

# DESK REFERENCE MANUAL

FOR NONPROFIT & SOCIAL SERVICE  
ORGANIZATIONS

(Second Edition)

Prepared by:



**Sobel & Co., LLC**

CERTIFIED PUBLIC ACCOUNTANTS  
AND CONSULTANTS



## TABLE OF CONTENTS

Welcome To Our Readers.....	1
Structure of Desk Reference Manual .....	2
Disclaimer .....	2
Defining Nonprofit Organizations .....	3-4
Recent Financial Accounting/Reporting Standards Impacting Nonprofit Organizations .....	5-8
Financial Reporting for Nonprofit and Social Service Organizations.....	9-13
Legal Issues in Establishing Nonprofit Organizations .....	14-17
An Overview of Nonprofit Board Responsibilities .....	18-23
Board Policies: Audit Committee vs. Finance Committee .....	24
Non-Cash Contributions .....	25-27
Insurance and Risk Management.....	28-32
Financing for Nonprofit Organizations.....	33-35
Revised IRS Form 990 Poses Challenges .....	36-38
Nonprofit Tax Issues .....	39-45
Payroll and Nonprofit Tax Reporting .....	46-51
Forms to be Filed and How to Obtain the Necessary Forms .....	52
Where to Mail the Forms .....	53
Where to Obtain Additional Information .....	54
Helpful Web Sites.....	55-56
Information About the Sponsors.....	57-61

## **Welcome To Our Readers**

It is our pleasure to publish this Second Edition of the Desk Reference Manual for the Nonprofit and Social Services sector. Much like our first printing, the goal for this manual is to provide you with access to the resources and information you need to run your organization most effectively and efficiently. The current version includes updated information and improved content that we believe will help you keep abreast of issues and evolving trends impacting your industry.

As we did with our first edition, we have endeavored to fill these pages with high quality, meaningful and relevant information that provides you with a competitive edge.

Please share the manual with your staff, board members and other leaders of your organization. Feel free to call us if you would like additional copies and, as always, let us know what additional information you would like to see included in future editions.

## **Structure of Desk Reference Manual**

In order to maintain their nonprofit status and continue to help others, all nonprofit organizations continuously face unique financial, legal, and tax concerns.

With that in mind, The Desk Reference Manual For Nonprofit and Social Service Organizations outlines the basic financial, accounting, tax compliance, organizational and legal issues regarding the ongoing operations of nonprofit and social service organizations and provides resources to address these concerns. Critical issues such as obtaining federal recognition of nonprofit status, charitable solicitation registration, and basic financial statements, including statement of activities, statement of financial position, cash flows and functional expenses, are addressed. A complete overview of nonprofit board responsibilities, financing requirements, wealth management issues and insurance matters are also discussed. In addition, taxation and payroll requirements for nonprofit organizations with or without employees are included, as well as an information directory of the various agencies involved in the nonprofit sector.

### **Disclaimer**

This guide has been designed to present business and tax information of a generalized nature for nonprofit organizations. The information expressed herein should be regarded as indicative and for illustrative purposes only. It is not designed to be legal, tax, regulatory, accounting or other advice. The information herein is not designed to reflect appropriate procedures or advice that should be followed in any particular set of circumstances; the information herein should not be acted upon without prior consultation with appropriate professional advisors.

Each contributor to this guide has individually prepared its portion of the guide. No contributor is responsible for the content prepared by the other contributors.

## Defining “Nonprofit Organizations”

Nonprofit organizations come in many forms, from the purely volunteer Parent Teacher’s Association serving school children, to the Pro Golfers Association, to the American Lung Association. An understanding of the differences amongst these organizations can be helpful to understanding the world of nonprofits.

**Nonprofit.** “Nonprofit” is a concept of state law, which means that an organization may not pay dividends or otherwise pass any surplus revenue, or “profits,” from the enterprise on to shareholders, members, or other individuals. Although a nonprofit may pay reasonable compensation for services actually rendered to it, in general, any surplus generated by the organization must stay within the organization and be used for its stated mission or purpose. A nonprofit corporation is not “owned” by anyone. It may be controlled by individuals or other entities, but those who control the nonprofit do not have an ownership interest in the organization.

