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Nonprofit Standard

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Not-for-Profit Entities – Mergers and Acquisitions

By Dick Larkin

In May 2009 (although the printed document carries an April date) the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 164 (SFAS 164) entitled *Not-for-Profit Entities: Mergers and Acquisitions - Including an amendment of FASB Statement No. 142*. This long awaited standard addresses the issue of how to deal with combinations of not-for-profit entities.

SFAS 164 addresses the accounting for combinations of not-for-profit organizations. SFAS 164 distinguishes between a merger and an acquisition. Mergers are accounted for on a 'carryover basis' which is similar to pooling accounting under APB 16. Acquisitions are accounted for on an 'acquisition basis' which is similar to SFAS 141(R).

A determining factor of a merger is the ceding of control by the governing bodies of two (or more) organizations to a new organization. The governing board of the new entity must be newly formed, but establishing a new legal entity is not a requirement.

Other factors such as relative size, relative dominance of the process and of the combined entity, and relative financial health, can be considered in judging whether control has been ceded, but are not themselves determinants of a merger versus an acquisition. All other combinations not meeting the criteria for a merger are accounted for as acquisitions.

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Not-for-Profit Entities – Mergers and Acquisitions (continued)

The following describes the accounting treatment for a combination that is deemed to be a merger:

- Add together the historical financial data of the merging entities as of the merger date (not, as under APB 16, as of the beginning of the fiscal year in which the merger occurs).
- The financial statements of the period of the merger include data only since the date of the merger (except that for a public company (FSP 126-1), pro forma disclosure is required as if the merger had occurred at the beginning of the fiscal year).
- Conform accounting policies, except, because a merger is not a 'fresh-start', it is not an event that permits the election of accounting options that are restricted to the entity's initial acquisition or recognition of an item (or the reversal of a previous election). Thus, for example, one merging entity's election of the fair value option (SFAS No. 159) for a particular asset or liability permits neither the new entity's election of the fair value option for *other* financial assets or liabilities nor reversal of a previous election of this option.
- Eliminate effects of any intra-entity transactions.
- All reclassifications, adjustments, and other changes needed to effect a merger are rolled into opening balances.
- Since the successor organization after a merger is a new entity, there is no prior period statement of activities or cash flows. An opening balance sheet (statement of financial position) may be presented if desired.

The following describes the accounting treatment for a combination that is deemed to be an acquisition:

- All identifiable assets and liabilities (and any noncontrolling interest) of the acquired entity are brought in at their fair values at date of acquisition.
- Some exceptions specific to nonprofits are: (1) collections are accounted for in accordance with the policy of the acquirer; (2) conditional pledges are not recorded; and (3) no value is attributed to donor relationships.
- An exception for leases: Leases are classified (operating vs. capital) according to their terms at lease inception, unless they have been modified.
- If the value of the acquired assets exceeds the sum of the acquired liabilities plus any consideration, the difference is recorded as an inherent contribution and reported as a separate credit in the statement of activities.
- If the sum of the liabilities plus consideration exceeds the assets, the difference is recorded as goodwill, except if the entity is predominantly supported by contributions and/or investment return, the goodwill is written off immediately as a separate charge in the statement of activities. "Predominantly supported by" means that contributions and investment return are expected to be significantly more than the total of all other revenues.
- Any noncontrolling interests are accounted for in accordance with SFAS 160 *Noncontrolling Interests in Consolidated Financial Statements*.
- Acquisition-related costs are period expenses, except for debt issuance costs.

SFAS 142, *Goodwill and Other Intangibles* is made fully effective for not-for-profit entities. Under SFAS 142 goodwill is no longer amortized, rather it is tested for impairment.

Various descriptive, quantitative, and qualitative (why the merger/acquisition occurred) disclosures are required.

The effective date of SFAS 164 is for combinations occurring in reporting periods beginning on or after December 15, 2009. Early adoption is prohibited.

SFAS 164 does not apply to:

- The formation of a joint venture;
- The acquisition of assets that do not constitute either a business or a nonprofit activity;
- A combination between entities under common control; or
- An event in which a not-for-profit entity obtains control of another entity but does not consolidate that entity, as permitted or required by AICPA SOP No. 94-3.

For more information, please contact Dick Larkin, National Nonprofit Technical Director of the Institute for Nonprofit Excellence in BDO Seidman's Greater Washington, D.C. office at dlarkin@bdo.com.

