This report is subject to disclosure under the South Carolina Freedom of Information Act, Chapter 4, Title 30 of the South Carolina Code of Laws. If a copy of the report is requested pursuant to the Freedom of Information Act, any information contained in the report that would be subject to Section 12-54-240 of the Code will be redacted prior to releasing the report.

Audit of Palmetto Kids First Scholarship Program, Inc.

I. INTRODUCTION

The South Carolina General Assembly passed Proviso 1.85 within H. 3710 for fiscal year 2013-2014 and Proviso 1.80 within H. 4701 for fiscal year 2014-2015, establishing Educational Tax Credits for Exceptional Needs Children and providing for tax-exempt charitable entities known as Scholarship Funding Organizations ("SFOs") to raise money and distribute scholarships to children with "exceptional needs." The South Carolina General Assembly has continued the Educational Credits for Exceptional Needs Children program for fiscal year 2015-2016, by enacting "within H. 4230 (R.130) of the state budget a provision that further refines the Educational Credit for Exceptional Needs Children (ECENC)."[1]

The South Carolina Department of Revenue (the "Department") initiated a review of one SFO, Palmetto Kids First Scholarship Program, Inc. ("PKF"), on October 8, 2014 due to reported improprieties in PKF's operations, as well as issues involving Jeff Davis, who filed for bankruptcy in 2011, and who is closely associated with PKF.

A public records search into Mr. Davis revealed multiple concerns including bankruptcy, interim suspension and eventual revocation of a professional designation, litigation involving embezzlement, use of client funds for personal and business expenses, forgery, as well as pleading the 5th Amendment against self-incrimination during deposition testimony in a lawsuit. *See* Exhibits (G), (H), and (J).[2] Given that PKF solicits charitable donations from the public and operates a charitable organization exempt from federal and state taxation under the tax laws, the Department initiated a review of the SFO to ensure the integrity and viability of the Educational Credits for Exceptional Needs Children program, and to protect the taxpayer and the public from possible impermissible actions by PKF.

PKF incorporated under the South Carolina Nonprofit Corporation Act on June 20, 2013. The Internal Revenue Service ("IRS") granted PKF nonprofit status on November 20, 2013, making PKF a 501(c) (3) organization (the IRS retroactively granted PKF 501(c)(3) status since June 20, 2013). The South Carolina Secretary of State Office recognized PKF as a charity under the South Carolina Solicitation of Charitable Funds Act on January 10, 2014.

---

[1]http://www.eoc.sc.gov/educredit4exceptionalneeds/Pages/default.aspx

[2]Exhibit (J) is an order issued in an adversary proceeding by the United States Bankruptcy Court for the District of South Carolina. *Taylor v. Davis*, 494 B.R. 842 (2013). The Fourth Circuit subsequently affirmed in a unanimous opinion. *Taylor v. Davis*, 607 Fed. Appx. 298 (2015).

Olga Lisinska is the Registered Agent and Director of Operations for PKF.[3] She is the wife of Mr. Davis, who also organized a similar nonprofit in Atlanta, Georgia and is actively involved in PKF's affairs.

PKF lists Jaroslaw Jasinski as its President on the entity's 2013 federal 990 tax return for nonprofit organizations (Exhibit Q). IRS Form 990s are publically available. David Owens is the Vice President, and Shawn Lifrage is the Secretary and Treasurer. These same individuals comprise the Governing Board of Directors for PKF.

Shawn Lifrage resides in Florida. David Owens currently lives in France. Jaroslaw Jasinski resides in Poland. The Director of Operations, Mrs. Lisinska, the Director of Operations, currently resides in South Carolina.

All known documents show that PKF specifies its office as 1985 Riviera Dr. 103 – 126, Mount Pleasant, South Carolina 29464. The address houses a PostNet franchise, a "neighborhood business center that offers business services,"[4] including secure mailbox and shipping services. PKF has no known established physical office.

Mrs. Lisinska is also the Registered Agent and sole Manager of Scholarship Services, LLC. Scholarship Services, LLC is a domestic South Carolina limited liability company registered with the South Carolina Secretary of State effective January 31, 2014. The company's office address is listed as: 1985 Riviera Dr. 103 – 126, Mount Pleasant, South Carolina 29464, the same address as listed for PKF. PKF contracted with Scholarship Services, LLC, and Mrs. Lisinska to manage its operations, effective as of February 1, 2014.