**Tax Exempt.** Most, but not all, nonprofit organizations are exempt from paying federal income tax on their earnings. Section 501(c) of the Internal Revenue Code (the “Tax Code”) now spells out 27 separate categories of exempt organizations. These categories include Section 501(c)(2) title holding companies, Section 501(c)(4) civic associations, Section 501(c)(5) agricultural or labor organizations, Section 501(c)(6) business leagues, professional and trade associations (including the Association of Management Consulting Firms and the New Jersey Psychological Association), and Section 501(c)(7) social clubs. The largest category, and the one most people usually think of when they hear the terms “nonprofit” or “tax exempt,” is Section 501(c)(3) which exempts “charitable” organizations (including the volunteer soup kitchen).

**Charities.** Under the Tax Code definition, a Section 501(c)(3) charitable organization is one which is “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.” In addition, no part of the net earnings may inure to the benefit of any private shareholder or individual, no substantial part of the activities may consist of carrying on propaganda, or otherwise attempting, to influence legislation (“lobbying”), and the organization may not participate in any political campaign for or against any candidate for public office (“electioneering”).

The critical distinguishing feature of charities, as opposed to almost all other types of federally exempt organizations, is that individuals and corporations may make charitable contributions to charitable organizations and claim a charitable contribution deduction on their own federal income tax returns.

**Public Charities and Private Foundations.** Section 501(c)(3) charities are further subdivided under Section 501(a) of the Tax Code between those that are considered publicly supported, such as a church, hospital, school, United Way or a nursing home, and those that are considered private foundations because essentially all of their income has come from a single individual, family, or corporation and income on their investments. Private foundations are subject to more stringent regulations.

**State Tax Exemption.** State tax exemption is an entirely separate issue from the federal exemption that usually defines nonprofits in the public mind. In New Jersey essentially any nonprofit corporation not conducted for personal profit is exempt from state income tax and corporate franchise taxes.

In addition, there are two other state taxes that can have a significant effect on the budget of a nonprofit organization. These are the sales tax and real estate tax. Charitable organizations may be exempt from paying sales tax on the goods and services they purchase and real estate tax on their real estate holdings if they meet the state law definition of a charity. New Jersey generally exempts organizations of the kind traditionally deemed to be charitable under Section 501(c)(3). Nonprofit organizations must apply for exemption from paying or collecting sales tax to the Division of Taxation by completing Form REG-1E.

# **Recent Financial Accounting/Reporting Standards Impacting Nonprofit Organizations**

## **FASB Accounting Standards Codification**

The FASB Accounting Standards Codification became the single official source of authoritative, nongovernmental United States generally accepted accounting principles (GAAP); superseding existing FASB, AICPA, EITF, and related literature.

The changes apply to all quarterly and annual financial statements issued for periods ending after September 15, 2009. The Codification is a major restructuring of accounting and reporting standards arranging content and guidance within Topics, Subtopics, Sections and Subsections. The Codification streamlined GAAP by taking thousands of different documents and grouping all rules into roughly 90 topics. A basic view of Codification Topics is accessible free of charge at <http://asc.fasb.org>.

Financial statements must eliminate the old rule references and either replace them with topic and subtopic numbers or eliminate them altogether in favor of plain English. The Desk Reference Manual has been updated and eliminates all references to GAAP and utilizes plain English.

## **Fair Value Measurements**

This Statement defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (GAAP), and expands disclosures about fair value measurements. This Statement does not require any new fair value measurements.

Prior to this Statement, there were different definitions of fair value and limited guidance for applying those definitions in GAAP. Differences in that guidance created inconsistencies that added to the complexity in applying GAAP. In developing this Statement, the need for increased consistency and comparability in fair value measurements and for expanded disclosures about fair value measurements were considered. The changes to current practice resulting from the application of this Statement relate to the definition of fair value, the methods used to measure fair value, and the expanded disclosures about fair value measurements.

