NewsByte

Asher Names Not-for-profit Chair

Elizabeth F. Pilacik has been named Chair of Asher & Company, Ltd.'s Not- for-profit Services Group. Elizabeth, a Senior Manager, has been a key member of Asher's Not-for-profit Services Group since joining the firm in 1996. Elizabeth succeeds Rachel Winslow, who became the group's Chair in 1997. Rachel is retiring from her full-time position with Asher, & Company, Ltd., but will continue providing consulting services.

Rachel Winslow (l) and Elizabeth Pilacik

While Elizabeth's diverse client base includes closely-held business, real-estate entities and international clients, her primary professional focus has been not-for-profit organizations. She works with clients on accounting for endowments, contributions and government funding, evaluates internal control procedures, identifies potential accounting and operational issues, and proposes sound recommendations for system improvements. Her clients are funded by contributions, class registration and other fees, foundation grants and endowment contributions, as well as federal, state and local government grants.

Elizabeth is part of the team which provides in-house training on not-for-profit topics. She authored our materials on OMB A-133 audits. She was also a presenter at the firm's seminars on Mental Health/Mental Retardation fiscal regulations and on the responsibilities for not-for-profit audit committees.

Elizabeth serves on the Board of Directors of The MBF Center. She is a graduate of St. Joseph's University and an Accredited Fellow of the American Institute of Certified Public Accountants Academy for Exempt Organizations. Elizabeth Pilacik can be reached at 215-564-1900 or via email at epilacik@asherco.com.

ASHER & COMPANY, LTD.
Business Consultants • Certified Public Accountants
1845 Walnut Street, Suite 1300
Philadelphia, PA 19103-4796

PLAN. PERFORM. PROSPER.

Return Service Requested

Did You Know…

The effects of the Sarbanes-Oxley Act have begun trickling down to private and not-for-profit organizations. Originally intended to provide a higher degree of assurance and accountability for publicly-traded entities, the public has grown interested in Sarbanes-Oxley-type controls for the not-for-profit organizations they support. Asher can help educate organization leaders and boards on the effects and benefits of implementing Sarbanes-Oxley initiatives.

NPO Perspectives: Providing timely information on issues affecting not-for-profit organizations

In this Issue

NPO Perspectives

Summer-Fall 2005

Financial Statements: One of the Best Road Maps to Your Organization

Elizabeth F. Pilacik
Senior Manager

One of the best ways that a not-for-profit organization can share its mission and market itself to funding sources is through its financial statements. Just as your vehicle requires an annual maintenance check and inspection, your organization should annually "inspect" and evaluate the information presented in its financial statements. Be sure that your organization's financial statements provide relevant information.

- Consider the users of your financial statement: Are they banks, funding sources, donors, and/or members?
- Are your statements clear and user friendly?
- Are you telling the reader what they want and need to know about the organization?

Usually, questions about your statements are a hint that someone isn't getting the information that they need from your financial statements.

Each not-for-profit organization is required to present the basic financial statements: a statement of financial position, a statement of activities, and a statement of cash flows. Review these statements to see if they present the level of detail that you want to provide to the users. Information regarding the organization's performance, service efforts, and ability to continue providing services should be clear and tell the story of the organization.

Evaluate the footnotes that accompany your organization's financial statement:

- Do they meet basic GAAP reporting requirements and provide sufficient detail?
- Do they make sense to someone who is not familiar with your organization?
- Do the footnotes clearly convey your organization's mission?

A good tool to use in evaluating the organization's footnotes is the auditors' disclosure checklist. Be sure to request a copy of this checklist from your auditor in order to determine what is required to be disclosed *at a minimum*.

After reviewing your organization's financial statements, take some time to tune-up the organization's other "road maps," the Federal Form 990 and the Annual Report. Remember that financial reporting is not just for reporting numbers. If you consider the users of your information and evaluate the usefulness of your "road maps," you will be on your way to mapping a clear path to your organization.

For more information, contact Elizabeth Pilacik at 215-564-1900.

IRS Updates

The IRS Cracks Down: Complying with Intermediate Sanctions Rules

Robin D. Fritz
Tax Manager

In recent years the media has reported on incidences of excess compensation and inappropriate transactions with insiders of not-for-profit organizations. These cases reported in the news caused public outrage. Congress stepped in and passed legislation to try to keep compensation and other transactions in check by establishing an excise tax on excess benefit transactions. This resulted in the Treasury Department adopting new regulations. The Internal Revenue Service came under scrutiny by Congress for not enforcing this law; therefore, the IRS has begun to look at organizations very carefully for violations of this law.

