

Mastering Form 990 Schedule G: Reporting Fundraising and Gaming Activities for Nonprofits

WEDNESDAY, SEPTEMBER 9, 2015, 1:00-2:50 pm Eastern

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Mastering Form 990 Schedule G: Reporting Fundraising & Gaming Activities for Nonprofits

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Outline

- What activities qualify as fundraising events that must be reported on Schedule G
 - Fundraising activities
 - Fundraising events
 - Gaming
- Detailed exploration into Schedule G by activity
- UBTI issues with fundraising and gaming activities
- Other information reporting obligations



Fundraising Activities, Fundraising Events, and Gaming

Fundraising Activities

- Conducting fundraising campaigns
- Conducting **fundraising events**
- Recruiting volunteers
- Participating or conducting training for improving fundraising techniques
- Other solicitation activities
- Hiring professional fundraisers
- Do not include exempt purpose related activities

Professional Fundraising Services

- Services requiring the exercise of professional judgment or discretion
- Planning, managing, preparation of materials, provision of advice and consulting regarding solicitation of contributions, and direct solicitation of contributions
- Generally does not include services provided by employees
- Does not include purely ministerial tasks (e.g., printing, mailing services, or depositing contributions)

Fundraising Events

- Primary purpose is to raise funds for the organization by selling goods or services for more than their direct cost
- Not regularly carried on
- Attendee/participant typically receives a direct benefit
- Include dinners and dances, door-to-door sales of merchandise, concerts, carnivals, sports events, auctions, casino nights, and similar events

What is not a fundraising event?

- Conduct of trade or business that is regularly carried on
- Activities substantially related to the accomplishment of the organization's exempt purposes
- Solicitation campaigns that generate only contributions, sales or gifts of goods or services from the organization of only nominal value
- Events that substantially further the organization's exempt purpose even if they also raise funds

Gaming

- Gaming generally involves a chance component to win
- As a general rule, if the prizes to be awarded have more than a nominal value and a participant pays a minimum amount to be entered in the event, the resulting income is treated as being from gaming activities
- In all cases, wagers and similar payments are never treated as a charitable contribution, regardless of whether the participant wins or loses

Gaming and Other Similar Activities

- Sweepstakes
- Contest
- Raffle
- Bingo, card games such as poker, casino nights, scratch-offs, slot machines, and other video games

Detailed Exploration into Schedule G

Schedule G, Part I: Fundraising Activities

- Complete if the organization reported a total of more than \$15,000 of expenses for **professional fundraising services** on Form 990, Part IX, lines 6 and 11(e)
- Trigger question: Form 990, Part IV, line 17
- Not required for Form 990-EZ filers

Schedule G, Part I, Line 1

- Check applicable boxes a through g for each type of fundraising activity used by the organization and its professional fundraisers
- If contributions are reported on Form 990, Part VIII, line 1, the corresponding boxes on Schedule G, Part I, line 1 representing the source of those contributions should be checked

Schedule G, Part I, Line 2a

- Check "Yes" if at any time during the tax year the organization had an agreement with another person or entity in connection with professional fundraising services
- Includes both written and oral agreements
- Does not include officers, directors, trustees, or employees who conduct professional fundraising services solely in their capacity as an officer, director, trustee, or employee

Schedule G, Part I, Line 2b

- Complete if "Yes" is checked on Schedule G, Part I, Line 2a
- List the ten highest paid individuals or entities who were each to be compensated at least \$5,000 during the tax year for professional fundraising services

Ten Highest Paid Fundraisers

- Name and business address of individual or entity
- Type(s) of **fundraising activities**
- Whether the fundraiser has custody or control of contributions
- Gross receipts from activity
- Amount paid to or retained by fundraiser
- Amount paid to or retained by the organization

Custody or Control

- Possession of funds or the authority to deposit, direct the use of, or use the funds
- Describe the custody or control arrangement in Part IV of Schedule G

Gross Receipts from Activity

- Gross receipts that the organization collected or the fundraiser collected on behalf of the organization
- A professional fundraiser can deliver services during the tax year and the expense be properly reported on line 2b, column (v) but have no corresponding gross receipts reported in column (iv)

Amount Paid to or Retained by Fundraiser

- Fees paid to or fees withheld by the fundraiser
- Additional reporting in Part IV of Schedule G if agreement provides for payment for services and also payment for expense reimbursements such as printing, paper, envelopes, postage, mailing list rental, and equipment rental
- If agreement does not distinguish between payment for services and reimbursement of expenses, report the gross amount paid to or withheld by the fundraiser

Amount Paid to or Retained by Organization

- Subtract column (v) from column (iv)
- This number is often scrutinized by the public
- United Cancer Council, Inc. v. Commissioner

Schedule G, Part I, Line 3

- List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing
- List each state separately