The definition of fair value retains the exchange price notion in earlier definitions of fair value. This Statement clarifies that the exchange price is the price in an orderly transaction between market participants to sell the asset or transfer the liability in the market in which the reporting entity would transact for the asset or liability, that is, the principal or most advantageous market for the asset or liability. The transaction to sell the asset or transfer the liability is a hypothetical transaction at the measurement date, considered from the perspective of a market participant that holds the asset or owes the liability. Therefore, the definition focuses on the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price).

## **Subsequent Events**

Management of a reporting entity should account for and disclose events that occur after the balance sheet date but before financial statements are issued or available for issuance. These requirements apply to interim or annual financial periods after June 15, 2009.

## **Uniform Prudent Management of Institutional Funds Act**

Legislation to provide relief to charities whose endowment funds have eroded in value due to the recession was signed into law by New Jersey Governor Corzine on June 10, 2009. The Uniform Prudent Management of Institutional Funds Act of 2006 (UPMIFA) provides additional discretion to charities to spend their endowments as long as certain conditions are met.

Under the previous New Jersey Law originally enacted in 1975, non-profits that have endowment funds were not allowed to tap into those funds if their value fell below the "historic dollar value." With the precipitous declines in the stock market, many endowment funds are now below their historic dollar value, which means that they have been completely unavailable for the institution to provide vital programs and services in these times of severe economic distress.

The new law, which is based on model legislation which has been enacted in at least 35 other states, will provide greater flexibility for non-profits within a responsible framework by replacing the "historic dollar value" standard for spending from endowments with a prudence standard, which will enable charities to spend from their endowments as long as such spending is prudent. The law will modernize the standards for management of funds, providing improved clarity and guidance for boards. In limited cases, it will also allow the release or modification of donor restrictions on older (at least 20 years old), comparatively smaller (no greater than \$250,000) funds where these restrictions are now illegal or impractical.

### **Endowments of Nonprofits: Classification of Funds Subject to UPMIFA and Enhanced Disclosures for All Endowment Funds**

The guidance is intended to improve the quality and consistency of financial reporting of endowments held by not-for-profit organizations. The Statement addresses issues that are very important to the not-for-profit sector, especially organizations with sizeable endowments and the users of their financial statements such as donors, credit rating agencies, and regulators. The adoption of UPMIFA has raised significant questions about the reporting of donor-restricted endowment funds. Moreover, organizations across the country now find themselves subject to increased public scrutiny on how they manage and use their endowments, which in many instances have seen tremendous growth over the past decade.

This Statement provides guidance on classifying the net assets (equity) associated with donor-restricted endowment funds held by organizations that are subject to an enacted version of UPMIFA, which serves as a model act for states to modernize their laws governing donor-restricted endowment funds. Approximately 35 states have already done so, and many more are expected to do so over the next few years.

The Statement also requires additional disclosures about endowments (both donor-restricted funds and board-designated funds) for all organizations, including those that are not yet subject to an enacted version of UPMIFA.

### **Nonprofit Entities: Mergers and Acquisitions**

The objective of this Statement is to improve the relevance, representational faithfulness, and comparability of the information that a not-for-profit entity provides in its financial reports about a combination with one or more other not-for-profit entities, businesses, or nonprofit activities. To accomplish that, this Statement



establishes principles and requirements for how a not-for-profit entity should report such transactions.

In today's economic climate, more nonprofits than ever are considering how to form strategic alliances, if not actually engaging in a formal merger or an acquisition. This option can provide financial relief and greater efficiencies for many nonprofits, but there are complex, technical issues to manage when conducting a merger. Each situation is different, so a detailed discussion on all of the issues that your organization might face as it considers a merger or an acquisition is necessary.

## **Accounting for Transfers of Financial Assets**

This Statement removes the concept of a qualifying special-purpose entity from GAAP and removes the exception from applying previous accounting literature to qualifying special-purpose entities. This Statement must be applied to transfers occurring for fiscal year ends beginning after November 15, 2009.

This Statement clarifies that the objective is to determine whether a transferor and all of the entities included in the transferor's financial statements being presented have surrendered control over transferred financial assets. That determination must consider the transferor's continuing involvements in the transferred financial asset, including all arrangements or agreements made contemporaneously with, or in contemplation of, the transfer, even if they were not entered into at the time of the transfer. This Statement modifies the financial-components approach and limits the circumstances in which a financial asset, or portion of a financial asset, should be derecognized when the transferor has not transferred the entire original financial asset to an entity that is not consolidated with the transferor in the financial statements being presented and/or when the transferor has continuing involvement with the transferred financial asset.

