



Nonprofit Regulatory Update

Denver Government & Nonprofit Training Academy – 2022

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Learning Objectives

1

Recognize COVID-19 relief programs available to nonprofits, who qualifies, and impact to nonprofit orgs.

2

Identify new and proposed FASB Accounting Standards Updates (ASUs) and effective dates.

3

Explain which new Standards apply, and under what circumstances.

4

Identify implementation considerations, challenges, and approaches.



Covid-19 Assistance Programs



ERC Credits

Shuttered Venue Grants

PRF and CRF Funds

HEERF

PPP Loans

EIDL Loans

Other State and Local Assistance



Employee Retention Credits

Refundable payroll tax credit for compensation paid to employees

Processed through payroll taxes, 941s and form 7200

CARES Act and Consolidated Appropriations Act

- Provide guidance and access to ERCs



What is the Employee Retention Credit?



Fully refundable payroll tax credit for qualified wages (including allocable qualified health plan expenses) that eligible employers pay employees.



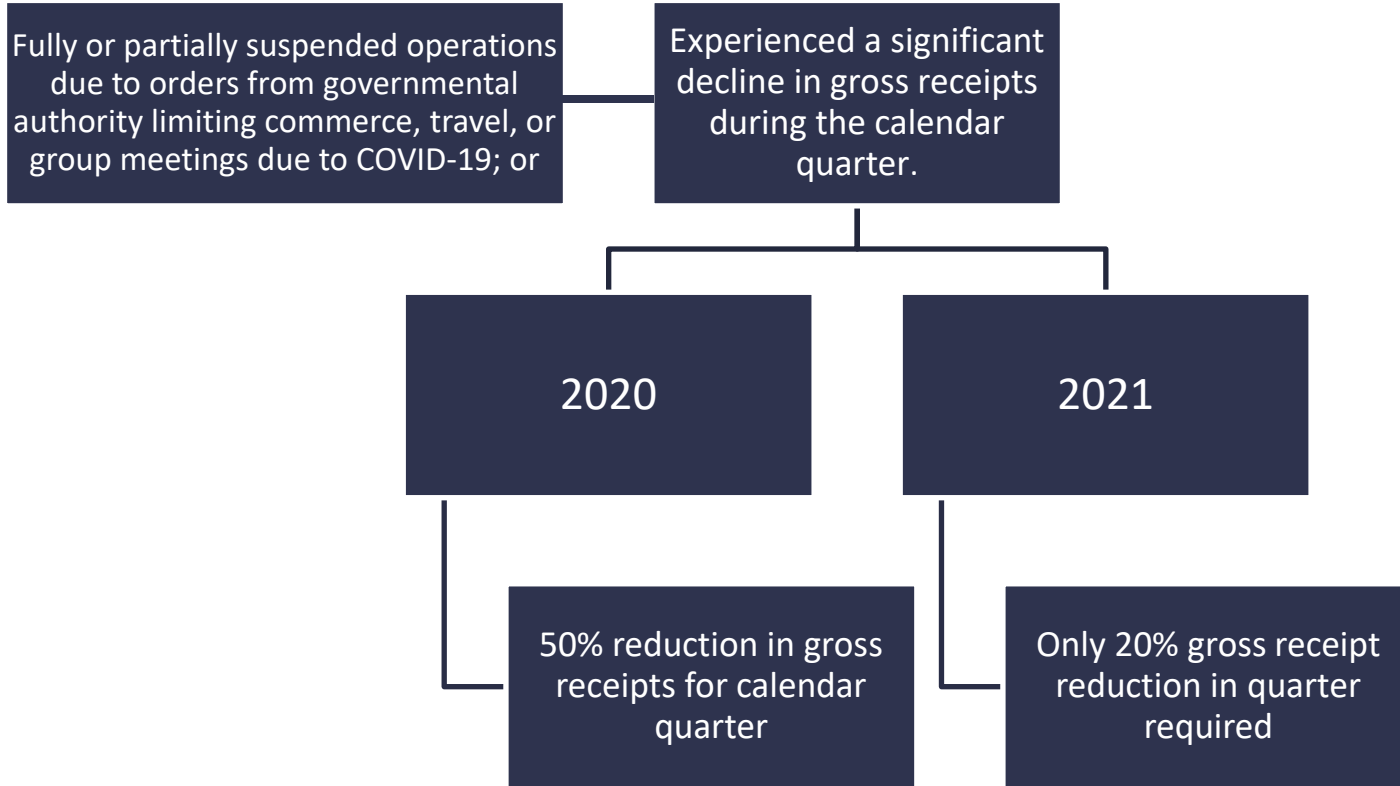
For 2020, credit amount = 50% of qualified wages (including allocable qualified health plan expenses) up to \$10,000 for year for each eligible employee.



For 2021, credit amount = 70% of qualified wages (including allocable qualified health plan expenses) up to \$10,000 per quarter for each eligible employee.



Who is Eligible for the ERC?



ERC – Accounting Considerations

- No GAAP specifically addresses ERC or similar funding stream
- ASC 740 Income Taxes
 - Generally recognized through existence of income tax credit
 - Would NOT apply to ERC
- GAAP – government grants
 - ASC 958-605 for nonprofits
 - Analogize to government grants
 - ERC is not a change to payroll tax law but a method to provide funding to organizations



ERC – Accounting Considerations

Nonprofits should evaluate the following:

- When is grant in place?
 - Cannot record revenue until there is a grant in place.
- Exchange vs. Contribution – generally considered contribution
- Conditional vs. Unconditional – are there barriers?
 - Payment of qualified expenses
 - Limits on # of employees
 - Gross receipts reductions, required closures, etc.
 - **Recognize when barriers have been met**
- With or Without restriction

