

Tax-Exempt Advisory

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IRS Releases Governance Check Sheet

The IRS recently released a Governance Check Sheet which will be used by IRS revenue agents during an audit of public charities described in Section 501(c)(3) of the Internal Revenue Code. A copy of the Check Sheet and a Guide for Completing the Check Sheet can be found on the IRS Web site at: http://www.irs.gov/pub/irs-tege/governance_check_sheet.pdf and http://www.irs.gov/pub/irs-tege/governance_guide_sheet.pdf.

The Check Sheet indicates that the IRS will be examining six areas related to governance:

- 1. Governing Body and Management** – written mission statement of the organization reflecting a 501(c)(3) purpose and current activities; governing board composition, duties and qualifications; and frequency of meetings of the board.
- 2. Compensation** – approval procedures, comparability data used, and contemporaneous documentation.
- 3. Organizational Control** – business and family relationships among officers, directors, trustees or key employees; and whether effective control of the organization rests with a single or select few individuals.
- 4. Conflict of Interest** – written conflict of interest policy; whether the policy addresses recusals and requires annual written disclosures of conflicts; and whether the policy was adhered to when actual or potential conflicts were disclosed.
- 5. Financial Oversight** – whether systems or procedures are in place to ensure proper use of assets; written financial reports to the board and discussion of such reports; board review of IRS Form 990; and use of an independent accountant, accountant's report, and management letter.
- 6. Document Retention** – written policy for document retention and destruction; and contemporaneous documentation of board meetings.

In an address to the Exempt Organizations Section of the D.C. Bar Association, Robert Choi, Director of Rulings and Agreements of IRS Tax Exempt/Government Entities Division, spoke about recent developments at the IRS and its focus in 2010. In the area of governance, Mr. Choi discussed the implementation of the Check Sheet. When asked how the items examined on the Check Sheet differed from the questions regarding governance on the IRS Form 990, Mr. Choi responded, in essence, that the Check Sheet looks for more information. For example, while the Check Sheet asks whether effective control of the organization rests with a single or select few individuals, the Form 990 does not go into such detail.

Mr. Choi noted that the responses to the questions on the Check Sheet will be used to gather information on governance for the IRS. Presently, there is no legal requirement for the governance policies and procedures cited in the Check Sheet, but as the IRS has stated in the past, its position is that a focus on governance will increase awareness by charities and make it more likely that organizations will obey the tax laws, safeguard charitable assets, and serve charitable interests. Mr. Choi also indicated that the IRS may, in the future, post sample governance policies on its Web site—www.irs.gov. Currently, a sample Conflict of Interest Policy is published on the site and in the instructions to IRS Form 1023, Application for Recognition of Exemption.

If your organization requires assistance with issues of governance and related documents, please contact an attorney in our exempt organizations practice group, listed below.

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