Pursuant to Section 9 of H. 4230, PKF applied to the Department for certification as an eligible organization for the 2015-2016 fiscal year.[5] The Department approved PKF on July 1, 2015.[6]

The Department examined PKF's practices from January 1, 2014 through December 31, 2014 (Audit Period), under applicable South Carolina and federal law, including but not limited to, Provisos 1.85 of H. 3710 and 1.80 of H. 4701, H. 4230, IRC 501(c)(3), the South Carolina Nonprofit Corporation Act, the South Carolina Solicitation of Charitable Funds Act, and the South Carolina Forgery, Larceny, Embezzlement, False Pretenses, and Cheats Act.

The structure of the report follows:

- Department's Duty and Authority Under Section 9 of H.4230 (Section II)
- Summary of the Department's Findings (Section III)

---

[3]https://palmettokidsfirst.org/about-us/board-staff/ (accessed 5/29/15).

[4]https://postnetfranchise.com/research-postnet/what-is-postnet/

[5]Section 9 of H.4230(H)(1). Previous Provisos did not require this administrative step.

[6]However, "[b]y receiving the application materials and approving the organization as an eligible organization pursuant to item [H](1), the Department is not determining that the organization meets all of the requirements of a qualified nonprofit scholarship funding organization, and the organization remains subject to examination as provided for pursuant to subsection (I)." §9 H. 4230(H)(2).

- Detailed Findings (Section IV)
- Department's Conclusion (Section V)
- Table of Contents for Exhibits A-R (p.16)

II. DEPARTMENT'S DUTY AND AUTHORITY UNDER H. 4230

Section 9 of H. 4230 (Exhibit P) provides that the Department has the authority to oversee, audit and examine the nonprofit scholarship funding organizations, including determining whether the nonprofit scholarship funding organization operates consistent with requirements for a tax-exempt organization.[7] Section 9 of H. 4230 further provides that:

> "if at any time during the year, the Department has evidence, through audit or otherwise, that a nonprofit scholarship funding organization is not being operated in a manner consistent with the requirements for operating an IRC 501(c)(3) organization or is not in compliance with any other provision of this proviso, the Department immediately may revoke the organization's participation in the program."

H. 4230 §9(I)(2)(a).

III. SUMMARY OF FINDINGS

Based on its review during the Audit Period, the Department has identified twenty (20) findings as violations or potential violations of Provisos 1.85 and 1.80, or the laws governing tax-exempt charitable organizations. Some of the violations occur under multiple bodies of law, which the summary below reflects. The twenty (20) findings are grouped into eight (8) broad categories as outlined below. Details of each violation are provided in Section IV.

A) PKF engages in quid pro quo arrangements with donors in violation of the Provisos. A number of PKF's donors have children who receive scholarships.

   - 1 Violation, Section IV, pages 4-6

B) PKF fails to provide appropriate contemporaneous substantiation (as required by federal tax law) to donors whose children receive scholarships.

   - 1 Violation, Section IV, page 6-7

C) Mr. Davis' involvement with PKF violated the express prohibition of Proviso 1.80, which bars the participation of anyone who filed for bankruptcy within the past seven (7) years.

   - 1 Violation, Section IV, pages 7-8

---

[7] *H. 4230* §9(I)(1).

D) PKF's contractual relationship with Scholarship Services, LLC violates tax-exempt laws.

- 1 Violation, Section IV, pages 8-10

E) PKF's Board of Directors and officers failed to follow state laws governing its oversight and approval of PKF's actions and activities.

- 4 Violations, Section IV, page 10-11

F) PKF inaccurately completed IRS Form 990.

- 7 Violations, Section IV, pages 11-13

G) PKF and Scholarship Services, LLC, the entity purportedly soliciting donations from the public, failed to comply with the South Carolina Solicitation of Charitable Funds Act by not disclosing the relationship between the two organizations, as well as other information, to the South Carolina Secretary of State.

- 4 Violations, Section IV, pages 13-14

H) Despite specific instructions from the Department to cease the activity, PKF altered the Department's Form TC-57A and its instructions by superimposing its logo onto the form to give the appearance that the form was specific to PKF.

- 1 Violation, Section IV, page 14-15

IV. DETAILS OF FINDINGS

A. Quid Pro Quo Violations

1. Subsection B of the Provisos states that a person may receive a tax credit against income taxes for a contribution to a nonprofit scholarship funding organization, as long as the person does not designate a specific child or school as the beneficiary of the contribution. *Proviso 1.80*(B)(1)-(2); and *Proviso* 1.85(B)(1)-(2).[8]

The Department determined that PKF marketed the Educational Credits for Exceptional Needs Children program to tax professionals, as well as parents at certain private schools during an interview with Mrs. Lisinska on October 23, 2014. Additionally, in an interview with The State newspaper, Mr. Davis actually admitted that there is some connection between "donations and who gets scholarships…out of fairness to the schools [that generate the most parent participation in the program for PKF]" (Exhibit B).

