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## Employee Handbooks: Acknowledgment of Receipt

By Ashley N. Trotto, Esq.

You’ve painstakingly drafted your employee handbook and update it regularly to incorporate new or revised employment policies, but do you have employees sign to acknowledge they’ve received and understood it? This step could make all the difference in the event there is a dispute over a disciplinary action.

Requiring employees to sign an acknowledgement stating that they’ve received, read, and understood the employee handbook may seem arduous, especially if it’s done every time there is an update to the handbook. But this process is more than a mere formality – it is critical if there is ever a dispute over a handbook provision, including those describing the employer’s disciplinary process.

At some point, every employer is faced with the task of disciplining a difficult employee. When that time comes, employers often point to violations of the employee handbook as the basis for the disciplinary action. Unsurprisingly, the difficult employee might claim that he or she was not aware of or did not fully understand the employer’s policies. For this reason, among others, an acknowledgment of receipt and understanding in the employee’s personnel file is essential.

At a minimum, the acknowledgement should include:

- Confirmation that the employee has received, read, and understood the provisions of the handbook. Alternatively, a statement that the employee has received the handbook and understands that it is his or her responsibility to read and understand its provisions;
- A disclaimer noting that the handbook does not constitute a contract of employment;
- A statement that the handbook is subject to change, at any time, in the sole discretion of the employer;
- The version and/or revision number and effective date of the handbook, along with a comment explaining that the current version supersedes all previous versions;
- A statement that the acknowledgment will be kept in the employee’s personnel file; and
- Places for the employee to sign and date the document.

So, what does an employer do if an employee refuses to sign the acknowledgment?

The employer can ask the employee to write on the form that he or she is refusing to sign. If the employee refuses this request, the employer can have a witness affirm, in writing, that the employee received the

handbook but refused to sign the acknowledgment. Although the employee's signature is best, either of these options will, at a minimum, serve as evidence of receipt.



[Ashley N. Trotto](#) practices in the areas of ERISA law, pension plans, and employment law. Ms. Trotto assists both private and governmental clients in the design, implementation, and maintenance of their employee benefit plans and specifically health and welfare benefit plans. Ms. Trotto focuses much of her time on assisting clients with issues related to health plan compliance. If you have questions or for more information, please call Ashley Trotto at (865)-546-7311 or email [atrotto@kmfpc.com](mailto:atrotto@kmfpc.com).

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## IRS Taxpayer Advocacy Panel Seeks Suggestions on Improving Forms and Publications

**By William E. Mason, Esq.**

The Taxpayer Advocacy Panel, a Federal Advisory Committee to the IRS, helps to identify tax issues of importance to taxpayers and to provide a taxpayer perspective to the IRS on key programs, products, and services. It also serves as a focus group that makes recommendations to the IRS and the IRS's National Taxpayer Advocate.

TAP is made up of 75 citizen volunteers who are responsible to listen to taxpayers, identify taxpayers' issues, and make suggestions for improving IRS service and customer satisfaction. The Panel is demographically and geographically diverse with taxpayers from all walks of life representing each state, the District of Columbia and Puerto Rico, and at least one member living abroad to represent international taxpayers. I am Tennessee's TAP member and am interested in ideas from citizens on topics important to taxpayers and the IRS. I am also serving this year on the TAP Forms & Publications Committee, which takes particular assignments on clarity, usefulness and ease of IRS standard forms and publications.

We have recommended improvements to the IRS Form 1099-MISC instructions related to the short-term rental of personal residences. There's a special rule if you use a dwelling unit as a residence and rent it for fewer than 15 days in a tax year. In that case, you don't report any of the rental income and you don't deduct any expenses as rental expenses. If you rent your home during a couple football weekends, the rule might apply to you.

The IRS also asked us to review Form 1098-T, the form used to report tuition for higher education. While the form is completed by colleges and universities, it communicates information to students and parents that is important to their personal returns.

If you have had problems with either Form 1099-MISC or Form 1098-T, or have any other suggestion for improving the IRS, I would like to hear from you.



