ATTORNEY GENERAL ISSUES GUIDANCE ON NYPMIFA

Nonprofit Alert
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Practices & Industries

Tax-Exempt Organizations

The New York State Office of the Attorney General recently issued guidance on the New York Prudent Management of Institutional Funds Act (NYPMIFA), which became law on September 17, 2010.

NYPMIFA includes provisions dealing with charities' management and investment of funds, the delegation of investment functions, and spending from endowments. Much of NYPMIFA comes from the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which was enacted in some form by 46 other states before New York's adoption. Several provisions of NYPMIFA, however, are unique to New York, and the attorney general's guidance addresses these in some detail.

NYPMIFA gives charities more flexibility in determining spending from their endowment funds. Prior law prohibited a charity from spending from an endowment fund if such spending would bring the value of the fund below its "historic dollar value," i.e., the total value of monies contributed to the fund by its donors. Under NYPMIFA, a charity must consider a number of specific factors to determine how much can be spent prudently from an endowment, but spending is permitted even if it brings a fund's value below its historic dollar value.

Before it can apply NYPMIFA's new standard to a pre-NYPMIFA endowment fund, a charity must notify available donors and give them 90 days in which to opt out of the new standard. According to the attorney general's guidance, a charity must send these 90-day notices before any monies can be spent from an endowment fund, even if the charity intends to continue preserving the fund's historic dollar value. If a donor's address is not known, the attorney general's guidance states that the charity must make "reasonable efforts" to locate the donor, "including Internet searches and contacting known associates of the donor, such as an attorney who represented the donor when the gift was made." The charity must document its efforts to locate donors.

NYPMIFA's 90-day notice requirement has raised a variety of issues that are not covered in the official attorney general guidance. For example, a charity may have endowments that have multiple donors, such as a scholarship fund to which many people contribute small amounts in honor of a deceased teacher or student. According to unofficial guidance from the attorney general, each such contributor is a donor to the fund and must receive the required 90-day notice. If some donors to a fund opt out of the new standard and others do not, unofficial guidance from the attorney general instructs the charity to divide the fund into two parts in proportion to the value of the original donations.

Another NYPMIFA requirement that can be cumbersome for charities is the requirement that prudent spending decisions be made on a fund-by-fund basis. The law seems to envision a charity with only one or two endowment funds, but many charities have dozens or even hundreds of funds. Typically, these charities have set a single "spending policy" formula that applies to all funds. The attorney general's guidance permits charities to make a single spending decision for multiple funds, so long as the funds are "similarly situated." To do so, the charity must have a written procedure for determining when a group of funds is similarly situated, and must document the basis for such determinations.