An e-mail excerpt from a partnering school further confirmed the interaction between school officials and PKF. PKF asked schools to share mailing lists that included "Parent List, Alumni

[8] H.4701, Part 1B, §1, 1.80 and H.3710, Part 1B, §1, 1.85.

List, Board List, School Donor List, etc." It further states that, "We are building our own lists from parent applicants and the 'manual' route, but your help would greatly speed the process especially in light of the 'competition.'"[9]

The Department did not interview any of the parents who attended the above meetings held by PKF. However, an article in The State newspaper, published May 10, 2014 (Exhibit B), quoted a leader of one of the private schools who believed PKF insinuated quid pro quo arrangements to entice parents to donate.

Regarding parental donations, PKF is the only SFO that did not agree to sign the Access Opportunity of South Carolina Best Practices Pledge (Exhibit D). While there were several versions within the last two years, the most current Pledge has the following language:

> NO PARENTAL DONATIONS
>
> The SFO pledges to neither accept donations from the parents or guardians of applicant or awardee students, nor award grants to the children or dependents of donors, within the same financial, academic and/or tax year.

The Department learned that other SFOs refund all donations received from parents of scholarship recipients. Additionally, if another SFO received an application from a parent who also donated, that SFO would then forward that application to another SFO per an agreement. Consequently, the Department understands that the other SFOs would not have any quid pro quo arrangement among donors because of operational procedures and the best practices pledge.

The other SFOs have clear and distinct separation of duties. Each of the other SFOs has a committee that strictly solicits donations, and a separate scholarship committee to award the scholarships. Separate duties for members of separate committees clear those members of any conflict of interest in the scholarship process - and coordination between committees prevents unintended quid pro quo arrangements.

PKF fails to follow such procedures. Mrs. Lisinska receives the donations to PKF as Manager of Scholarship Services, LLC (Exhibit K). Mrs. Lisinska also asks PKF's Board to approve all of the scholarships in her capacity as the Director of Operations for PKF.

The Department ultimately determined that 100% of the children whose parents donated to PKF received scholarships, whereas the Department has some evidence that children with parents who did not donate to PKF did not receive scholarships. The child or children of 8.2% of PKF's total number of donors for part of fiscal year 2013-2014 received a grant valued at either $10,000, or the total cost of tuition (which includes tuition, transportation, or textbook expenses). *Proviso* 1.85(7)(b) and (C); *see* also *Proviso* 1.80(7)(b) and (C). The same is true of 14.41% of PKF's total number of donors for part of fiscal year 2014-2015. *Id.* The date range of January to June 2014 does not encompass the entire fiscal year of 2013-2014, nor does the date range of July to December 2014 encompass the entire fiscal year of 2014-2015. It is likely the Department would find more quid pro quo arrangements out of the total number of donors if the audit period encompassed the entirety of those fiscal years.

---

[9]E-mail between PKF and Einstein Academy dated February 28, 2014, provided by Einstein Academy (Exhibit R).

PKF's marketing strategy targets parents of private school students and knowingly accepts donations from parents of scholarship applicants. The marketing strategy, coupled with the grant of scholarships to the children of parents who donated to PKF, is evidence of quid pro quo arrangements. Quid pro quo arrangements violate the express prohibition of the Provisos by designating the donor's child and that child's school as the beneficiary of the contribution. Each designation violates the Provisos and bars a person or persons from claiming a tax credit based on their donations. *Proviso* 1.80(B)(1)-(2); and *Proviso* 1.85(B)(1)-(2). The same prohibitions continue under Section 9 of H.4230.[10]

Finally, the ECENC is subject to a cap on the amount of funds available for the tax credit. If individuals claim tax credits that they are not entitled to receive, the action potentially causes an eligible and qualified taxpayer to lose the tax benefit intended by the General Assembly.

Quid pro quo arrangements implicate PKF's status as an SFO.

B. Substantiation of Donations

As discussed in subsection A above, PKF engaged in quid pro quo arrangements in violation of the Provisos. One hundred percent (100%) of the qualifying children whose parents donated to PKF received scholarships. The child or children of 8.2% of PKF's total number of donors for part of fiscal year 2013-2014 received a grant valued at either $10,000, or the total cost of tuition (which includes tuition, transportation, or textbook expenses). *Proviso* 1.85(7)(b) and (C); see also *Proviso* 1.80(7)(b) and (C). The same is true of 14.41% of PKF's total number of donors for part of fiscal year 2014-2015. *Section 9* of H. 4230(B)(2) and (C).

