

Evaluating Internet Activities

By Kim McNulty, CPA

The internet is becoming more and more a part of nonprofit organizations' operations, from fundraising, to communications with donors, to distribution of reports and information. However, the use of the internet raises a variety of tax questions. The Internal Revenue Service is still in the process of ironing out its rules and regulations with regards to the internet and nonprofit organizations. What follows are common questions and proposed answers for nonprofits to consider based on current published rules and regulations.

Question:

Can a nonprofit satisfy the donor substantiation requirements under Section 170(f)(8) for written acknowledgements of a contribution of \$250 or more with a printed webpage confirmation or copy of a confirmation e-mail from the donee organization?

Answer:

Yes, a donor satisfies the requirement under Section 170(f)(8) for a written acknowledgement by obtaining written confirmation transmitted through a web page or by e-mail as long as the acknowledgement contains the following information: 1) name of organization, 2) amount of cash contribution, 3) description (but not value) of non-cash contributions, 4) statement that no goods or services were provided by the organization in return for the contributions, if that is the case, 5) description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution, and 6) statement that goods or services, if any, that an organization provided in return for the contribution consisted entirely of intangible religious benefits, if that is the case.

For more information on the substantiation and disclosure requirements, see IRS Publication 1771.

Question:

Can a nonprofit meet the requirement that it provide an appropriate disclosure for "quid pro quo" contributions if it puts a notice on an internet-based solicitation or in an electronic confirmation after receiving such a contribution?

Answer:

IRS Publication 1771 does not answer this question specifically, however, given that this publication approves the use of electronic receipts for acknowledgement purposes, it is reasonable to conclude that the IRS will also accept electronic notices for disclosure of quid pro quo gifts, provided they are sent in manner likely to come to the donor's attention.

Question:

If a nonprofit places a solicitation for contributions on its web site, must it register in all states that require registration by charities soliciting in the state?

Answer:

Currently, 39 states require charities that solicit contributions in that state to register. The above question is a state question rather than a federal question, and there are no definitive answers at this point. At a minimum, a nonprofit needs to register with its home state if applicable. Organizations may want to consult with legal advisors about the need for other possible state registrations needed.

Question:

What is the potential unrelated business income tax impact of selling nonprofit merchandise, such as t-shirts, coffee mugs, etc., through use of the nonprofit's web site?

Answer:

Selling merchandise for a profit is a trade or business. The fact that the merchandise carries a nonprofit's logo does not make the sales of such items related to the nonprofit's purpose. Sales of some items, such as educational videos related to the nonprofit's mission, are related and are generally not subject to unrelated business income tax. Nonprofit logo items, such as t-shirts, that are not closely tied to the organization's exempt purpose activities, are more than likely not related and may be subject to unrelated business income tax.

To determine whether the sales of these items over the internet are subject to unrelated business income tax, nonprofits can use currently guidance on the definition of unrelated business activities. One requirement of an unrelated business activity, is that the activity must be regularly carried on. Because web sites are generally accessible 365 days a year, and there is unlimited access to the purchasing of merchandise from the nonprofit's web site, the IRS may consider the sales activity to meet the frequency and duration elements of the "regularly carried on" test. Therefore, assuming the merchandise is not in and of itself related to the organization's exempt purpose, the sales of these items over the internet may be subject to unrelated business income tax.

The rules for the determination of unrelated business activities are complex, even without consideration of the use of the internet. Nonprofits should seek the advise of their CPAs and attorneys in evaluating all potential unrelated business activities.

Question:

If a nonprofit places a link to a corporate sponsor's web site, will the sponsorship payments be subject to unrelated business income tax?

Answer:

The answer to this question has not been confirmed by the IRS, but it is reasonable to assume the payment from the corporate sponsor would not be subject to unrelated business income tax. The current rules and regulations with regards to sponsorship

payments, allow nonprofits to provide an acknowledgment for sponsorship payments and avoid unrelated business income tax. However, the acknowledgements cannot be advertising. Acknowledgements can include the sponsor's name, address, logo, and slogan. A link to a sponsor's web site is nothing more than an address for a web page combined with a tool the user may employ, solely at the user's discretion, to go to the linked site. There would appear to be no basis for treating the link differently than the sponsor's address.

Question:

If a nonprofit raises revenue by offering a link on its site to a web-based merchant, such as Amazon.com, will the revenue that the merchant pays to the nonprofit be subject to unrelated business income tax?

Answer:

The answer depends on whether the nonprofit is advertising for the merchant, in which case it would be subject to unrelated business income tax, unless the merchant's goods can be viewed as related to the nonprofit's exempt purpose. An organization's agreement with these merchants could fall under the same determinations which occur with corporate sponsor links discussed above, meaning as long as the nonprofit does not promote, endorse, or advertise for the business but just displays the link in the form of the merchant's name or logo, it may not be subject to unrelated business income tax. A message in connection with a link that contains qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase or use the merchant's products or services, would generally be considered advertising, and such revenue generated from this activity would be subject to unrelated business income tax.

Question:

Does providing a hyperlink to the website of another organization that engages in lobbying activity constitute lobbying by a charitable organization?

Answer:

The answer should be no. Similar to the discussions above regarding links to other websites, the nonprofit should be able to provide a link to another website for a clearly identified non-lobbying purpose and not have the link cause the lobbying conducted on the other website to be attributed to the nonprofit.