Schedule G, Part II: Fundraising Events

- Complete if the organization reported more than \$15,000 total gross receipts (contributions and gross income) from fundraising events on Form 990, Part VIII, lines 1c and 8a
- Trigger question: Form 990, Part IV, line 18
- Complete if the organization reported more than \$15,000 total gross receipts from fundraising events on Form 990-EZ, Part I, line 6b and in the parentheses for line 6b

Schedule G, Part II: Fundraising Events

- List only events with gross receipts greater than \$5,000
- The amounts from Schedule G, Part II, lines 3, 10, and 11 of column (d) will not equal the amounts reported on Form 990, Part VIII, lines 8a, 8b, and column (A) of line 8c if the organization had fundraising events with gross receipts of \$5,000 or less
- Do not include gaming activities in Part II even if the gaming activity is held at a fundraising event

Schedule G, Part II: Fundraising Events

- List the two largest events as measured by gross receipts in columns (a) and (b)
- In column (c), enter the total number of other events with gross receipts greater than \$5,000 each and report the aggregate revenue and expenses from these events
- If no events other than those listed in columns (a) and (b) exceeded the \$5,000 threshold, enter "None" in column (c)

Noncash Contributions and Prizes

- The value of **noncash contributions** received by the organization should be included in the amounts for gross receipts and contributions
- The **fair market value** of noncash prizes awarded should be included as direct expenses
- Noncash contributions do not include volunteer services or donated use of materials, facilities, or equipment

Recordkeeping

- How much did each donor pay?
- What was the fair market value of the goods and services each donor received in return for the payment?
- What did it cost for the organization to conduct the event?
- The fair market value of attending the event and the organization's cost for conducting the event will normally not be the same

Schedule G, Part III: Gaming

- Complete if the organization reported more than \$15,000 of gross income from gaming activities on Form 990, Part VIII, line 9a
- Trigger question: Form 990, Part IV, line 19
- Complete if the organization reported more than \$15,000 of gross income from gaming activities on Form 990-EZ, Part I, line 6a

Schedule G, Part III: Gaming

- Complete Part III for each type of gaming conducted (there is no monetary threshold in connection with the reporting of discrete gaming activities)
- The amounts from Schedule G, Part III, lines 1, 7, and 8 of column (d) must equal the amounts reported on Form 990, Part VIII, lines 9a, 9b, and column (A) of line 9c

Schedule G, Part III: Gaming

- Treat all **bingo** as a single event for column (a)
- Treat all **pull tabs** as a single event for column (b)
- Include in column (c) all other types of **gaming** not included in column (a) or (b)

Revenue

- Report gross income from gaming activities without reduction for cash or noncash prizes, cost of goods sold, compensation, fees, or other expenses
- Report contributions received from gaming activities on Form 990, Part VIII, line 1f, not on line 1c or line 9a

Direct Expenses

- The fair market value of noncash prizes awarded should be included as direct expenses
- The organization should retain in its records a schedule providing an itemized list of all other direct expenses not included on Schedule G, Part III, lines 2 through 4
- The itemized list should include labor costs and wages, the employer's share of employment taxes, and any excise taxes

Volunteer Labor

- A **volunteer** is a person who serves the organization without compensation
- Compensation includes tips and noncash benefits
- Check "Yes" on Schedule G, Part III, Line 6 if substantially all of the organization's work is performed by volunteers
- The percentage is determined by dividing the number of volunteers used for each type of gaming by the total number of workers, both paid and unpaid, used for that type of gaming

Gaming Activities with Nonmembers

- Social clubs (section 501(c)(7)) and fraternal societies (sections 501(c)(8) and 501(c)(10))
- The exempt function of these organizations includes providing social and recreational activities for members and their bona fide guests
- Membership is determined by the organization's governing documents and applicable law

Gaming Manager Information

- The person(s) who has overall supervision and management of the organization's gaming operation
- Responsibilities include recordkeeping, money counting, hiring and firing workers, and making bank deposits for the gaming operation
- If the gaming manager is a director, officer, or employee of the organization, report only the portion of that person's compensation allocable to gaming management



UBTI Issues with Fundraising and Gaming Activities

Unrelated Business Income

- The activity must be considered a trade or business
- The activity must be regularly carried on
- The activity must not be substantially related to the organization's exempt purpose

Exemptions from Unrelated Business Income Tax as it Relates to Gaming

- Certain bingo games
- Activities conducted with substantially all volunteer labor
- Qualified public entertainment activities
- Games of chance conducted in North Dakota

Bingo Games Exemption

- Must meet the definition of bingo
- Wagers should be made, winners should be determined, and prizes should be disbursed in the presence of all players
- Conducted where no commercial competition exists
- Legal under state and local law

Volunteer Labor Exemption

- Substantially all (unofficial guideline of 85% or more) of the work must be performed by unpaid volunteers
- Tips and non cash benefits are generally considered compensation
- If the event is held at a for profit facility, the employees of that facility are not considered as volunteers
- To rely on the volunteer labor exclusion to exclude gaming from unrelated trade or business, an organization should maintain accurate records reflecting the number of hours worked by compensated and volunteer workers

Qualified Public Entertainment Activities

“Public entertainment activity” is one traditionally conducted at a fair or exposition promoting agriculture and education, including any activity whose purpose is designed to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

A “qualifying organization” is an organization exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(5) that regularly conducts an agricultural and educational fair or exposition as one of its substantial exempt purposes.