Present as grant revenue or other income



ERC – Accounting Considerations



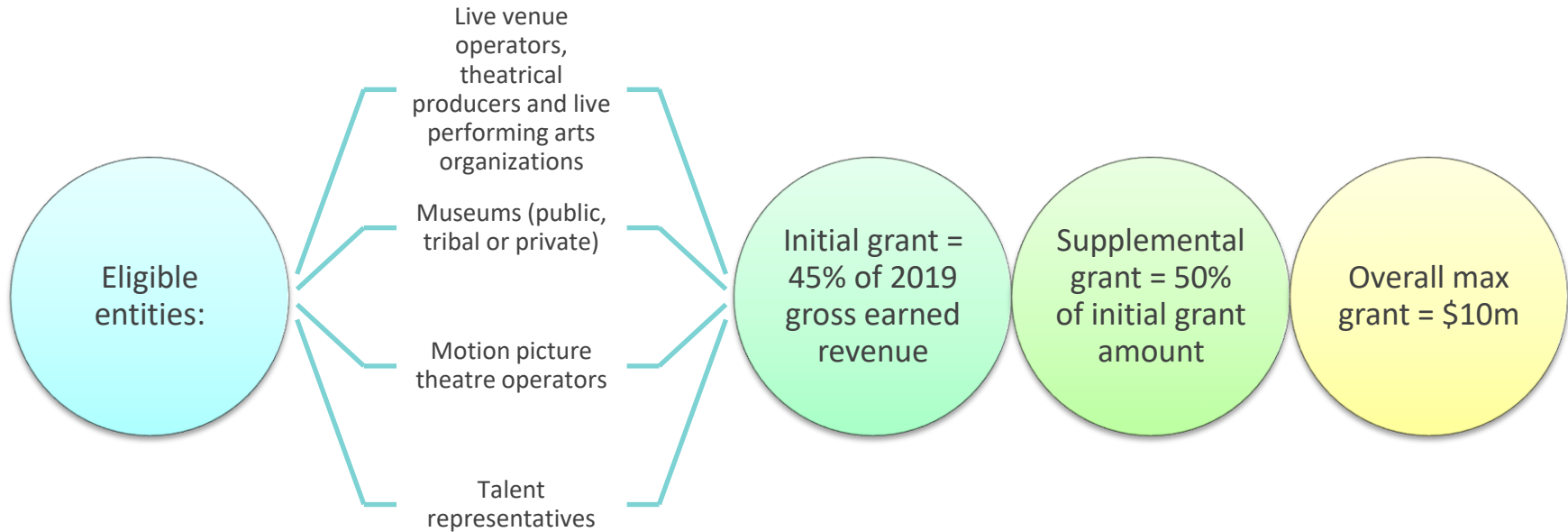
When do I record revenue?



What if I determine eligibility and request credits after my audit is completed?



Shuttered Venue Operators (SVO) Grant



Shuttered Venue Operators Grant

Accounting Considerations:

- Account for government grants in accordance with contributions received
- Conditional contribution
 - Barrier – incurrence of eligible expenses as barrier to entitlement
 - Right of Return
- Recognize revenue = eligible expenses
- Payment received in advance of expenses = Refundable Advance
- With or Without restriction



Covid Relief Funding and the Single Audit

Are ERC, SVOG,
or other relief
programs
subject to the
Single Audit?



COVID-19 related funding

Funding	Subject to Single Audit?
PPP Loans	No
Provider Relief Funds (PRF)	Yes
Coronavirus Relief Fund (CRF)	Yes
Education Stabilization Fund (ESF)	Yes
Emergency Rental Assistance Program	Yes
Employee Retention Credit (ERC or ERTC) Program	No
Economic Injury Disaster Loans (EDIL)	Yes
Shuttered Venue Operators Grant Program	Yes



COVID-19 Compliance Guidance

OMB - Office of Federal Financial Management's website

AICPA GAQC website - [GAQC COVID-19 Resources](#)

- [COVID-19 Related Funding & UG Applicability Matrix](#) as of 2/16/21

Agency websites

- Coronavirus Relief Fund (CRF) ([link](#))
- Provider Relief Fund (<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>)
- Education Stabilization Fund (<https://oese.ed.gov/offices/education-stabilization-fund/>)

U.S. Department of the Treasury COVID-19 Economic Relief:

- <https://home.treasury.gov/policy-issues/coronavirus>





Accounting Standards - Effective Now and in the Future

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Effective Dates

Public entities

- A public business entity;
- A not-for-profit entity that has issued, or is a conduit bond obligor for, securities that are traded, listed, or quoted on an exchange or an over-the-counter market;
- An employee benefit plan that files financial statements with the U.S. Securities and Exchange Commission (SEC).



Reference Rate Reform



ASU 2020-04: Effective Date: may be applied any time after 3/12/20 but no later than 12/31/22

ASU 2021-01: Effective immediately



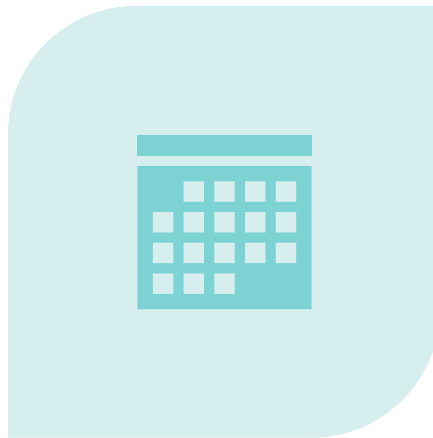
Objective: Provides relief in accounting for contract modifications related to transitioning from LIBOR and other reference rates for limited period of time



How to prepare for implementation: Inventory all contracts (receivables, debt, leases, derivatives) that reference discontinued rates; understand and apply optional expedients relative to each type



Leases (Topic 842)



EFFECTIVE DATE:

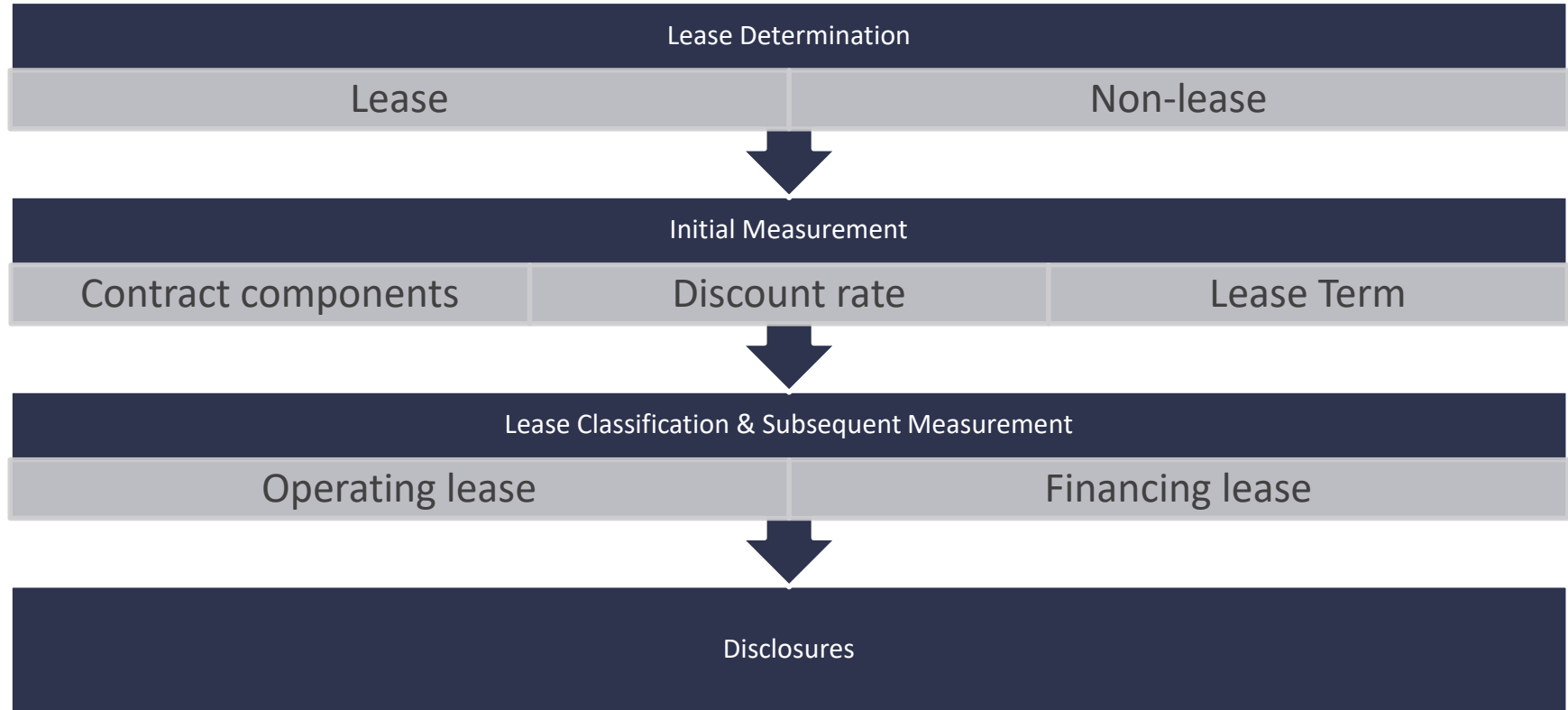
FISCAL YEARS BEGINNING AFTER 12/15/21

(12/31/22; 6/30/23);

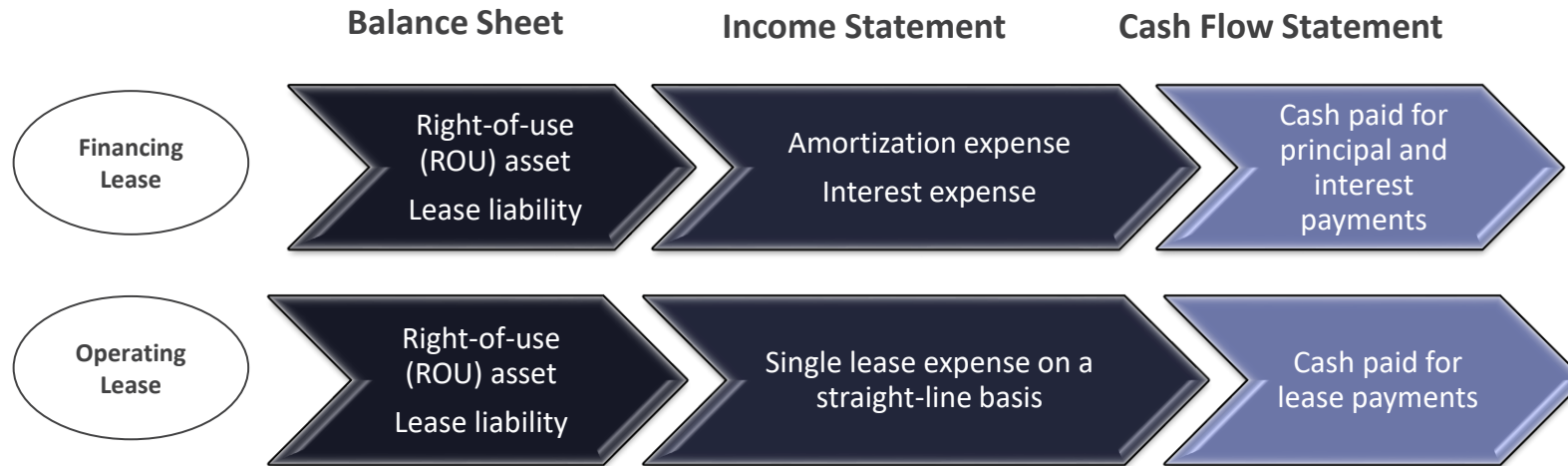
EXCEPT FOR PUBLIC NFP ENTITIES; EFFECTIVE DATE OF YEARS
BEGINNING AFTER 12/15/19 **(12/31/20; 6/30/21)**



Steps: Lease Analysis and Accounting



Leases (Topic 842; ASU 2016-02) – Lessee Accounting Overview



Classification is similar to that in Topic 840, *Lease*

Recognition and measurement exemption for short-term leases

Entities other than public business entities may use risk-free rates as practical expedient for measurement of all lease liabilities



Leases - Disclosures

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Disclosures



Objective

- Enable users of financial statements to assess amount, timing, and uncertainty of cash flows arising from leases



Requirement

- Enhanced qualitative and quantitative disclosures



Lessee Disclosures - Qualitative



Lessee Disclosures – Quantitative

Finance lease cost segregated between amortization and interest

Operating lease cost

Short-term lease cost

Variable lease cost

Sublease income

Gains/losses from sale and leaseback transactions



Lessee Disclosures – Quantitative (cont'd)

Segregate amounts for finance and operating leases for following:

Cash paid for amounts included in measurement of lease liabilities

Supplemental noncash information on lease liabilities arising from obtaining right-of-use assets

Weighted-average remaining lease term

Weighted-average discount rate



Example Disclosures – Quantitative

	2019	
Lease cost:		
Finance lease cost:		
Amortization of right-of-use assets	\$	-
Interest on lease liabilities		
Operating lease cost		
Short-term lease cost		
Variable lease cost		
Sublease income		
Total lease cost	\$	-
Other information:		
(Gains) and losses on sale leaseback transactions, net	\$	-
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from financing leases		
Operating cash flows from operating leases		
Financing cash flows from financing leases		
Right-of-use assets obtained in exchange for new financing lease liabilities		
Right-of-use assets obtained in exchange for new operating lease liabilities		
Weighted-average remaining lease term - financing leases		x years
Weighted-average remaining lease term - operating leases		x years
Weighted-average discount rate - financing leases		
Weighted-average discount rate - operating leases		



