

Legal Update for Education Foundations

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Presented by:
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Legislative Update: Access to a Nonprofit Organization's Financial Data

Financial Records

Nonprofit corporations required to maintain “current and accurate financial records with **complete entries as to each financial transaction of the corporation, including income and expenditures**, in accordance with generally accepted accounting principles.” Bus. Org. Code 22.352(a)

Financial Records

- Board of directors must annually prepare or approve a financial report for the preceding year. Bus. Org. Code 22.352(b)
- Report must include:
 - (1) a statement of support, revenue, and expenses;
 - (2) a statement of changes in fund balances;
 - (3) a statement of functional expenses; and
 - (4) a balance sheet for each fund.
- Must be **available to the public for inspection** for 3 years.

New 2023 Legislation – HB 1957

Tex. Bus. Org. Code 22.353:

- Documents the corporation is required to make available for public inspection because of its status as a 501(c)(3) exempt organization, must be kept at the registered or principal office for at least three years after the close of the fiscal year.
- The corporation must make the documents available to the public for inspection and copying at the corporation's registered or principal office during regular business hours. The corporation may charge a reasonable fee for preparing a copy of a document.

IRS Regs Do Not Require Disclosure of Donor Names/Addresses

- A tax-exempt organization is generally **not required to disclose** publicly the **names or addresses of its contributors** on its annual return (i.e., IRS Form 990). The regulations specifically exclude the name and address of any contributor to the organization from the definition of disclosable documents.
- Does not apply to private foundations.



Other Legislative Updates



Legislative Update - Tex. Bus. Org. Code 22.220

The certificate of formation or bylaws of a corporation may provide that an action required to be taken at a meeting of the corporation's directors or an action that may be taken at a meeting of the directors or a committee may be taken without **holding** a meeting, **providing prior notice**, or **taking a vote** if a written consent, stating the action to be taken, is signed by the number of directors or committee members necessary to take that action at a meeting at which all of the directors or committee members are present and voting. The consent must state the date of each director's or committee member's signature.

Legislative Update - Professional Sports Team Charitable Foundation Raffle Enabling Act

Provides a qualified professional sports team charitable foundation the option to sell raffle tickets to individuals who are physically located inside the home venue or rodeo venue of the professional sports team associated with the foundation conducting the raffle at the time of sale through digital interactive media, such as a website or mobile application, as an alternative to selling the tickets in person at the venue.



Use of Foundation Funds



Use of Foundation Funds

To maintain exempt status as a 501(c)(3), a Foundation must:

- Engage primarily in activities that accomplish one or more of its exempt purposes;
- Ensure the organization's net earnings **do not inure to the benefit of private individuals**; and
- Serve a valid purpose that confers a public benefit.

I.R.C. Reg. § 1.501(c)(3)-1(c) (a failure to satisfy any one of the requirements is fatal to continued entitlement to exempt status).

Use of Foundation Funds

- Unrestricted monetary gifts to teachers likely **do not serve a charitable or educational purpose** and result in a prohibited private benefit to the recipients.
- Private benefit is defined to include a nonincidental benefit to anyone other than the intended recipients of the Foundation's exempt purpose. The distribution of **substantial, unrestricted financial gifts** to teachers would likely be deemed a private benefit.

Use of Foundation Funds

- “Private benefit” – Generally, means nonincidental benefits conferred on **anyone other than the intended recipients** of the organization’s exempt purpose.
- An improper private benefit is evaluated through both a qualitative and quantitative lens: a **qualitative private benefit** is a mere byproduct of the public benefit; a **quantitative private benefit** is insubstantial compared to the public benefit provided by the exempt organization.

Use of Foundation Funds

- *Oliveri v Commissioner* (2019), the U.S. Tax Court reviewed gifts to specific individuals, including a \$500 gift card to a retired police officer, from an exempt organization with the stated purpose to “provide religious and spiritual counsel to people of need, including inmates and hospital patients.”
- Tax Court ruled the **gifts were not in furtherance of the organization’s exempt purpose** and conferred a private benefit because the gifts were made to individuals for whom **no substantial charitable need was established.**

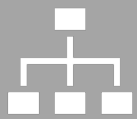
Use of Foundation Funds

- *Rameses School of San Antonio v. Commissioner* (2007), the Tax Court looked unfavorably on the use of a 501(c)(3) organization's funds for **personal use by individuals** because it provides for an "obvious opportunity for abuse of the claimed tax-exempt status."
- The organization was formed to operate a charter school in the San Antonio area. Organization funds were used to make mortgage and lease payments for the **benefit of specific individuals**, and the Court revoked the organization's exempt status.

Use of Foundation Funds



Statement of exempt purpose in governing documents defines the scope of allowable exempt activities of the organization.



Be familiar with the scope of your organization's exempt purpose.



If necessary, consider amendment if organization wants to change scope of activities.

Thank you!
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