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Tax Considerations When Terminating or Merging

By Joyce Underwood

IRS recently released a new Publication, Pub 4779, to respond to the increase in mergers and liquidations resulting from the economic downturn. Most tax-exempt organizations must inform the IRS about the details of terminating or effectively going out of business by merging with another organization by filing a final Form 990 which is due four months and 15 days after the date of the organization's termination.

On a final Form 990 filers check the Termination box on page 1 of the return and answer yes to the question whether the organization liquidated, terminated, or dissolved, and, if applicable, to the question whether the organization engaged in a significant disposition of net assets. Filers must also complete the new Schedule N: *Liquidation, Termination, Dissolution, or Significant Disposition of Assets*.

The information required on Schedule N includes a description of the assets and any transaction fees, the date of distribution, the fair market value of the assets and information about the recipients of the assets. Schedule N also asks specific questions about whether an officer, director, trustee, or key employee of your organization is, or is expected to be, involved in the successor or transferee organization by governing, controlling, or having a financial interest in that organization. If you answer 'yes' to any of the questions, you provide the name of the person involved and an explanation of the circumstances. You will also provide a certified copy of your articles of dissolution or merger, resolutions and plans of liquidation or merger and any other relevant documentation with the return. Certain states require you notify the state attorney general or other appropriate state office of the organization's intent to dissolve, liquidate, or terminate.

Private foundations file a similar return for their final short year, but also include a list of the names and addresses of all recipients of assets, and an explanation of the nature and fair market value of assets distributed to each recipient. They also must consider special rules under the provisions of Internal Revenue Code section 507, which provides four ways to terminate private foundation status, two of which involve tax liability:

1. Voluntary termination by notifying the IRS of intent to terminate and paying a termination tax.

2. Involuntary termination for either willful repeated violations or a willful and flagrant violation of the private foundation excise tax provisions - subject to the termination tax.

3. Transfer of assets to certain public charities exempt under section 509(a)(1) – recipient charities must have been in existence and a 509(a)(1) for a continuous period of at least 60 months before the distribution. Under this method the entity is not required to notify the IRS of its intent to terminate and is not subject to the termination tax.

4. Operating as a public charity for a continuous period of 60 months after giving appropriate notice. This method is also not subject to the termination tax.

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Recovery Act Funds

By Tammy Ricciardella

As a result of the *American Recovery and Reinvestment Act of* 2009 (Recovery Act) it is expected that over $300 billion in grants will be paid out by the Federal Government. In response to the Recovery Act the Office of Management and Budget (OMB) has and will continue to issue guidance for recipients of these funds. OMB has issued Recovery Act guidance to the federal agencies that can be found on the OMB website (http://whitehouse.gov/omb). This guidance includes important information that impacts Recovery Act recipients and should be reviewed frequently by recipients.

Recipients of Recovery Act funds need to be aware of the proposed increased reporting requirements that may be imposed on them. OMB issued a Federal Register notice in April 2009 entitled *Information Collection Activities: Proposed Collection Comment Request* that proposes the standard data elements that will have to be used to comply with the reporting requirements under Section 1512 of the Recovery Act. Once these are approved, each federal agency will have to require its grant recipients to report the required information and data electronically within 10 days of each calendar quarter beginning with the October 31, 2009, quarter-end. Some of the information required to be reported by recipients includes:

- Award and award recipient information;
- Project/Activity information including amounts received and expended, evaluation of completion status, employment impact, and infrastructure investments; and
- Subrecipient information for first-tier subawards. First-tier subrecipients are defined as those that receive an award directly from a recipient.

The reporting information required and the quick deadlines after the end of each calendar quarter could be very challenging for both recipients and the first-tier subrecipients to comply with. Once the standard data elements proposed by OMB are finalized these will likely be incorporated into the reporting compliance requirements in the OMB *Compliance Supplement*.

One of the other implications of the Recovery Act is the requirement to maintain records that identify adequately the source and application of Recovery Act funds. The entity has to have a tracking system established so that the expenditures of Recovery Act funds can be accounted for separately. In addition, any Recovery Act funds awarded to subrecipients must be identified as such and subrecipients must be required to account for these funds separately in their records as well. Recovery Act funds must be separately identified in the Schedule of Federal Expenditures of Federal Awards.

