Correlation Between Nonprofit Governance and Tax-Exempt Compliance

Discussion on compliance or lack thereof in the non-profit world - from IRS Exempt Organizatons Director Lois Lerner.

In her remarks to the Georgetown University Law Center program on Representing and Managing Tax-Exempt Organizations, IRS Exempt Organizations Director Lois Lerner discussed the findings of an IRS study of its governance checksheet, which is comprised of a list of questions used by IRS agents to determine the governance practices of an exempt organization. In October 2009, IRS agents began completing the checksheet at the end of every public charity examination. The result is over 1300 checksheets that were examined as part of the study.

The study's analysis found "a statistically significant correlation between questions related to some governance practices and tax compliance." The correlative questions are, in Lerner's words:

1. Organizations with a written mission statement are more likely to be compliant.
2. Organizations that always use comparability data when making compensation decisions are more likely to be compliant.
3. Organizations with procedures in place for the proper use of charitable assets are more likely to be compliant.
4. Organizations where the 990 was reviewed by the entire board of directors are more likely to be compliant. This is an important point and one I'd like to highlight. It indicates that having your entire board engaged in what is being reported on the 990 is not only helpful, but it correlates to better compliance.

Lerner also stated that "[o]n the flip side, among the organizations we examined, we saw that those that said control was concentrated in one individual, or in a small, select group of individuals, were less likely to be tax compliant."

Diversion of Assets Initiative: Lerner also announced a new audit initiative focusing on tax-exempts that divert their assets for their own use or for uses not in furtherance of their charitable purposes. Lerner reported that approximately $170 million in assets were diverted in instances involving theft, embezzlement, or Ponzi schemes. With respect to 82 organizations, civil or criminal charges were brought against the responsible party. The charges were typically pursued by the organizations themselves or local authorities, not the IRS. The IRS compiled this information from Forms 990 as well as the internet and other publicly-available information. (For additional discussion, see: http://blogs.hallrender.com/blog/irs-comments-on-exempt-organization-governance-study-and-significant-diversion-of-assets)

Robert A. Levite, Esq.
UMASS Extension
237 Chandler Street
Worcester, MA 01609