In their efforts to enforce the law, the IRS created IRC Sec. 4958. This section attempts to prevent excess benefit transactions to insiders, a.k.a. disqualified persons, of Section 501(c)(3) public charities and Section 501(c)(4) organizations. This code section imposes substantial penalty taxes on any excess benefit transactions received by disqualified persons of the organization.

The penalty tax is equal to 25% of the excess benefit received and is paid by the disqualified person.

Any insider transaction is fair game when the IRS is checking for excess benefit transactions. If the amount paid by the not-for-profit organization to the disqualified person exceeds the value received, an excess benefit transaction has occurred. Some examples of transactions that may be considered excess benefit transactions are rent, fees, commissions, loans, sales, cost sharing agreements, revenue sharing transactions and other similar transactions. The tax is assessed on the amount that is greater than the value received.

When an officer is a disqualified person, that officer's compensation must be determined by the board of directors. It must be reasonable and the intent to compensate must be documented. In order to document reasonableness, an organization can have a salary study prepared. Lack of written documentation for compensation is an automatic violation and makes it easier for the IRS to discover and penalize violations. Taxable and nontaxable fringe benefits, some working condition fringe benefits and certain expense reimbursements may also be considered excess benefit transactions. Examples of these benefits are personal use of auto, cell phones and computers, paid parking, etc. Payments made for these types of benefits must be included on the disqualified person's W-2 and the organization's Federal Form 990.

Intermediate sanctions are here to stay. Organizations have two choices, they can sit back and wait for the IRS to help or they can address the issues directly. We recommend that organizations identify disqualified persons and educate them about these rules, focus on the documentation for all transactions with disqualified persons and adopt policies and procedures to manage the risk associated with the intermediate sanctions. The IRS is very serious about this issue and is performing limited scope audits looking for violations. Make sure that you are prepared before the IRS comes to you.

An article addressing disqualified persons will appear in our next issue of NPO Prospectives. For more information, contact Robin Fritz at 215-564-1900.

Document Retention

Good Management for Document Destruction and Retention

Megan M. McBride
Supervising Senior

Various legislation makes it illegal to destroy, alter, cover up, or falsify (or to persuade someone else to do so), a document to prevent its use in an official proceeding, such as a federal investigation or bankruptcy proceedings. Intentional document destruction is now a process that must be monitored, justified, and carefully administered.

In addition, the Sarbanes-Oxley Act (the Act) has put public focus on good management practices for all entities. While nearly all of the provisions of the Act apply only to publicly traded corporations, the passage of this bill serves as a wakeup call to the not-for-profit community. Many not-for-profit organizations have voluntarily implemented aspects of the Act to improve operations and show that they deserve the confidence and trust of the public.

Not-for-profit organizations are among the companies that need to shred or dispose of unnecessary or outdated documentation and files. However, they also need to maintain appropriate documentation about their operations. Important information should be archived according to guidelines established by the organization.

We suggest developing a written document retention and periodic destruction policy to help limit accidental or innocent destruction. Documents to be addressed include financial records, significant contracts, real estate and other major transactions, employment files, and fund-raising obligations. Guidelines for handling voicemail and electronic files should also be addressed. The policy should also cover back-up procedures, archiving of documents, and regular check-ups of the reliability of the system.

An effective document retention policy:

- establishes a framework in which important documents are available when needed, while others can be destroyed without exposing the company to liability
- recognizes those instances in which there is an obligation to preserve documentation
- ensures compliance with the document retention and document destruction policies.

An effective document retention policy specifies, at a minimum, the following elements:

- identification of essential documents which should be retained
- period of time in which certain documentation should be retained
- specific guidance for destruction of documentation
- circumstances in which document destruction should be suspended, such as when a lawsuit or government investigation is pending
- documentation of compliance with the retention policy, not just the policy itself.

The policy is most effective when the company's management, administrative staff, legal counsel, and auditors participate in the development process. They typically have the following roles in developing the policy. **Management** determines the cost/benefit of retaining documents for longer periods of time. **Administrative staff** contributes knowledge of the company's day-to-day operations, the documents generated and how a documentation retention policy will impact the operations of the company. **Legal counsel** identifies the retention requirements imposed by the company's agreements and suggest retention periods documents where there is no specific legal document retention requirement. **Auditors** ensures that documents are retained for compliance with applicable accounting and tax laws and regulations.

For more information, contact Megan McBride at 215-564-1900.