This Statement defines the term participating interest to establish specific conditions for reporting a transfer of a portion of a financial asset as a sale. If the transfer does not meet those conditions, a transferor should account for the transfer as a sale only if it transfers an entire financial asset or a group of entire financial assets and surrenders control over the entire transferred asset(s).

This Statement requires that a transferor recognize and initially measure at fair value all assets obtained (including a transferor's beneficial interest) and liabilities incurred as a result of a transfer of financial assets accounted for as a sale.

Enhanced disclosures are required to provide financial statement users with greater transparency about transfers of financial assets and a transferor's continuing involvement with transferred financial assets.

## **Amendments to Reporting By Enterprises With Variable Interest Entities**

This Statement amends previous literature to require an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as the enterprise that has both of the following characteristics:

- A. The power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance.
- B. The obligation to absorb losses of the entity that could potentially be significant to the variable interest entity or the right to receive benefits from the entity that could potentially be significant to the variable interest entity.

Additionally, an enterprise is required to assess whether it has an implicit financial responsibility to ensure that a variable interest entity operates as designed when determining whether it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance.

This Statement amends previous literature to require ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity. Before this Statement, previous literature required consideration of whether an enterprise is the primary beneficiary of a variable interest entity only when specific events occurred.

This Statement amends previous literature to eliminate the quantitative approach previously required for determining the primary beneficiary of a variable interest entity, which was based on determining which enterprise absorbs the majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both.

This Statement amends certain guidance in previous literature for determining whether an entity is a variable interest entity. It is possible that application of this revised guidance will change an enterprise's assessment of which entities with which it is involved are variable interest entities.

This Statement amends previous literature to add an additional reconsideration event for determining whether an entity is a variable interest entity when any changes in facts and circumstances occur such that the holders of the equity investment at risk, as a group, lose the power from voting rights or similar rights of those investments to direct the activities of the entity that most significantly impact the entity's economic performance.

This Statement amends previous literature to require enhanced disclosures that will provide users of financial statements with more transparent information about an enterprise's involvement in a variable interest entity. The enhanced disclosures are required for any enterprise that holds a variable interest in a variable interest entity.

# Financial Reporting for Nonprofit and Social Service Organizations

## *The Basic Financial Statements*

The key objectives for financial reporting by nonprofit organizations relate to the ability of nonprofit organizations to provide services. Information in the financial statements should help readers:

- Evaluate the nonprofit organization’s services and its ability to continue to provide these services.
- Evaluate management’s administration and other aspects of its performance.
- Understand the organization’s resources and obligations.
- Judge the performance of the organization by evaluating the changes in its net resources.
- Evaluate the organization’s liquidity and use of cash.
- Understand the financial information presented through explanations and interpretations of the data in the financial statements.

Financial reporting should be sensitive to the needs of the users. Users of nonprofit financial statements include funders, donors, grantees, creditors, regulatory agencies, vendors, management and board members. Organizations receiving funding from governmental sources (federal, state or local sources) either directly or indirectly (subrecipient) may be subject to the OMB Circular A-133 standards or to certain other “agreed upon procedures” determined by the funding agency. For these reasons, management of nonprofit organizations has a fiduciary responsibility to provide accurate, reliable financial information.

Changes in financial reporting standards and principles require nonprofit organizations to report contributions on the accrual basis of accounting; investments at fair value and financial information based on net assets classified solely on the basis of donor restrictions. These changes are intended to make the financial statements consistent and similar to “commercial type” financial statements and more readable by the financial community and public.

In addition, accounting principles generally accepted in the United States of America now require nonprofit organizations to account for derivative and hedging transactions and activities. They must also report assets received from donors, with instructions to disburse these assets to a specific beneficiary, as a liability instead of revenue, unless the nonprofit organization has the ability to redirect the donation to another beneficiary (variance power).

