In August 2018, the FASB issued guidance that aims to improve the effectiveness of notes to the financial statements. This guidance included a new chapter in the FASB's Conceptual Framework along with a new ASU that improves disclosure requirements that relate to fair value measurements.

Conceptual Framework

The FASB added Chapter 8, *Notes to Financial Statements*, to FASB Concepts Statement No. 8,

Conceptual Framework for Financial Reporting. This new chapter provides direction to the FASB when determining what to include in the notes to the financial statements when developing accounting standards. The FASB plans to use (or has used) the concepts in Chapter 8 in connection with the disclosure framework project—to modify and improve disclosure requirements for fair value measurements, defined benefit plans, income taxes, and inventory.

Fair Value Measurements

ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*, as indicated above, results from the FASB's disclosure framework project. The ASU applies to any entity that is required to provide disclosures about recurring or nonrecurring fair value measurements. The new ASU removes certain disclosures from FASB ASC 820, as well as providing new disclosure requirements, and modifies other existing disclosures. Certain of the disclosure requirements in the ASU don't apply to nonpublic entities.

Disclosures Removed. Existing disclosures requirements that the ASU removed include:

- Reasons for and amounts of transfers between Levels 1 and 2 in the fair value hierarchy.
- Policy for the timing of transfers between levels.
- Level 3 valuation processes.

Disclosures Added. The ASU added certain new disclosure requirements related to Level 3 measurements; however, they're only applicable to nonprofit organizations if they are conduit bond obligors.

Disclosures Modified. Certain of the fair value measurement disclosures that the ASU modified include:

- For nonpublic entities, disclosure of transfers into and out of Level 3, as well as purchases and issues of Level 3 assets and liabilities. (This is in lieu of a rollforward of Level 3 measurements.)
- For investments in certain entities that calculate net asset value, disclosure of the timing of liquidation of investee assets and certain other information on restrictions from redemption.

Effective Date. The ASU is effective for all entities for fiscal years, and interim periods with those years, beginning after December 15, 2019. Early adoption is permitted. An entity is permitted to early-adopt removed and modified disclosures and to delay adoption of new disclosure requirements until the effective date of the ASU. Certain amendments should be applied prospectively, while others are applied retrospectively.

Websites of Interest

The following websites may be of interest to the nonprofit sector.

https://wiredimpact.com

Wired Impact is a technology and marketing company that focuses on building websites for nonprofit organizations that aim to boost fundraising, increase volunteerism, raise awareness, and serve communities. The company also offers complementary nonprofit marketing advice through guides, a blog, and a weekly newsletter. Guide content includes topics such as *Essential Web Page Content for Nonprofits* and *How to Increase Traffic to Your Nonprofit Website*. The blog covers topics that include email marketing, online resources, social media, measurement, and marketing strategy. Follow on Facebook, Twitter, and Google+.

https://cpahalltalk.com/

CPA Hall Talk is the blog of Georgia CPA Charles Hall. He's currently the quality control partner for McNair, McLemore, Middlebrooks & Co., LLC and a contributing author to Thomson Reuters' PPC Guides. His blog provides a wide mix of interesting posts—technical discussions of recent auditing and accounting guidance, practice management discussions, technology and efficiency tips, and personal reflections on a career as a CPA. His perspective is tailored for the small to medium-sized firm. He also offers a few free online courses and a free podcast and newsletter. Follow him on Facebook, Twitter, and LinkedIn.

http://nonprofitaf.com/

Vu Le is an Executive Director of a Seattle nonprofit and a self-styled nonprofit humor blogger. Through his blog, he shares his experiences in the trenches and unique perspective in an accessible and engaging way. His nonprofit blog presents a funny take on issues common to nonprofit organizations such as board relations, capacity building, funder relations, grantwriting, office culture, staff dynamics, and random stuff, to name a few.

He encourages readers to subscriber to his free newsletter and is available for speaking engagements. You can also buy a t-shirt! Follow him on Facebook, Twitter, LinkedIn and Google+.

Inflation-adjusted Amounts for 2019

The following inflation-adjusted amounts apply for 2019 [Rev. Proc. 2018-57 (2018-49 IRB 827)].

Low-cost Articles

Charitable organizations normally can distribute low-cost articles in connection with a fundraising campaign without fear that the IRS will treat the activity as an unrelated business activity [IRC Sec. 513(h)(1)(A)]. A low-cost article is an item that costs the organization no more than $11.10 in 2019 (up from $10.80 in 2018).

