Your Future is Our Focus

RINA accountancy corporation

STATEMENTS

Fourth Quarter 2018

Changes Affecting Nonprofit Entities

by Tracy Teale, Audit Stockholder & Nonprofit Practice Leader

If you sit on a nonprofit board, have a private foundation or are heavily involved in philanthropy, the upcoming nonprofit changes will be of interest to you.

Like all business entities, nonprofits will have to consider the capitalization of leases and address revenue recognition in addition, there are two big changes on the horizon.

Everyone is aware of the Tax Cuts and Jobs Act and wants to know the ultimate effect on their tax situation. Were you aware that the tax law is now requiring nonprofit entities to pay tax on qualified transportation fringe benefits, parking facilities used in connection with qualified parking and on-premises athletic facilities?

On the accounting front, the Financial Accounting Standards Board (FASB) recently issued a new accounting standard update (ASU) that will affect nonprofit organizations for financial statements beginning after December 15, 2017. These standards are expected to provide more useful financial statements for donors and grantors.
Some of the immediate improvements are expected to address:

- Complexity in net asset classification
- Clarity of information regarding liquidity and availability of cash
- Transparency in reporting of financial measures
- Consistency in reporting expenses by function and nature
- Improvements in the statement of cash flows

While getting ready to consider implementation, a good place to begin is with the new liquidity and availability of cash disclosure. It will require information that may not be currently tracked. This new model will draw attention to circumstances in which a nonprofit organization does not maintain adequate liquid assets to comply with donor restrictions. More importantly, organizations that rely on restricted contributions and grants may find that the quantitative disclosures paint a stark picture of the organization's financial position. If your organization uses restricted resources to pay for expenditures that did not meet the underlying restriction (borrowing the resources, sometimes without the ability to restore those resources promptly), the liquidity disclosure will make that situation apparent.

One question boards should address now is policies around board designated funds. If a board has strict policies on the use of board designated assets, this could result in an organization having a difficult liquidity position. Changing a board policy to indicate that board designated assets could be used if the financial need arose, with board approval, the liquidity disclosure could be much more favorable.

The organization should check the effect of the new standards on its important ratios. Foundations and other donors, banks and other lenders, and watchdog agencies often use ratios to qualify and evaluate organizations. If ratios will no longer be met, it is necessary to decide whether to ask for a change in the required ratio. Additionally, it is possible that some amounts that are used in ratios will no longer be reported in financial statements (e.g., permanently restricted net assets), and the organization may want to approach the donor or lender to see how the ratio should be computed in the future.

Contact RINA's nonprofit team or review our website for more information on the changes effecting nonprofit organization.

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New Way to Defer Gains – Qualified Opportunity Zones

by Kelly Creed, Tax Stockholder

As part of the December 2017 Tax Cuts and Jobs Act - quietly inserted, was a complicated new tax break to lure dollars into struggling areas known as Opportunity Zones, which includes much of Oakland, San Francisco and rural areas of the East Bay. About 8,700 of these zones exist nationwide. Taxpayers cannot contribute directly to these zones - instead taxpayers invest deferred gains from other activities into a fund.

How does it work?
A taxpayer realizes a gain by selling appreciated property and within 180 days of the sale, the taxpayer invests the gain portion only, into a Qualified Opportunity Fund (QOF). No tax is paid on the gain and the investment in the QOF has a zero-tax basis. The gain is deferred until the sooner of, the taxpayer sells his interest in the QOF asset, or December 31, 2026.

Tax Basis Increase:
If the taxpayer holds their interest in the QOF for at least 5 years, they will receive a 10% tax basis increase in the investment in the QOF. If the taxpayer holds onto the investment for an additional 2 years, he will receive an additional 5% tax basis increase. For example, a taxpayer realizes a $1,000,000 gain on June 1, 2018, and invests the gain into a QOF. The taxpayer's tax basis in his QOF investment on June 1, 2018 is zero. If the taxpayer holds his investment in the QOF until December 31, 2026 the taxpayer will be required to pay tax on a gain of $850,000.

Gain Exclusion:
If the taxpayer holds their investment in the QOF for 10 years, the tax basis in the investment in the QOF is deemed to be FMV. In the example above, the taxpayer sells the investment in the QOF at December 31, 2019 for $3,000,000. The taxpayer has already recognized and paid a tax of $850,000. The appreciation from $1,000,000 to $3,000,000 or $2,000,000 is permanently excluded from tax.

The funds have freedom of what they can invest in, from real estate to starts-ups as long as they are not considered "vice" businesses (massage parlors, liquor stores, tanning booths, etc.) and if 90% of the assets are located in an Opportunity Zone. The QOF must be for first use property - so businesses already located in the Zone may not benefit, but the incentive is to get new businesses to move and develop in these zones.

If you would like more information, please contact your RINA representative.