Lessee Disclosures – Quantitative (cont'd)

Maturity Schedule for first five years

Finance lease liabilities

Operating lease liabilities

undiscounted
cash flows

First 5 years &
total for
remaining

Reconcile to
balance sheet

undiscounted
cash flows

First 5 years &
total for
remaining

Reconcile to
balance sheet



Example Disclosures – Maturity Table

A maturity analysis of annual undiscounted cash flows for lease liabilities as of December 31, 2019, is as follows:

<u>Year</u>	<u>Financing Leases</u>	<u>Operating Leases</u>
2020	\$ -	\$ -
2021		
2022		
2023		
2024		
Thereafter		
Total	<u>\$ -</u>	<u>\$ -</u>

As of December 31, 2019, the Company has additional operating and finance leases, primarily copiers and facility rental, that have not yet commenced of \$XXX and \$XXX, respectively. The operating and finance leases will commence between fiscal year 2020 and fiscal year 2021 with lease terms of 1 year to 20 years.





Leases - Other Considerations

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Transition Methods Available

CY = year of
adoption

Original
Transition
Method (ASU
2016-02)

- CY - 842
- PY - 842

Cumulative effect
adjustment at the
beginning of the
earliest period
presented

PY =
comparative
period

Additional
Transition
Method (ASU
2018-11)

- CY - 842
- PY - 840

Cumulative effect
adjustment at the
beginning of the CY



Transition – Package of Practical Expedients*

An entity need not reassess:

Do expired or existing contracts contain embedded leases

Lease classification of any expired or existing leases

Initial direct costs for any existing leases



Applies to leases that commenced **BEFORE** effective date



Must apply as a package to all leases

Cannot pick and choose which leases

Cannot pick and choose which practical expedients

*Discount rate



Transition – Hindsight Practical Expedient

Hindsight can also be elected as practical expedient

- Determination of lease term
- Impairment of right-of-use assets
- Can be used separately or in conjunction with package
- Must apply consistently to all leases





Action Items

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Where Do I Start? Start With One.

Test run with your largest existing lease

Create an amortization table to support balance sheet and ongoing income statement journal entries

Gather needed info from lease documents & create disclosures for lease that meet requirements of new standard

Create template for these processes to replicate for existing leases and future leases

Document lease determination, classification, calculation, and disclosure processes in accounting policy document



After the test run, consider:



Should external party review lease determination, classification, calculation and disclosure?



Does your team have capacity to do this internally, or is external help needed?



Does you need technology solution to perform lease determination, classification, calculation and disclosure; or can this be done manually?

- Transition vs on-going

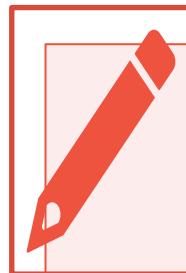


Then Expand to Portfolio of Leases



List of Leases & Service Contracts

- Begin gathering data on existing leases
- Consider completeness of list*



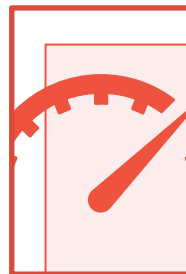
Document practical expedients

- Decide & document which practical expedients to adopt



Communicate Internally

- Share accounting policy document with procurement department & other stakeholders^



Debt Covenant Review

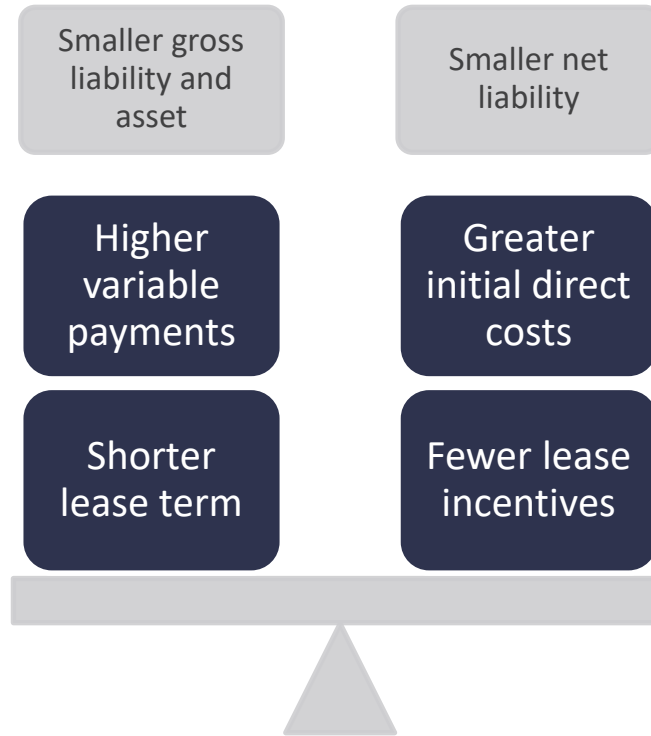
- Review existing and future debt agreements for covenants that will be impacted

*Consider embedded leases in service contracts

^Consider updating your capitalization policy



Economics of Lease Arrangements



Gifts in Kind (ASU 2020-07)



Effective Date: Annual reporting periods beginning after June 15, 2021

(6/30/22; 12/31/23)



Objective: Clarifies presentation and disclosure of contributed nonfinancial assets; recognition and measurement requirements remain unchanged



How to prepare for implementation:

- Track amounts separately
- Prepare for additional disclosures
 - see examples included in ASU
- Review related accounting policies



Gifts in Kind (ASU 2020-07) Specified Changes

Financial Statement Presentation:

- Contributed nonfinancial assets as a separate line in statement of activities

Disclose:

- Disaggregation of amount of contributed nonfinancial assets by category
- For each category disclose:
 - Qualitative info about monetized vs utilized. If utilized, then description of programs or other activities in which they were used
 - Policy about monetizing rather than utilizing
 - Description of donor-imposed restrictions
 - Description of valuation techniques and inputs to determine FMV
 - Principal market used to arrive at FMV in NFP is prohibited from participating in that market



Gifts in Kind (ASU 2020-07) Presentation

Not-for-Profit Entity A
Statement of Activities
Year Ended June 30, 20X1
(in thousands)

