

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status

DO's & DON'Ts Of Protecting Your Tax Exempt Status



<http://gilbertcpa.com/should-you-reconsider-providing-transportation-fringe-benefits/>

Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

September 17, 2014

Presented by:

Cathy Hudak, CPA

Jennifer Iwata, CPA

Amanda Williams, CPA



Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

The governing board of an exempt organization must diligently work to ensure that the organization fulfills its exempt mission and minimize the likelihood that its income or assets will be diverted improperly to nonexempt purposes. Through board education and utilization of best practices, this goal can be accomplished.

The IRS considers the policies and procedures which are recommended to generally improve tax compliance. The absence of appropriate policies and procedures can lead to opportunities for excess benefit transactions, inurement, operation for nonexempt purposes, or other activities inconsistent with the organizations exempt status.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status

Governance practices to keep in mind to help the organization stay in tax compliance (per IRS statistical data):

- Current written mission statement
 - It is important to have a board approved mission statement which is in line with the organization's exempt purpose.
- Systems/procedures that ensure the use of assets is consistent with the organization's mission
- Review of the Form 990 by organization's full governing body
- Always use comparability data in setting compensation



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Systems/Procedures

- Internal Controls –proper internal controls will ensure the organization’s finances are accurate and procedures in place are being followed.
 - In general, not complying with a policy could be more harmful than not having a policy at all, so enforcement and procedures are very important.
- Conflict of Interest policy
 - A proper conflict of interest policy should:
 - Define conflicts of interest, identifying classes of individuals within the organization who are covered by policy;
 - Facilitate disclosure of information that can help identify conflicts of interest (i.e. annual questionnaire signed and dated); **and**
 - Specify the procedures to be followed in managing conflicts of interest.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Systems/Procedures (Continued)

➤ Other recommended policies:

- Whistleblower Policy
- Document retention and destruction policy

Review of Form 990

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

- It is a best practice for board members to review the Form 990 to ensure it was properly prepared. This form contains the information necessary for a board member to become well informed about the organizations activities and the applicable tax laws. In addition, this form is open to public disclosure.
- It should be considered to document in the board minutes the directors who did review the Form 990.
- It may be helpful to distribute the “Board review of Form 990” checklist along with a copy of the Form 990 to help board members navigate through the form during their review.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Compensation Process

A written process for determining compensation should be in place and followed in determining compensation (especially for Board member, Directors, Key Employees). This should include the following elements:

- Review and approval of board or compensation committee, provided the persons with a conflict of interest regarding the compensation arrangement at issue were not involved.
- Use of data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations.
- Contemporaneous documentation and record keeping of the deliberations and decisions regarding the compensation arrangement.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Independence of Board of Directors

- Board of Directors should be composed of 51% independent Board members. This is a CA statute that is required. This helps to ensure no private inurement issues arise and there are no conflicts of interest.
- An independent audit committee is also recommended for overseeing financial statement audits – this helps to ensure the accountability and proper governance of the financial process.



Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Independence of Board of Directors (Continued)

- Reasonable effort standard – An organization is not required to exert more than a reasonable effort to obtain the necessary information to determine the number of independent voting members and can rely on information provided by such members. A questionnaire sent annually to each member that includes the member's name, title, and blank lines for the member's signature and date and necessary instructions and definitions concerning independence should be enough.
 - This annual document should also include information to obtain information concerning relationships among Board members, Officers, Directors and Key Employees for family or business relationships.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Documentation of Meetings/Actions

➤ Make sure there is good documentation of all board meetings and executive committee meetings. This documentation should include details outlining actions taken, when these are/were taken, and who made the decision.

- This is especially important to document concerning “gray area” items which may be controversial – be sure to record who voted for/against an issue.
- If the non-profit organization takes action and the board members voted in a way that would not be appropriate taking into consideration California law and non-profit guidelines, then this documentation will absolutely be necessary to hold harmless certain board members.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Other items of interest

- It is helpful to have open discussions which re-emphasize the exempt purpose of the organization and what may/may not be done in regards to fundraising.
 - It is important for board members to be aware of additional reporting/filing requirements for specific types of fundraisers (raffles, gaming, etc.) and various state statutes that need to be followed.
- Board members should be aware that they could be held personally liable for damage to the organization if they acted in a fraudulent or grossly negligent manner including acts of bad faith or unsuccessful defense of self-dealing. The President or CEO is generally responsible for day to day operations of the non profit. In addition, delegation of the duties of a board officer do not delegate the responsibility as well – this stays with the officer no matter who performs the task or makes the decision.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Other items of interest (Continued)