Federal law imposes disclosure requirement on charitable organizations that receive quid pro quo contributions in excess of seventy-five dollars. The organization must provide a written statement that: 1) informs the donor that the amount of the contribution for federal income tax purposes is reduced by the amount of goods or services given by the organization, and 2) provides the donor with a good faith estimate of the value of such goods or services.[11] A quid pro quo contribution "means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the done organization."[12]

The Department received no evidence that PKF provided a disclosure document to the donors whose children received scholarships.

> "If an organization fails to meet the disclosure requirements of section 6115 with respect to quid pro quo contributions, such organization shall pay a penalty of $10 for each contribution in respect of which the organization fails to make the required disclosure, except that that total penalty imposed...with respect to

[10] H.4230§9(B)(1)(b).

[11] 26 *U.S.C.* §6115(a)(1)-(2).

[12] 26 *U.S.C.* §6115(b).

a particular fundraising event or mailing shall not exceed $5,000.00."[13]

Operating a scholarship funding organization in a manner consistent with the operating requirements of an IRC Section 501(C)(3) organization is a requirement of Section 9 of H.4230, the ECENC for the 2015-2016 fiscal year.

Failing to comply with the substantiation requirements, as outlined herein, violates an operating requirement for a 501(C)(3) organization, and consequently implicates PKF's status under Section 9 of H.4230.

C. *Actions by Prohibited Persons*

1. For fiscal year 2013-2014, a "Nonprofit Scholarship funding organization" means a charitable organization that does not have as a member of its governing board a person who declared bankruptcy in the past seven years. *Proviso* 1.85(7)(f).

For fiscal year 2014-2015, a "Nonprofit Scholarship Funding Organization" means a charitable organization that does not have a member of its governing board or an employee, volunteer, contractor, consultant, or fundraiser who declared bankruptcy within the last seven years. *Proviso* 1.80(7)(f).[14]

Mr. Davis declared bankruptcy on December 5, 2011 (Exhibit J, p. 2). A review of e-mails and newspaper articles indicates that, notwithstanding his bankruptcy, Mr. Davis occupied many of the prohibited roles with PKF.

While Mr. Davis did not serve on PKF's Board of Directors, he did maintain an active role with PKF as both a "volunteer" and an "advisory board member" (Exhibit C). He also maintained a role in reaching out to parents and schools to solicit donations (Exhibit B). Evidence suggestions Mr. Davis continued to occupy these positions into fiscal year 2014-2015.

During meetings between PKF and the Department in Columbia, Mr. Davis answered the majority of the questions regarding the organization, despite the presence of the Director of Operations, Mrs. Lisinska. Mr. Davis answered the majority of the questions about PKF and its practices, also in the presence of the organization's legal counsel, attorneys from the McNair Law Firm. These attorneys did not seek to clarify that Mr. Davis was unaffiliated with PKF.

Additionally, the Department discovered a photo of Mr. Davis and Mrs. Lisinska jointly presenting a check from PKF's board to the Einstein Academy on March 13, 2015 (Exhibit F). PKF's Facebook page also listed that event date as March 13, 2015.

---

[13] 26 *U.S.C.* §6714(a).

[14] The prohibition regarding bankruptcy was removed in the 2015-2016 Proviso so that this discussion only pertains to PKF operations during the audit year, January 1, 2014 through December 31, 2014.

Mr. Davis invited an employee of the Department, via e-mail, to a PKF event after meeting with members of the Department about the audit of the SFO (Exhibit O). The event took place on March 21, 2015 in Ridgeway, SC (Exhibit O).

At that event in Ridgeway, Mr. Davis again participated with Mrs. Lisinska by jointly presenting a check on behalf of PKF's board to school officials (Exhibit I). Mr. Davis' response to questions, engagement in advocacy and participation in events on behalf of PKF provide clear evidence of his active involvement in PKF operations in violation of the Provisos.

D. Contractual Relationship Violating Tax-Exempt Laws

1. PKF engaged in an "excess benefit transaction" in violation of federal tax-exempt law when it contracted with Mrs. Lisinska at Scholarship Services, LLC.

PKF is not a private foundation,[15] government entity, or foreign organization that receives most of its support from outside the United States - so the prohibition against excess benefit transactions applies.[16]

An "excess benefit transaction" occurs when an applicable tax-exempt organization directly or indirectly provides an economic benefit to a disqualified person and that benefit exceeds the value of the consideration (including the performance of services) received for providing such a benefit.[17]

Scholarship Services, LLC is an "intermediary" for purposes of the "excess benefit transaction."[18] An "intermediary" is "any person (including an individual or a taxable or tax-exempt entity) who participates in a transaction with one or more disqualified persons of an applicable tax-exempt organization."[19] Scholarship Services, LLC is a limited liability company. Mrs. Lisinska is its sole Manager. The contract between Scholarship Services, LLC and PKF would necessarily provide economic benefit to Mrs. Lisinska,[20] and that fact could not fail to be understood before the parties signed the contract.[21]

---

[15]PKF is not a private foundation under 26 U.S.C. §509(a)(1) and 26 U.S.C. §170(b)(1)(A)(vi).