	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>
Revenues, gains, and other support:			
Contributions	\$ 8,640	\$ 8,390	\$ 17,030
Contributions of cash and other financial assets	\$ 6,790	\$ 7,430	\$ 14,220
Contributions of nonfinancial assets	1,850	960	2,810
Fees	5,200		5,200
Investment return, net	6,650	18,300	24,950
Gain on sale of equipment	200		200
Other	150		150
Net assets released from restrictions (Note D):			



Gifts in Kind (ASU 2020-07) Disclosure Examples

Contributed Nonfinancial Assets

For the years ended December 31, contributed nonfinancial assets recognized within the statement of activities included:

	20X9	20X8
Building	\$ 550,000	\$ -
Household goods	95,556	100,486
Food	85,407	86,633
Medical Supplies	90,389	115,173
Pharmaceuticals	111,876	113,982
Clothing	85,765	83,890
Vehicles	127,900	-
Services	73,890	65,392
	<u>\$ 1,220,783</u>	<u>\$ 565,556</u>

NFP K recognized contributed nonfinancial assets within revenue, including a contributed building, vehicles, household goods, food, medical supplies, pharmaceuticals, clothing, and services. Unless otherwise noted, contributed nonfinancial assets did not have donor-imposed restrictions.

It is NFP K's policy to sell all contributed vehicles immediately upon receipt at auction or for salvage unless the vehicle is restricted for use in a specific program

Contributed Nonfinancial Assets

	Revenue Recognized	Utilization in Programs/Activities	Donor Restrictions	Valuation Techniques and Inputs
Building	\$550,000	General and Administrative	No associated donor restrictions	In valuing the contributed building, which is located in Metropolitan Area B, NFP K estimated the fair value on the basis of recent comparable sales prices in Metropolitan Area B's real estate market.
Household goods	\$95,556	Domestic Community Development; Community Shelters	No associated donor restrictions	NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.
Food	\$85,407	Natural Disaster Services; Domestic Community Development; Community Shelters	No associated donor restrictions	NFP K estimated the fair value on the basis of estimates of wholesale values that would be received for selling similar products in the United States.



Gifts in Kind (ASU 2020-07) Disclosure Example LITE

CONTRIBUTED NONFINANCIAL ASSETS

For the year ended December 31, 20XX, contributed nonfinancial assets recognized within the statement of activities:

<u>Nonfinancial Asset</u>	<u>Revenue Recognized</u>	<u>How Utilized</u>	<u>Donor Restrictions</u>	<u>Valuation Technique</u>
Clothing	\$3,500	Community Shelter	No associated restrictions	Thrift store price guides
Children's books	\$2,200	Afterschool program	No associated restrictions	Used bookstore pricing



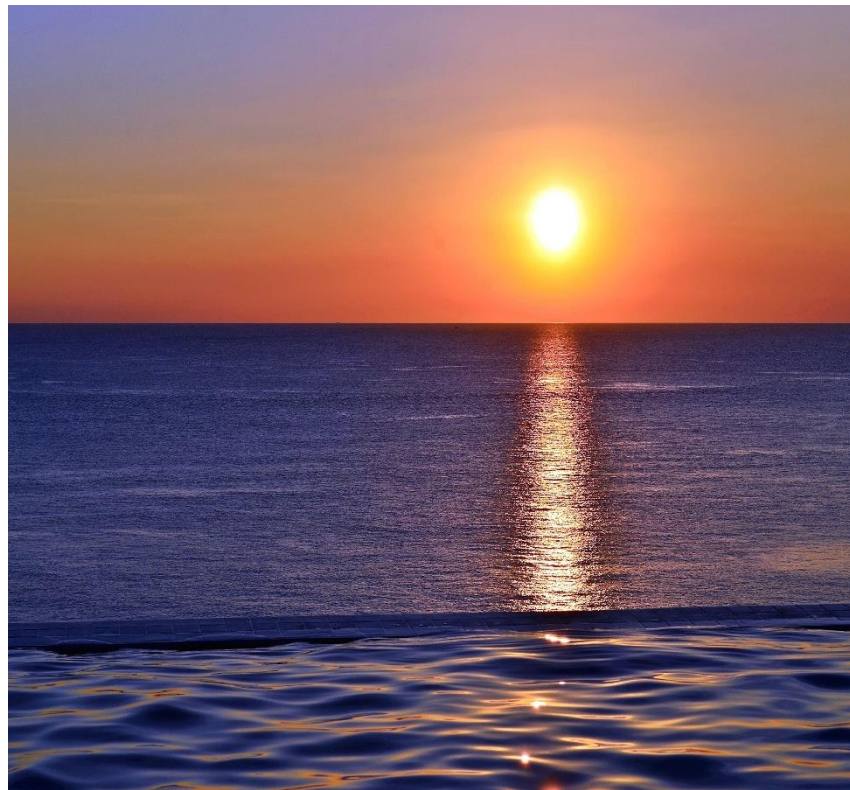
Standards on the Horizon

Implementation Costs Incurred in Cloud Computing (ASU 2018-15)

Credit Losses (CECL) ASU 2016-13

Intangibles – Goodwill and Other: Simplifying the Test for Goodwill Impairment (ASU 2017-04, 2021-03)

ASU 2021-08: Business Combinations: Accounting for Contract Assets and Contract Liabilities





New Audit Reporting Standards

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SAS 134-141 – Auditor Reporting Standards

SAS No.	Description
134	Auditor Reporting and Amendments
135	Omnibus Statement on Auditing Standards
136	Reporting on Employee Benefit Plans - ERISA
137	Other Information Included in Annual Reports
138	Description of the Concept of Materiality
139	Add'l reporting changes from SAS No. 134
140	Add'l reporting changes from SAS Nos. 134/137
141	Amendment to Effective Dates - SAS (134-140)



Auditor Reporting Standards



Effective for 12/31/21 audits



Revised form and content of the auditor's report



Extensive changes to other performance standards



SAS 134 - Auditor's Report Structure

Report Structure - Current	Report Structure – SAS 134
1. Introduction	1. Opinion
2. Management's Responsibilities for the Financial Statements	2. Basis for Opinion (New)
3. Auditor's Responsibility	3. Key Audit Matters (New) – if engaged to communicate
4. Opinion	4. Responsibilities of Management for the Financial Statements
5. Report on Other Legal and Regulatory Requirements	5. Auditor's Responsibilities for the Audit of the Financial Statements
	6. Report on Other Legal and Regulatory Requirements

