

# THE HOWE & HUTTON REPORT

ANALYZING LEGAL NEWS OF IMPORTANCE TO THE NONPROFIT COMMUNITY

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## THE LAW FIRM FOR ASSOCIATIONS®

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**LOOKING AHEAD IN AN ELECTION YEAR** – Trying to get an income tax package through Congress this election year is a daunting task, illustrated by the struggles to merely extend the 2% deferral on payroll taxes in 2011. Well, that expires again December 31 and Congress (and the White House) are also facing a return to income tax rates in effect before the 2003 and 2004 reductions. These include taxes on ordinary income, capital gains and dividends. There are also the expiring extenders for the AMT taxes, which now hit millions instead of the few millionaires they were aimed at, and various credits built into the system. What about estate taxes? *The Republicans are saying no income tax increases and the Democrats are saying increases on anyone making over \$250,000. Neither side is likely to back down before the November election. That doesn’t leave much time to cut a deal between the election and January 21, 2013. Happy planning.*

**MORE IRS WARNINGS ON SCAMS** – The Internal Revenue Service has offered another warning about scams to avoid. A sampling of the latest batch is phony claims for refunds or tax credits, even to people with little or no income; offers of free money or refunds on low income-no document tax returns; economic stimulus payments; online solicitations to call 800-numbers where you are asked to provide your Social Security number or other personal information; and so on. *Go on, no one would fall for that stuff! Wanna bet? Don’t be one of them.*

**ADD THIS TO YOUR LEXICON – “IPAIDABRIBE.COM”** – The power of the Internet: A couple in India started a website back in 2010 called “ipaidabrike.com” where they and others could post instances of being required to pay or at least asked for a bribe to obtain minor government services. Anonymous entries naming officials, the services and amounts were posted. The idea quickly spread to other countries and other local “ipaidabrike” websites. *The intent is to force public awareness and possibly lead to changes in obtaining services without the humiliation and expense of petty bribes. This may lead to a coalition of such websites, and some positive outcomes as officials become aware they could be outed and even ousted. Let’s hope.*

GOOD READING ... See you in April

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**ILLINOIS TO RESUME HOSPITAL EXEMPTION REVIEW – *H&H Report Update*** – Illinois Governor Pat Quinn has announced that the state will be resuming its review of nonprofit hospital property tax exemptions after a moratorium on such reviews failed to produce an agreement between state officials and hospital representatives on the extent of charity care that should be required for exempt status. The question became a political issue when the Illinois Department of Revenue began denying hospital exemptions because of allegedly insufficient charitable care, which resulted in appeals and court decisions that completely satisfied few interested parties, as well as much public discussion of the need for hospital property tax exemptions. The governor imposed a March 1 deadline for hospitals and Department administrators to come up with new rules for consideration of exemptions, and now that the deadline has passed without agreement on new rules, the Department has been given the go-ahead to again review and approve or deny exemptions. *It is thought that as many as 18 hospitals are in line for review of their exempt status in the near future.*

**NONPROFITS MAY LOSE DONATIONS GIVEN TO “UMBRELLA ORGANIZATION”** – The *Los Angeles Times* reports that many small nonprofits may lose over \$800,000 that was donated for their use to an “umbrella organization,” the International Humanities Center, that appears to have folded and is now being investigated by the California Attorney General’s office. The organization is said to have handled donations made for the purposes of many highly diverse groups that did not have the time or expertise to handle accounting, bills and other administrative tasks. Consequently, they depended on the umbrella organization to handle such matters for them, relying on its tax-exempt status to ensure deductibility of donations and on the Center’s personnel to ensure that money was spent in accordance with the donors’ intentions. The Center has closed its offices, taken down its website, and informed clients by email that it is no longer operating. *Small nonprofits working with such “umbrella organizations” may sometimes realize savings on legal and administrative expenses, such as the expense of obtaining and maintaining separate federal income tax exemptions. But they may not fully appreciate the fact that they will not necessarily have complete control of donated funds, even if the organizations actually receiving the donations on their behalf are on the up and up, and, as in this case, there is the risk that the umbrella group may disappear and leave donated funds unaccounted for.*

