

Good Practices For Tax Exempt Organizations

by Louise A. Jackson

The IRS regards itself as the watchdog over tax exempt organizations. A few years ago, major changes were made to the annual reporting form 990 for all exempt organizations. Tax exempt organizations now have questions on the return to answer regarding governance, management and disclosure. A number of the questions inquire about the existence of certain documents/policies which are not required but fall into the category of “good practices.” The major ones that tax exempt organizations and their boards should be concerned with include:

1. **The governing body should review the 990 before it was filed.** The process might involve the treasurer or other financial officer on the board reviewing the annual return and reporting at a board meeting so the board minutes indicate that such review was done, by whom and when. The return also should be made available to the board members before the return is filed as through a password protected web site or by e-mailing it to each board member.

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2. ***The organization should have a conflict of interest policy.*** This policy should define conflicts of interest, identify the classes of individuals within the organization who are covered by the policy and detail the procedure for dealing with the conflict at the board meeting at which it is discussed. Examples of situations which may result in an apparent or actual conflict of interest:

- Hiring investment managers, vendors or consultants;
- Temporary employment of a board member or relative of a board member as executive director;
- Accepting meals, tickets or other gifts from current or potential grantees;
- Participating on fundraising committees or in fundraising efforts for an organization seeking a grant from the one on whose board you sit; and
- Making grants to non-profit organizations on which a board member, staff or grant-reviewing volunteer or their families are serving as staff members, board members or volunteers.

Related to this, the organization should require its officers, directors/trustees, and key employees to annually disclose business or other interests that could give rise to conflicts.

3. ***The organization should have a written whistleblower policy.*** The Sarbanes-Oxley Act of 2002 mainly applies to public companies, but also has application to tax-exempt organizations. Having a written whistleblower policy is one of those good practices that came from the law. A whistleblower policy encourages staff and volunteers to come forward to a specified staff person, board member or outside party with information on illegal practices or violations of adopted policies of the organization. It protects such individuals and the recipients of the information from retaliation.

4. ***The organization should have a written document retention and destruction policy.*** Another good practice from the Sarbanes-Oxley Act is this policy. It is illegal to destroy a record with the intent to obstruct a federal investigation. Such a policy identifies the records retention responsibilities of staff, volunteers, board members and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records. Eastman & Smith would be happy to help you develop such a policy.

5. ***The governing board needs to have a procedure in place for determining the compensation of the organization's key employees such as the organization's executive director.*** The board needs to obtain data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations. Organizations of similar tax exempt organizations usually have the type of data the board should obtain in setting compensation.

Board members should be aware of how their organization is complying with the legal requirement to allow public inspection of the application for recognition of tax exempt status by the IRS, including all additional information in response to IRS requests, and copies of the last three years' IRS forms 990.

Even though these documents may not be legally required, non-profit organizations with these policies in place will be following what is considered good practice. Should you have any questions regarding these policies or need assistance creating one, please contact Eastman & Smith Ltd.



Ms. Jackson, member, is a Northwest Ohio native with over 30 years of experience in the legal field. She practices in a number of areas, particularly those affecting governmental entities, non-profit/tax exempt organizations and small businesses.

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