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RE: Not-for-Profit Changes

There have been numerous significant changes over the past few years regarding the laws, regulations and required reporting for not-for-profit organizations and the next few years will contain even more. This letter is to serve as a reference guide to ensure your organization stays in compliance with all required changes.

Significant Past Changes:

- **New York Non-Profit Revitalization Act of 2013** - Represents the first major change in the NY Not-for-Profit Corporation Law in over forty years. The Act intends to increase transparency by enhancing governance and increasing accountability in addition to reducing some administrative and regulatory burdens. The key changes effected by the Act are as follows:
  - **Annual Reporting Requirements** - The gross revenue thresholds requiring an audit increased from $250,000 to $750,000 in 2017 (to $1M in 2021).
  - **Conflict of Interest Policies and Annual Disclosure Statements** - Now a requirement for all non-profit organizations**.**
  - **Whistleblower Policy -** Required for organizations with 20 or more employees and annual revenue greater than $1M in its prior fiscal year.
  - **Audit Oversight:** Creates audit oversight for those organizations requiring an audit. The Act requires organizations to establish either a designated audit committee consisting of independent directors or the Board of Directors to oversee the accounting, financial reporting process and the audit.
  - **Audit Committee Responsibilities Defined**
  - **Defines Independence**
  - **Related Party Transactions Prohibited**
  - **Other Changes -**
    - Electronic communications allowed for board and member communication.
    - Board of Directors – No employee can serve as Chairman of Board (revised 2017), no paid related parties can deliberate and number of board members can be fixed in bylaws or by bylaw provision.
    - Real property transactions – changed board approvals for transactions.
    - Various other legal and administrative changes for incorporation and dissolution, acquisitions and mergers.

- **CHAR-500 Deadlines –** In 2015, the New York State Attorney General's Charities Bureau changed the extension request process so that all organizations were granted an automatic 180 day extension, eliminating the need to file extensions. Deadlines are posted on www.CharitiesNYS.com.

Significant Current Year Changes:

- **2016 Amendment of the New York Non-Profit Revitalization Act of 2013** – Most amendments went effective May 27, 2017.
    - **Employees can now serve as Chairman with Board approval effective 1/1/2017.** Consult an attorney if an employee is President or Chairman to ensure compliance with the new law. Must be approved by a two-thirds vote of the board and the basis for the approval documented in the minutes.
    - **Related parties –** Now excludes transactions that are:
        - De minimis,
        - Not normally reviewed by the board and are available on same/similar terms available to public,
        - Benefits provided to a related party only as a member of a charitable class served.
    - **Key Employee** - Changed to Key Person and is defined.
    - **Conflict of Interest and Whistleblower Policies Revised**:
        - Can now be adopted and overseen by directors (instead of independent directors).
        - Directors who are employees may not participate in any deliberations or voting relating to administration of the whistleblower policy.
        - Any individual who is the subject of a whistleblower complaint cannot participate or be present in deliberations or vote involving related complaints.
    - **Committees –**
        - When the governing board elects a committee of the board, it has the power to delegate the power of the board (as they have the same fiduciary responsibilities).
        - A committee of the organization can be appointed by a board chairperson and may include non-fiduciaries. The appointment of these individuals does not give them the rights or responsibilities of a board member. Therefore, committees of the organization can provide advice to the board but cannot act on behalf of the organization.
        - Election of the Executive Committee required by a majority of the entire board (unless there are 30 or more directors). All other committees of the board may now be elected by a majority of a quorum.
    - **Independent directors –**
        - Revised so independent directors may still be independent if employed by or has a financial interest of less than:

Gross Revenue:	**Threshold Amount:**
Less than $500k	Lesser of $10k or 2% gross revenue
$500k to under $10M	$25,000
$10M or more	$100,000

- New exception for payments at fixed or non-negotiable rates for services received (if services by and to the nonprofit are available to individual members of the public on the same terms).

- **990 Extension Deadline Change –** For 2016, the deadline for 990's is still the 15th day of the fifth month after the fiscal year end date. However, the two three-month extensions have now been replaced with one six-month automatic extension.

- **2016 Filing Deadline Changes for W-2's, W-3's, 1099-MISC, 1096 –** Filing deadlines have been accelerated and the required forms are to be filed by January 31 commencing with the 2016 (due January 31, 2017) tax year and forward. Electronically filed returns no longer have extended filing dates.

- **New York Paid Family Leave Act –** In April 2016, Governor Cuomo signed into law the New York State Paid Family Leave Program under the current Disability Benefits Law. Beginning January 1, 2018, the program will provide New York workers job-protected, paid leave to bond with a new child, care for a loved one with a serious health condition or to help relieve family pressures when someone is called to active military service. Employee payroll deductions started July 2017. Please refer to our June 2017 two-page memo for details.

- **Accounting for Cloud Computing Arrangements -**
  - Effective Calendar Years (CY) 2016 or Fiscal Years (FY) 2016-2017
  - Guidance whether Cloud Computing Agreement includes a software license.
  - Software license portion should be accounted with same method as other acquired software.
  - If no software license is included, record as a service contract.

- **Accounting for Debt Issuance Costs-**
  - Effective CY 2016 FY 2016-2017
  - Previously recorded as an asset (deferred charge) but is now required to be reported as a direct reduction of related debt liability.

Significant Changes for Future Years:

- **Accounting for Going Concern -**
  - **Effective for CY 2017, FY 2017-2018, early adoption permitted**
  - Management is responsible to evaluate whether there is a substantial doubt about an entity's ability to continue as a going concern.
  - Management is also responsible for the related footnote disclosures.
  - Note requirement - Period is extended to one year from the report date of the financial statements instead of one year from the ending date of the financial statements.