Insubstantial Benefits

The deductible portion of a donor's contribution normally must be reduced by the value of anything received in return. However, an insubstantial benefit can be ignored, thus allowing a full deduction, if the gift otherwise meets the requirements for claiming a contribution. The following alternative limitations are used to determine if benefits are insubstantial:

1. The fair market value of all benefits received is not more than the lesser of $111 for 2019 (up from $108 in 2018) or 2% of the contribution.
2. The contribution is at least $55.50 for 2019 (up from $54 in 2018), and the cost of the benefits received is no more than the low-cost article value of $11.10 for 2019 (up from $10.80 for 2018).
3. In connection with a fund-raising campaign, the benefits are distributed free to potential donors who neither requested nor expressly consented to receiving them, and their cost is no more than the low-cost article value of $11.10 for 2019.

Lobbying Expenditures

If a Section 501(c)(4) social welfare organization, a Section 501(c)(5) agricultural or horticultural organization, or a Section 501(c)(6) organization has any lobbying expenditures, it normally must notify members of the portion of their dues that is nondeductible because of such expenses [IRC Sec. 6033(e)(1)(A); Rev. Proc. 98-19 (1998-1 CB 547)].

However, Section 501(c)(4) and (c)(5) entities are exempt from the notification requirements if (1) more than 90% of the annual dues comes from certain other tax-exempt entities, or (2) more than 90% of the dues comes from members who annually pay $117 or less for 2019 (up from $115 for 2018).

Agricultural or Horticultural Organization

The dues and similar income of an agricultural or horticultural organization are not subject to unrelated business income tax, regardless of the benefits or privileges to which the entity's members are entitled, if the annual dues do not exceed $169 for 2019 (up from $165 in 2018) [IRC Sec. 512(d)(1)].

Penalty Provisions

Some of the penalty provisions under IRC Sec. 6652 are adjusted for inflation. Those that apply to tax-exempt organizations or their managers are summarized as follows.

Failure to File Return under IRC Sec. 6033(a)(1). Exempt organizations can be assessed penalties for failure to file returns. The list is not all inclusive.

Scenario	Daily Penalty	Maximum Penalty
Organization with gross receipts of $1,067,000 or less	$20	Lessor of $10,500 or 5% of the organization's gross receipts for the year
Managers	$10	$5,000
Public inspection of annual returns	$20	$10,500
Public inspection of exemption applications	$20	No limit

For a tax-exempt entity with gross receipts over $1,067,000, the daily penalty is $105 with a maximum penalty of $53,000.

Failure to File Disclosure Required under IRC Sec. 6033(a)(2). The daily penalty is $105 with a maximum penalty of $53,000.

Failure to File Return under IRC Sec. 6043(b). Terminated exempt organizations and their managers can be penalized. This list is not all inclusive.

Scenario	Daily Penalty	Maximum Penalty
Organization	$10	$5,000
Managers	$10	$5,000

Other Penalty Provisions. There are several other penalty provisions (both taxpayer and preparer) that are adjusted annually for inflation, but they are not specific to tax-exempt organizations. See Rev. Proc. 2018-57 (2018-49 IRB 827) for additional inflation adjusted amounts for various penalties.

Proposed Regulations Provide Details on Certain Excise Taxes

Certain excise taxes apply to applicable tax-exempt organizations (ATEO) specified in IRC Sec. 4960(c)(1) and may apply to others, including—

- related organizations;
- educational institutions;
- sponsoring organizations maintaining donor-advised funds (DAFs);
- fund managers of these sponsoring organizations; and
- donors, donor advisors, and those related to a donor or donor advisor of a DAF.

The Treasury, in November 2018, released proposed regulations (REG-107163-18) implementing certain provisions enacted by the Pension Protection Act (PPA) of 2006, the Tax Technical Corrections Act of 2007, and two new excise taxes included in the 2017 Tax Cuts and Jobs Act (TCJA). The proposed regulations revise prior regulations issued under IRC Sec. 6011. Additionally, they specify which return to use when reporting Section 4960, 4966, 4967, and 4968 excise taxes. The proposed regulations also amend the regulations under IRC Sec. 6071, noting the deadline for filing the return, and under IRC Sec. 4963, relating to the abatement of first-tier taxes (sometimes referred to as initial taxes).

Excise Taxes

The new excise taxes under IRC Secs. 4960 and 4968 were discussed in prior editions of this newsletter. IRC Sec. 4960, added by the TCJA, imposes a "first-tier" excise tax at the corporate rate (currently 21%) on excessive compensation. Excessive compensation is defined as the sum of:

1. remuneration (not including any excess parachute payment) greater than $1 million paid by an ATEO with respect to the employment of any covered employee, plus
2. any excess parachute payment paid to any covered employee [IRC Sec. 4960(a)].