OMB has issued the 2009 *Compliance Supplement* (Supplement) and it includes Appendix VII which specifically addresses the requirements related to the Recovery Act funds. One major change that will need to be tracked monthly is the listing of clusters in Part 5 of the Supplement. Federal agencies are required to specifically identify Recovery Act awards, regardless of whether the funding is provided under a new or existing CFDA number. As a result, federal agencies will use new CFDA numbers for new Recovery Act programs or for existing programs for which the Recovery Act requires significantly different compliance requirements. For existing programs, agencies may or may not use a new CFDA number for the Recovery Act awards. As a result the clustering guidance will need to be updated since many of the Recovery Act awards will have new CFDA numbers even though they are additions to and share common compliance requirements with existing programs. The OMB will post addenda to the Supplement at the end of each month beginning in June 2009. To determine clusters, an entity must refer to the OMB website and utilize the listing posted as of the entity's year end.

One critical change is that OMB will be updating guidance throughout the year with regard to the Recovery Act. Additions to the Supplement will include the addition of new programs and new compliance requirements related to these funds. Revisions to the guidance will be posted to the OMB website so recipients of these funds will need to track changes as they occur on the website.

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Recovery Act Funds (continued)

The Government Accountability Office (GAO) has been charged with playing an important role in promoting the accountability and transparency of the Recovery Act funds and has issued a report (*As Initial Implementation Unfolds in States and Localities, Continued Attention to Accountability Issues Is Essential* available on their website *http://www.gao.gov/recovery*) that makes several observations and recommendations to OMB. GAO recommends that:

- The Director of the OMB adjust the single audit process to provide for review of the design of internal controls during 2009 over programs to receive Recovery Act funding before significant expenditures in 2010.
- Adjust the single audit process to require the auditor to perform procedures such as the following as part of the routine single audit:
  - Provide for review of the design and implementation of internal control over compliance and financial reporting for programs under the Recovery Act;
  - Consider risks related to Recovery Act related programs in determining which federal programs are major programs; and
  - Specifically test Recovery Act programs to determine whether the auditee complied with laws and regulations.

OMB is currently considering these recommendations and if adopted these could significantly impact single audits in the future. There is also the possibility that legislation could be introduced to accomplish some of the GAO recommendations. Recipients of Recovery Act funds need to stay on their toes and keep a watchful eye on these developments to ensure they are in compliance.

For more information, please contact Tammy Ricciardella, Assurance Director and Member of the Institute for Nonprofit Excellence in BDO Seidman's Greater Washington, D.C. office at tricciardella@bdo.com.

Data Collection Form

Effective for audits with year-end dates in 2008, the data collection form and the single audit reporting package are required to be submitted electronically via the Federal Audit Clearinghouse's Internet Data Entry System. There are no exceptions to this requirement. The single audit reporting package which includes the audited financial statements, OMB Circular A-133 reports, summary schedule of prior audit findings and corrective action plan must be submitted as a single PDF document. The Federal Audit Clearinghouse (FAC) will return any mailed reports it receives for year-end dates 2008 and beyond with a letter providing instructions on how to submit the form electronically. However, for audits with year-end dates prior to 2008 the data collection form and the reporting package must still be submitted manually as in the past and cannot be submitted electronically.

The electronic submission process requires that the data collection form be certified electronically by both the auditee and the auditor. The certification process utilizes two distinct 12-digit numeric certification codes that are provided by the Federal Audit Clearinghouse by email to the appropriate officials who will certify the form. Once the data collection form is certified by both parties and submitted to the Federal Audit Clearinghouse the form will be reviewed by FAC personnel and both the auditee and auditor will be notified as to whether the form has passed the edits and has been accepted or if there are issues with the form that need to be addressed before the submission can be accepted. By this time next year, the FAC expects that all submissions will be processed within two days and notification will be sent via email to the parties who certified the form as to the status of the submission.

Proposed FSP FIN-48-d

By Dick Larkin

In the proposed FASB Staff Position (FSP) FASB Interpretation No. 48-d (FIN 48-d), the Financial Accounting Standards Board plans to address the following three questions to provide guidance on the application of FIN 48 *Accounting for Uncertainty in Income Taxes* for not-for-profit entities.

The proposed FSP addresses the following three issues relating to the application of FIN 48:

- What is a tax position?
- Whose income tax is it? (Not normally an issue for nonprofits.)
- How does FIN 48 apply to consolidated/combined financial statements?

