

M E M O R A N D U M

TO: Tax Exempt Charitable Organizations and Private Foundations

FROM: Samuel M. Krieger, Esq.

DATE: February 2014

SUBJECT: Post IRS Recognition - General Information and Procedures

This memorandum will attempt to acquaint you with some of the applicable filings and legal requirements with respect to your charitable organization or private foundation. This information is generally provided for New York State; local variations will apply.

Form 990 and Form 990PF - Your recognition letter from the Internal Revenue Service will indicate whether you are required to file Form 990 (or for a private foundation, Form 990PF). Not-for-profit organizations (other than private foundations) with gross receipts less than \$200,000, and total assets less than \$500,000 are entitled to file a simplified form called Form 990-EZ, in lieu of Form 990. An exempt organization whose annual gross receipts are normally \$50,000 or less may instead file Form 990-N ("e-postcard") which requires disclosure of only the most basic information about the organization. Whether or not you are required to file Form 990 or Form 990PF, the organization may be subject to additional filing requirements if the organization has either unrelated debt financed income (generally with respect to real estate) or unrelated business income (for business activities not directly related to the organizations charitable purposes). You should discuss this with your account or our office; while these requirements may not be applicable for a current fiscal year, they may be applicable for a later fiscal year depending on your activities.

The filing date for Form 990 is the 15th day of the fourth month after the close of your fiscal year (i.e. May 15th for calendar year entity). The current Form 990 requires more extensive information regarding corporate governance, specific programs and financial activities. Form 990 should be provided to, and reviewed by the directors prior to filing. If you are a charitable organization that has adopted a conflict of interest policy, the IRS will be reviewing Form 990 to see if you are in compliance with the conflict of interest policy. You should be aware that your Form 990 will generally become publicly available on the web at www.guidestar.org or projects.propublica.org¹. The schedule of contributors (Schedule B) is not required

¹ The IRS maintains two separate lists of exempt organizations, which are both available online. The searchable Publication 78 database, including the Auto-Revocation List and the Form 990-N filing list, are available at <http://apps.irs.gov/app/eos>. The downloadable "master file" list is available at <http://www.irs.gov/taxstats/charitablestats/article/0,,id=97186,00.html>.

Failure to file the applicable version of Form 990 for three consecutive years leads to an automatic revocation of an organization's tax exempt status.

to be made available for inspection by public charities, but Schedule B for private foundations filing Form 990PF must be available for public disclosure.

Substantiation of Donations. Exempt organizations are subject to the contribution substantiation requirements for any donation in excess of \$250.00, and additional disclosure rules governing non-cash donations. The procedures to be used vary depending on a variety of factors. More information is available at the IRS website or in IRS Publication 1771.

Private Foundations are subject to additional limitations on their activities and investments, and must pay an excise tax on their net investment income. The specifics of the foregoing limitations (especially with respect to “self dealing transactions” between a private foundation and its substantial contributors or other disqualified persons), are beyond the scope of this brief memorandum. Failure to comply can subject the foundation and its managers to substantial penalties.

New York Registration and Filing. Charitable organizations and private foundations are required to register with the Charities Bureau of the New York State Department of Law (www.charitiesnys.com), and by filing an application with the Department of Law on Form CHAR410². A religious corporation or an educational institution formed under the New York State Education Law are generally exempt from these reporting requirements, and if requested, should file CHAR410 together with Schedule E (Request for Registration Exemption). Thereafter, each organization must annually file Form CHAR500 (which generally incorporates most of the information filed with the Internal Revenue Service under the Form 990 series). The type of financial reports required to be filed (unaudited, review or audit) with Form CHAR500 is dependent on the organization’s gross revenues. Effective July 1, 2014, organizations required to submit an audited report to the Department of Law must also have an Audit Committee comprised of independent directors as defined in the Not-For-Profit Corporation Law.

Benefits. Certain organizations may be entitled to an exemption from real estate taxation and water and sewer charges. For New York City, the relevant forms are available at the site of the New York City Department of Finance (www.nyc.gov). Outside New York City, contact the local assessor. Exempt organizations may secure a New York Sales Tax Exempt Certificate by filing Form ST119.2 with the Department of Taxation and Finance. Religious organizations may also be eligible for reduced rates from gas and electric - contact your local utility.

Certain organizations may also be eligible to receive computer hardware and software free or at substantially reduced prices (see www.techsoup.org).

If you have any questions regarding the subject matter of this memorandum, please feel free to call our office.

² Registration is required of charitable and other not-for-profit organizations (including private foundations) that (i) solicit contributions from New York State (including residents, foundations, corporations, government agencies and other entities) (pursuant to Article 7-A of the Executive Law) and/or (ii) are incorporated, are formed or otherwise conduct activity in New York State (pursuant to Section 8-1.4 of the Estates, Powers and Trusts Law).