IRC Sec. 4968 imposes a "first-tier" 1.4% excise tax to the net investment income (NII) of certain private colleges and universities (and their related organizations) for the tax year [IRC Sec. 4968(a)]. NII includes gross income from interest, dividends, rents, payments for securities loans, royalties, and similar items of income.

In 2006, the PPA imposed excise taxes on taxable distributions from DAFs in the amount of—

1. 20% on each taxable distribution defined in IRC Sec. 4966, and
2. 125% of the prohibited benefit amount derived from the advice of a donor, donor advisor, or related person that receives, directly or indirectly, more than an incidental benefit (IRC Sec. 4967).

Additional taxes are applied to the fund manager(s).

Caution: The Treasury Department and the IRS are considering proposed regulations that address two areas of ambiguity concerning when a transaction will result in a more than incidental benefit to certain persons [Notice 2017-73 (2017-51 IRB 562)]. Notice 2017-73 also outlines a proposal to prevent using a DAF to circumvent the public support rules for private foundations. Practitioners should monitor developments.

Reporting on Form 4720

The proposed regulations provide that the new excise taxes under IRC Secs. 4960 and 4968 will be reported on Form 4720 (Return on Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code) using new Schedules N and O, respectively. In addition, the proposed regulations amend previous guidance and provide that organizations liable for Section 4966 and 4967 taxes must file Form 4720 [Prop. Regs. 53.6011-1(b) and 53.6071-1(i)]. Previously, Regs. 53.6011-1 and 53.6071-1 did not list all the excise taxes under Chapter 42 of the Code.

Due Date. Form 4720 must be filed by the 15th day of the fifth month after the end of the year during which the excise tax liability was incurred. For example, a calendar year organization that incurred excise tax during the year ending December 31, 2018, would be required to file Form 4720 and pay the tax due by May 15, 2019.

Excise Taxes Eligible for Abatement

Under IRC Sec. 4962, qualified first-tier taxes are subject to abatement. IRC Sec. 4962 currently does not include Section 4966 and 4967 taxes. To reflect the statutory addition of these excise taxes to first-tier taxes, the proposed regulations add Sections 4966 and 4967 to the definitions of first-tier tax and taxable event in Reg. 53.4963-1. If imposed, the tax can be abated by the IRS when the violation is due to reasonable cause, not willful neglect, and the violation is corrected within the correction period (IRC Sec. 4962). The correction period begins with the date the taxable event occurs, and normally ends 90 days after the mailing date of a notice of deficiency with respect to the second-tier tax [IRC Sec. 4963(e)(1)].

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Effective Date

The proposed regulations will apply as of the date they are published as final in the Federal Register.

Practical Consideration:

The 2018 Form 4720 has been revised, adding Schedules N and O, to allow for the reporting of the two new excise taxes included in the TCJA.

2019 IRS Exempt Organization Compliance Initiatives

The IRS's 2019 Fiscal Year Program Letter highlights priorities, including taxpayer compliance. The IRS prioritizes and allocates resources based on these issues. The following strategies were approved by the TE/GE's Compliance Governance Board for fiscal year 2019:

- Section 501(c)(7) organizations—focus on investment income, non-member income, and Form 990-T non-filers.
- Section 4947(a)(1) Non-exempt Charitable Trusts (NECTs)—focus on under and over reported charitable contributions.
- Previous for-profit organizations—focus on entities that have converted to Section 501(c)(3) organizations.
- Potential private benefit and inurement—watch for indicators of potential private benefit or inurement to individuals or private entities.
- Forms W-2 and 1099—review for proper wage reporting, including misclassified workers.
- Backup withholding—focus on mismatched and/or missing taxpayer identification numbers on Form 1099 that may indicate failure to comply with backup withholding requirements.

Practical Consideration:

January is a good time to consider an organization's compliance in these targeted areas, and to develop a compliance strategy.

Tax Brief

NEW SCHEDULE M FOR REPORTING SEPARATE UBTI. Interim guidance and transition rules related to the new unrelated business taxable income (UBTI) calculation rules were discussed in the October 2018 issue of this newsletter. Much uncertainty remains regarding what is considered a separate unrelated trade or business. However, the 2018 Form 990-T includes a new form, Schedule M (Form 990-T), for reporting the activity from more than one unrelated trade or business.

Parts I and II of Form 990-T should be completed for one unrelated trade or business. A Schedule M is attached for each additional unrelated trade or business. The UBTI of each separate trade or business, from line 32 of Schedule M and Form 990-T, Part II, is combined (if greater than zero) to determine the net unrelated business taxable income (UBTI) that is reported on the organization's Form 990-T, Part III, line 33. The IRS requested comments after publishing the draft 2018 Form 990-T and instructions and practitioners should watch for future guidance.