[16] 26 C.F.R. §53.4958-2(a)(1)-(2); *See* also http://www.irs.gov/irm/part7/irm_07-027-030.html (Section 7.27.30.2).

[17]26 *C.F.R.* §53.4958-4(a)(1).

[18]26 C.F.R. §53.4958-4(a)(2)(iii).

[19]*Id.*

[20]26 C.F.R. §53.4958-4(a)(2)(iii)(A).

[21]26 C.F.R. §53.4958-4(a)(2)(iii)(B)(1).

A "disqualified person" includes any person in a position to exercise substantial influence over the affairs of the organization.[22] The definition also includes a "family member" of a person in a position to exercise substantial influence over the affairs of the organization.[23] "Persons having substantial influence" include Presidents, Chief Executives, or Chief Operating Officers.[24] "Family members" of a disqualified person include "spouses of brothers or sisters (whether by whole or half-blood)."[25]

Mrs. Lisinska is the sister-in-law of Jarsolaw Jasinski, the President of PKF. Her familial relationship to someone who exercises "substantial influence" over the organization renders Mrs. Lisinska a "disqualified person."

Moreover, as PKF's Director of Operations, Mrs. Lisinska "manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole."[26] The importance of Mrs. Lisinska' s managerial activities likely renders her a "disqualified person" under the "facts and circumstances" test for such an individual.[27] Finally, Mrs. Lisinska' s position as the Director of Operations for PKF may be equivalent to what would normally be thought of as a Chief Operating Officer because her duties involve the management of the organization's entire set of operations.[28] "The category of persons having substantial influence includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization."[29] There is no other individual responsible for PKF's operations besides Mrs. Lisinska.

The value of the contract satisfies the second part of the excess benefit test.[30] The Department believes the contract Mrs. Lisinska obtained far exceeded the economic value of her services. The contract she obtained for management services garnered her over $132,000 in the four months between the signing of the contract (February 1, 2014) and the deadline of the 990 tax form (May 31, 2014). To facilitate comparison, the figure is almost $27,000 more than the

[22]26 C.F.R. §53.4958-3(a)(1).

[23]*Id.*

[24]26 C.F.R. §53.4958-3(c)(2).

[25]26 C.F.R. §53.4958-3(b)(1)(iii).

[26]26 C.F.R. §53.4958-3(e)(2)(v).

[27]*Id.*

[28]26 C.F.R. §53.4958-3(c)(2).

[29]*Id.*

[30]*See* n. 17.

national average for a non-profit Chief Operating Officer's *annual* salary.[31] She continued to bill for contract services, and received an additional $50,000 by the end of the 2014 calendar year. Scholarship Services, LLC and Mrs. Lisinska received more than $182,000 in just 10 months. Scholarship Services, LLC may have billed PKF since the end of the audit period.

Compensation is not excessive when it is reasonable. Reasonable compensation is the value of services ordinarily paid for like services by like enterprises under like circumstances.[32] The standards for deducting business expenses (Section 162) apply in determining the reasonableness of compensation.[33]

While the fact that a compensation arrangement is subject to a cap, is a relevant factor in determining the reasonableness of compensation, the fact that a state or local legislative or agency body or court authorized or approved a particular compensation package is not determinative of the reasonableness of compensation for purposes of Section 4958.[34]

Therefore, the fact that the South Carolina General Assembly allows SFOs administrative expenses to equal 5% of contributions and revenue for a particular year,[35] does not determine whether the amount paid to a disqualified person is reasonable or excessive under federal law. Furthermore, the fact that the General Assembly seemingly gave no cap on the amount of administrative expenses during the SFOs first year of operation, is also indeterminate under federal law.[36]

The information the Department possesses regarding the value of the services provided by Mrs. Lisinska and Scholarshp Services, LLC leads to the conclusion that she received an excessive benefit when compared to compensation received by like enterprises giving like services under like circumstances.

Given all of the above, PKF engaged in an "excess benefit transaction" when it contracted with Mrs. Lisinska at Scholarship Services, LLC. An "excessive benefit transaction" violates an operating requirement of a 501(c)(3) organization, and implicates the SFO status of PKF.

E. Failure of Board of Directors and Officers

1. A corporation shall keep as permanent records minutes of all meetings of its board of directors, and a record of all actions taken by its board of directors without a meeting. *S.C. Code Ann.* §33-31-1601(a). "A corporation shall maintain its records in written form or in another

---

[31]The NonProfit Times, *NonProfit Organizations Salary and Benefit Report—Executive Summary*, p. 3 (2014) (Exhibit N).