With regard to what is a tax position, FASB has said the proposed guidance would clarify that an entity's status as a tax-exempt not-for-profit entity is a tax position. The FSP clarifies that all entities are subject to FIN 48, even if the only tax position in question is the entity's tax status.

One issue – whether a tax is an income tax – would not be addressed since it is outside the scope of the project. That issue relates to guidance under SFAS No. 109 and applies to all entities. The principal time this question arises with nonprofits is with regard to the private foundation excise tax on investment income. There is some disagreement as to whether this is an income tax for purposes of FIN 48, but we believe it is an income tax since it is computed based on an income amount.

In consolidated statements, the parent must consider tax positions of consolidated entities - even if the parent is tax-exempt.

The FSP will change the disclosure requirements in FIN 48, for non-public entities - to eliminate paragraphs 21(a) and 21(b) that required a reconciliation of beginning and ending amounts of unrecognized tax benefits that, if recognized, would affect the effective tax rate.

Once the FSP is issued it will be effective for entities that have deferred adoption of FIN 48 in the year of adoption which will be for fiscal years beginning after December 15, 2008, essentially calendar year 2009 entities. FIN 48 itself will now definitely become effective without any further deferrals. Per an earlier FSP issued by FASB the effective date of FIN 48 had been postponed pending issuance of this FSP. If an entity has already adopted FIN 48, the FSP will be effective upon issuance.

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Update on FIN 48

By Laura Kalick

Tax exempt organizations have a financial benefit by not having to pay taxes on most of their income. If exemption is not in order or if income or expenses have not been properly characterized as related or unrelated, the organization could have a tax liability. If that potential tax liability is material, GAAP now requires that such items be disclosed in the footnotes to the financial statements. Proposed guidance confirms that FIN 48 is applicable to tax exempt organizations (See P*roposed* FSP FIN-48-*d*). Nonprofit organizations must evaluate their tax positions including exemption itself. Since tax issues may arise at the federal, state, local or international level an evaluation should cover all these areas. Also, in the first year of implementation, the evaluation must be done for all the open tax years. For purposes of FIN 48, examination by the taxing authorities is assumed. The IRS now requires that a FIN 48 footnote be disclosed on the Form 990.

Preparing the required FIN 48 documentation is similar to conducting a mock IRS audit for income tax issues and then expanding the inquiry to cover state, local and foreign tax issues as well. In addition, FIN 48 requires quantifying how much tax would be owed if the organization were examined in order to determine if there is a material tax liability.

A FIN 48 analysis should include whether an organization's activities are of the type that allow the organization to continue to qualify under its applicable exemption section of the Internal Revenue Code, e.g., is there private inurement, more than insubstantial unrelated trade or business activity, etc. and whether the organization filed for exemption and filed tax and information returns in all jurisdictions where it is required to do so.

The organization's tax returns are a good starting place. Other documents that an organization might review include: articles of incorporation and bylaws, the application for exemption, minutes of the board of directors meetings, major contracts, opinions of counsel and other tax advisors and any correspondence with taxing authorities, including private letter rulings and prior audits. In addition, partnerships should be reviewed in order to determine if being a partner in a venture creates nexus with jurisdictions other than the organization's home state and/or unrelated business income. Please let us know if you need assistance.

Laura Kalick is the Tax Consulting Director in BDO Seidman's Institute for Nonprofit Excellence located in the Greater Washington, D.C. office. She can be reached at lkalick@bdo.com.

State Requirements

By Laura Kalick

The District of Columbia (DC) recently withdrew a requirement that *all* nonprofit organizations obtain a business license. The DC rule was scaled back to eliminate the business license requirement except for organizations that have a DC tax identification number and that solicit funds from those other than their members, for example, solicitation of grants or contributions.

Regardless of the business license, nonprofit organizations that are required to have a DC tax identification number should also apply for tax exempt status or else their income could be subject to DC tax. If an organization is engaged in or carrying on a trade or business in DC and it receives income from sources within DC, the organization usually should have a DC tax identification number.

If an organization should have filed for exemption but did not, the organization can voluntarily apply for tax exempt status. It has been the administrative practice in DC to only impose back taxes on non-contribution income for the past three years for organizations that voluntarily come into compliance. On the other hand, if the noncompliance is discovered by the government, it appears that all the organization's income for a longer period of time could be subject to tax with interest and penalties as well.

