

MARTHA'S VINEYARD NONPROFIT COLLABORATIVE: WHAT, HOW, WHY: TAX ISSUES AND COMPLIANCE

January 11, 2019

PARTRIDGE
SNOW &
HAHN LLP

🇺🇸 FILINGS

🇺🇸 REAL PROPERTY TAX

🇺🇸 EXEMPTION TO PROPERTY TAX

🇺🇸 WHAT IS A CHARITABLE ORGANIZATION

🇺🇸 HOW TO RECEIVE REAL ESTATE TAX EXEMPT STATUS

🇺🇸 WHAT TO DO IF YOU ARE DENIED REAL ESTATE TAX EXEMPT STATUS

FILINGS – STATE/LOCAL/FEDERAL

- ⇒ Secretary of Commonwealth
 - annual report filing due 11/1
- ⇒ Internal Revenue
 - tax exempt filing due 4 ½ months after end of fiscal year
 - exemption from annual filing: churches; church organizations; church affiliated schools, religious orders
- ⇒ Attorney General Division of Public Charities
 - registration
 - annual Report (PC) due 4 ½ months after end of fiscal year
- ⇒ Local Board of Assessors
 - form 3ABC complete with Form PC by 3/1

FILING CHECKLIST

Form 990 Filing (IRS)

Our filing deadline is _____ (4 ½ months after the end of our fiscal year)

- Fiscal Year (ending) 2019 Filed on _____
- Fiscal Year 2020 Filed on _____
- Fiscal Year 2021 Filed on _____
- Fiscal Year 2022 Filed on _____
- Fiscal Year 2023 Filed on _____
- Fiscal Year 2024 Filed on _____
- Fiscal Year 2025 Filed on _____
- Fiscal Year 2026 Filed on _____
- Fiscal Year 2027 Filed on _____

Form PC Filing (Attorney General's Office)

Our filing deadline is _____ (4 ½ months after the end of our fiscal year)

- Fiscal Year (ending) 2019 Filed on _____
- Fiscal Year 2020 Filed on _____
- Fiscal Year 2021 Filed on _____
- Fiscal Year 2022 Filed on _____
- Fiscal Year 2023 Filed on _____
- Fiscal Year 2024 Filed on _____
- Fiscal Year 2025 Filed on _____
- Fiscal Year 2026 Filed on _____
- Fiscal Year 2027 Filed on _____

FILING CHECKLIST

Secretary of State Filing

Our filing deadline is November 1

- | | | |
|--------------------------|---------------------------|----------------|
| <input type="checkbox"/> | Fiscal Year (ending) 2019 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2020 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2021 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2022 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2023 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2024 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2025 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2026 | Filed on _____ |
| <input type="checkbox"/> | Fiscal Year 2027 | Filed on _____ |

(3ABC) Board of Assessors

Our filing deadline is 3/1

MASSACHUSETTS PROPERTY TAX BASICS

- ⇒ Property tax assessed by locality through Board of Assessors
- ⇒ Fiscal year 7/1 – 6/30
- ⇒ Taxes assessed on 1/1 (BEFORE beginning of fiscal year – 7/1) to owner of record on 1/1

EXEMPTIONS TO PROPERTY TAX

- ⊖ Exempt status determined by local assessors
- ⊖ Exempt status calculated as of 7/1
- ⊖ Qualified organization must meet ALL eligibility requirements as of 7/1
- ⊖ Exemption is privilege and burden is on organization to clearly and unequivocally prove qualification
- ⊖ Religious organization
Massachusetts General Laws c. 59 §5 are exempt from local taxation for all property (personal/real) used by the religious organization for religious purpose.
- ⊖ All other property, regardless of ownership is taxable unless it qualifies for charitable purpose exemption

CHARITABLE PURPOSE

M.G.L. C. 59 §3(3)

- ⇒ Charitable organizations exempt from local tax on all of its personal property
- ⇒ Charitable organization exempt from local tax on real estate it owns and occupies for charitable purposes only
- ⇒ 2 year window for occupation

CHARITABLE ORGANIZATION

- ⊖ Corporation or trust established for LITERARY, BENEVOLENT, CHARITABLE or TEMPERANCE purposes
- ⊖ NOT-Profit status is NOT enough for tax exempt status.
- ⊖ Must actually operate as a PUBLIC charity – i.e., benefit the public at large
- ⊖ Neither income nor assets can be distributed to officers, directors or shareholders.