[32]26 C.F.R. 53.4958-4(b)(1)(ii)(A)

[33]*Id.*

[34]*Id.*

[35]*Id.*; *See also* Proviso 1.85(7)(b); and Proviso 1.80(7)(b).

[36]*Id.*; *See* Proviso 1.85(7)(b); and Proviso 1.80(7)(b).

form capable of conversion into written form within a reasonable time." *S.C. Code Ann.* §33-31-1601(d). The Department found no evidence that PKF possess minutes of meetings or records of actions taken without a meeting, which violates Section 33-31-1601. *S.C. Code Ann.* §33-31-1601(a).

2. The direct responsibility for keeping minutes and authenticating records belongs to the Secretary of the corporation, *S.C. Code Ann.* §33-31-140(33), one of the required nonprofit corporate officers. *S.C. Code Ann.* §33-31-840(a). PKF's bylaws state, "The Secretary shall keep or cause to be kept the minutes of all meetings and actions of the Board of Directors" (Exhibit E). The inclusion of this language gives rise to a legal duty, *S.C. Code Ann.* §33-31-841, a duty that PKF's Secretary failed to perform.

3. The Secretary's failure to perform his legal duty violates Section 33-31-842, the legal standard of conduct for officers. *S.C. Code Ann.* 33-31-842. Specifically, the Secretary failed "to discharge his duties with the care an ordinarily prudent person in a like position would exercise under similar circumstances...and in a manner the officer reasonably believes to be in the best interests of the corporation, and its members." *S.C. Code Ann.* §33-31-842(a)(2) and (3).

4. As seen above and throughout this audit, PKF's Board of Directors repeatedly failed to oversee the activities and decisions of both its officers and the corporation, generally. These issues include, but are not limited to, failures to maintain adequate corporate records, to avoid "excess benefits transactions," to adequately monitor PKF's operations so as to prevent Mr. Davis' prohibited involvement, and as will be discussed below, to ensure that the federal tax form 990 was completed accurately. "A director shall discharge his duties as a director in good faith, with the care an ordinarily prudent person in a like situation would exercise such duties under similar circumstances, and in a manner the director reasonably believes to be in the best interest of the corporation." *S.C. Code Ann.* §33-31-830(a)(1)-(3). Moreover, PKF's directors did not discharge their duties with the care that ordinarily prudent persons in similar positions would exercise under like circumstances. *S.C. Code Ann.* §33-31-830(a)(2).

F. Inaccurate Federal Tax Filings

1. PKF inaccurately stated on its Form 990 that it did not engage in any excess benefit transaction with a disqualified person during the year. (IRS Form 990, Part IV, Question 25(a)).

2. PKF failed to list Mrs. Lisinska as its Director of Operations on its IRS Form 990 (IRS Form 990, Part VII, Section A).

3. PKF inaccurately stated on its Form 990 that it contemporaneously documented meetings (IRS Form 990, Part VI, Section A., question 8).

4. PKF inaccurately stated on its Form 990 that the organization regularly and consistently monitored and enforced compliance with the conflict of interest policy (IRS Form 990, Part VI, Section B., question 12(c)). The Department found no evidence to substantiate that PKF monitored or enforced compliance with its conflict of interest policy.

5. PKF inaccurately stated on its Form 990 that the organization was not a party to a business transaction with a current or former officer, director, trustee, or key employee. Mrs. Lisinska is the Director of Operations for PFK; she is also the sole Manager of Scholarship Services, LLC, which PKF contracts with to obtain various services (IRS Form 990, Part IV, Question 28(a)).

6. PKF inaccurately stated on its Form 990 that the organization was not a party to a business transaction with a family member of a current or former officer, director, trustee, or key employee. Mrs. Lisinska, the Manager of Scholarship Services, LLC, is the sister-in law of Jarsolaw Jasinski, PFK's President (IRS Form 990, Part IV, Question 28(b)).

7. PKF inaccurately stated on its Form 990 that the organization was not a party to a business transaction with an entity of which a current or former officer, director, trustee, or key employee was an officer, director, trustee, or direct or indirect owner (IRS Form 990, Part IV, Question 28(c)).[37]

A 501(c)(3) organization has annual reporting requirements.[38] The failure to include or to list accurately all of the above information within annual return results in a fine of $100 for each day an organization with gross receipts in excess of one million dollars fails to complete its return with the required information. The maximum penalty is $50,000.00.[39] A willful submission of a return that the corporation knows to be fraudulent or false in any material matter results in a maximum fine of $50,000.00.[40]

Operating a scholarship funding organization in a manner consistent with the operating requirements of an IRC Section 501(C)(3) organization is a requirement of Section 9 of H.4230, the ECENC for the 2015-2016 fiscal year.

