

## ASK THE EXPERTS

*ical Society Foundation v. United States*, 345 F. Supp. 900 (W.D. Mo. 1972) demonstrates that sometimes numbers are not critical to the outcome of the analysis. In that case, a U.S. District Court was reviewing whether income from the sale of phonograph records was subject to UBIT. Some of the workers involved in producing the records were compensated and some were not. Both parties offered the court several different percentage calculations based on such things as the monetary value of services performed, the number of hours worked by various individuals, and the intrinsic importance of the work. Surprisingly, the court essentially ignored all of the parties' calculations. Instead, after reviewing all the facts, the court determined that substantially all of the work was performed without compensation. This determination was based primarily on the court's

general feeling that uncompensated work "was the essence of the entire endeavor."

Your question indicates that you want to operate "at the limit" of the law. However, finding the limit in a gray area of law is pretty much impossible. It is also risky to draw any firm conclusions from only a few court cases. Nevertheless, if I were operating a thrift shop or similar activity, I would probably feel comfortable if the percentage of donated merchandise in the store (or the percentage of uncompensated workers operating the store) was 85% or higher. Remember, however, that if a thrift shop steps over the line by selling too many non-donated items, the IRS could well take the position that *all* the store's sales are subject to UBIT, including the sales of donated merchandise. Thus, one should always err on the side of being conservative.

Of course, if purchasing a significant amount of merchandise and reselling it in a thrift shop is an easy and lucrative form of income for your organization, it may not make economic sense to completely stop selling such items or to limit such sales to a low percentage just to avoid UBIT. A better alternative might be to discuss with a tax advisor the feasibility of restructuring the thrift shop operations in a way that would allow the organization to pay UBIT only on the sales of purchased items that are being resold, but not on the sales of donated items. In some cases, restructuring may warrant a request for a private letter ruling from the IRS.

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## Does Your Board Need Liability Insurance?

**Q:** The mission of our nonprofit organization is to help eradicate domestic violence. A Friend's Place provides assistance to women who are often isolated and unaware of their options and available services. We have become a clearinghouse for a wide range of referrals as well as being a safe haven for women and children who need to talk. Our staff of educators, social workers, counselors, and volunteers provides a hotline, free and confidential counseling, legal referrals, and a community education committee, which includes a speakers' bureau.

Our question is this: Does the board need liability insurance? We have general liability insurance for our organization and are now paying over \$1,300 for board insur-

ance. Is this really necessary, or can we save money by eliminating it?

*Juanita Meyer-Dougherty  
Executive Director  
Friends of Battered Women &  
Their Children  
Evanston, Illinois*

**A:** We believe that your board does need Directors and Officers (D & O) liability insurance, even though it is costly to your organization. Many D & O claims are filed by employees of nonprofit organizations. These claims include wrongful termination, failure to properly promote employees, sexual harassment, and discrimination in salary and duties. Members of the board of directors as well as officers of your organization may be sued individually or as a group by employees who are unhappy with some employee-related issue.

Others, including clients of your organization, may sue as well. Discrimination issues, such as racial, sexual, religious, age, and sexual-

orientation matters, are being litigated more and more often. Members of the board and officers of the organization are often included in such suits. Federal regulations on the environment, finances, and other areas may also lead to litigation naming board members of the organization as defendants.

Volunteer board members, who often have to make difficult decisions for their organizations, need proper D & O insurance to protect them from the risk of litigation. Failure to provide this insurance may make it difficult to attract and keep good board members, who cannot afford to serve on your board with such risk to their personal assets.

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*Also see "Choosing the Right D & O Insurance for Your Board" in Nonprofit World, January-February 1994.*

**Would eliminating board insurance be a good cost-cutting measure?**