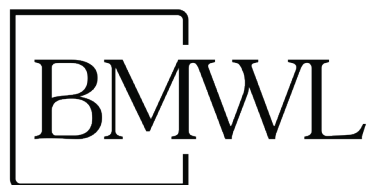


NO IS EASY. YES MIGHT TAKE SOME WORK.

By Mike Batts, CPA

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Can our church raise tax-deductible funds to help a family who just lost their home in a fire? Can our organization provide financial assistance tax-free to the young widow of one of our employees who recently died suddenly? Can our organization pay a speaker's fee to a guest speaker from another country who does not have a U.S. work permit? Can our organization make a grant directly to an orphanage in Haiti? Can our Sunday School class host a church-wide dinner with the proceeds going to help a poor young girl in our church buy new leg braces?

These are all actual questions that real nonprofit organizations have asked. And they are challenging questions.

Faced with challenging questions, nonprofit organizational leaders and even some professional advisors – attorneys and CPAs – can be tempted to immediately take the path of least resistance and simply answer, “No.”

And sadly, in many cases, the result is that an organization doesn't take action that would be helpful to people in need or that would help accomplish an important missional objective of the organization. No can mean an organization doesn't do something it *should* do.

But what if there were a better answer than No?

Many times, No answers are half-baked, are not based on actual law, and do not take into consideration opportunities that may exist in the law. No is easy. No is riskless. No doesn't require analysis or research – and therefore No seems inexpensive.

Of course, there are times when No is the correct answer to a question. When an issue is black and white, and the question is right versus wrong, No may be the only correct answer. But when it comes to questions about tax and legal compliance,

sometimes No isn't the only answer or the best answer...or even the *right* answer. Attorneys and CPAs often joke about how the answer to many questions is “It depends.” But at the core of that humorous axiom is a truth – answers to many questions are simply not simple.

Let's look further into one of the examples from the first paragraph of this article – whether an organization can provide financial assistance tax-free to the young widow of one of its employees who recently died suddenly. I recently participated in an online discussion in which this very question was raised by an organization leader. Several responses from nonprofit leaders, including one from a prominent attorney, amounted to simply “No.”

While the responders to the question cited no actual legal authority for their answers, their responses were presumably based on a rule in federal tax law that says employers cannot make tax-free gifts to or for the benefit of their employees.

In an effort to help this organization aid this young lady, I provided a different response. I noted that the law states that an employer cannot make a tax-free gift to or for the benefit of its employees. I noted that since the employee had actually passed away, a gift to the widow is clearly not a gift *to* the deceased employee, and it seems that there is a reasonable question as to whether the gift would be deemed to be for his benefit. I also noted that there is at least one legal treatise that addresses this very issue taking the position that in such scenarios, a benevolence payment to a widow of an employee could possibly be deemed not to be to or for the benefit of the employee. I also referenced helpful language in the Congressional Committee Report explaining the intent of the law. I suggested that if the organization really wanted to find a way to provide the young widow with tax-free financial assistance, it could engage a tax attorney or knowledgeable CPA to look at the law, taking into consideration the factors I described. The response from the original questioner? A thank you to the “No folks” and no response regarding the possibility of a different answer. I don't know

whether the poor young widow received any financial help from the organization, but I do hope that the organization's easy No answer didn't stop it from helping someone truly in need.

I will not soon forget a comment made to me years ago by an executive leader of a large nonprofit organization, referring to the financial administration office of his organization. "The Dark Side," he called it. He was referring to his perception that the financial administrators of the organization were a frequent obstacle to the organization's ability to implement innovative ideas. "They always say no," he mused aloud with frustration.

While financial leaders must, indeed, ensure that an organization's activities comply with the law and represent ethical practices, another important objective of financial administration is to facilitate the ability of an organization's leaders to carry out the organization's purposes – even when doing so involves challenging issues and innovation.

Failing to operate with such a mindset not only stymies the mission of an organization, it discourages visionary leaders and can create tension in an organization.

Finding a way to legally and ethically accomplish a particular objective can involve work and cost. It is appropriate to weigh the work and cost against the value of accomplishing the objective.

Sometimes, it is appropriate for an organization to spend money to engage the services of a professional (CPA, attorney, etc.) to help it find a permissible way to accomplish a particularly challenging objective or to address a particularly challenging question.

It is also appropriate to apply common sense. One of the example questions at the beginning of this article relates to whether a church Sunday School class can have a church dinner to raise money for a needy young girl's leg braces. No matter what legal or tax theory one may attempt to apply to this scenario, there is no evidence that any church in the history of the United States has ever been sanctioned by the IRS for engaging in such an activity. And imagine the public outcry if the IRS were to attempt to penalize a church for doing so. When evaluating such a question, keep in mind that a little girl needs leg braces.

No is easy. Yes might take some work. And Yes may be the right answer.

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