PUBLISHED BY ASAE: THE CENTER FOR ASSOCIATION LEADERSHI

ASSOCIATIONS now

IDEAS INTO ACTION

11|11

fresh Fundraising

Combine traditional outreach with new techniques to motivate donors to give. **20**

As economic troubles persist, local, state, and national governments are looking for ways to manage their budget shortfalls. One way is by claiming they are owed funds from traditionally tax-exempt organizations, including associations. Organizations can stop these challenges by staying informed and doing some aggressive advocacy work.

By Nancy Mann Jackson

Is Your Tax Status Under the Microscope?

National economic woes continue, and associations are feeling the impact in more ways than one. In addition to experiencing budget shortfalls of their own, some associations are finding themselves with new bills to pay—bills that closely resemble taxes. And association public policy experts say that if associations don't take action, larger chunks of their member and donor dollars will be required to fund government operations.

In many cases, associations are dealing with increased scrutiny of their tax-exempt status, as local, state, and national governments look for ways to fill their own budget gaps. One opportunity they see is taking funds from traditionally tax-exempt organizations. "Nonprofits can expect to see local governments seeking revenues so long as the government budgets have deficits," says David Thompson, vice president of public policy at the National Council of Nonprofits.

Despite the increased scrutiny and the challenges that may come along with it, if associations know what the IRS is looking for and voice concerns about any impending changes to their tax status, they may be able to avoid them.

The Senate Finance Committee has looked closely at tax-exempt organizations for the past eight or nine years, says Jim Clarke, CAE, senior vice president of public policy at ASAE. For instance, a few years ago the committee was especially interested in the salary and compensation packages of television ministries. Before that, there was a special focus on colleges and universities and nonprofit hospitals. When the Finance Committee pinpoints a certain type of tax-exempt organization to investigate, it usually holds hearings and asks for detailed information from the groups under investigation. "There have been numerous occasions when Senator Grassley [former chairman of the committee] has sent out

letters, up to 28 pages long, asking questions about tax exemption," Clarke says.

While those investigations into various types of nonprofits are expected to continue, they are now compounded by additional activity on the state and local levels, says Chris Vest, director of public policy at ASAE. For instance, several large cities have made headlines for their recent efforts to finagle funds out of traditionally tax-exempt organizations, including professional associations.

In Baltimore, Boston, and Pittsburgh, city governments have devised a new method of obtaining revenue from nonprofits that own real estate within their borders. These cities now request that nonprofits make a payment in lieu of taxes (PILOT) that approximately equals what their property taxes would be, if their property was taxable. "The city governments estimate what property taxes would be and then suggest that the organizations make voluntary payments to the city," Vest says. "While the payments are technically voluntary, the cities put a lot of pressure on nonprofits that own property to pay these fees for the upkeep of their property."

Nonprofit associations aren't just paying new quasi-taxes in their own hometowns; for the first time they are also required to pay taxes when they convene meetings in certain destinations. In August, the state of Hawaii temporarily revoked a series of state-tax exemptions in order to close a $1 billion-plus budget deficit. One of the general excise-tax exemptions suspended was for income nonprofits receive from meetings and conventions, adding a new tax burden to associations holding meetings in the state. Hawaii also suspended the excise-tax exemption on costs for loading and unloading cargo related to meetings, which means more money out of association coffers.

The bill revoking these tax exemptions, Act 105, is expected to raise almost $400 million in revenue between 2011 and 2013. While the suspension is set to expire after 2013, the law's opponents argue that tax-exemption suspensions are usually made permanent.

Other states are taking similar steps. In Vermont, a new law went into effect in April that adds at least 6 percent in taxes on tickets sold for entertainment events. In towns that have the right to add their own levy on top of the state's fee, tickets can be taxed at 7 percent. This new tax not only affects associations that conduct meetings in Vermont, but it's also a hindrance to Vermont-based nonprofits that hold fundraisers.

Local governments are using different rationales to justify these steps. Thompson offers Boston, New Orleans, and Chicago as examples. "Each city rejected the rationale of the others, seeking its own justification for draining resources from nonprofit missions," Thompson says. Boston, for example, has sought PILOTs from larger nonprofit landholders, claiming they should pay for their use of city police and fire protection. The mayor of New Orleans rejected PILOTs from nonprofits but wants to tax the properties of nonprofits, which will require a state constitutional amendment. And in Chicago, Mayor Rahm Emanuel rejected taxing nonprofits, saying he wants to charge them fees based on water usage instead.

IRS CONSIDERS CHANGES TO FORM 990

Even if associations maintain their full tax-exempt status, the IRS will continue to refine its reporting requirements, and for organizations that don't file properly, tax exemption can be vulnerable.