South Dakota vs. Wayfair, Inc. - How the Supreme Court Ruling May Affect You

by Ray Evans, Tax Stockholder

The recent 5-4 Supreme Court majority decision that ruled South Dakota can collect sales tax from online retailers with no physical presence in their state. This will change the online retail environment for businesses. This ruling reversed the 1992 Quill Corp. vs. North Dakota decision, which set the standard that only businesses with physical nexus were required to collect sales tax in a particular state. The Supreme Court decision allows states to pass economic nexus standards, meaning having a certain number of transactions (i.e. 200 transactions) or a dollar value (i.e. $100,000 of sales in a year) creates substantial presence in the state. The businesses would then be required to collect sales tax from customers for a state they haven't stepped foot in. Approximately eighteen states have enacted similar laws, with more on the way.

The retail shopping environment has changed since 1992 with the explosion of internet sales. The 1992 Quill decision allowed companies operating exclusively in the e-commerce environment to not collect sales tax from their customers if they had no physical presence. This created a disadvantage for businesses operating in a physical retail location, that were required to collect sales tax from their customers. The Government Accountability Office has estimated that in 2017, states had lost over $13 billion in taxes that they could not collect due to the increase of online spending in the past twenty-six years.

States have been aggressively going after businesses that they feel should be collecting sales tax from customers. Given this verdict, we will be seeing more states using the Wayfair decision to collect sales tax from out of state businesses.

If you have sales outside of California and think this verdict may have an impact on your business, please contact your RINA representative.

Offshore Voluntary Disclosure Program - Time to Come into Compliance

by Chris DeMay, Tax Stockholder

The IRS recently announced that they will be closing the Offshore Voluntary Disclosure Program (OVDP) on September 28, 2018. The IRS encourages taxpayers with undisclosed foreign accounts to act so that they may take advantage of the program. While the program can be extremely beneficial for taxpayers who have neglected to disclose their foreign assets or pay tax on their foreign income, recent court decisions may require rethinking tax strategies for coming into compliance.

Taxpayers who were unaware of their filing obligations can continue to use the Streamlined Filing Compliance Procedures, although the IRS said it may end this program as well sometime in the future.

Since the OVDP's inception 2009, 56,000 taxpayers have participated, paying $11.1 billion in back taxes, penalties and interest. However, the number of taxpayers using the OVDP has declined from a peak of 18,000 people coming forward in 2011 to only 600 in 2017.

The foreign bank account report (FBAR) requirements introduced in the Bank Secrecy Act of 1970, requires a person having an interest in or signature authority over a bank, securities or other financial account in a foreign country to disclose their foreign accounts if the aggregate value of the accounts is greater than $10,000 at any time during the year.

While there is a reasonable-cause exception for non-willful violations, the penalty for willful violations can be staggering. In 2013, Ty Warner, the inventor of Beanie Babies, paid more than $53 million in FBAR penalties. Penalties in the original statute set a maximum penalty of $100,000 per account. The statute was amended in 2004 increasing the maximum penalty to 50% of each account per year of non-reporting.

OVDP offers the taxpayer a way out of these draconian penalties by hitting the taxpayer with a one-time penalty of 27.5% of the balance on the overseas account, and no criminal prosecution.

In U.S. vs. Colliot the judge granted the taxpayer's motion for summary judgement on the basis that the regulation's maximum penalty of $100,000 was valid despite the government's argument that the regulation was overridden by the change in the statute in 2004. With the Collier decision, the 27.5% penalty charged in OVDP may well exceed the amount the regs would indicate as appropriate. On July 18th the second district court in U.S. vs. Wadhan also ruled consistent with Colliot, ruling that the IRS couldn't impose penalties in excess of the amounts provided for in the regs.

While the OVDP allows the taxpayer avoidance of criminal prosecution, a criminal trial requires a unanimous verdict, where the average juror may not be able to discern the difference between "clear and convincing evidence or evidence "beyond a reasonable doubt" that a taxpayer willfully failed to file.

In Bedriosian vs. U.S. the court found in favor of Bedrosian and that his failure to report $2 million of foreign assets was not willful. The court pointed out that Bedrosian was a credible witness at trial, fully cooperative and honest with the IRS, and he had engaged a lawyer and accounting firm to bring him into compliance prior to learning that the government was investigating him.

Bedrosian was able to avoid significant penalties and jail time largely due to his diligence in coming into compliance. Exposure to these penalty regimes can have significant consequences. With the expiration of the OVDP it's now time to ask how to come into compliance rather than when.

Don't Lose Your Passport

by Chris DeMay, Tax Stockholder

The Internal Revenue Service recently announced that Americans with seriously delinquent tax bills will be denied passports or have their passports revoked if they do not pay their tax bill.

A seriously delinquent tax debt is defined as an outstanding IRS tax liability in which the taxpayer owes the government more than $51,000 in back taxes, penalties, interest and has previously filed a Notice of Federal Tax Lien and the period to dispute the lien has expired.

