JO Knows Key Areas of Compliance for Nonprofit Websites

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The Internal Revenue Service, state Attorney General offices, local administrative bodies such as accessing departments of cities and towns, charity rating organizations, donors and funders are increasingly reviewing not-for-profit organizations' websites. To help protect your organization, consider having your Johnson O'Connor advisor conduct a thorough review of your website to identify potential issues and prevent unnecessary notices and inquiries.

Your website address is now a standard part of Form 990 filing requirements, and many states are following suit by requiring it on their forms as well. IRS personnel are trained to examine nonprofit websites for unrelated business income and other tax concerns, while Attorney General offices may review websites for state solicitation compliance and other legal requirements. Given this scrutiny, it's crucial to ensure that your website content is accurate and aligned with your official records.

What might the IRS and Attorney General offices look for on your website? Below are several potential areas of focus (not all inclusive!):

Internet Issues:

1. Website "advertising" versus "corporate sponsorships."
2. Solicitation of contributors via the website.
3. Links to businesses and banners.
4. Merchant affiliate programs.
5. Lobbying activities.
6. Disclosure requirements.
7. Unrelated Business Income Tax (UBIT) considerations.

Acknowledgment vs. Sponsorship Issues: If your organization has corporate donors, the IRS may review your website to determine if it appears to "endorse" donor products or services. Regulations offer six guidelines to help nonprofits thank sponsors without risking adverse tax consequences.

Solicitation Rules: Generally, any nonprofit soliciting donations within a state, whether by mail, phone, email, website, or ad, is subject to that state's solicitation laws. Some organizations display drop-down menus with all 50 states, implying intent to solicit across the country. In these cases, a state may expect the organization to register, though requirements vary widely.

Nature of Links/Banners: An exempt organization may acknowledge sponsors with banners or links on its website. Simple acknowledgments are generally fine, but moving banners or animated links may be seen as advertisements by the IRS.

Merchant Affiliate Programs: The IRS has not yet issued specific guidance on affiliate programs. However, commissions from affiliated merchants' sales might be analyzed similarly to merchandise sales. If an item aligns with the organization's purpose (e.g., environmental books for a wildlife group), the commission may be exempt from UBIT. But sales not related to the mission (e.g., stereo sales) likely would be subject to UBIT.

Lobbying: If your organization advocates on behalf of a cause, the IRS will assess whether any grassroots lobbying occurs through the website. For example, a call for the public to contact legislators about an issue would be considered grassroots lobbying.

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Disclosure Requirements: Is your organization providing all required documents on its website, such as the determination letter, Form 990, and exemption application? The IRS mandates that specific tax-exempt documents be accessible upon request. Rating agencies will also grade you on availability of certain documents on your website.

Unrelated Business Income Tax (UBIT): If your organization earns revenue from alternative sources like referral fees, advertising, or facilities rental, the IRS may examine these for unrelated business income. The activities must be closely related to the organization's mission to qualify as exempt.

We can review your organization's website activity to identify the same potential tax issues the IRS might flag. As online business and nonprofit practices evolve, the IRS has yet to issue guidance for many web-based activities, but we can help you navigate these areas and determine the best way to address them.

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