Financial statements prepared in accordance with generally accepted accounting principles typically follow rules promulgated by the American Institute of Certified Public Accountants. These standards have resulted in several new names for financial statements; however, no particular statement titles or formats are required or prohibited.

### **Net Asset Model**

Statement of Financial Position

Statement of Activities

Statement of Cash Flows

Statement of Functional Expenses

### **Fund Accounting Model**

Balance Sheet

Statement of Support,  
Revenue and Expenses and  
Changes in Fund Balances

Statement of Cash Flows

Statement of Functional Expenses

The reporting standard requires that certain totals and disclosures be presented relating primarily to net assets, liabilities and changes in net asset totals. There is flexibility in presenting certain information either in notes to the financial statements or in the statements themselves.

Nonprofit organizations' financial statements should include consolidation of for-profit entities in accordance with the equity method of accounting and other nonprofit organization entities in which the organization has voting control and economic interest, if other than temporary. If consolidation of support or affiliated nonprofit organizations is not required, disclosure of the organization, nature of related party transactions and summarized financial information should be presented.

Nonprofit organizations' financial statements should be prepared on the accrual basis of accounting to more accurately report revenues and expenses.

### ***Statement of Financial Position***

The primary focus of the statement of financial position is on the liquidity and equity of the organization as a whole. The statement should provide relevant information about an organization's total assets, liabilities and net assets and about their relationship to each other. The statement should provide information regarding (a) the organization's ability to continue to provide services; (b) the interrelationship of the organization's assets and liabilities; and (c) the organization's liquidity and financial flexibility, so it can respond to unexpected needs and opportunities.

One or more of the following can provide information about liquidity:

- |                       |  |
|-----------------------|--|
| <b>Sequencing</b>     | Assets are listed in order of their nearness to being converted into cash. Liabilities are listed in order of their maturity and expected use of cash resources. |
| <b>Classification</b> | Assets and liabilities are classified as either current or noncurrent in the statement of financial position.  |
| <b>Disclosure</b>     | Information regarding the liquidity of assets and liabilities, including any restrictions, is presented in the notes to the financial statements.                |
| <b>Equity</b>         | Unrestricted, temporarily and permanently restricted net asset balances must be reported. These amounts may be segmented to provide further detail.              |

Temporarily restricted net assets represent net assets resulting from contributions and other inflows of assets whose use by the organization is limited by donor-imposed restrictions that either expire by passage of time or can be fulfilled and removed by actions of the organization in accordance with those restrictions.

Permanently restricted net assets represent net assets resulting from contributions and other inflows of assets whose use by the organization is limited by donor-imposed restrictions that neither expire by passage of time nor can be fulfilled or otherwise removed by actions of the organization.

The details about temporarily and permanently restricted net assets are required to be reported. This information should include descriptions and dollar amounts of the restricted net assets, which are generally disclosed in the notes to the financial

statements. The descriptions may include the purpose of various donor restrictions and when restrictions will lapse.

Unrestricted net assets represent net assets that are neither permanently nor temporarily restricted by donors. Board designated or appropriated assets are legally unrestricted assets, which the Board has set aside for specific purposes. Unrestricted net assets may be separately identified within the class or designated for specific purposes. Board designated net assets can be redesignated in the future for other purposes.

### ***Statement of Activities***

The primary areas of focus for the *statement of activities* are:

- ◆ Types and amounts of revenues received
- ◆ Dollar values and types of programs and supporting services provided
- ◆ Changes in each class of net assets during the period

The *statement of activities* should provide relevant information about how the organization's resources are used in providing various programs or services.

