IRS PUBLISHES NONPROFIT GOVERNANCE TRAINING MATERIALS — INDEPENDENT BOARDS AND POLICIES/PROCEDURES EMPHASIZED

WHAT YOU NEED TO KNOW:

The IRS recently published exempt organizations training materials addressing nonprofit governance, which can be found at http://www.irs.gov/charities/article/0,,id=208454,00.html. The materials provide nonprofit governance instruction to IRS examination agents, determination specialists, tax law specialists and managers on the elements of nonprofit governance and how it relates to an organization’s tax-exempt status. The training materials are another step in the IRS’s long-term plan to study the link between nonprofit governance and tax law compliance.

The IRS announced six areas of interest in the governance training materials:
☐ An active and engaged board of directors

☐ An appropriately sized board of directors

☐ A board comprised primarily of independent board members

☐ A board that understands the organization’s programs, people and resources

☐ Documentation of board meetings

☐ Implementation of policies and procedures

The training materials focus on public charities and are intended to provide more uniformity among agents at the audit level and the initial determination level. The IRS acknowledges “one size does not fit all” when it comes to nonprofit governance and that it is not the job of the IRS to determine an organization’s “governance, structure, policies or practices, or to make decisions for them.”

The materials emphasize the positive impact of an independent board of directors on legal compliance. The materials also emphasize the importance of proper policies and procedures, which its agents are encouraged to review.

According to the IRS, its role is to administer the tax laws uniformly and fairly, and to assess whether an organization has complied with the tax laws. In some cases, this may involve a review of an organization’s governance procedures relating to matters such as executive compensation and insider transactions. The materials do not mandate any specific board composition or policies and procedures outside of certain regulated areas, but offer suggested solutions to perceived board problems, such as the addition of independent board members and the adoption of a conflicts-of-interest policy.

The IRS announced it will be developing a governance checksheet to be used in examinations to explore the link between good or bad governance and compliance with the tax laws. We will alert you to this checksheet when it becomes available. The IRS also is planning to launch more compliance initiatives that will incorporate many of the governance questions asked in the new Form 990.
WHAT YOU NEED TO DO:

Tax-exempt organizations should review their governance structure to ensure that they are carrying out their mission with effective board members, personnel and procedures in place. Nonprofit organizations should keep thorough minutes, deliberate over interested person transactions, document and support decisions regarding executive compensation, create special committees where needed, and implement appropriate governance policies and procedures. By having a well-structured board and proper policies and procedures in place, organizations should be favorably positioned in the event of an IRS compliance check or audit.

FOR FURTHER INFORMATION:

For more information regarding the IRS-encouraged policies and procedures, click here — http://www.polsinelli.com/publications/nonprofit/resources/reprint0308.pdf. Or you may contact any of the attorneys in our Nonprofit practice group.
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