- Non-profit organizations should consider purchasing “directors and officer’s” insurance to provide a source of payment for litigation costs (unless the act does not qualify to be covered under the insurance).
- Every non-profit board needs to have at least three officers per CA regulations: President (or Chairman of Board), Secretary, and Chief Financial Officer.
- Loans to Directors are never permitted and Directors can be help personally liable for making prohibited loans.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Other items of interest (Continued)

- Self Dealing transactions with a board member are always highly suspect, documentation should be kept in the board minutes defining the terms of the transaction and whether it is in the best interest of the non-profit organization and concerning the persons who voted for/against the transaction. A self-dealing transaction could be considered material if it is large enough to create the appearance of a conflict of interest.
- Organizations who are exempt under IRC section 501(c)(3) and engage in direct or indirect political campaign activities on behalf of or in opposition to a candidate can be imposed a 10% tax on such expenditures and the managers who knowingly agree to the expenditure and know of political nature can be assessed a 2 ½% tax on such amounts.

Board Member Education and Best Practices

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Other items of interest (Continued)

- Form 990, 990EZ, 990PF and 990-N should be filed timely. Penalties for Form 990 and 990-EZ late are between \$20 - \$100 per day filed late.
- A written contract should be in place for all commercial fundraisers the non-profit may use for a solicitation campaign or event.
 - This contract should outline the charitable purpose for which the event is held, the terms (including compensation) of the arrangement, the obligations of both parties, terms of contract. It should be signed by both the charity and fundraiser's contracting officer.
 - Contracts between commercial fundraisers and charities are voidable unless commercial fundraiser is registered with Attorney General's office prior to start of campaign or event.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unrelated Business Income

- Unrelated business income is the income from a trade or business that is:
- Regularly conducted by an exempt organization
 - Carried on for profit, and
 - Not substantially related to the performance of its exempt purpose

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unrelated Business Income

- Business activities ordinarily are regularly carried on if:
- Have frequency and continuity
 - Are pursued in a manner comparable to similar commercial activities of nonexempt organizations
 - Determining the frequency of whether an activity is regularly carried on varies with the activity involved, but often depends on time expended

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unrelated Business Income

➤ Trade or business income includes any activity carried on with a profit motive from the sale of goods or the performance of services. Relevant factors in determining if an activity is engaged in for profit include:

- Manner in which the activity is carried on,
- Expertise of taxpayer and advisors,
- Time and effort expended,
- Expectation that activity assets will appreciate,
- Success experienced in carrying on the activity,
- History of income or losses,
- Amount of profit earned,
- Financial status of the taxpayer, and
- Elements of personal pleasure or recreation.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unrelated Business Income

- A business activity is not substantially related to an organization's exempt purpose if it does not contribute importantly to accomplishing that purpose. In determining whether activities contribute importantly to the exempt purpose, points considered include:
- The size and extent of the activities involved considered in relation to the nature and extent of the exempt function.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unrelated Business Income

- To the extent an activity is conducted on a scale larger than is reasonably necessary to perform an exempt purpose, it does not contribute importantly.
- Selling of products that result from the performance of exempt functions is not an unrelated trade or business if the product is sold in substantially the same state it is when the exempt function is completed.
- Selling completed products resulting from an exempt function to further business activity beyond reasonably necessary to dispose of, it does not contribute importantly.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Excluded Trade or Business Activities

- Even though an activity meets all three tests of an unrelated trade or business income, it may not be UBI based on statutory exclusions.
 - Volunteer work force
 - Any trade or business in which substantially all the work is performed by unpaid volunteers is not unrelated business income. An organization's paid staff may be directly involved with an activity that is exempt under this exception provided sufficient volunteer labor is also present. Although not specifically defined, "substantially all" is usually at least 85%.
 - Member's convenience
 - An activity only has to provide convenience such as a cafeteria for hospital staff



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Excluded Trade or Business Activities

➤ Conventions and Trade Shows

- Trade show activities that are regularly carried on as one of its substantial exempt purposes by qualifying organizations (501)(c)(3)s,(4)s,(5)s and (6)s are exempt
- Internet activity relating to and enhancing the trade show is also exempt from UBI but only when content coincides with any convention.