Performance Standards Changes – SAS 137

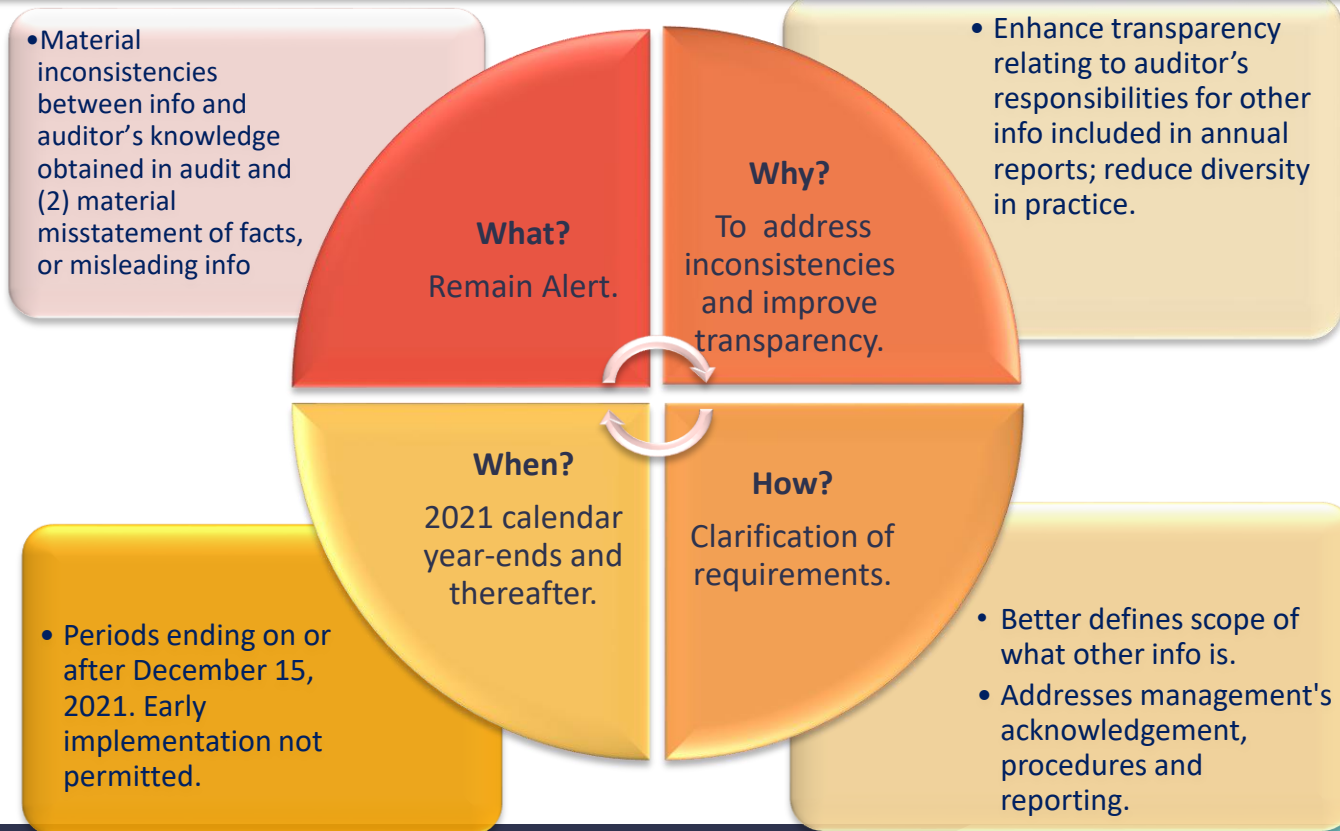
Other Information – Annual Report

- “contains, accompanies, or incorporates by references the FS and auditor’s report thereon....”

Obtain written
acknowledgement
from management
about what
documents comprise
annual report and
their timing of issuing
the document



(SAS) No. 137, The Auditor's Responsibilities Relating to Other Information Included in Annual Reports



Summary of Other Changes

Increased communication

Changes to engagement letter

Communications with governance

- Significant Risks
- Significant unusual transactions
- Potential effects of uncorrected misstatements on future-period financial statements



Summary of Other Changes (continued)

Clarification of audit procedures

- Related parties
- Enhanced emphasis on:
 - Disclosures
 - Significant and unusual transactions

Revised definition of materiality



Impact to Audit

Changes to:

Engagement
letters

Audit
programs

Various deliverables

Additional
required steps

Independent
Auditor's Report

Governance
Communications



Questions?



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Find additional resources and learn about upcoming events at CLAconnect.com.



Improving your financial health starts with an honest check-in.

Our guidance can help organizations and individuals stay on the right track.

[Learn More](#)



Thank you!

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Nonprofit Tax Update- What Should We Pay Attention to in 2022?

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Learning Objectives



Identify ongoing compliance initiatives and recent legislative changes that have a potential impact on your organization



Describe the impact of the Unrelated Business Income final regulations issued in response to the reporting changes from the Tax Cuts and Jobs Act



Identify key individuals in your organization to aid in implementation of a compliance program



Recognize common revenue streams that may generate unrelated business income





Ongoing Compliance

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2021-22 Priority Guidance Plan

Group Exemptions

- Guidance revising Rev. Proc. 80-27 regarding group exemption letters. Notice 2020-36 was published on May 18, 2020.

LLC

- Guidance on circumstances under which an LLC can qualify for recognition under §501(c)(3).

Supporting Organizations

- Final regulations on §509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.

UBI

- Regulations under §512 regarding the allocation of expenses in computing unrelated business taxable income and addressing how changes made to §172 net operating losses by section 2303(b) of the CARES Act apply for purposes of §512(a)(6).



