



Mosherslaw Nonprofit Update

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Earmarked Donations... Are They Deductible?

During this holiday season, many donors plan to give cash gifts to missionaries. Churches and other organizations that receive and distribute funds earmarked for specific missionaries have a responsibility to accurately report the gift's deductibility. However, deductibility cannot be assured unless proper procedures are followed.

The Problem:

Many donors wish to provide charitable contributions to specific missionaries. However, the phrase "charitable contribution" is synonymous with the word "gift" – a word that raises both gift and income tax liabilities. To distinguish a tax-deductible charitable contribution from an ordinary gift, a donation must be given "to or for the use of" a qualified 501(c)(3) organization. If given directly to an individual, the contribution is generally not tax-deductible. An ambiguity arises when the gift is given to a qualified organization but restricted to benefit specified individuals.

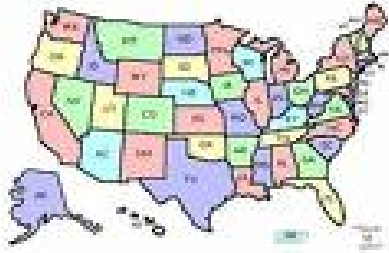
Guidelines:

In order for a contribution to be given "to or for the use of" a qualified charity, the charity must maintain control and discretion over the contribution's use. If a donor provides money to a qualified charity, mandating that a specific individual receive the benefit, clearly no deduction is allowed. On the other hand, simply requesting that the money will benefit a specific person will not defeat its deductibility. In the latter, the charity is not legally obligated to direct the funds as requested. But, the moral obligation and desire to encourage future gifts are worth its consideration.

To ensure deductibility of earmarked gifts, an organization may state in its charitable solicitations that it welcomes recommended designations, but that all gifts are to the organization, subject to its control and final discretion. In its written charitable receipts, the organization may also include the following information: (1) the donee organization has ultimate discretion over the destination of the contributions; (2) a confirmation that the donor intends for the organization, not the individual, to be the gift recipient; and (3) an acknowledgment of the donor's preference to support a particular individual. Since ambiguities are common in this area of giving, qualified organizations must remind donors that improperly earmarking gifts may compromise the deductibility of the donation.

Mission Statement

The legal professionals of Moshers & Associates are dedicated to serving the legal needs of both small and large charitable, religious, educational, and human service organizations as well as the larger philanthropic community.



Raising Funds Across State Lines

Illinois charitable organizations that solicit donations generally know about the state's registration and reporting requirements affecting charitable solicitation and charitable trusts. But what happens when the Illinois charity solicits contributions from people living in Wisconsin, Florida, or any of the other states?

Soliciting donations beyond the borders of a charity's state of incorporation is a necessary and prudent step for most nonprofit organizations seeking to expand their donor base. Conducting fundraising in other states however may trigger registration and reporting responsibilities with states' attorneys general or secretaries of state. At present, thirty-seven states and the District of Columbia require public charities that solicit funds from their residents to annually register and file financial reports.

Many states exempt charitable organizations that receive a minimum level of contributions either within the state or nationally. Most also exempt certain religious organizations. However, charitable solicitation statutes vary considerably from state to state. For example, a religious organization currently exempt from the charitable solicitation reporting requirements in Illinois may not be exempt in Wisconsin. Further, the method of solicitation (such as the internet, direct mail, or in-person) combined with an organization's other activities in the state (i.e., an office or employee) contribute significantly to the analysis.

Keeping state-by-state records of the number and amount of charitable donations is an important first step to managing an organization's charitable solicitation registration requirements. With this information, an organization can begin working with an attorney well versed in the charitable solicitation statutes of all fifty states to determine where and when the organization is legally required to register. The registration and reporting requirements can place substantial administrative and financial burdens on an organization. For this reason, it is important to carefully evaluate activities in each state before submitting to unnecessary registrations. Most state regulators will provide information about charitable solicitation regulations. If a charitable organization asks the state agency "should this organization register in x state?", the agency's answer will probably be "yes" and it may well be incorrect. It is better to check the state's regulations with someone independent of the regulatory system. Mosher & Associates currently manages several organizations' multi-state charitable solicitation registrations, files annual reports on behalf of organizations, and helps clients stay abreast of the ever changing state solicitation laws.