Currently, the IRS is considering making changes to Form 990, the return filed by most tax-exempt organizations. ASAE opposes two of the possible changes involving how tax-exempt organizations report payments to management companies and the thresholds for reporting compensation of key employees, highest-compensated employees, and independent contractors, says Chris Vest, director of public policy at ASAE.

Form 990 allows fees paid by filing organizations to bona fide association management companies (AMCs) to be reported as payments to independent contractors. But the IRS is concerned that the current reporting system allows organizations to shield compensation to highly paid executives from disclosure by paying those executives indirectly through management companies. For that reason, the agency is considering changing the Form 990 to require payments to AMCs to be treated as compensation for individual employees of a management company that service an organization's account. In August, ASAE filed comments with the IRS stating that the current reporting structure should be retained.

Form 990 requires filing organizations to list the top-20 key employees who make $150,000 or more, the five highest-compensated employees who make more than $100,000, and the top-five highest-compensated independent contractors paid more than $100,000. The IRS is considering lowering these thresholds, but ASAE says the agency could improve compliance by adopting a single, uniform reporting threshold of $150,000 for key employees, highest-compensated employees, former officers/directors/trustees, and independent contractors.

Vest says ASAE has no objection to the IRS collecting compensation data and supports the agency's interest in unearthing excessive compensation, but ASAE does not believe the current thresholds need to be lowered to expose even more employees' salaries for public inspection.

If you are concerned about these issues as well, contact your congressional representatives and let them know what you think. For more information from ASAE on these issues, visit www.thepowerofa.org.

What to Expect

While your city or state may not have attempted yet to apply new fees to tax-exempt organizations or rewrite the tax code to demand taxes from associations, don't be surprised if it does soon. "We're going to see a lot of talk about [tax-exempt organizations]," Clarke says. "All things are going to be put on the table, and tax-exempt organizations are creatures of the tax code."

He expects to see Congress looking closely at organizations' governance structures and compensation packages. While it's unlikely that all tax-exemption privileges will be revoked, Congress might attempt to tax certain parts of an organization's operations, he says.

For added confirmation that the government takes tax exemption seriously, earlier this year the IRS revoked the tax-exempt status of 275,000 organizations that had not filed returns for three years. While those organizations were allowed to reapply for tax exemption, the action by the IRS "underscores that Congress is interested in scrutinizing the tax-exempt community and that the IRS is intent on having everybody on the record," Vest says.

With scrutiny of an association's tax status almost certain, Clarke says it's important for associations to stay informed about what the IRS is looking for. Revisit your organization's original filings for tax exemption and ensure that the mission originally filed with the IRS is still your mission today. Also, take a look at the IRS work plan for each year, which is available under the Exempt Organizations area of the IRS website. In that work plan, read through the areas of focus for the year. (In 2011, the focus areas include down-payment-assistance organizations, political action committees, and qualified state and local political organizations.) "If you're in one of those areas, pay attention to your own housekeeping," Clarke says.

Taking a Stand

As governments scramble to fill budget gaps, they will consider every option. And because the path of least resistance is often the one that governments will choose to take, association executives must make their voices heard.

"If nonprofit associations do nothing, they can expect to pay newly created fees that apply only to nonprofits and sales taxes on new and different items or to lose existing exemptions," Thompson says. "With aggressive advocacy, the attempts to tax nonprofits can be defeated."

One approach that may help associations gain favor from local, state, and national governments may be working to better communicate the value associations bring to the national economy, especially in the form of revenue and jobs created by association meetings, says Christie Tarantino, CAE, president and CEO of the Association Forum of Chicagoland. According to "The Economic Significance of Meetings to the U.S. Economy" study, the U.S. meetings industry, in which associations play a significant role, directly supports 1.7 million jobs, $263 billion in spending, a $106 billion share of the gross domestic product, $60 billion in labor revenue, $14.3 billion in federal tax revenue, and $11.3 billion in state and local tax revenue each year.

Associations and nonprofits are also working together to gather strength in numbers. In Louisiana, for instance, nonprofits formed a coalition to guide a legislative study commission away from recommending imposing property taxes on nonprofits in New Orleans. "Theoretically, it is a local issue, as the mayor wants to change the state constitution to allow him to impose special taxes," Thompson says. "But the Louisiana Association of Nonprofit Organizations has turned it into a statewide issue and rallied the whole nonprofit community."

The good news is that these approaches are working. "In most cases this year, the nonprofit community has been successful in pointing out their positive impact in their communities and the negative effects of taking money out of nonprofit missions," Thompson says. "Nonprofit associations that lead the community in advocating on behalf of their members, donors, volunteers, and the community at large are the most effective at opposing new taxes and fees. [Associations] have identified specific costs to government that are lower today because of [their] work and have reminded policymakers that nonprofits earn their tax-exempt status by dedicating themselves to the public good and by giving up their rights to property, privacy, and politics." an

Nancy Mann Jackson is a freelance writer based in Huntsville, Alabama.