**NONPROFIT EMPLOYEES ALLOWED TO LEAVE EGYPT – *H&H Report Update*** – The latest episode in the saga of nonprofits in Egypt is that foreign nonprofit employees who had been detained by the Egyptian government for promoting democracy in that country have been released and transported home following payment to that government of approximately \$4 million in “bail.” One American voluntarily chose to remain in Egypt to face whatever charges Egyptian officials might bring against him, but other detainees are not expected to return for further judicial proceedings despite their forced promises to the contrary. American-financed organizations joined a German-financed foundation in paying to extricate their employees after the nonprofits were charged with failing to obtain a license to operate in Egypt using foreign financing – which many nonprofits had been doing for years in that country without a license and with the full knowledge of the government. No Egyptian official has publicly accepted responsibility for freeing the detainees, which has met with some popular backlash against a perceived American interference in the Egyptian “justice” system. Intense diplomatic negotiations preceded the release, during which the U.S. government indicated that \$1.5 billion in annual U.S. aid to Egypt could be terminated if the nonprofit workers were not freed, coupled with delays in much-needed World Bank and International Monetary Fund financing to help the foundering Egyptian economy. *We’ve said before that American nonprofits need to be fully aware of the dangers that accompany operating in some foreign countries. Having employees briefly detained by a foreign government, and having to pay through the nose for their release, may not ultimately be acceptable to a nonprofit’s financial supporters. But the outcome for nonprofit employees charged with and convicted of violating foreign laws, in some cases, could be much worse.*

## INTELLECTUAL PROPERTY & COMPUTER LAW DEVELOPMENTS

**SOME NONPROFITS DID TAKE OUT .XXX DOMAIN NAMES – *H&H Report Update*** – Some not-for-profit institutions responded to warnings in late 2011 and acted to protect their institutions’ domain name portfolios by registering their trademarked names as additional addresses using the new .xxx URLs. The purpose of the registrations was to prevent others from possibly affixing the nonprofits’ names to .xxx web names intended for use as pornography sites. ICANN provided established trademark owners an opportunity to register their names using the .xxx addresses before the .xxx category was opened on a first come-first served (or registered) basis to the public. One major university registered 14 different addresses using the .xxx category (at a cost of \$2,800 for 10 years) while a sister university decided it would watch and react if anyone tried to use its trademarked designations in a .xxx site. *Was this precaution necessary? A number of trademarked names have unhappily found themselves linked to pornographic websites, and that was before the xxx. category was created. So precautionary registration or careful watching – they illustrate the need to be mindful and very reactive to improper use of your organization’s trademarks.*

## EMPLOYMENT LAW DEVELOPMENTS

**“SKILLS DISCONNECT” IS A REALITY FOR EMPLOYERS AND WORKERS** – The term “skills disconnect” reflects the mismatch in skills needed by employers to fill vacancies and the skills of workers looking for employment. The mismatch can be attributed in part to technology in the workplace as employers invest in equipment to reduce labor costs to be more competitive with lower labor costs in Asia and Mexico, and because technology investments can lead to better production results than those produced by workers before such technology was introduced. Workers in today’s factories and workshops need more advanced training to deal with electronics needed to utilize equipment, as one example, but where will the training come from, and at whose expense? Many states are cutting back on technical and vocational training due to horrendous budget problems, and community and junior colleges are often struggling. *Anyone who has attended association meetings is likely to have heard frequent conversations lamenting inability to find skilled workers. Can associations help? Many are attempting to provide useful educational content for members’ use individually or by combining with other associations, utilizing webinars, videos, training at meetings, and other ways. Anything to reduce the growing skills disconnect between what workers can bring and employers require should be welcome.*

## REGULATORY LAW DEVELOPMENTS

**WILL THE U.S. ADOPT IASB ACCOUNTING RULES? – *H&H Report Update*** – More than 100 nations, include most of Europe, use the accounting rules of the International Accounting Standards Board. Once again it is unclear if the United States will move from its own Financial Accounting Standards Board rules to the IASB rules, probably over a period of years to allow U.S. companies to time to adjust. The issue is to be presented to the Securities and Exchange Commission in the near future by its staff, which is already bogged down in rule-making to implement the Dodd-Franks legislation enacted a year ago. Administration policy is to proceed with more integration with the IASB. Smaller companies which are not publicly held and therefore not subject to SEC oversight would need time to adjust to IASB rules, or the U.S. could end up in the unhappy situation of having two Generally Accepted Accounting Principles (“GAAP”) systems. *One concern for the U.S. is that it currently is an international heavyweight in establishing accounting rules, which has led to a convergence of IASB and FASB rules. But differences remain in many respect, and if the U.S. adopts IASB*