---

[37] An interested person is a family member of an officer or director. *Instructions for Schedule L (Form 990 or 990-EZ)*, Part IV, Business Transactions Involving Interested Persons, p. 1. Jarsilaw Jasinski is the brother-in-law of Olga Lisinska. Jarsilaw Jasinski is an officer and member of the board of directors. Olga Lisinska is the Director of Operations for PKF, as well as the Manager of Scholarship Services, LLC. PKF paid Olga Lisinska more than $10,000 via its contract with Scholarship Services, LLC. The instructions for Schedule L of Form 990 direct PKF to report this business transaction. *Instructions for Schedule L (Form 990 or 990-EZ)*, Part IV, Business Transactions Involving Interested Persons, p. 3-4. In addition, all payments during the tax year between the organization and Olga Lisinska exceeded $100,000. *Instructions for Schedule L (Form 990 or 990-EZ)*, Part IV, Business Transactions Involving Interested Persons, p. 3-4.

[38] 26 C.F.R. §1.6033—2(a).

[39] http://www.irs.gov/irm/part21/irm_21-007-007r-cont03.html (27.7.7.4.23.1) (Daily Delinquency Penalty); and http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Annual-Reporting-Requirements-Filing-Procedures:-Incomplete-Returns; *and* 26 *U.S.C.* §6652(C)(1)(A)(i)-(ii).

[40] 26 *U.S.C.* §7207.

Failure to comply with reporting requirements, as outlined herein, violates an operating requirement for a 501(C)(3) organization, and consequently implicates PKF's status under Section 9 of H.4230.

G. *Violations of the South Carolina Solicitation of Charitable Funds Act*

1. PKF is a South Carolina nonprofit corporation and qualified under federal §501(c)(3); PKF has also registered as a South Carolina charity.

Charities under the South Carolina Solicitation of Charitable Funds Act solicit donations either through their own personnel or through third parties. Some of these third parties are "professional solicitors" and "professional fundraising counsels." The law requires a charity to file a registration statement with the South Carolina Secretary of State Office that includes whether the charity intends to use a "professional solicitor," along with the name and contact information. *S.C. Code Ann.* §33-56-30(B)(7).

A "professional solicitor" includes someone who, "for monetary or other consideration, solicits contributions for or on behalf of a charitable organization." *S.C. Code Ann.* §33-56-20(9).

While the Scholarship Services, LLC contract with PKF (Exhibit K) stipulates that Scholarship Services, LLC "will specifically not provide...donor solicitation services to Palmetto Kids FIRST,"[41] that is precisely what the Scholarship Service, LLC managed website and Facebook page ask a visitor to do: "PLEASE DONATE TODAY!!!"[42] For purposes of the Solicitation of Charitable Funds Act, "solicitation" includes the request for "money, credit, property, financial assistance, or other thing of value, or a portion of it, to be used for a charitable purpose or to benefit a charitable organization" and a solicitation has taken place "whether or not the person making the request receives a contribution." *S.C. Code Ann. §33-56-20(20).*

Per the contract (Exhibit K), PKF gave full management and, thereby, control of the website and other electronic mediums to Scholarship Services, LLC, which means that electronic solicitations occur via Mrs. Lisinska in her capacity as sole Manager of Scholarship Services, LLC. PKF utilizes the solicited funds, so Scholarship Services, LLC is soliciting for PKF.

Regarding PKF's intent to use a "professional solicitor," the following timeline is informative:

- January 10, 2014 - South Carolina Secretary of State Office recognizes PKF as a charity
- January 31, 2014 - South Carolina Secretary of State recognizes Scholarship Services, LLC as a "for profit" corporation
- February 1, 2014 - Contract between PKF and Scholarship Services, LLC

---

[41](Exhibit K).

[42]https://palmettokidsfirst.org/ (accessed on 07/20/2015); and *see* Palmetto Kids First Facebook post (July 11 at 4:41 am), "WE NEED DONORS!!!" https://www.facebook.com/palmettokidsFIRST (accessed on 07/20/2015); and *see* Palmetto Kids First Facebook post (July 6 at 4:19am), "PLEASE DONATE TODAY...and REFER A FRIEND!!!" https://www.facebook.com/palmettokidsFIRST (accessed on 07/21/2015).

The brief timeline between the designation as a charity, the incorporation of Scholarship Services, LLC and the effective date of the contract one day later, indicates that PKF intended to hire Scholarship Services, LLC as its "professional solicitor" prior to the filing of its registration statement with the South Carolina Secretary of State Office.