Church Ministries As Integrated Auxiliaries

Under the Internal Revenue Code, churches and their "integrated auxiliaries" are not required to file Form 1023 applications for tax exempt status nor are they required to file annual Form 990 returns. These integrated auxiliaries may benefit from other tax laws as well. Accordingly, church-controlled organizations and church-related ministries should know if they can be classified as integrated auxiliaries, either currently or with some additional planning.

To be classified as an integrated auxiliary, an organization must fall within one of the following categories: (1) it is covered by a group exemption letter; (2) it is operated, supervised, or controlled by or in connection with a church or convention or association of churches; or (3) relevant facts and circumstances show that it is affiliated with a church or an association of churches. In addition, for certain organizations (other than mission societies, youth groups, seminaries, and men's and women's organizations), they must satisfy an "internal support" test to show that they are mainly supported by their churches and not from outside means such as independently solicited contributions, government grants, or revenues from fees for goods and services.

To be classified as an integrated auxiliary under the third "facts and circumstances" test, the following factors are

relevant: (a) the organizational documents show that the organization shares common religious doctrines, principles, disciplines, or practices with a church or association of churches; (b) a church or association of churches has the authority to control the appointment or removal of at least one of the organization's officers or directors; (c) the organization's name indicates an institutional relationship with a church or association of churches; (d) the organization reports at least annually on its financial and general operations to a church or association of churches; (e) an institutional relationship between the organization and a church or association of churches is affirmed by the church or association of churches; and (f) in the event of dissolution, the organization's assets are required to be distributed to a church or association of churches. None of these factors is controlling, and the absence of any one does not necessarily defeat classification as an integrated auxiliary. Nevertheless, the more completely an organization satisfies these parameters, the more likely it will qualify as an integrated auxiliary.

Having integrated auxiliary status is a valuable benefit for any organization which fits within the above parameters and seeks to closely align itself with a church or association of churches. For further information, please feel free to contact an attorney in our office.

Essential Employment Policies

Whether your nonprofit organization has a few employees or a hundred, written employment policies can provide valuable protection from employer liability, clarity for employees, and a sense of fairness among all. While an employee policy handbook may be appropriate, at a minimum employers should have the following Board-approved policies in place.

1. **Equal Employment Opportunity and Religious Discrimination.** Employers often provide in writing that they offer equal employment opportunities to all, regardless of age, race, gender, religion, national origin, color, ethnicity, disability, or military status. If an employer wants to require that its employees have a particular religious faith as a condition of working, then the employer should support such requirements explicitly through job descriptions that list needed skills and qualifications.

2. **Employment at will.** Unless an employment contract provides otherwise, employees generally are presumed to have at-will employment status. This means that both employee and employer can terminate the employment relationship at any time, for any or no reason so long as they do not violate state or federal laws, such as anti-discrimination and whistleblower protections. To avoid the creation of greater employment rights – through individual verbal or written statements, or employer materials such as progressive disciplinary policies – employers should inform employees explicitly that their status is at will.

3. **Harassment.** The scope of prohibited harassment has recently expanded from purely sexual to any harassment based on a protected classification such as age, race, or

national origin. Significantly, employers will be shielded from liability if they have anti-harassment policies in place but employees fail to use them. In addition, when properly utilized by employees, anti-harassment policies may help defuse tensions and help supervisors address serious issues that can lead to expensive litigation and damaged employment relations.



