

## NEWSLETTER January 2012

### **Opening Letter:**

Dear Clients and Friends,

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

Please feel free to pass this newsletter along to your colleagues. We also invite referrals to others in your organization and elsewhere who might wish to receive future issues directly. We welcome suggestions about topics of interest to address in future issues. Likewise, we encourage you to get in touch with us with any questions you might have about legal matters, 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

### **New Legislation Affecting Nonprofit Corporations Enacted in the District of Columbia**

The District of Columbia enacted legislation in February 2011 in an effort to revise its laws governing entities in the District, these laws having been originally enacted in 1870 and 1962. The laws take effect for existing nonprofits (and nonprofits formed thereafter) on January 1, 2012.

In this new legislation, the District of Columbia has adopted the Model Nonprofit Corporation Act with respect to nonprofits which results in significant changes to the District of Columbia's previous nonprofit corporations' governing law. Among the areas of nonprofit corporations law affected by the new legislation are the formation of a nonprofit corporation; the standards of conduct and standards of liability for directors and officers; rights of members; the duties of maintenance of certain books and records; and a new deadline for the filing of two-year reports for certain organizations.

Those nonprofits incorporated in the District of Columbia should review their organizing documents for compliance with the new legislation.

### **Greater Scrutiny of Political and Lobbying Activities for 501(c)(4), 501(c)(5), and 501(c)(6) Organizations**

As may be of particular interest for Washington area non-profit organizations, recent investigations have been conducted examining the politicking of social welfare organizations, business leagues, and labor unions, organizations generally exempt under IRS sections 501(c)(4), 501(c)(5), and 501(c)(6). While organizations exempt under these sections have broader abilities than 501(c)(3) organizations to engage in political activity and lobbying, governmental activities

still must not be so extensive as to be deemed the organization's "primary purpose" as defined by the IRS.

In determining whether a 501(c)(4), 501(c)(5), or 501(c)(6) organization's political activities are allowable under the IRS code, the IRS looks to the organizations expenditures on such activities as well as the other facts and circumstances of those activities.

### **Automatic Revocation of Tax Exempt Status and How to Get an Organization Reinstated**

Most small tax-exempt organizations (with limited exceptions for certain organizations which can be found on the IRS website at <http://www.irs.gov/charities/article/0,,id=152729,00.html>), whose gross receipts are \$50,000 or less for tax years ending on or after December 31, 2010 (or \$25,000 for tax years ending before December 31, 2010) have an annual reporting requirement. The IRS automatically revokes the exemption of any organization that fails to satisfy its filing requirement for three consecutive years. If you are concerned about an organization's status, the list of organizations that have had their tax-exempt status automatically revoked can be found here: <http://www.irs.gov/charities/article/0,,id=240099,00.html>.

Though in the recent past the IRS offered a relatively easy method for organizations' tax-exempt status to be reinstated, an organization must now file an IRS Form 1023 or 1024 and pay an appropriate user fee to initiate the process of reinstatement. Certain small organizations may qualify for a reduced user fee and retroactive reinstatement. However, the process for reinstatement now involves the often lengthy and at times byzantine process of filing an IRS Form 1023 or 1024 for exemption.

### **A Great Number of Organizations Lost Their Tax-Exempt Status in 2010**

A report by the Urban Institute's Center on Non-Profits and Philanthropy analyzes the 275,000 organizations that lost their tax-exempt status in 2010 for failure to file a return with the IRS for three consecutive years. The number represents about 16 percent of the entire non-profit sector of the United States.

The majority of the organizations whose status was revoked are believed to be defunct. Human services organizations, such as neighborhood community centers and organizations that serve those with special needs, accounted for the 31% of revoked organizations. Public service organizations and arts organizations accounted for large percentages of revoked organizations as well, at 28% and 10% respectively.

Sidebars:

IRS Events for Exempt Organizations

The IRS sponsors webinars, conferences, and workshops to help exempt organizations understand their tax responsibilities. Find out more at <http://www.irs.gov/charities/article/0,,id=96083,00.html>.

## IRS Issues New Optional Standard Mileage Rates for the 2<sup>nd</sup> Half of 2011

Beginning on July 1, 2011, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) are:

- 51 cents per mile for business miles driven
- 19 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

While the rates for business and medical or moving purposes were increased to reflect the recent increase in gas prices, the rates for charitable organizations was not raised.

## Non-profit Workers Illegally Fired over Facebook Posts

An administrative law judge (ALJ) has ruled that a New York non-profit, Hispanics United of Buffalo (HUB), illegally fired five employees after they went on Facebook to criticize working conditions. The ALJ considered four factors under the National Labor Relations Act in his ruling: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by the employer's unfair labor practice. The ALJ found that the factors weighed in favor of the employees because (1) the Facebook postings were made outside of work and not during working hours; (2) the subject of the posts were related to a coworker's criticism of employees' job performance; (3) there were no outbursts inasmuch as some of the posts did not mention the domestic violence advocate and none mentioned HUB; and (4) the fourth factor was not relevant.

The ALJ ordered that the employees be reinstated with back pay.