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Regulations on Non-Qualified Deferred Compensation Plans for Nonprofit and Tax-Exempt Entities

By Derrick Neuhauser and Yolanda Scannicchio

The Internal Revenue Service (IRS) is requiring additional filings for Internal Revenue Code (IRC) Section (§) 403(b) plans. This is consistent with the IRS's intent to increase enforcement of retirement plan requirements. On April 10, 2007, the final regulations under IRC §409A were announced and a deadline of January 1, 2009, was set for operational and documentary compliance. The final regulations are applicable to both for-profit and nonprofit organizations.

IRC §409A regulates a wide range of non-qualified deferred compensation plans that traditionally have not fallen under government regulations. Generally, the requirements of IRC §409A fall into three categories of restrictions:

- Implements specific timing requirements regarding when elections to defer compensation must be made.
- Limits when and how deferred compensation may be distributed.
- Restricts the ability to make payment date changes for previously established distribution dates.

There are strict penalties for non-compliance with IRC §409A and other regulations of non-qualified compensation and retirement plans. These penalties include immediate taxation of the non-compliant deferred amounts, in addition to a 20% excise tax, plus an interest penalty, all of which fall on the individual. The income and excise taxes are assessed regardless of whether the deferred compensation has been paid.

Many of our nonprofit and tax-exempt clients have long-standing executive directors that more than likely have IRC §457(f) plans and other non-qualified deferred compensation arrangements that will now be subject to IRC §409A regulation. For example, executive directors are limited to annual contributions of $16,500 (without regard to catch-up payments) for both IRC §403(b) and IRC §457(b) plans. Executive directors many times participate in Supplemental Executive Retirement Plans (SERPs) to provide additional resources at retirement. It would be prudent to take inventory of all retirement and compensation plans and have them reviewed and/or amended in order to comply with IRC §409A. This could avoid immediate taxation and additional penalties. Recently we have assisted nonprofit clients' executive directors who have been personally burdened by the income tax and excise tax resulting from non-compliant, non-qualified deferred compensation arrangements.

Please contact the Compensation and Benefits group if you have any further questions. Derrick Neuhauser, Senior Manager, dneuhauser@bdo.com and Yolanda Scannicchio, yscannicchio@bdo.com

403(b) Plans

by Bob Lavenberg

In November 2007, the DOL issued amendments to the Form 5500 – Annual Return/Report of Employee Benefit Plan – for the 2009 plan year. One of the changes eliminated the exemption granted to Internal Revenue Code ("IRC") §403(b) retirement plans of IRC §501(c)(3) organizations, from the Form 5500 reporting, disclosure and audit requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. The removal of this exemption subjects ERISA-covered 403(b) plans to the same Form 5500 reporting and audit requirements as §401(k)-type plans.

Generally, 403(b) plans sponsored by tax-exempt organizations are subject to ERISA whereas 403(b) plans sponsored by governments and most religious organizations are not covered under ERISA.

Many of these plans have been in existence since the late 1950s and organizations will be faced with numerous challenges in preparing for the audit, such as gathering plan accounting records, identifying all current and former participant accounts to be included as plan assets, determining the beginning account balances, and obtaining other financial information to be included in the plan's financial statements. As such, it is highly recommended that plan sponsors embark on gathering the necessary information as soon as possible in order to be able to meet the new requirements.

In response to these changes, the AICPA created a 403(b) Plan Audit Task Force which is chaired by Bob Lavenberg. The Task Force has issued several tools that may be useful to 403(b) plan sponsors as they prepare to comply with the new rules.

For more information, please contact Bob Lavenberg, National Employee Benefit Plan Audit Practice Leader, at rlavenberg@bdo.com.

IRS Proposes to Simplify Taxation of Employer-Provided Cell Phones … Then Proposes to Eliminate Their Taxation

By Paul E. Hammerschmidt

Certain employee benefits, like employer provided health care, are not taxable. Personal use of an employer-provided cell phone is not one of them … at least not yet officially. Such communication equipment is currently "listed property" under the current Internal Revenue Code and requires substantiation of amount, time and business purpose for each expenditure or use. Efforts by Congress to remove cell phones and similar telecommunications equipment such as iPhones, BlackBerrys and Windows Media Devices as "listed property" have been stalled.

On June 6, 2009 the IRS published Notice 2009-46[1] that provides several proposals for simplifying employer documentation of employees' business use of an employer-provided cell phone.