[Bill Mason](#) has been practicing more than 40 years, most of that time in employment and employee benefits for employers. He serves on the Board of Directors for the Legacy Park Foundation and the Education Subcommittee for the United Way of Greater Knoxville. He is the past Chair of the Hillcrest Healthcare Board of Directors. In 2016, the US Treasury Department appointed him as the IRS Taxpayer Advocacy Panel (TAP) representative for Tennessee. For additional information or questions, feel free to contact Bill at [wemason@kmfpc.com](mailto:wemason@kmfpc.com) or (865) 546-7311.

## Protecting Assets from Creditors via the “TIS Trust”

By Michael R. Crowder, Esq.

The Tennessee Investment Services Act allows a person to transfer their property to a Tennessee Investment Services Trust (“TIS Trust”), retain some control over the trust assets, and yet protect those assets from creditors. Historically, these sorts of “self-settled asset protection trusts” were held invalid as against public policy, but Tennessee has permitted them since 2007, and is currently one of only sixteen states to do so. Additionally, Tennessee consistently ranks amongst the best of those sixteen states. In fact, the TIS Trust was ranked third by Nevada attorney Steve Oshins in his Domestic Asset Protection Trust Rankings for 2016.

A TIS Trust must meet four specific requirements under Tennessee law: (1) the trustee must be a natural person who is a resident of Tennessee or an entity (such as a bank or trust company) that is authorized by the State of Tennessee to act as a trustee; (2) the trust must expressly incorporate Tennessee law; (3) the trust must contain a spendthrift clause prohibiting both voluntary and involuntary alienation of the beneficiary's interest in the trust; and (4) the trust must be irrevocable.

If property is validly transferred to a TIS Trust, the transferor's creditors may not reach such property unless (a) the creditor's claim arose prior to the transfer, and the action is brought within the later of two years after property is transferred to the trust or six months after the creditor should have discovered the transfer or (b) the creditor's claim arose after the transfer, and the action is brought within two years after the transfer. The one notable exception is that a spouse, former spouse, or child of the transferor may reach trust assets in order to satisfy claims for past due alimony and/or child support, or for a court ordered division of marital property.

Even while being shielded from creditors, the transferor may still retain a significant level of control over the trust assets. For example, the transferor can be given the right to receive all trust income; the right to receive up to five percent of the trust principal each year; and the potential to receive additional principal distributions in the discretion of the trustee or pursuant to an ascertainable standard (for health, education, support or maintenance). The transferor may also have a special testamentary power of appointment over trust assets (exercisable in favor of anyone except the transferor, his estate, his creditors, or the creditors of his estate); and the right to use real property owned by the trust if the trust is a qualified personal residence trust. Additionally, the transferor can appoint an “advisor” who has the authority to remove and appoint trustees or other advisors and who may direct, consent to or disapprove of distributions from the trust.



[Michael Crowder](#) works primarily in the firm's estate planning, and business & corporate law practices. If you have questions or for more information about TIS Trusts, asset protection, or estate planning in general, please call Michael R. Crowder at (865)-546-7311 or email [mcrowder@kmfpc.com](mailto:mcrowder@kmfpc.com).

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Rollover Business Startups are a financing arrangement that may seem attractive to entrepreneurs at first blush, but the IRS closely scrutinizes this use of IRA and qualified retirement savings, and the extra costs may outweigh a so-called ROBS's advantages. The summer edition of the KM Newsletter will feature an article on this topic for new businesses.

## Board Member Responsibilities for Executive Compensation in Nonprofit Corporations

By **Brittany Brent Smith, Esq.**

Nonprofit corporations owe a duty to the public, and particularly their donors, to carefully review compensation arrangements with executive officers. Supporters of the nonprofit are interested in knowing how their contributions are being used, and the information is publicly-available if the organization is required to file a Form 990 with the Internal Revenue Service. The IRS may even enforce penalties against organizations with excessive compensation.