HOW TO RECEIVE LOCAL TAX EXEMPT STATUS

- ⇒ Make initial application to local Board of Assessors
 - Form available through local Board of Assessors
 - File initial application within same period as abatement application for that fiscal year.
- ⇒ After acceptance of application by the Board of Assessors
 - Annually file Form 3ABC (with attached Form PC) with the local Board of Assessors.
 - Form 3ABC is due by 3/1 unless the deadline is extended (upon request of organization)

WHAT TO DO IF YOU ARE DENIED EXEMPTION

- i. Filing a timely application does not stay collection of taxes. So timely pay at least ½ of personal property tax and if real estate tax is over \$3,000, each installment and file for an abatement. If exemption is granted, a refund will issue.
- ii. Assessors have 3 months (unless mutually extended in writing) to act
- iii. Assessors must send notice within 10 days of their decision.
- iv. Failure by the Assessors to act within 3 months of extended deadline is a denial of the application.
- v. If the Assessors fail to act or deny the application, there is recourse to the Appellate Tax Board.

APPELLATE TAX BOARD

- ⊖ You have 3 months (very strictly adhered to) from the date of the Assessors decisions to file your appeal with the Appellate Tax Board. The ATB cannot hear a late filed appeal.
- ⊖ An ATB decision may be further appealed to the Appeals Court and rarely to the Supreme Judicial Court.

GET TO KNOW YOUR ASSESSORS AND TAX COLLECTORS

- ⇒ Call or meet (preferred) at least once per year.
- ⇒ Ask about new issues/ rulings/ trends.
- ⇒ Ask what they are looking for from tax-exempt organizations.
- ⇒ Ask for their deadlines and if they are willing to informally pre-review your draft filing.
- ⇒ Ask when the draft filing should be submitted for informal review.
- ⇒ After final filing is submitted (before the deadline), call to check that it has been received and if they have everything they need to make their determination.
 - If they don't, then supplement or ask for an extension of the deadline.
- ⇒ Promptly respond to all questions, calls or communications.

- BOARD MEMBER FIDUCIARY DUTIES AND BEST PRACTICES FOR OVERSIGHT
- POLICIES FOR YOUR ORGANIZATION
- FINANCES AND FLEXIBILITY
- GRANTMAKING CHECKLIST
- CHARITABLE GIVING ISSUES

ACCOUNTABILITY: OTHER AREAS TO BE AWARE OF

- ⇒ The IRS: Implication of losing status and remediation
- ⇒ State oversight of charitable solicitations
- ⇒ Other federal regulation
- ⇒ Constituents/ Donors

FAILURE TO CHOOSE/ RECRUIT THE WRONG BOARD MEMBERS AND INSUFFICIENT BOARD DEVELOPMENT AND EXPECTATIONS

- ⊖ Expectation of meeting attendance
- ⊖ Review of materials and minutes
- ⊖ Participation in board committees
- ⊖ Support the Executive Director and participate in review
- ⊖ Be independent
- ⊖ Share your expertise

BEST PRACTICES FOR ADVISING DIRECTORS

Under Massachusetts Law:

A director shall discharge duties in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he or she believes is in the best interest of the corporation.

- ⇒ May rely on reports, opinions and data supplied by others to perform one's duties
- ⇒ May rely on reports of committees

LIABILITY OVERSIGHTS

- ⊖ A director is not liable for an act or failure to act if they have acted in accordance with the standards set out in the section for good faith and standards of care
- ⊖ Exceptions to protections against personal liability
- ⊖ Director and Officers Insurance
- ⊖ Bylaws should also contain an indemnification provision

CONFUSING THE DIRECTORS' AND OFFICERS' ROLES: HOW TO AVOID CONFUSION

- ⊖ The roles of the officers should clearly be set out in the bylaws.
- ⊖ Limits on authority.
- ⊖ Clear descriptions of roles in bylaws.
- ⊖ Term limit separation.

