Opening Letter

Dear Clients and Friends,

We are pleased to share with you our newsletter on legal matters of interest to nonprofit executives. It is being distributed to you to help keep you abreast of issues of legal concern to the non-profit community.

This month, please enjoy our feature articles on the ramifications of failing to file Form 990, reasonable compensation for nonprofit executives, and the changing face of tax returns in the digital world. Also, consider some events coming up: register for the 2010 National Tax Forums and nominate an exceptional nonprofit leader for the 2010 EXCEL Award.

Please feel free to pass this newsletter along to your colleagues. We also invite referrals to others in your organization and elsewhere who might benefit from receiving future editions.

We welcome suggestions and topics of interest that you may wish us to address in future editions. Likewise, we encourage you to get in touch with us with any questions you might have about legal concerns, whether or not discussed in this newsletter. All consultations are confidential and are free to prospective new clients. We hope you will enjoy our newsletter.

Sincerely,

Julian H. Spirer

Coming Up:

1. **Registration for the 2010 National Tax Forums is now available** [https://www.irstaxforum.com/index.cfm?fuseaction=reg.info&&comm_page_id=5706&event_id=1&live_view=1], which will be presented in six locations nationwide this summer. Guests can choose from a selection of more than 40 seminars and workshops, attending three full days of events. Learn the latest information in the fields of tax law, compliance, and ethics from IRS leadership and experts. Take the opportunity to network and earn up to 18 CPE credits, while hearing about the latest IRS e-Services products for tax professionals. Attend the new Exempt Organizations seminar, *Charities and their Volunteers: Working Together to Help the Public*, as well as the *Top 10 Things You Need to Know about the Form 990* workshop.

2. **The Center for Nonprofit Advancement invites you to nominate a nonprofit leader for the 2010 EXCEL Award**. This award spotlights up to three distinguished nonprofit leaders in the Washington metropolitan area for their outstanding chief executive leadership.

The competition is open to any chief executive of a Washington-area nonprofit organization with an annual budget of $10 million and under. Candidates must show excellence in leadership in innovation, motivation, community building, inclusiveness/diversity and/or ethical integrity.

Winners will receive a $5,000 professional development account to use in their role as as organization's chief executive. Additionally, the winner's organization will receive a $2,000 grant to provide professional development opportunities to its staff.

Nominations are due by Friday, July 30th . Download the nomination packet:

http://www.nonprofitadvancement.org/sites/default/files/imagecache/2010%20EXCEL%20Awar d%20Application%20Packet.doc

http://www.nonprofitadvancement.org/news/nominate-outstanding-nonprofit-leader

MAIN ARTICLES
Taxation
Small Charities Failing to file Form 990-N Could Lose Tax-Exempt Status:

While the annual requirement to file of federal tax returns was instituted by Congress in 2006, 2010 marks the first year in which charities risk losing their tax-exempt status, should they fail to file IRS Form 990, 990-PF, 990-EZ, or 990-N for three consecutive years. This year's deadline to file was May 17th. This requirement applies not only to stand-alone charities, but also to nonprofit "subsidiaries" and other small entities, related to larger organizations, that may be dormant or have minimal activity.

However, there may be a remedy for noncompliant nonprofits in danger of losing their tax-exempt status. IRS commissioner, Doug Shulman, has urged organizations to file the form 990-N, available online, even if late. Also, it has been announced that the IRS will soon release guidelines on how it will help small charities keep their tax-exempt status even if they missed the May 17th deadline.

Compensation
What constitutes excessive compensation for a nonprofit executive?
Reasonable compensation is defined by Reg. 1.162-7(b)(3) as the amount that would ordinarily be paid for like services by like organizations in like circumstances. The IRS generally presumes reasonable compensation if disinterested persons made the compensation decision, appropriate data was used in making the compensation decision, and the decision was documented. Not just salary and wages, but all forms of compensation, must be taken into account in determining reasonableness. The nonprofit organization has the burden of proving its compensation to be reasonable.

Executives should be aware of several "intermediate sanctions", penalties that fall just short of the organization losing its nonprofit status should compensation be too high with regard to the job performed. Executives may be required to reimburse the "excessive benefit"and subjected to a penalty equal to 25% of the excess benefit, as well as excise penalties up to 200% of the benefit. Also, the IRS may impose an excise tax up to $10,000 on each member of the decision-making body that authorized the compensation.

Volunteer Liability

Are your volunteers liable for their performances within your organization?

The 1997 Federal Volunteer Protection Act provides civil liability protection for non-profit or government volunteers, so long as the volunteer acts within the scope of his responsibility and legally authorized to engage in that practice. There are exceptions for willful misconduct, gross negligence, or the involvement of a vehicle, the operation of which requires an operator's license or state insurance.

This Act proved helpful last Spring for Terry McGrady, a volunteer for the Society for the

Protection of Animals, an Ohio nonprofit organization. McGrady rescued what seemed to be a stray dog, which was soon adopted from the animal shelter. However, the dog was not a stray, but had briefly wandered away from its owner, Dennis Wagner. Wagner sued McGrady, and the court held that McGrady, as a volunteer for a charitable organization, was not liable for the acts he performed within the scope of his responsibility. McGrady, therefore, could not be held liable for the actions that resulted in Wagner's loss of his dog.