- **Accounting for Inventory ASU 2015-11:**
  - **Effective for CY 2017, FY 2017-18**
  - Inventory to be recorded at lower of cost or net realizable value.

- Excludes inventory measured at LIFO and retail inventory method.

- **Presentation of Financial Statements by Not-for-Profit Entities (ASU 2016-14)-Phase I**
  - **Effective for CY 2018, FY 2018-19,** early adoption allowed only for all requirements (cannot early adopt portions of the revision).
  - **Liquidity & Availability -** Required quantitative and qualitative disclosures about liquidity and available resources.
    - **Qualitative Disclosure –** Information on how organization manages its liquid available recourse and its liquidity risk.
    - **Quantitative Disclosure –** Amount of financial assets (defined as total assets less non-financial assets: fixed assets, inventory, prepaids) available to meet cash needs for general expenditures within one year. Can be presented in a footnote or on the face of the financial statement.
  - **Net Asset Classification –**
    - New categories: Net Assets with donor restrictions and net assets without donor restrictions.
    - Disclosure requirements for net assets with donor restrictions (nature and amount) and board designations (amount, purpose and type of board designation).
  - **In-kind Donations of Fixed Assets –** These are included in net assets with donor restrictions until placed in service, then moved to net assets without donor restrictions.
  - **Functional Expenses –** Statement or footnote is now required. Disclosure is required for allocation methods used to allocate costs. Provides guidance on management & general expenses.
  - **Statement of Cash Flows –** Option to use either method (direct or indirect).
  - **Investment Returns –** Can now net expenses against investment revenue without disclosure of expense amounts.
  - **Endowments –**
    - Changed accounting for underwater endowments.
    - Underwater endowments to be reflected in Net Assets with Donor Restrictions.
    - Disclosures Required: Total amount funds underwater, total amount of original gift, fair value, governing board policy and actions taken concerning appropriation from underwater funds.
  - **Comparative Financial Statements –** If presenting comparative statements, all requirements apply for both years except:
    - Functional
    - Liquidity and availability resources

- **Revenue Recognition (ASU 2014-09 and follow ups):**
  - **Effective for CY 2019 (FY 2019-2020) for non-public entities (no bonds), may early adopt in 2018.**
  - Affects all contracts with customers except leases, insurance contracts, guarantees, financial instruments, nonmonetary exchanges to facilitate sales to customers.
  - Contributions and collaborative arrangements excluded.

    - Areas addressed by Task Force: tuition and housing fees, membership dues, grants, self-pay patients, Medicare/Medicaid payments, continuing care requirement communities (entrance fees and other issues), bundled payments.
    - Steps: Identify contract, identify performance obligations, determine transaction price, recognize revenue when performance obligation satisfied.
    - Required Disclosures:
        - Qualitative disaggregation of revenue into categories that depict how revenue and cash flows are affected by economic factors.

- **Leases (ASU 2016-2)**
    - **Effective CY 2020, FY 2020-21, early adoption permitted.**
    - All operating leases over 12 months required on balance sheet.
    - Operating leases must be equally expensed via the straight-line method.

Details on Defined Areas:

New York Non-Profit Revitalization Act of 2013

- **Audit Committee Responsibilities Defined** for Organizations with over $1M in Revenue. The Audit Committee/Board must:

  Related to Audit:
  - Review scope and planning of audit with auditor
  - Discuss material risks and weaknesses in internal controls with auditor
  - Discuss significant disagreements between management and auditor
  - Discuss adequacy of accounting and financial reporting process of organization
  - Review the performance of the auditor annually

  Other Responsibilities:
  - Ensure proper tax filings were timely completed (including unrelated business tax)
  - Review internal and financial controls periodically
  - Assessment of appropriate risk and risk response plans
  - Identifying and monitoring related party transactions, reviewing and updating governance policies
  - Monitor legal matters
  - Review of adequacy of insurance coverage
  - Maintenance of audit committee meeting minutes

  Governance policies and bylaws need to be updated to reflect the above requirements.

- **Defines Independence –** A person who is not (and has not been during the prior three years) an employee of the organization and its affiliates, and does not have a relative who has a management position or received over $10,000 from the organizations during that period. Also, the individual and their relatives may not have similar relationships with entities with which the organization has a financial relationship. A member of the board is considered independent even if they receive reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director.

- **Related Party Transactions Prohibited –**

  - Related parties include:
    - any officer, director or key employee or any affiliate or relative of the preceding individuals
    - any entity with an officer, director or key employee or any affiliate or relative of the preceding individuals with above 35% ownership or beneficial interest (5 % for partnership or professional corporation-direct or indirect).
  - A related party is prohibited from participating in deliberations or voting on the related party transaction but may present information concerning the transaction to

the board/authorized committee prior to deliberations or voting if requested by the board/authorized committee.

- If the related party transaction is substantial (not defined by Act), the board/authorized committee must also:
    - Consider alternatives transactions prior to entering into the transaction
    - Approve the transaction by not less than a majority vote of the directors present at the meeting
    - Document in writing the basis for the board approval including its consideration of alternative transactions
- Officers, directors and key employees having an interest in a related party transaction have a duty to disclose in good faith to the board the material facts concerning his or her interest.
- The Act also enhances the Attorney General's authority to address violations of the related party transaction rules.

2016 Amendment of the New York Non-Profit Revitalization Act of 2013

- **Key Employee** - Changed to Key Person and includes individuals other than employees. Defined as an individual (other than officers or directors otherwise defined as a “related party”), who:
    - Has responsibilities or exercises powers/influence over the organization as a whole similar to the powers/influence of directors and officers
    - In addition to the first bullet point, manages the organization or a substantial portion of the activities, assets, income or expenses of the organization

  OR

    - Determines a substantial portion of the organization’s capital expenditures or operating budget.