*rules the U.S. will be one among many instead of its current primacy as a major and competing source of accounting rules. You might compare it to the difference between the U.N. Security Council and U.N. General Assembly. Esoteric perhaps, but it holds potentially significant importance for many associations' members.*

## TAX LAW DEVELOPMENTS

**NONPROFITS GET SOCIAL SECURITY TAX CREDIT FOR HIRING VETS** – The federal VOW to Hire Heroes Act of 2011 provided tax credits for businesses hiring unemployed veterans, and those credits are also now available to hiring organizations exempt from income tax, which can claim the Work Opportunity Tax Credits against the employer's share of Social Security tax, among its numerous other benefit provisions intended to cut the high unemployment rates of younger veterans, especially veterans of the wars in Iraq and Afghanistan. Credits are available for veterans hired to begin work on or after November 22, 2011 and before January 1, 2013, and will be available to the employer for twelve months from the date of hire. The credits must be claimed by filing Form 5884-C with the IRS separately from the organization's employment tax return and after that return is filed. The IRS says the organization's liability for employment tax should not be reduced on that return, and the organization should not reduce deposits of tax in anticipation of the credit. Rather, the IRS will process the Form 5884-C and refund the amount of tax properly claimed as a credit by the employing exempt organization. *So, you have to pay the tax, but you get the credited amount back when the IRS refunds the tax. The question to be determined is whether the credit is sufficient incentive for an employer to hire a veteran, period, or a veteran rather than another candidate once employers are aware of the credit.*

**CHARITY ABUSE MAKES IRS "DIRTY DOZEN" TAX SCAM LIST** – The Internal Revenue Service has released its "Dirty Dozen" tax scam list for 2012, and making the annual scam list this year is "Abuse of Charitable Organizations and Deductions." The IRS says "IRS examiners continue to uncover the intentional abuse of 501(c)(3) organizations, including arrangements that improperly shield income or assets from taxation, and attempts by donors to maintain control over donated assets or the income from donated property." The IRS is investigating schemes that involve the donation of non-cash assets – including situations in which several organizations claim the full value of the same non-cash contribution. Often these donations are highly overvalued or the organization receiving the donation promises that the donor can repurchase the items later at a price set by the donee. *The IRS is watching. So, if you think your organization may be involved in one of the practices already labeled by the IRS as scams, you might want to obtain legal advice ASAP.*

**SUPREME COURT WON'T CONSIDER POLITICAL ACTIVITY BAN CHALLENGE** – The U.S. Supreme Court has refused to hear a legal challenge to the Internal Revenue Code's prohibition on partisan political activity by organizations exempt from federal income tax under Section 501(c)(3) of the Code. Catholic Answers, Inc. had filed a suit for a refund of excise taxes imposed by the IRS on the organization's alleged campaign intervention expenditures, hoping to obtain a court ruling that the ban is unconstitutional. But the IRS then refunded the taxes to the organization, which led the Court to conclude that the case was no longer appropriate for judicial review. *This is an example of how the IRS can prevent court scrutiny of its activities by simply giving a tax refund to any organization challenging the legality of IRS actions or by otherwise taking steps that eliminate any reviewable legal controversy with that particular organization. Doing so can leave the IRS free to engage in the same enforcement activities with respect to other organizations unless they too file a legal objection to the way the IRS is treating them. But this also undercuts the threat to church groups and other Section 501(c)(3) organizations that their exemptions may be revoked for engaging in prohibited political activities.*

**IRS STREAMLINES SEARCHES** – The Internal Revenue Service has streamlined searching for information about tax-exempt organizations on the IRS website by consolidating three former search databases into one. Previously, it was necessary to conduct separate searches for (1) organizations eligible to receive tax-deductible charitable contributions, (2) organizations whose exempt status has been automatically revoked because they have not filed Form 990 series annual returns for three straight years, and (3) organizations that have filed a Form 990-N annual return electronically. Now, by using “Exempt Organization Select Check,” it will be possible for users of the IRS website to access all of this information on any group with a single search. In addition, users can download lists of all organizations meeting each of the above descriptions. *This is a great improvement to IRS online search capabilities that will make searching much more efficient.*