4. **Conflict Resolution.** Employment matters are often personal, and employees who feel they have been treated illegally or simply unfairly can cause enormous financial and practical problems for employers. By having a policy that requires employees to seek resolution of employment disputes through nonjudicial means, such as mediation or arbitration, employers can greatly reduce potential litigation and liability exposure while promoting a fair, positive work environment where employees feel heard and valued.

5. **Communications/Technology.** Employers should make clear to their employees that computers, telephones, and other electronic equipment belong to the employer and are to be used only for business purposes. As a result, employers will reduce the potential for harassment (through use of pornographic or other inappropriate materials), protect the confidentiality of their information, reduce the risk of improper charges to the employer, and promote more productive work environments.



*The entire staff of Mosher & Associates
sends best wishes to you and yours for a
joyous holiday season and a peaceful new year!*

Does Your Property Qualify for Tax Exemption?



Does your nonprofit organization own, use, or plan to buy real estate for tax exempt purposes? Illinois law has long provided tax exemptions for religious, educational, charitable, and other qualified uses. The Illinois Department of Revenue, however, is increasingly interpreting such

laws more narrowly. Accordingly, applicant organizations must carefully evaluate and structure their ownership status and activities to fit within such constraints.

Numerous pitfalls exist with respect to ownership issues. Generally, to qualify for charitable or educational (but not for religious) tax exemptions, the applicant organization must actually own the property. In addition, if more than one organization owns the property, and each would otherwise qualify for different tax exemptions, exemption may be problematic since the Department of Revenue interprets the statute's requirement of "exclusive" property use as allowing only one type of use.

For all tax exemptions, the subject property may not be used "with a view to profit." Thus, program fees should be charged only to cover costs, and the applicant must have a fee waiver and reduction policy in place, well publicized, and actually used. In addition, leasing of tax exempt property may be allowed under certain circumstances by one tax exempt organization to another, but such arrangements should be carefully developed to avoid the appearance of any profit motive. For example, no commercial lease forms should be used, but rather a space sharing or

other similar agreement should memorialize the parties' understanding. Revenues from the space usage should properly be termed "contributions", and not "rent", and specified as covering property-related expenses. If an organization does not properly structure its revenue-generating plans, the property it uses for such activities will be at risk of losing tax exempt status.

For charitable tax exemptions, a strong corporate purpose statement and a section 501(c)(3) determination are not enough. The applicant must show that an indefinite number of beneficiaries are served, with no obstacles to access, and that the organization is mainly supported by charitable contributions. The applicant should also be able to show that its activities actually reduce government burdens such as health, education, and welfare. The Department of Revenue views grants of government funds for charitable projects differently from government contracts for charitable services, and it does not currently view the latter as charitable support.

Finally, if your organization has "inherited" an exemption from previously exempt property ownership, do not expect such exemption to continue under the new ownership. The organization must apply in its own name and based on its own qualified uses. Failure to apply for exemption may result in assessed back taxes and related consequences.

Property tax exemptions are a valuable benefit for nonprofit organizations. With careful planning, the viability of an exemption application can be maximized, and valuable resources can be devoted to the organization's exempt purposes.

New Attorney Joins Mosher & Associates

Mosher & Associates added new attorney Jacob Zehnder to its staff in September. Jacob obtained his undergraduate degree in statistics from the University of New Mexico in 2004. As a result of his considerable exposure to nonprofit organizations and their unique struggles throughout his life, Jacob attended Valparaiso University School of Law with the goal of working with tax exempt organizations upon graduation. During law school Jacob worked in a variety of capacities including general business law with a private law firm, government and army law with the United States Army Judge Advocate General, and municipal law for the City of South Bend, IN. We welcome Jacob to our team of professionals serving the community of tax-exempt organizations.

About Mosher & Associates

The law firm of Mosher & Associates has developed over the past thirty years in the context of the charitable and philanthropic community. We have helped to successfully establish more than fifteen hundred tax-exempt organizations, many of which we still work with today. Our legal services also encompass a wide range of corporate, tax, employment and real estate issues affecting our tax-exempt clients.

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