

## ***Document Retention:*** **The IRS Is Asking (And The Public Is Watching)**

Using its revised Form 990, the IRS is now asking more questions of nonprofits.

Specifically, Form 990 asks about your organization's governance and management practices, including whether you have a written document retention/destruction policy.

Of course, your answers are also available to the public.

Certain requirements of the Sarbanes-Oxley Act regarding document retention apply to nonprofits, as well. Specifically, organizations that destroy records with the intent to obstruct a federal investigation are subject to criminal liability.

### **It's Just Good Practice**

With that in mind, tax-exempt organizations are well advised to adopt a document retention policy. It just makes good sense to have a policy for managing the paper and electronic documents that deluge the typical nonprofit.

In particular, organizations with paid employees may find a document retention policy helpful in complying with state and federal employment laws. The Fair Labor Standards Act, for example, requires employers to maintain payroll records for certain periods of time.

### **Keep It Simple**

A document retention policy doesn't have to be complex. A simple, succinct policy lets employees, officers and directors know which documents to retain (and for how long), and guards against improper disposal or destruction. A basic policy should set forth the following:

- **Timelines for maintaining documents.** This can simply be a list of document categories (financial, fundraising, personnel, contracts, leases, etc.) along with the length of time they should be retained to comply with state and federal requirements. Be sure to detail where each type of document is stored, paying particular attention to whether you are required to retain originals or whether copies will suffice.

### **File Facts**

- Nearly half of stored documents are of no current or future use.
- Some 40 percent of stored data are copies of already-filed documents.
- Nearly 95 percent of stored documents that need to be retrieved are less than three years old.

- **Procedures for preserving electronic data.** In today's digital world, a document retention policy must look beyond printed documents to also cover electronic communications such as e-mails and voice mails.
- **Guidelines for disposal and destruction.** Obviously, there is a housekeeping issue here: Records pile up quickly, making storage costs spiral and individual documents hard to find. Documents that are no longer needed or required by law should be routinely eliminated. But there is also a compliance issue. By using a standard, documented procedure for disposing of records, you can more easily defend against any allegations that materials were purged in a manner other than in the ordinary course of business.
- **Categories of documents that warrant special consideration.** Two documents that you must retain and make available for public inspection are your original application for exempt status (IRS Form 1023) and your annual information return (IRS Form 990 or 990 EZ). Form 1023 must be saved permanently, and your Form 990 should be kept for a minimum of seven years.
- **A mechanism for halting document destruction.** If your organization comes under investigation by a law enforcement agency, your policy should have provisions for suspending routine destruction of documents. It should also detail under what conditions document destruction may resume (typically with the written approval of legal counsel or the chief executive officer).

## Sample Document Retention Policies

You don't need to re-invent the wheel. A variety of organizations make sample policies and templates available for use by nonprofits, including this one from the National Council of Nonprofits:

<http://www.councilofnonprofits.org/?q=node/294>

Once drafted, your board should review and approve the policy. Include it in your employee/volunteer handbook, where it can be read and acknowledged by all staff and volunteers.

\*\*\*\*\*

The *Nonprofit Advisor* is produced quarterly by Bober Markey Fedorovich's Nonprofit Services Group. For questions, or to obtain additional information about the services we provide, please call or email Lori Sheets, CPA at (330) 762-9785 or [lshheets@bobermarkey.com](mailto:lshheets@bobermarkey.com). You can also visit us at [www.bobermarkey.com](http://www.bobermarkey.com).

Unless expressly stated otherwise, any U.S. tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

© 2009 Bober, Markey, Fedorovich & Company