Compliance Initiatives



Worker
misclassification and
W-2/1099 matches



Retirement plans of
small exempt
organizations



Retirement plans and
worker
misclassification



990-N filings



Excess compensation
excise tax



Tax exempt bonds



State & Foreign Compliance Considerations



Payroll



Sales and use tax



Business registration



Charitable
solicitation
registration

Nexus



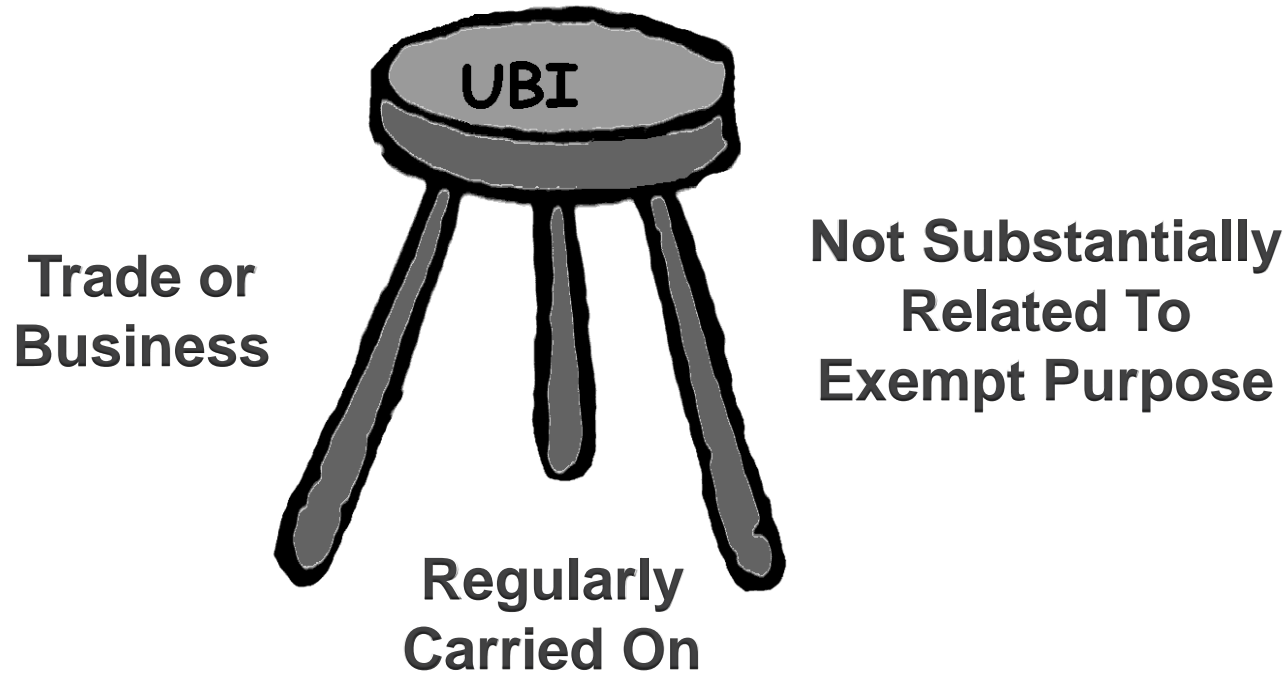


Unrelated Business Income Tax and Tax Reform

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UBI Defined – IRC § 512(a)(1)



Potential Sources of Unrelated Business Income

Alternative investments
(Partnerships and S-
Corp interests)

Advertising (qualified
sponsorship payments
are not UBI)

Rental income from
personal property or
mixed leases

Inventory Sales

Debt financed income

Exploitation of exempt
functions

Public use of facilities -
Fitness centers, ice
rinks, swimming pools,
golf courses, cafeteria,
childcare, etc.

Royalties

Unrelated laboratory or
pharmaceutical testing



UBI: “Siloing Rules”

- Prior to January 1, 2018, Exempt Organizations were able to aggregate their UBI activity (whether profitable or not) in the determination of their Unrelated Business Income (UBI).
 - Final Regulations issued November 19, 2020.
 - Effective for tax years beginning after December 31, 2017: losses of one unrelated activity cannot offset gains of another.
- Organizations with more than one unrelated trade or business may generally rely on a "reasonable, good-faith interpretation of IRC Sections 511 – 514" when identifying different trades or businesses for purposes of the silo rules under IRC Sec 512(a)(6).
 - IRS has identified North American Industry Classification System (NAICS) as a "reasonable, good-faith interpretation":
 - **NAICS – Initially six-digit NAICS codes, final regulations updated to two-digit NAICS codes**



UBI: “Siloing Rules” – Partnership Activity

- Exempt organizations are permitted to aggregate into a single silo all partnership investment activities that meet the definition of a “Qualified Partnership Interests (QPI):
 - Includes debt-financed property as an investment
 - QPI rule is intended as an administrative convenience
 - If not a QPI then each partnership interest is treated as a single trade or business or “silo”
- “Qualified partnership interests” – If partnership meets either the de minimis or participation tests, activity can be aggregated.
 - De minimis: own (average beginning/ending) no more than 2% of profits interest and capital interest
 - Participation (previously control): directly holds no more than 20% of the capital interest and does not have control or influence over the partnership



UBTI: “Siloing Rules” – Partnership Activity

- Exempt organizations are permitted to aggregate into a single silo all partnership investment activities – “Qualified Partnership Interests (QPI):
 - Includes debt-financed property as an investment
 - QPI rule is intended as an administrative convenience
 - If not a QPI then each partnership interest is treated as a single trade or business
 - “Qualifying partnership interests”: meet either de minimis or participation test = can use aggregation
 - De minimis: own (average beginning/ending) no more than 2% of profits interest and capital interest
 - Participation (previously control): directly holds no more than 20% of the capital interest and does not have control or influence over the partnership



Related State Filings

- Federal unrelated business income may be taxable in the state where the income is generated
 - Allocation versus apportionment
 - Alternative investments can generate multiple state filings
 - May have different filing deadlines than Federal return
 - Most states do not have a minimum filing threshold
 - Once you start to file in a state, then what?





IRS Section 4960 Excess Compensation Excise Tax

and

IRC Section 4968: Colleges/Universities Net Investment Excise Tax

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Excise Tax on Compensation

- Final regulations issued January 11, 2021.
- An “Applicable Tax-Exempt Organization” (ATEO) is subject to a 21% excise tax on
 - Remuneration over \$1 million paid to a covered employee
 - Generally Federal taxable wages (box 1) of calendar year within fiscal year if fiscal year filer.
 - Includes 457(f)
 - Does not include amounts paid to licensed medical professionals
 - Excess parachute payments paid to a covered employee
- ATEO = your related 501(c)(3) organizations
 - Excludes governmental unit (including a state college or university) without an IRS determination letter



Excess Parachute Payments

- Compensatory payment to a covered employee if:
 - The payment is contingent on an employee separation from employment with the employer and
 - Aggregate present value of the payment exceeds three times the base amount, which is the average annual compensation over the preceding 5-years
- Notice 2019-9
 - Payment is deemed to be a parachute payment only if the payment is contingent on involuntary separation from service



IRC Section 4968: College Endowment Excise Tax



Final regulations issued September 18th, 2020



Applies to private colleges and universities



At least 500 tuition-paying students



Aggregate FMV assets of
at least \$500k per student

Excludes assets used
directly in exempt purpose



Includes assets and NII of certain related
organizations



Create Opportunities

IRC Section 4968: College Endowment Excise Tax

1.4% excise tax on net investment income:

- Gross interest, dividends, rents, royalty income
 - excludes student loan interest
 - excludes rental income from student housing
 - excludes rental for faculty/staff required housing
 - excludes royalty from assets resulted from work of students or faculty, but not from other intangibles
- Capital gains



IRC Section 4968: College Endowment Excise Tax

Allowable expenses to arrive at net investment income:

- Deduct ordinary and necessary investment expenses
- Can allocate internal operating expenses
- Depreciation, straight-line method, is allowed
- Do not deduct charitable contributions, NOLs, etc.
- Do not deduct the net investment excise tax



Reporting the Excise Taxes

- Additional filing (Form 4720) is required
- Same due date as Form 990
- **Separate extension is required**
- Potential tax liability must be paid with extension





Employee Retention Credit Updates

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Employee Retention Credit Overview

	2020	2021
Covered Dates (payroll paid during period)	3/13/20 – 12/31/20	1/1/21 – 12/31/21
FTE-based restrictions*	Over 100 can only include paid but not working	Over 500 can only include paid but not working
Quarterly Revenue Decline vs. same quarter 2019 OR	>50%	>20%
Partial or full government shut-down	Actual dates organization was shut-down by government order	
Maximum eligible wages + healthcare cost per employee	\$10,000/year	\$10,000/quarter
% wages + healthcare eligible for credit	50%	70%
Maximum annual credit/employee	\$5,000	\$28,000

**FTE measured by number of FTE in 2019 according to ACA definition of fulltime employee*





How Do We Know What To Pay Attention To?!

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Many different compliance concerns

- Monitor new revenue streams and/or perform a UBI assessment
- Review contracts for potential UBI
 - Sponsorships, royalties, advertising, etc.
- Identify foreign activities and related risks including nexus, employment and labor law, import and export
- ERC- can you get some money back?
- Nexus
- Compliance Initiatives – other compliance besides 990-T



Where do I start?

- Identify and train staff that have potential to generate UBI
 - Education outside of finance (development / fundraising, athletics, marketing, R&D, etc.)
- Do a risk assessment
 - Heat map
 - Compliance Questionnaire
- Find a place to start
 - Top 2 concerns
 - Risks with potential significant financial impact
 - Risks with potential organizational impact



Questions





Thank you!

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State and Local Tax Update: The Impact of Our Current Environment on Business Operations

Dustin Hubbard and Heather Beckwith

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Agenda

- Overview of State Taxes
- Nexus
 - Wayfair
 - Remote Workers
- State Taxes



Learning Objectives

- Recognize the tax consequences associated with having remote employees
- Indicate items that trigger registration in other states (employees, economic nexus, solicitation, etc.)
- Recognize sales tax implications of the Wayfair decision





State Tax Overview

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A Four-Step Analysis

- Where does the organization have nexus?
- What taxes can be imposed on the organization once nexus is established?
- Is there a need to register as a nonprofit or apply for a separate state nonprofit determination?
- How does the organization comply?





State Tax Nexus

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What Activities Create Nexus

- Economic Activities
 - Wayfair Decision
- Physical Presence
 - Employees
 - Contractors
 - Inventory
 - Assets



Economic Activity

- Wayfair Decision
 - June 2018 USSC decision overturning the physical presence requirement for sales and use tax collection under *Quill* (1992)
 - States are now enforcing sales tax collection and remittance on remote sellers
- Who is a Remote Seller
 - Any organization that makes sales into a state where it does not maintain a physical presence
 - Has sales and/or transaction volumes over a certain threshold
 - Generally, \$100,000 of sales
 - Generally, 200 Transactions



Economic Activity

- Example Potential Economic Activity
 - Virtual Conferences
 - Bookstore online sales
 - Data Processing
 - Subscriptions
 - Billing Services
 - Membership Dues
- Service revenue is generally sourced to where benefit is received
 - Generally, not taxable, but in many states will be included in economic nexus measurement
 - Some states, South Dakota, New Mexico, and Hawaii tax most services



Physical Activity

- Employees/Contractors in the State
 - Remote workers such as:
 - Professors conducting online training from their in-home office
 - Editors of a trade publication working from their in-home office
 - Travel outside organization's normal footprint
 - Participation in charitable functions
 - Speaking engagements
 - Research assignment
 - Development officer's travel to various state
- Assets in the State
 - Inventory held by others
 - Equipment "loaned" to others





Potential State Taxes



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What Taxes Apply

- Income Taxes
 - Most states will accept federal exemption under IRC Section 501
 - Unrelated business income tax applies in most states – separate registration may be required
 - Franchise and capital base taxes will not generally apply if exempt for state income tax purposes
- Sales/Use Tax
 - Most states require a separate registration for sales and use tax to receive exempt status
- Gross Receipts Tax
 - Most states will require payment of gross receipts tax



Income/Franchise/Gross Receipts

- Most states provide an exemption from income tax for nonprofit organizations.
 - Must be related to the organization's purpose
 - Unrelated Business Income would still be subject to state taxation
- The exemption does not generally extend to “non-income based” taxes
 - Washington B&O
 - Ohio Commercial Activity Tax
 - New Mexico Gross Receipts



Sales Taxes

Number One Sales Tax Rule for All States

- Sales of tangible personal property and enumerated services are taxable unless a specific exemption exists
 - Does the state recognize the IRS tax exempt status of the nonprofit for sales and use taxes?
 - For nonprofits, does this mean purchases are exempt from sales and use tax?
 - Is the nonprofit required to collect tax on the sale of goods



Sales Taxes

- Nonprofit exemptions are varied by state so state by state research is required
 - Many states provide an exemption from sales and use taxes for purchases by nonprofit organizations
 - This exemption does not extend to sales by the organization to an ultimate purchaser



Organization Purchases

- Nonprofit purchases are presumed taxable unless a specific exemption exists
- The most common exemption is for the purchase of goods used in the charitable purpose
 - Software, office equipment & furniture, supplies, etc.
- Exemption certificates should be issued to suppliers where appropriate
- Don't assume that because no tax was assessed on an invoice that the product is exempt



Sales by Organizations

- Most states consider sales of tangible personal property as taxable
- Even nonprofits may be required to collect sales tax on sales of tangible personal property
- Exemptions
 - Fundraising
 - De minimis sales
 - Product itself is exempt
 - Customer itself is exempt



Questions



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Thank you!

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Lunch and Networking