POLICIES FOR YOUR ORGANIZATION

- ⇒ Gift Acceptance Policy
- ⇒ Conflict of Interest Policy
- ⇒ Strategic Planning
- ⇒ Fundraising Goals
- ⇒ Financial Policies
- ⇒ Executive Compensation Policies

PRIVATE INUREMENT/EXCESS BENEFIT

- ⊖ Providing unreasonable transactions with insiders
- ⊖ A voting member of the board who receives any compensation should abstain from voting on matters pertaining to this private benefit
- ⊖ 2017 Tax Cuts and Jobs Act imposes an excise tax on compensation for certain tax-exempt organizations for employees with compensation of \$1 million
- ⊖ The amount of private benefit that may be deemed as “excess” is assessing how much private benefit is needed to accomplish the public benefit for which your organization has been formed.

FINANCIAL BEST PRACTICES

- ⇒ UPMIFA
- ⇒ Organizations should have appropriate methods in place for their accounting systems in conjunction with recording contributions.
- ⇒ Tracking Public Support
- ⇒ Receipting and Gift Substantiation
- ⇒ A quid pro quo contribution is a contribution by a donor where one party receives goods or services in exchange for the value of the contribution and part of the contribution is a gift for the recipient organization.

UNDERFUNDING OVERHEAD

- ⊖ Expenses associated with specific programs
- ⊖ Expenses underwritten and shared by certain programs
- ⊖ Core mission support – administrative and fundraising expenses
- ⊖ Importance of annual fund

NOT DOING DUE DILIGENCE ON PROVIDING GRANTS TO OTHERS

- ⊖ Things to consider for providing grants:
- ⊖ What information are you requesting from different organizations
- ⊖ Do you want to seek information on a preliminary basis
- ⊖ Items you need to receive: Determination letter, corporate governance
- ⊖ Grant application
- ⊖ Frequent reporting on use of funds
- ⊖ Monitoring tax-exempt status
- ⊖ Expenditure responsibility to ensure that grant funds will be spent for charitable purposes

CHARITABLE GIVING – WHAT ARE YOUR GOALS?

- ⇒ Reduce the likelihood of future problems, even after the donor is deceased
- ⇒ Promises to make a gift and pledges are not enforceable
- ⇒ If there is reasonable reliance on a promise, like building a structure on the expectation of a gift, the promise becomes enforceable under contract law
- ⇒ The same extends to the charity years after the gift has been made
- ⇒ Importance of deferred giving and endowment building
- ⇒ Charitable Solicitation Regulation

GIFT AGREEMENTS

- ⇒ Payment schedule
- ⇒ USE USE USE USE USE USE
- ⇒ Compliance with policies
- ⇒ The out clause
- ⇒ Stewardship
- ⇒ Promotion and Publication
- ⇒ Jurisdictional Clause

ENDOWED FUNDS

- ⇒ Again, be specific about the purpose of the gift
- ⇒ Think through all scenarios and questions
- ⇒ Plan B or C
- ⇒ Reference policies of your organization
- ⇒ Contemplate what happens if minimum endowment level isn't reached in reasonable time

QUESTIONS?

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As a member of the Real Estate, Trust & Estate, Commercial Lending and Business Groups at PS&H, Mike advises a diverse range of small and midsize businesses. He has extensive experience with state, federal and local filings, as well as, appellate tax boards. Mike counsels clients with respect to site acquisition, due diligence, zoning, planning, regulatory compliance, structuring and negotiating financing, licensing and complex leasing. Mike is a qualified intermediary for 1031 tax-deferred exchanges.

Mike stays current and is very familiar with the happenings on Martha's Vineyard, as his wife lived on the Vineyard for 31 years. He is also active within his own community, as he currently sits on a number of Boards, including the Dartmouth Rotary Club, the Crystal Springs School and the Boys and Girls Club of New Bedford.

Mike is based in our Southcoast office in New Bedford.



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Liz has extensive knowledge and experience representing nonprofit entities with compliance, governance and best practices. She also advises charitable institutions and institutions of higher learning about charitable giving and assists with the inception of planned giving programs.

Liz is currently a Board Member of the Partnership for Philanthropic Planning of Rhode Island. Her interest in philanthropy was inspired by her parents, who would open their Fall River restaurant, the Rocking Horse, to feed the homeless on holidays.

Liz is based in our Providence office.

PARTRIDGE SNOW & HAHN LLP

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