Ensuring the board of directors of a nonprofit corporation has approved reasonable and not excessive compensation for the nonprofit's executive director or president is one of the fiduciary responsibilities of nonprofit board members. Nonprofit board members should be directly involved in establishing and periodically-reviewing executive compensation. In approving executive compensation, board members should consider what similarly-sized nonprofit organizations, in the same geographic region, are paying their executives.

Some IRS-recommended best practices for reviewing and approving executive compensation include:

1. Executive compensation should be approved in advance.
2. The board of directors should base its decision on comparability data obtained before the compensation is approved. Considerations include the size of the organization, the geographic location of the organization, and the roles and responsibilities of the executive.
3. The decision-making process and the decision should be documented at the time the compensation is approved. The IRS suggests the documentation include the terms of the transaction and the date of its approval, the members of the deciding body present during the discussion and vote, the comparability data obtained and relied on, the actions of any members of the deciding body that have a conflict of interest, and documentation of the basis for the determination.

The board of directors might consider creating a committee (that does not include the person receiving the compensation) to review executive compensation. Boards often form a compensation committee or use the executive committee for this purpose. Each board member is still responsible for reviewing and approving the compensation, including fringe benefits, and for asking appropriate questions about how the level of compensation was determined, even if a committee is used to conduct the review.

Following this procedure creates a "rebuttable presumption" of the reasonableness of executive compensation, which the IRS may only refute with sufficient contrary evidence to rebut the probative value of the comparability data relied on by the deciding body.

Nonprofit boards might consider adopting written executive compensation policies to document required procedures.



[Brittany Brent Smith](#) assists business and corporate clients with a range of business planning and operations services, including establishing, organizing, and maintaining their entities. If you have questions about the Form 990 or for more information on nonprofit governance, please call Brittany Brent Smith at (865)-546-7311 or email [bsmith@kmfpc.com](mailto:bsmith@kmfpc.com).

## KM in the Community: CASA of East Tennessee

On Saturday, February 4th, CASA of East Tennessee held its annual Red Shoe Gala and Kennerly Montgomery was proud to sponsor this event which helps to support CASA's mission to advocate for abused and neglected children in East Tennessee.

CASA stands for Court Appointed Special Advocates, who are trained to represent the best interests of children in juvenile abuse and neglect court cases. CASA is a local, nonprofit organization in communities all across the nation. Since CASA's national inception, CASA volunteers have helped more than two million children find safe, permanent homes.

CASA of East Tennessee is registered as a 501(c)(3) non-profit organization. For more information regarding corporate matching gifts, planned giving, or stock or asset donation, please contact Executive Director Britney Sink by phone at 865-329-3377 or by email at [britney@casaoeasttn.org](mailto:britney@casaoeasttn.org).



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## Hot Topics: Employee Handbook Edition

Kennerly Montgomery offers free seminars for our clients and friends on employee benefit and employment related topics. For our next program, we will be focusing on hot topic provisions in employee handbooks. Specifically, we will be covering guns in the workplace, NLRB restrictions, and use (and abuse) of electronic devices. We'll also share with you some tips on how your employee handbook can help make your workplace more attractive to a new generation of employees.

We would love for you to attend at our office, located on the 4th floor of the Bank of America building in Knoxville at 9:00 a.m. on Tuesday, April 18th. Coffee and pastries will be provided. You may park in the building garage; parking tickets will be validated. This program is presented without charge.

Please let us know by Friday, April 14th, if you will be able to attend. If there are others you work with who would like to attend, we'd be glad for them to come too. [Click here to register for this program.](#)

If you are unavailable on April 18th, we would be happy to make arrangements to meet with you individually to discuss these issues and any other matters of concern. We look forward to seeing you soon.

If you have any questions about the event or how to register, please contact Stephanie Romer at 865-546-7311 or [sromer@kmfpc.com](mailto:sromer@kmfpc.com).

We also make tailored in-house presentations for employers, and talk to outside groups. Let us know if there's a program we can present for you or your group.