

Navigating the Legal Landscape: What Nonprofits Need to Know

By: Shahrzad Emami
Legal Services of Greater Miami, Inc.



The legal landscape that nonprofits must navigate can be quite complex, but it is a necessary endeavor to protect their tax-exempt status. This article briefly explains some important and commonly overlooked rules that nonprofits must follow.

Required Federal & State Filings

Federal laws impose reporting requirements on nonprofits as a condition of their continued tax-exempt status. The most important requirement is the yearly filing of a Form 990--Return of Organization Exempt from Income Tax--with the IRS. The Form 990 should accurately reflect the story of the nonprofit, make clear the purposes and goals of the nonprofit, and explain the activities the nonprofit is conducting to fulfill those goals. Any material changes made to a nonprofit's purposes, goals, or activities must be reflected in the Form 990.

Federal tax-exempt status, however, does not automatically exempt nonprofits from state taxes; Florida imposes additional requirements. Nonprofits must file for Sales and Use Tax exemption with the Department of Revenue every five years and for Ad Valorem Property Tax exemption with their County Property Appraiser yearly. Florida also requires nonprofits that solicit donations to register yearly with the Department of Agriculture and Consumer Services.

Unrelated Business Income

One of the main traps nonprofit organizations unknowingly fall into is unrelated business income (UBI). UBI is any income derived from activities that do not serve the primary purpose(s) of the nonprofit. However, some passive types of investment income are excluded from UBI tax, such as certain rents, dividends, and interest payments. UBI generated from regularly carried out activities is taxable, but as long as those activities are an insubstantial part of a nonprofit's activities, its tax-exempt

status is not jeopardized. "Substantial" is viewed in light of the specific facts and circumstances in regards to the amount of the UBI, and the expenses and staff time dedicated to the unrelated-business activities. If these activities are substantial, the nonprofit's tax-exempt status will be jeopardized. It is important for nonprofit organizations to have procedures in place to monitor their unrelated-business activities in relation to activities that further their tax-exempt purpose(s) and to consult with an accountant or tax attorney that specializes in this area to ensure compliance.

Lobbying

Lobbying is another activity that can leave a nonprofit organization's tax-exempt status vulnerable. If a substantial amount of the organization's activities are related to lobbying, propaganda, or advocating for a change in legislation, then the nonprofit is no longer qualified for 501(c)(3) status. The general rule is that an organization's lobbying activities should be less than 5% of its total activities. The total amount of lobbying activities needs to be insubstantial compared to the organization's primary purpose(s), which is again based on specific facts and circumstances.

501(c)(3) organizations are allowed to file Form 5768 with the IRS, which is special election 501(h). This election is effective the beginning of the year in which it is filed and allows the corporation replace the general rule with a set dollar amount budget for lobbying activities, which they cannot exceed. 501(h) status is crucial for 501(c)(3) organizations that want to

maximize their lobbying potential by using online platforms, since the cost to conduct online lobbying is minimal. However, there is an absolute prohibition on political campaign support, and a 501(c)(3) will lose its tax-exempt status if it supports a political campaign or candidate, regardless of how trivial the involvement.

Conflict of Interest & Private Inurement

A fundamental legal issue that nonprofits commonly struggle with is conflict of interest. A conflict of interest exists when a member, employee, board member, director, or officer of the nonprofit has a material personal interest in a transaction to which the nonprofit is a party. Conflicts of interest are not necessarily unlawful, however, the nonprofit's board must properly handle these transactions to ensure their legality. Nonprofits should adopt a conflict of interest policy that prescribes how to effectively deal with situations when conflicts arise. Conflict of interest policies should provide that a conflict is completely disclosed to the board and that a transaction is voted on and discussed only by disinterested directors. These policies must ensure the fairness of transactions to the nonprofit and prevent transactions from improperly benefiting a member, employee, board member, director, or officer.

It is strictly prohibited for the activities of 501(c)(3) corporations to serve private interests, which constitutes private inurement. When nonprofits' activities inure to the benefit of any shareholder or individual, such as it paying for goods or services in excess of fair market value for a kickback, then the nonprofit is no longer in operation for a charitable purpose and excise taxes will be assessed. However, no private inurement occurs if the benefit of the organization's activities is received by an individual who is part of a charitable class.

Compliance with all Federal and State nonprofit statutes, especially those explained above, is essential to maintain tax-exempt status and prevent penalties, allowing nonprofits to keep serving their communities.

DISCLAIMER: This is for informational purposes only and is not legal advice. Please consult an attorney about your specific legal issues.

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SHAHRZAD EMAMI

Shahrzad Emami (semami@lsgmi.org) is an attorney with Legal Services of Greater Miami, Inc., where she is the Director of the Affordable Housing & Community Development Project. Her clients are community based organizations engaged primarily in affordable housing development and preservation. She also serves as adjunct professor of law at the University of Miami where she currently teaches Affordable Housing Law.



The Florida Housing Coalition 2017 conference has a session covering key areas of non-profit governance and management including conflicts of interests for board members, bylaws and organizational documents, compliance with State of Florida and federal regulations, and lobbying and holding title to real estate.

There will be an overview of due diligence when purchasing or leasing real estate for commercial or residential use. The speakers will cover real world examples of pitfalls that have derailed or sidetracked the developments and will discuss what services are available for free to avoid these mistakes.

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