



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Document Retention Policies as a Best Practice

By Sara Weed, Partner at Paul Hastings

The Internal Revenue Service (“IRS”) asks in the Form 990, the annual information return filed by most tax-exempt organizations, several questions about board structure and organizational policies, including whether the entity has a written document retention policy.

While not specifically required by the IRS Code, it is clear that the IRS views such policies and related practices as critical to ensuring that tax-exempt organizations are both sufficiently transparent and otherwise in compliance with applicable law.

Other bodies of law like the Sarbanes-Oxley Act of 2002 impose criminal liability on organizations, including tax-exempt organizations, that destroy records with the intent to obstruct a federal investigation. As a result, it is recommended that tax-exempt organizations adopt a document retention policy as a best practice to address this risk as well.

The Basics of Document Retention Policy

A document retention policy lays out the organization’s agreed-upon approach for maintaining documents and records of various kinds in the files of the organization. Because documents vary in their significance to the organization, the document retention policy should identify the period each document type should be retained. For example, it may call out that grant documentation be maintained for four years, that tax records be maintained for seven years, and board meeting minutes be retained permanently.

The document retention policy provides all members of the organizations (e.g., employees, officers, and directors) with notice of the time periods for which each type of document should be maintained and helps to protect against premature disposal or destruction of documents.

The document retention policy should include an exception from the general record retention periods in the event that litigation is pending or expected.

Developing and Maintaining a Document Retention Policy

It is important to consult with legal counsel regarding the form and substance of a record retention policy to ensure compliance with applicable law.

For those tax-exempt organizations that already have a record retention policy in place, it is also important to consult with legal counsel to ensure that no additional adjustments are necessary, either to address changes to the organization itself or legal requirements.

Dated: 6/29/2021

www.pbpatl.org

© 2020 Pro Bono Partnership of Atlanta, Inc. All rights reserved.