Scholarship Services, LLC qualifies as a "professional solicitor," and the South Carolina Solicitation of Charitable Funds Act requires PKF to include its intent to use a "professional solicitor" along with their names and contact information within its registration statement. The failure to do so violates Section 33-56-30. *S.C. Code Ann.* §33-56-30(B)(7).

2. A charity must file a contract between it and a "professional solicitor" with the Secretary of State "at least ten days before the...professional solicitor...begins any solicitation activity or any other activity contemplated by the contract or agreement in this State." *S.C. Code Ann.* §33-56-70(A).

PKF did not file a contract within the prescribed deadline, nor did it file one afterward. PKF's failure to file violates Section 33-56-70(A). *S.C. Code Ann.* §33-56-70(A).

3. PKF should have included within its registration form any relationship between its officers, directors, or board members (by blood, marriage, or adoption) to each other. *S.C. Code Ann.* §33-56-30(B)(16)(b).

Mrs. Lisinska is the Director of Operations for PKF, and Jaroslaw Jasinski is Mrs. Lisinska' s brother-in-law. Jarsolaw Jasinski is the President, a member of the Board of Directors, and the Chief Executive for PKF. PKF did not disclose or update its registration to reflect their relationship, which violates Section 33-56-30. *S.C. Code Ann.* §33-56-30(B)(16)(a).

4. In addition to disclosing any familial relationship between its officer, directors, or board members, a filing charity must disclose any familial relationship between its officers, directors, or board members, and a director or an officer of a professional solicitor under contract with the charitable organization.

Mrs. Lisinska is the sole Manager of Scholarship Services, LLC, the organization acting in the capacity of a professional solicitor for PKF. PKF did not disclose or update its registration to reflect the relationship between Jaroslaw Jasinski and Mrs. Lisinska, which violates Section 33-56-30. *S.C. Code Ann.* §33-56-30(B)(16)(b).

H. Alteration of Department of Revenue Form

1. The Department received and reviewed applications for the tax credit from donors of PKF. The donors submit their application for the tax credit, via the Department's TC-57A form. The Department discovered that PKF had altered the Department's form and instructions (Exhibit L). Bob Thomas of the Department instructed PKF in a string of e-mails to cease providing donors with forms that the Department did not design or approve (Exhibit M).

As Mr. Thomas wrote in the September 26, 2014 and October 17, 2014 e-mails, "We insist that you not provide a download or other version of TC-57A, but rather that you link directly to the TC-57A application on our (the Department's) website."

As of June 2015, the altered form was on PKF's website. PKF had inserted its logo on the top of each page of that form. In addition, PKF had inserted promotional information on the last page of the Department's instructions. PKF finally corrected the violation in July of 2015; the correction occurred nearly ten months after the initial request to cease altering the Department's form.

Sections 16-13-10(A)(1) and (3) define "forgery" in the following ways:

> (1)"falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or willfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing;
>
> ***
>
> (3) "falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record."

S.C. Code Ann. §16-13-10(A)(1),(3).

PKF altered the Department's TC-57A form and instructions. PKF supplied a variation of this form to its donors on its website, a form that the Department did not design or approve. PKF ignored the Department's commands to cease publishing and providing the altered form.

PKF violated Section 16-13-10(A)(1) and (3) of the Forgery, Larceny, Embezzlement, False Pretenses and Cheats Act. *S.C. Code Ann.* §16-13-10(A)(1) and (3).

The Department only offers this alteration as an example of PKF's business operations and practices.

V. CONCLUSION

The current Proviso, H. 4230, gives the Department the authority to immediately revoke an SFO's participation in the ECENC program if there is evidence that the SFO "is not being operated in a manner consistent with the requirements for operating an IRC 501(c)(3) organization or is not in compliance with any other provision of this proviso." The Department believes that the multiple violations or potential violations demonstrated within this review are sufficient to immediately revoke PKF's participation in the program. Nevertheless,the Department's overriding concern is to achieve participants' compliance with the requirements of the ECENC program, to ensure its integrity for the South Carolina citizens the program was designed to benefit and to protect South Carolina taxpayers. Accordingly, PKF will be given a period of thirty (30) days from the date of issuance of this report to provide the Department with evidence that it has corrected the noted deficiencies and violations.

The Department invites PKF to work to bring its practices and procedures into compliance with federal and state law. However, in the event PKF does not demonstrate to the Department within the designated time frame (30 days) that it has taken corrective action, the Department will revoke PKF's participation in the ECENC program in accord with the procedures outlined in H.4230 (I)(2)(a)-(d).