The IRS has the power to bar passports, codified in section 7345 of the internal revenue code in 2015. Thanks in part to FATCA (Foreign Account Tax Compliance Act), the IRS has been sending tens of thousands of violators' names to the State Department.

Once the State Department receives certification of a tax debt from the IRS, the State department is called to discontinue issuing or renewing the taxpayers' U.S. passport. The State Department may also revoke the passport. The State Department has issued a warning to violators who do not resolve their tax issues before applying for a passport will have their application delayed or denied.

Taxpayers with passports or who are planning international travel in the future should act now to avoid the IRS from tipping them off to the State Department. The taxpayer should consider:

• Paying the debt, negotiating an installment agreement or applying for an offer in compromise.

• IRS streamlined procedures, and for a short time, the IRS's Offshore Voluntary Disclosure Program. These programs allow the taxpayer to come into compliance without risking a referral to Criminal

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RINA Fourth Quarter

OCTOBER

October 1

- **Fiduciary returns** - Final due date for calendar year 2017 that filed an automatic 5-1/2 month extension.

October 15

- **Individual returns** Final due date for 2017 that filed an automatic six-month extension.
- **C-corporation returns** Final due date for calendar year 2017 that filed an automatic six-month extension.

October 31

- **Payroll and sales tax returns** - Third quarter 2018 due.

NOVEMBER

November 15

- **Exempt returns** - Final due date for 2017 calendar-year that filed an automatic six-month extension.
  Due date for June 30, 2018 year end.

DECEMBER

December 31

- Final due date for calendar establishing qualified retirement plans for 2018 calendar-year taxpayers.

COMING UP IN JANUARY

January 15

- **Individual estimated income tax payments** - Fourth quarter 2018 due.

January 31

- **Payroll, household and sales tax returns** - Fourth quarter 2018 due.
- **Form W-2 (2018)** - Wages and Tax Statement, to be furnished to employees from employers.
- **Form 1099 (2018)** - to recipients of dividends, interest, non-employer compensation, etc.

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Connect With Us

RINA Gives Back

Volunteering With HandsOn Bay Area

By Juan Maciel, Staff Accountant

On Friday, August 10th, thirty staff members volunteered with Oakland Parks and Recreation for a volunteer day lead by HandsOn Bay Area. RINA restored and rejuvenated Arroyo Viejo Park in Oakland by forming various groups lead by team members from HandsOn Bay Area. HandsOn Bay Area team members guided RINA volunteers on restoring the community garden, constructing a park fence, and cleaning and painting park structures. RINA beautified the park and gave life to the community garden to ensure Arroyo Viejo is inviting for all members in the surrounding community.

Mentoring at De La Salle Academy

By Amanda Vergara, Marketing Coordinator

Staff accountant, Juan Maciel, is a mentor at De La Salle Academy (DLSA) in Concord. DLSA is a middle school for boys from low-income families. Their mission is to provide effective education, for grades 5 through 8, to promising boys in the greater Concord area. Recognizing each student's unique gifts, challenges and needs, the school creates a community of learning based on religious academic programs and informed by the Catholic, Lasallian charism of the De La Salle Christian Brothers.

Juan has been mentoring 7th grader, Ian for two years. "It has been a pleasure to see his personal and academic growth". He works with him both formally and informally at least once a month. To Juan, DLSA means educational equality. Equality is essential to breaking the cycle of poverty within communities. He believes that DLSA does its part by providing an engaging curriculum, inviting community and sense of brotherhood for students. One of his favorite activities as a mentor comes at the end of the grading periods where students share grades with mentors, providing them the ability to celebrate their accomplishments and set goals for the following grading period.

In the past two years, Juan has witnessed Ian set academic goals for himself by creating a list of study habits he would like to develop. "It's exciting to see the pride Ian has in his educational growth when he perseveres and achieves his desired results." He also enjoys playing games such as relay races with Ian, his classmates and other mentors. The students not only cheer for their own team, but for their peers' teams. The high-fives, claps and words of encouragement between them demonstrates the brotherhood fostered by De La Salle Academy.

Don't Lose Your Passport *—Continued from page 3*

Investigation, and offers the taxpayer an opportunity to minimize their exposure to significant IRS penalties.

Taxpayers who are in bankruptcy, victims of identification fraud, or those taxpayers living in a federally declared disaster area, are not at risk for having their passports revoked.

Passport revocation does not appear to be going away. A recent report issued by the Taxpayer Assistance Service indicates that the IRS plans on stepping up its certification to a staggering rate of five to ten percent each week until all seriously delinquent accounts have been certificated to the State Department.

SAVE THE DATE

Join us on Tuesday, November 13, from 4pm – 6pm for RINA's San Francisco Office's Open House! Enjoy Hors d'oeuvres, beer and wine, while helping us to celebrate our new location.

150 Post Street, Suite 200 • San Francisco