The IRS outlined three methods it is considering:

1. Minimal Personal Use Method – Employees could avoid tax liability if they showed proof they used personal cell phones for non business calls during work hours. The IRS could also decide on a set number of phone minutes as "minimal personal use" that would be untaxed.

2. Safe Harbor Substantiation Method – Employer would treat a certain percentage of each employee's use of an employer-provided cell phone as business usage. The remaining percentage of use would be deemed to be for personal purposes. For this proposal, the IRS and Treasury Department proposed a business use percentage of 75%.

3. Statistical Sampling Method – Employers could use a statistical sample to determine what portion of an employee's cell phone use is personal and how much is work-related. Workers would be taxed on the difference.

IRS says No Employer-Provided Cell Phone Tax

On June 16, 2009, IRS Commissioner Douglas Shulman and Treasury Secretary Timothy Geitner called on Congress to clarify that there will be no tax consequence to employers or employees for personal use of work-related devices such as cell phones provided by employers. Commissioner Shulman called the current law on employer-provided cell phones "burdensome," and said it "would inevitably leave widespread confusion among employees and businesses." He further stated that "the passage of time, advances in technology, and the nature of communication in the modern workplace have rendered this law obsolete."[2]

Lawmakers and business leaders have applauded this approach and request that Congress enact legislation to make it clear that employee personal use of employer-provided cell phones and other devices should not be taxable. They have argued that Congressional action on the issue would be better than a new safe harbor or simplification of the current law's language.

What to do until IRS Finalizes its Procedures or the Law is Changed?

Because this is currently a developing and unsettled area, organizations that provide employees with cell phones available for personal use should be doing something to include the fair market value of employees' personal use as income to the employees.

Under current law, if the employer is a nonprofit organization under IRC 501(c)(3) or 501(c)(4), and there is no documentation that shows the benefit was paid as consideration for services, the value of the personal use could also constitute an excess benefit transaction that could be subject to Intermediate Sanctions.[3] Nonprofit organizations should consider some recordkeeping when they provide cell phones available for personal use.

The IRS allows the calculation and reporting of taxable noncash fringe

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1 http://www.irs.gov/irb/2009-23_IRB/ar07.html

2 http://www.irs.gov/newsroom/article/0,,id=209795,00.html

3 http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html

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Webinar

FIN 48 for Tax-Exempt Organizations

Tuesday, July 28, 2009 / 1:30pm – 3:00pm ET

CPE: 1.0 AC; 0.5 TX

Instructors:

- **Laura Kalick,** BDO *Director of Nonprofit Tax Consulting*
- **Joyce Underwood,** BDO *Director of Nonprofit Tax Services*
- **Paul Hammerschmidt,** BDO *Director of Nonprofit Tax Services*
- **Sandra Feinsmith,** BDO *Manager of Nonprofit Tax Services*

Description:
Course will review uncertain tax positions for tax exempt organizations and how to document these tax positions. In addition, participants will be able to understand the requirements of FIN 48 and how to begin implementation of FIN 48.

Click the following link for further information and to view enrollment options:

https://university.learnlive.com/Content/Public/1029/Invitations/bdo_invitation_page.html?ref=/WebCastDesc.aspx?webcast_id=9765

After you register, you will receive an email confirmation and a reminder email approximately 24 hours before the webcast. If you have any questions on enrolling, canceling enrollment, other administrative policies or technical support issues email **BDOonline_support@learnlivetech.com** or call 1-888-228-4188.

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Taxation of Employer-Provided Cell Phones (continued)

benefits to be done on an annual basis.[4] This is typically done no later than January 31 for the previous calendar year. Hopefully, there will be additional authoritative guidance on employer-provided cell phones by January 31, 2010. In the meantime, appropriate records should be maintained. The IRS website currently provides the following guidance:

At a minimum, the employee should keep a record of each call and its business purpose. If calls are itemized on a monthly statement, they should be identifiable as personal or business, and the employee should retain any supporting evidence of the business calls. This information should be submitted to the employer, who must maintain these records to support the exclusion of the phone use from the employee's wages.[5]

So don't hang up on that cell phone call just yet … you may wish to keep talking!

Paul E. Hammerschmidt is a Tax Director in the Nonprofit practice in BDO Seidman's New York office. He can be reached at phammerschmidt@bdo.com

4 IRS Publication 15-B, p. 28 http://www.irs.gov/pub/irs-pdf/p15b.pdf
5 http://www.irs.gov/govt/fslg/article/0,,id=167154,00.html

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