➤ Qualified sponsorship payment

- Any payment by an entity engaged in a trade or business to an exempt organization without an arrangement or expectation that the sponsor will receive any substantial benefit other than the use or acknowledgement of the business name, logo, or product lines. “Use or acknowledgement” does not include advertising the sponsor’s products or services.



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Unrelated Business Income Exclusions

- Certain income is also excluded by statute from being treated as unrelated business income including:
 - Interest, dividends and other investment income
 - Royalties
 - Rental income
 - Gains and losses from the disposition of property
- Whether an item is excluded depends on the facts and circumstances of each case



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Unrelated Business Income Exclusions

Royalties

- To qualify as a royalty, a payment must relate to the use of a valuable right such as a trademark, trade name, logo or copyright. If more than a de minimis amount of service is required to be performed by the exempt organization, the income is not considered a royalty.
- Mailing List Income
 - Affinity card income



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Unrelated Business Income Exclusions

Rental Income

Rental income from real property is excluded from unrelated business income except where:

- The property is debt financed
 - Except if 85% or more of the property remains being used for the exempt purpose
- The rents are from a controlled corporation
- The rent is calculated as a percentage of the tenant-lessee's net income
- The payment includes compensation for services rendered to the lessee
- More than 50% of the rent is attributable to personal property leased with the real property



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Exploitation of Exempt Functions

- Exempt activities sometimes create goodwill or other intangibles that can be exploited in a commercial way. Unless the commercial exploitation contributes importantly to the accomplishment of the exempt purpose, the commercial activities are an unrelated trade or business.
- Advertising non-qualified sponsorship payments and management fees are the types of exploited exempt activities we see most.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Exploitation of Exempt Functions

- Advertising is defined as any sponsor recognition or message that contains qualitative or comparative language, price information or other indications of savings or value, an endorsement or an inducement to purchase, sell or use the sponsor's products or services, facility or product. A single message that contains both advertising and an acknowledgement is advertising.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Exploitation of Exempt Functions

- A sponsorship payment is not an excluded qualified sponsorship payment if the sponsor receives a substantial return benefit. A de minimis exception allows a recipient to provide a sponsor with benefits that have an aggregate fair market value of not more than 2% of the sponsor's payment. If the fair market value of the goods or services provided to the sponsor exceeds the permissible limit, the entire fair market value (not only the excess amount) is a substantial return benefit and potentially taxable to the organization.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Exploitation of Exempt Functions

- The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit, and therefore is not an exempt activity.

Tax-exempt activities are generally only associated with the provision of services to other tax-exempt organizations for fees that are substantially less than cost. (Substantially less than cost has generally been interpreted as between 85 percent and 90 percent of total cost.)

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Risk of Substantial UBI Activity

- An exempt organization must be careful not to raise what is considered excessive unrelated
- The IRS is silent as to how much is too much, but 51% is definitely excessive
- Excessive UBI has been interpreted as spending a “significant” amount of time on an unrelated activity
- A taxable subsidiary can protect exemption

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

For Profit Subsidiaries

- The incorporation and ownership of a taxable subsidiary does not jeopardize the parent's tax-exempt status, provided it is not involved in the day-to-day management of the subsidiary



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

For Profit Subsidiaries

- A majority of the board of directors should not be directors, officers, or employees of the for profit
- If the for-profit entity hires employees or independent contractors who are also employees or independent contractors of the non-profit, such persons should not be in charge of the for-profit's daily operations
- Operate and account for the for-profit as a separate business and substantiate shared costs by time sheets or estimates of time spent and signed off by employees. Any direct for-profit expense should be paid directly by the for-profit
- Ideally, the for-profit entity should be self-sufficient after the initial capital contribution

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

For Profit Subsidiaries

- Account for all expenses from the start of the for-profit as this may create a net operating loss in the first year or two that can be used to offset future year's net income.
- Don't underestimate the costs of setting up and running the for-profit activity.
- Do a business plan and make sure that the revenue will be enough to make it worthwhile before setting up the new for-profit.
- Consider starting up and running in the non-profit until it is determined that it will grow enough to make it worth setting up a separate for-profit



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Fundraising

- An annual fundraising event normally does not result in unrelated business income because it is not regularly carried on

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Fundraising

- Fundraising events and activities are those endeavors with a primary purpose of raising funds for the organization by selling goods or services for more than their direct cost thereby having a contribution component.
- Event refers to the fact that the fundraiser involves some event or activity, rather than being purely a solicitation of funds.
- Examples include many activities similar to auctions, concerts and dinners.