**ONCE AUTO-REVOKED, ALWAYS AUTO-REVOKED** – The Internal Revenue Service has announced that any nonprofit automatically losing its tax-exempt status for failure to file a Form 990 three straight years is going to remain on the IRS’s list of such auto-revoked organizations, accessible by the public through the IRS website, even if the organization later reapplies for exemption and is reinstated to exempt status. Organizations can only be removed from this list of delinquent entities if they can show they were erroneously listed in the first place. *Sure, IRS, why go through the effort of correcting a public record just because people may see it and decide, for example, that they won’t contribute money to an organization that was reinstated to exempt status, believing, reasonably but wrongly, that the organization is no longer exempt? This is, of course, a very good reason for an organization to stay up-to-date in its Form 990 filings and to notify everyone they can think of when exempt status is reinstated.*

## MEETINGS & TRAVEL LAW DEVELOPMENTS

**TSA SAYS IT WILL FOCUS ON HIGHER-RISK TRAVELERS** – The head of the Transportation Safety Administration says TSA will expand its focus on higher-risk travelers and put less emphasis on lower-risk travelers. TSA cites its PreCheck program being implemented around the country as one example. The program is intended to speed up the flow of frequent travelers who have been prescreened for security purposes and can avoid taking off their shoes and some of the other minor indignities the rest of us go through, thus shortening their time in line as well as the time spent by others who still must endure the long, tedious searches before being allowed to proceed to airline gates. But the prescreened travelers, youngsters and grannies are still subject to the random pat-down searches the same as the rest of us. Another such example is a test at selected airports, including Chicago’s O’Hare, in which seniors 75 and older will not have to take off their shoes or outer jackets. *Hey, any improvement in the process is better, but it will not be long before the “higher risk” focus is declared by some to constitute racial profiling and therefore unconstitutional. You may want to look into the PreCheck program to see if you qualify. It could speed your trips through airport security. But finding out if you qualify takes work. Good luck.*

## OTHER ISSUES, TRENDS & DEVELOPMENTS

**PROSECUTION CAN PROCEED FOR FAKE FACEBOOK PROFILE IN N.J.** – A New Jersey state court judge said a criminal prosecution can proceed against a woman who impersonated her ex-boyfriend, a police detective, by posting derogatory and very inflammatory messages on a Facebook page she created in his name. New Jersey has a statute prohibiting impersonating someone “... for the purpose of obtaining a benefit for himself or another *or to injure or defraud another.*” (emphasis added) *This was a flagrant example of using Facebook in an attempt to get personal revenge, but there is a potential problem with the open-ended nature of such prosecutions, as we have seen elsewhere with school kids and bullying in nationally publicized incidents. Police your use of social media and your organization’s use.*

**JUDGE RULES ILLINOIS ELECTION CODE SUPER PAC RULES INVALID** – A federal district court judge in Chicago has ruled that portions of the Illinois Election Code are unconstitutional as violating freedom of speech protections when applied to “super-PACs,” which do not coordinate political expenditures with candidates or their campaigns. The decision came in a suit filed against members of the Illinois Board of Elections by a pro-choice nonprofit political action committee, seeking to prevent enforcement of the challenged Code provisions. Code requirements that were found unconstitutional as applied to super-PACs prohibit all PACs from accepting contributions from individuals in excess of \$10,000 per election cycle; from other PACs and campaign committees in excess of \$50,000 per cycle; and from other entities in excess of \$20,000 per cycle. He also ruled unconstitutional as applied to super-PACs a provision that prohibits individuals and groups from forming or maintaining more than one PAC. *Judge Aspen said his decision was mandated by previous rulings of the U.S. Supreme Court and the federal appellate court in Chicago. An appeal is probably to be expected, but reversal is not. Super-PACs are clearly having an outsize impact on campaigns as reflected in the primary elections to date.*

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## H & H DEVELOPMENTS

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In March,

Barbara Dunn presented “Advanced Contract Legal Issues and Negotiation Strategies” for a mid-America conference for meeting professionals in Sandusky, Ohio and two focus webinars, “The Lawyer is In: Best Practices for Sourcing Managers for Meeting Contracts” and “Negotiating: Driving the Deal (Part 1 and Part 2).”

Naomi Angel presented “Top 10 Legal Issues in International Business” for a global growth workshop in Chicago.

Samuel Erkonen gave two presentations on hotel contracts – one in Kansas City to an association annual conference and one at a major Chicago university.

Nathan Breen presented “The Outlook for Hotel Negotiations” for the local chapter of government meeting professionals 2012 annual conference in Michigan.

### Contributors to this issue...

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