Qualified Public Entertainment Activities and Unrelated Trade or Business Exclusion

To qualify for the exclusion, a public entertainment activity must be conducted by a qualifying organization either:

- In conjunction with an international, national, state, regional, or local fair or exposition;
- In accordance with provisions of state law that permit only qualifying organizations (or an agency, instrumentality, or political subdivision of the state) to conduct the activity; or
- In accordance with provisions of state law that permit a qualifying organization to be granted a license to conduct the activity for 20 days or less on payment to the state of a lower percentage of the revenue from the licensed activity than is required from non-qualifying organizations.

Other Information

Federal Regulation of Fundraising

- Internal Revenue Service
- United States Postal Service
- Federal Trade Commission
- Federal Election Commission

State Regulation of Fundraising

- Most states have some form of a charitable solicitation act
- These acts typically define terms such as *charitable organization*, *solicit*, *solicitation*, *contribution*, *professional fundraiser*, and *paid solicitor*
- Organizations must comply with the charitable solicitation act, if any, in effect in the state in which they are principally located as well as the law in each state in which they are soliciting funds
- Registration and filing requirements
- National Association of State Charity Officials (www.nasconet.org)

Federal and State Regulation of Gaming

- Federal tax law generally consists of the IRS instructions and the exception from treatment as unrelated business income for qualified bingo games
- IRS Publication 3079, *Tax-exempt Organizations and Gaming*
- Many states and localities have gaming laws that identify the types of organizations that are allowed to conduct gaming activities and the conditions pursuant to which the games may be conducted

Reporting Winnings

- Unless the winnings are from poker, keno, bingo, or slot machines, report a payment of winnings, including raffle prizes, when the amount paid is \$600 or more and at least 300 times the amount of the wager
- Form W-2G, *Certain Gambling Winnings*
- Form 5754, *Statement by Person(s) Receiving Gambling Winnings*

Withholding Income Tax

- Regular gambling withholding at 25%
(33.33% for certain noncash payments)
- Backup withholding at 28%

Regular Income Tax Withholding

Withhold income tax from a payment of winnings when the proceeds are more than \$5,000 and the wager was placed in:

- A sweepstakes, wagering pool, lottery, raffle, or poker tournament; or
- Any other wagering transactions, if such proceeds are at least 300 times the amount wagered

Exceptions to Regular Income Tax Withholding

- Do not withhold income tax on winnings from bingo, keno, or slot machines no matter what the amount of winnings
- Income tax does not need to be withheld on winnings from a poker tournament as long as the winnings are reported on Form W2-G

Backup Withholding

Withhold 28% of gambling winnings (including winnings from bingo, keno, slot machines, and poker tournaments) when:

- The winner does not furnish a correct taxpayer identification number
- 25% has not been withheld
- The winnings are at least \$600 and at least 300 times the wager (or the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno or more than \$5,000 from a poker tournament)

IRS Examination Practices

- What types of gaming activities does the organization conduct?
- Who conducts the activities?
- Who owns the facility where the gaming is conducted?
- How are the games advertised?
- Who supplied the gaming equipment and/or supplies?
- How long has the gaming been conducted?
- What is the size and extent of the gaming activity (on an income, expense, and time basis)?
- Has the manner in which the games have been conducted changed over time?

Compliance Tasks

- Inventory the methods the organization uses to solicit contributions and grants
- Determine whether the organization has or will be paying more than \$15,000 for professional fundraising services
- Determine whether the organization has or will be receiving more than \$15,000 in revenue from fundraising events
- Ascertain whether the organization is in compliance with the appropriate state charitable solicitation act(s)

Compliance Tasks

- Determine if, under state law, the organization is using the services of a professional fundraiser, professional solicitor, and/or professional fundraising consultant
- If the organization is using one or more of these services, determine if it has the appropriate contract(s) in relation to state law requirements
- If one or more of these contracts is in place, determine if the organization has contracted with an insider

Compliance Tasks

- If one or more of these contracts is in place, determine whether one or more fundraisers is to be compensated by the organization in the amount of \$5,000 or more
- Ascertain whether the organization is in compliance with the various ways in which fundraising is regulated under federal tax law
- Determine whether the organization has or will be receiving more than \$15,000 in revenue from gaming

Compliance Tasks

- If the organization is engaged in a gaming activity, determine if it is being properly treated as an unrelated or a related business
- If the organization is engaged in gaming, determine whether it is in compliance with state or local law
- If the organization is engaged in gaming, become prepared to answer the questions that an IRS agent is likely to ask in the context of an examination

Thank you!

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