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Fundraising

- **Gross receipts** include total gross amounts received from all sources
- **Contributions** included in gross receipts are the amounts received where there is no adequate consideration or exchange transaction
- **Gross income** from the event is gross receipts less contributions received

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Fundraising

- **Direct Benefit** is the cost or other basis (estimated at fair market value) in an exchange transaction that event attendees receive.
 - Examples include the value of the auction item purchase, the cost of the dinner, etc.

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Nexus

- Nexus is the amount and degree of business activity that must be present before a state can tax an entity's income
- Nexus can create filing requirements in a state regarding sales tax, UBI, and other non-income taxes for a non-profit

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Nexus

➤ Income tax:

- Physical presence
- Economic presence
- Factor-based

➤ Sales tax:

- Physical presence
- Click Thru Nexus

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Nexus

- Physical presence is created with a state if a taxpayer:
 - Has property in the state
 - Has payroll in the state
 - Performs in-state services related to:
 - Conducting training courses
 - Independent contractors or employees performing services on behalf of organization

- Solicitations of orders for tangible personal property solicited by employees that are approved outside the state and shipped outside the state or solicited by independent contractors if the sales are shipped from outside the state do not create nexus.
 - Services and intangibles are not protected

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Nexus

➤ Economic nexus

- Varies by state but most states have the same basic explanation that the organization is “regularly soliciting business from potential customers in the state”

➤ Factor Based

- State looks at some combination of payroll, property, and sales within the state

Nexus

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status

➤ Sales Tax

- Click-thru Nexus:
 - Originated in New York, and has effected California
 - Internet retailers are considered vendors if the seller enters into an agreement with a state's residents for a commission or other consideration under which they directly or indirectly refer potential customers



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

State Filing Requirement

- State taxing authorities vary on reporting requirements for nonprofits
 - State equivalent of 990
 - State equivalent of 990T
- Registration and annual filing requirement with the state attorney general
 - Separate form
 - Copy of 990
 - Financial Statements

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

State Filing Requirements

- 40 states require charitable organizations to register in their state when engaged in soliciting donations from within the state
- Doing Business varies by state
 - Soliciting contributions/grants from within the state
 - Conducting programs
 - Having employees in the state
 - Maintaining a checking account
 - Owning or Renting property in state

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

State Filing Requirement

- Generally solicit and solicitation means the request for something of value on the plea that it will be used for a charitable purpose or the benefit of a charitable organization
- Solicitation includes:
 - Oral or written request
 - Announcement to the press, over the radio, television, or telephone
 - Distributing an advertisement which seeks support
 - Sale of tangible item where a portion of the proceeds go to a charitable cause



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

Internet Activities

➤ Online Solicitations

- “Donate Here” button

➤ Whether this activity subjects an organization to registration varies by state

- Charleston Principles



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Charleston Principles

- Developed by the National Association of State Charity Officials
- Guide for states as to when charities, fundraisers, fundraising counsel and commercial co-ventures are required to register with regard to charitable solicitations via the Internet

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Charleston Principles

- Entities whose principal place of business is in the state
 - Register in that state
- Entities with a principal place of business outside the state
 - Must register with the state if:
 - Non-Internet activities would require registration
 - The entity solicits contributions through an interactive website and the entity either:
 - ❖ Specifically targets persons physically located in the state for solicitations or
 - ❖ Receives contributions from the state on a regularly basis or on a substantial basis through its website; or
 - The entity solicits contributions through a website that is not interactive but either specifically invites further offline activity to complete a contribution or establishes other contacts with the state, such as sending an email message that promotes the website and the entity either:
 - ❖ Specifically targets persons physically located in the state for solicitations or
 - ❖ Receives contributions from the state on a regularly basis or on a substantial basis through its website
 - Follow-up email to a contributor soliciting further donation would subject organization to registration

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Unified Registration Statement

- Used to consolidate the information and data requirements of all states that require registration of nonprofit organizations performing charitable solicitations with their jurisdictions.
- Useful if organization needs to register in a number of states
 - Longer than individual state forms
 - Several states also require additional attachments

