Tax&Legal

Tom's Top Ten (Or So) Tips

By Thomas E Blaney, CPA, CFE, Partner, O'Connor Davies Munns & Dobbins, LLP

- If a foundation amends its bylaws, a "conformed" copy of any amendments must be attached to the 990 PF tax return in the year of the change.
- Personal expenses charged to a Foundation's credit card could be considered an act of self-dealing.
- Foundations are not required to have a calendar tax year (December 31). Foundations may elect any month to end their tax year.
- Foundations should consider the utilization of the cash basis of accounting for both book and tax purposes. The cash basis is easy to maintain and must be used in calculating a foundation's qualifying distributions. Therefore, by adopting the cash basis, a foundation does not have to maintain two sets of hooks (cash and accrual).
- Basically speaking, a foundation is required to distribute 5% (in grants and certain administrative expenses) of the average fair market value of its investment assets of the preceding year. Therefore newly created foundations have until the end of their second year of existence to make this distribution.
- The 2% excise tax on a foundation's net investment income was originally 4% when adopted in 1969. The purpose of the tax was to fund the costs of audits and oversights of private foundations. The tax was reduced from 4% to 2% in 1978. Presently; the tax can be reduced to 1% if a foundation's percentage of distributions (adjusted qualifying distributions divided by the net value of noncharitable use assets) is greater than or equal to its average distribution over the preceding five taxable years plus 1% of net investment income.
- Foundations cannot qualify for a reduction in their federal excise tax from 2% to 1% in their first year of operation.
- When calculating a foundation's net investment taxable income, realized losses cannot offset interest and dividend income.
- Unfortunately, any net realized losses cannot be carried forward to future years. In other words, if you don't use them, you lose them.
- Foundations that invest in foreign securities should ask their investment advisors to file for refunds for any foreign taxes withheld. Depending on the country, foundations may be eligible for a refund of all or a portion of foreign taxes withheld by the source country.
- Foundations that invest in limited partnerships that utilize any form of debt financing could incur unrelated business income and be subject to an income tax at corporate rates.

Tom Blaney serves on the ASF Finance Committee. If have any questions about the tips listed here give Tom a call at 212-286-2600.

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