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## MEMO

To: Ms. Barbara Rodriguez

Company: Internal Revenue Service

CC:

From: Richard A. Block

Subject: *State of Colorado v. Colorado Humane Society*, Case No. 2008-CV-2659, Arapahoe District Court, Colorado and

Date: February 4, 2009

Transmit:

- Surface Mail
- X Fax 651-312-7810
- Email
- Other

Ms. Rodriguez:

At your suggestion, I have reviewed the language in the Internal Revenue Manual that reads:

11.3.2.4.14 (08-29-2008)

### Receivers

1. A receiver is a person appointed by a court to take into his/her custody, control and management of the property or funds of another, pending judicial action concerning such property or funds. While receiverships most commonly arise in bankruptcy or insolvency situations, this is not always the case, and various state and Federal laws authorize the appointment of receivers in different circumstances.



2. If substantially all of the property of a person with respect to whom a return is filed is in the hands of a receiver, current and prior years' returns and return information of that person may be disclosed to the receiver. The receiver, in his/her fiduciary capacity, must have a material interest which will be affected by the requested information. A material interest is an important interest and is generally, but not always, financial in nature.
3. A receiver must furnish satisfactory evidence that he/she is the appointed receiver who holds substantially all of the property of the person whose assets are in receivership.
4. Requests for returns must be made in writing.

Given the reluctance of the IRS representative to speak with me, I anticipate that any IRS representative will have a problem with the fact that Waverion Group was appointed "custodian," and not "receiver."

For your information, Colorado, along with other state jurisdictions, has enacted some version of Section 14.32 of the Model Business Corporations Act in the form of C.R.S. § 7-114-303. Colorado has also expanded the application of this language to non-profit corporations (C.R.S. § 7-134-303), limited liability companies (C.R.S. § 7-80-812), and cooperatives (C.R.S. § 7-56-716). Simply stated, the statutes based on Section 14.32 restrict receivers to the liquidation of the receivership estate, whereas a custodian may operate the custodial estate. As a result, the position that was previously call a receiver in Colorado is now called a custodian. The non-profit statute applies to the Colorado Humane Society & S.P.C.A., Inc., reads as follows:

C.R.S. 7-134-303 (2008)

7-134-303. Receivership or custodianship

- (1) A court in a judicial proceeding to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the nonprofit corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The



court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state, or a domestic or foreign nonprofit corporation authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount stated by the court.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers the receiver shall have the power to:

(a) Dispose of all or any part of the property of the nonprofit corporation, wherever located, at a public or private sale, if authorized by the court; and

(b) Sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.

(4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.

(5) The court, during a receivership, may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the nonprofit corporation and its members and creditors.

(6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

After reading the provision of the Internal Revenue Manual in the light of the Colorado statute on custodian's, it seems that you could assist us in our effort to obtain disclosure from the IRS concerning the Colorado Humane Society & S.P.C.A., Inc. by sending a simple fax that states that

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your Division finds that 11.3.2.4.14 of the Internal Revenue Manual is applicable to custodians as well as receivers. In that way, when the IRS representative is reluctant to discuss tax matter with me, I can fax your memo and not waste another day on disclosure issues.

Thank you in advance for your time and attention to this matter.

Richard A. Block  
Managing Member  
Waverion Group, LLC  
As custodian for the Colorado Humane Society & S.P.C.A., Inc.

A handwritten signature in blue ink that reads "Rick Block". The signature is written in a cursive style with a long, sweeping underline.