

perspectives

November 2011

A publication from
Benesch Friedlander
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight



Lakeside Association

Lakeside Association (Lakeside) is a Chautauqua community that welcomes families of all sizes to the Lake Erie shore. Since 1873, Lakeside has provided a Chautauqua summer experience dedicated to spiritual growth and renewal, educational and cultural enrichment and recreational pursuits. Multiple generations of families come together each summer for rest and renewal. Today, it thrives as one of the few remaining Chautauqua communities, offering a summer-long Chautauqua program.

True to the Chautauqua Movement, Lakeside's mission is, "To enrich the quality of life for all people, to foster traditional Christian values and nurture relationships through opportunities for renewal and growth...spiritually, intellectually, culturally and physically...while preserving Lakeside's heritage."

Each summer, Lakeside welcomes more than 60,000 guests to experience its Chautauqua program, including worship services and religious lectures; 200 educational seminars; more than 70 cultural arts performances; eight

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So You Need Revenue? Considerations for Alternative Revenue Generating Activities



Meredith Rosenbeck



Marty Sweterlitsch

As a result of difficult economic times, including the current downward trend of reimbursement rates in the health care industry, many not-for-profit organizations are looking for new and alternative ways to drum up revenue. The most apparent ways to increase revenue include renting out vacant space in a building or facility owned by the organization; entering into a management agreement to provide economies of scale in an area of operations; or offering

catering, housekeeping or home meal services to the general public. While each of these examples may be appealing ways to generate revenue, what should your organization know before you undertake these or other alternative revenue generating activities?

Unrelated Business Income (UBI)

Income earned by a tax-exempt organization from activities that are not substantially related to its exempt purpose is subject to the unrelated business income (UBI) tax, unless it fits into a specific safe harbor. For example, rental income for real property is considered passive income and is not taxable unless the rental price includes equipment and/or significant services. Income from rental of parking lot spaces is, however, taxable as license fees. Rental income from debt-financed property not being used by the exempt entity itself can be taxable. Sale of meals or other services to the general public not in furtherance of the organization's exempt purpose can create UBI, as well.

UBI is taxable at the corporate rate. The tax is levied on the net income after allowable business deductions. The organization should file a 990-T return to declare the UBI and calculate the resulting tax.

Lesson: A tax-exempt organization should monitor its unrelated business activities, as the test is the amount of activity. This is often, but not always, best measured by the income generated. Too much unrelated activity can lead to loss of exempt status.

Property Tax Exemption

Exemption from taxation on real property is determined according to State law. In Ohio, the general rule is that an entity that is tax exempt under IRC § 501(c)(3) may be entitled to tax exemption on property it owns, as long as the property is used primarily for exempt purposes. It follows that exempt property may be leased to another § 501(c)(3), which also uses the property for exempt purposes, without running afoul of the exemption rules. However, if the organization plans to rent or otherwise make the space available to a for-profit entity, an individual or even to another non-profit entity that plans to use it for non-exempt purposes, the property will be subject to property tax. Additionally, if, as owner of the tax-exempt property, you plan to use it for non-exempt purposes, the property will also be subject to tax.

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Year-End Fundraising: What You Need to Know

November and December are big giving months for many donors, as the holiday spirit kicks in and donors concerned about tax breaks seek to make their donations before year's end.

Deciding how to reach out to donors in these busy months, especially in the still struggling economy, is a challenge. Check out this podcast hosted by *The Chronicle of Philanthropy*, in which two fund-raising experts offer advice on the smartest investments of time and energy for charities seeking to tap the holiday giving spirit.

Not-for-Profit Spotlight Lakeside Association (continued from page 1)

Lakeside Symphony Orchestra concerts; and 800 instructional art classes and diverse recreational activities. Guests experience Lakeside's legacy as they walk around the grounds. Many of the Victorian cottages and community buildings are more than a century old. The friendly staff and dedicated team at Lakeside assist guests in finding the best accommodations. Whether seeking a cozy room at a quiet bed and breakfast or a large cottage for the entire family, Lakeside offers a variety of options for everyone.

Lakeside's Benesch team, lead by Marty Sweterlitsch, has provided sound legal advice and guidance to Lakeside over the past 10 years. Under Marty's leadership and counsel, Lakeside has prevailed in various tax-exemption issues, saving the charity countless thousands of dollars in taxes. Lakeside notes that Benesch, "has a solid understanding of our mission and has been a strong supporter of our Chautauqua program."