Uniform Registration Statement

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



STATES THAT REQUIRE REGISTRATION AND ACCEPT THE URS

| | | |
|---|--------------------------------------|---------------------------------------|
| <u>Alabama</u> | <u>Maine</u> | <u>North Dakota</u> |
| <u>Alaska</u> | <u>Maryland</u> | <u>Ohio</u> |
| <u>Arizona</u> | <u>Massachusetts</u> | <u>Oregon</u> |
| <u>Arkansas</u> | <u>Michigan</u> | <u>Pennsylvania</u> |
| <u>California</u> | <u>Minnesota</u> | <u>Rhode Island</u> |
| <u>Connecticut</u> | <u>Mississippi</u> | <u>South Carolina</u> |
| <u>District of Columbia</u> | <u>Missouri</u> | <u>Tennessee</u> |
| <u>Georgia</u> | <u>New Hampshire</u> | <u>Utah</u> |
| <u>Hawaii</u> | <u>Illinois</u> | <u>New Jersey</u> |
| <u>Virginia</u> | <u>Kansas</u> | <u>New Mexico</u> |
| <u>Washington</u> | <u>Kentucky</u> | <u>New York</u> |
| <u>West Virginia</u> | <u>Louisiana</u> | <u>North Carolina</u> |
| <u>Wisconsin</u> | | |

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Sales Tax

- Generally, a physical presence is required in the state
 - Internet Sales – nexus can be created by third party relationship who has physical presence in state

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

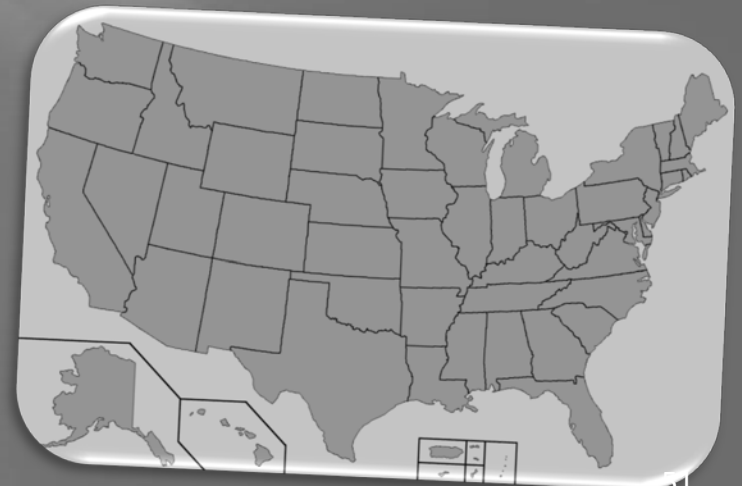


Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Sales Tax

- Rules vary by state as to what exemptions apply
- Organization must apply in each state for exemption
- Organization may need a seller's permit to make sales in state



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Sales Tax

➤ Hosting conferences in another state

- May be required to collect and remit sales tax from retail sales
- May need to obtain an exemption if sales tax will be charged to organization
- Sales tax may apply to tickets
- Could create nexus for future sales as organization was soliciting residents and had physical presence in state

Sales Tax - California

➤ Sales that are generally taxable

- Sales of food and beverages
- Sales of tickets that buyers will exchange for food or beverages or other physical products
- Sales of booklets, books, and pamphlets
- Sales of tickets for fundraising events where the ticket price includes amounts for food or beverage
- Sales of items at fundraisers
- Sales of merchandise in Internet, live, and silent auctions
- Sales of tickets for game booths where prizes are guaranteed to each tick purchaser, even where prizes have little value

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Sales Tax - California

- Certain types of organizations and transactions are exempt from sales and use tax:
 - Charitable organizations that relieve poverty and distress if certain criteria are met
 - A museum's purchase or sale of original works of art for permanent collections on public display

September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA



Gilbert Associates, Inc.
CPAs and Advisors

Relax. We got this.™

Sales Tax - California

- Special Event Tickets that include taxable and nontaxable items
 - Entire ticket charge will be taxable unless
 - List the taxable charges separately on the event ticket
 - Keep separate records of taxable and nontaxable charges



September 17

Dos & DON'Ts
Of Protecting
Your Tax
Exempt Status



Presented by:

Cathy Hudak,
CPA

Jennifer Iwata,
CPA, MST

Amanda
Williams, CPA

QUESTIONS?

- Cathy Hudak
 - chudak@gilbertcpa.com

- Jennifer Iwata
 - jiwata@gilbertcpa.com

- Amanda Williams
 - amanda@gilbertcpa.com