Please click here to learn more about Lakeside:
www.lakesideohio.com

So You Need Revenue? (continued from page 1)

This will be the case regardless of whether the space consists of an entire building, a portion of a building or a portion of the surrounding land. Where the non-exempt use does not comprise the entire parcel, the county auditor will generally split the property for tax purposes, placing the portion that is being used for non-exempt purposes on the tax duplicate.

Lesson: Have a detailed understanding of how the property will be used and, if the use will result in taxation of the property, ensure that the rent or lease payments are sufficient to cover the cost of taxes.

Private Use Considerations

Many not-for-profits finance their facilities with tax-exempt bonds. In general, property financed with the proceeds of a tax-exempt bond must be used for a public purpose. This principle inherently restricts "private business use" of the property. Private business use of a facility is any use by a non-governmental or non-501(c)(3) entity in its trade or business, or use by the organization or another 501(c)(3) for a non-exempt activity. While some private business use of bond-financed property is allowable (generally 3-5% depending on the particular circumstances), excessive private use can result in loss of the tax-exempt status of the bonds.

Private business use can arise when an organization leases a portion of its facility to another organization, even if the lessor retains use of or control over the space. For example, private business use may arise when a not-for-profit, bond-financed facility leases its kitchen out to a catering business for its business use during hours when the kitchen is not being used by the not-for-profit. The fact that the not-for-profit continues to use the kitchen for its exempt purposes during "regular" hours does not prevent the arrangement from resulting in private business use.

Similarly, management contracts may result in private business use of bond-financed property. Management contracts, in general, allow entities to achieve economies of scale by hiring out certain functions of an organization's operations. However, the IRS has promulgated specific requirements that management contracts must meet in order to avoid private business use.

The IRS now requires organizations with tax-exempt bond financing to have written procedures in place to monitor and take remedial action with regard to bonds if an excessive amount of the proceeds are used for private business use. Additionally, the IRS now requires written procedures to monitor arbitrage yield restrictions and rebate requirements.

Lesson: Consider whether alternative revenue strategies may result in private business use of bond-financed property. Measure whether such use would result in excess private business use, resulting in loss of tax-exempt status of the bonds.

For more information on alternative revenue-generating activities, please contact **Meredith Rosenbeck** at mrosenbeck@beneschlaw.com or (614) 223-9353 or **Marty Sweterlitsch** at msweterlitsch@beneschlaw.com or (614) 223-9367.

OANO's 2011 Nonprofit Sector Report

Ohio's Nonprofit Sector has a long and proud history of touching and enriching the lives of Ohio's citizens—through arts and culture, education, health care, social services, research and planning, environment and more. Thousands of nonprofits throughout the state solve community problems, enhance tourism and economic development, care for those in need, and serve as partners with business and government to strengthen Ohio's communities.

Each year, the Ohio Association of Nonprofit Organizations (OANO) produces the Ohio Nonprofit Sector Report. The 2011 Report, which was sponsored by organizations including Benesch, provides concrete evidence of the size, scope and impact of Ohio's vital nonprofit sector as well as Ohio's place within the national nonprofit sector.

Data includes:

- The number of people employed by the nonprofit sector in Ohio compared to other industries & government
- Total wages earned
- Amount the nonprofit sector contributes towards income tax
- The average charitable contribution of Ohioans
- Sources for nonprofit revenue including fees for service numbers

The Report is a tool and resource for nonprofit leaders—particularly those who communicate with policymakers and business leaders as advocates for Ohio's nonprofit organizations. In addition to sharing the stories that are specific to their missions, this data allows nonprofit organizations to expand on their overall impact, because it demonstrates the collective economic force of the entire nonprofit sector.

To view the 2011 Report, please click [here](#).

Events

December 13, 2011 | 11:30AM–4:30PM

Columbus, OH

The Executive's Guide for Nonprofit Success

Presented by Howard, Wershba & Co., Benesch, First Merit Bank and Beyond Fundraising

The challenges for nonprofit organizations are continually shifting. With government budget cuts, fading resources and a declining workforce, nonprofits must work even harder to navigate and survive this new reality.

Please join us for this complimentary educational event that reviews operational strategies and tips for the success of your nonprofit organization.

Topics include:

- Nonprofit Financing Options
- Event Planning—Raising Friends and Funds
- Board Governance in an Electronic Age
- State of the Nonprofit Sector

This program qualifies for 4.5 credit hours.

Please click [here](#) for more information and to register.



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