This information is communicated to the user by reporting:

- ◆ Revenues as increases in unrestricted net assets, unless the use of the assets received is limited by donor-imposed restrictions or by law
- ◆ Expenses as decreases in unrestricted net assets
- ◆ Realized and unrealized gains and losses on investments and other assets or liabilities as increases or decreases in unrestricted net assets, unless the related gains or losses are restricted by donor stipulation or by law
- ◆ Net gains or losses resulting from incidental transactions or special fundraising events
- ◆ Events that simultaneously increase one class of net assets and decrease another

The *statement of activities* summarizes the nonprofit organization's operating results and is similar to an income statement of a for-profit entity. The statement of activities may be prepared based on the types of revenues received by the nonprofit organization – unrestricted, temporarily restricted, or permanently restricted. The segregation of revenues is based upon the contributor's, grantor's or donor's intent – not on how the nonprofit organization intends to use the revenue received. Exchange transactions – performing services in exchange for funding, i.e., cost reimbursement or fee for service contracts – are considered unrestricted revenues to the extent expenses are incurred. Generally, all activities of nonprofit organizations are shown as unrestricted net assets. Revenues which are time or purpose restricted are transferred to unrestricted net assets when the restriction has been met. Custodial (Agency) transactions are not shown in the statement of activities as they represent "pass through" transactions. Instead, they are reported in the statement of financial position.

Combining items that have similar characteristics into reasonably comparable groups provides information about revenues and expenses.

In recording the change in a class of net assets from the beginning to the end of a period, the nonprofit organization should use descriptive terms such as *change in net assets* or *change in equity*. The terms *fund balance* or *changes in fund balances* are not used because those terms refer to separate groups of assets and related liabilities rather than to an entity's net assets or changes in net assets taken as a whole.

Classifying revenues, expenses, gains, and losses within classes of net assets does not preclude incorporating additional classifications within a *statement of activities*. Within a class or classes of changes in net assets, an organization may classify items as:

- ♦ Operating and nonoperating.
- ♦ Expendable and nonexpendable.
- ♦ Recurring and nonrecurring.

### ***Statement of Functional Expenses***

All organizations must report expenses by functional categories (program types, management, general and administrative and fund raising). Voluntary health and welfare organizations must also report expenses by natural classification (salaries, benefits, rent, and contract services) in a matrix format in a statement of functional expenses. The *functional* expense categories become the expense categories in the statement of activities. Gains, losses and other nonrecurring events should not be shown on the *statement of functional expenses*. The types of functions reported will vary by nonprofit organization and generally correspond to the types of services for which funding is received.

### ***Statement of Cash Flows***

The *statement of cash flows* is a required part of the complete set of basic financial statements for nonprofit organizations. Its primary purpose is to provide relevant information about the nonprofit organization's cash receipts and cash payments. This statement reports an organization's cash inflows and outflows from operating, investing and financing activities during the reporting period and the net effect of these activities on cash balances.

Operating Activities – Operating activities consist of all activities not defined as investing or financing activities. Operating activities as defined for the *statement of cash flows* is a broad term and may not correspond to operations as presented in the *statement of activities*. Operating activities under the indirect method relate to changes in net assets.

Financing Activities – Financing activities for nonprofit organizations include proceeds from borrowing or issuing debt and principal repayments. The following transactions unique to nonprofit organizations are also included in the *statement of cash flows* as financing activities:

- ♦ Receipt of investment income restricted for reinvestment.
- ♦ Contributions restricted for long-term investment.
- ♦ Contributions restricted for acquisition of plant and equipment.

Investing Activities – Nonprofit organizations report purchases and sales of investments and long-lived assets as investing activities.

Cash and Cash Equivalents – Cash is defined as currency, demand deposits with banks and other institutions, and other accounts with the general characteristics of demand deposits.

Cash equivalents are defined as highly liquid investments that are both:

- ♦ Readily convertible to known amounts of cash.
- ♦ So near their maturity they present insignificant risk of changes in value because of change in interest rates.

Non-cash Financing and Investing Activities – The financing of capital purchases through financing or leasing arrangements, the receipt of donated long-lived assets, or investment securities are examples of transactions that should be disclosed in the *statement of cash flows* as supplemental information.

### ***Financial Statement Disclosure***

Notes to the financial statements are intended to add clarity to, and additional information about, the financial information presented. In addition to disclosures required by accounting principles generally accepted in the United States of America about financial activities during the reporting period(s), external factors affecting the nonprofit organization should be discussed, if not readily apparent from the financial statements. Such disclosures could include information on funding sources, future events, uncertainties, concentrations of risk, commitments, related party transactions, volunteer activities and accounting estimates used in the financial statements. Such information adds to a reader's understanding of the nonprofit organization's activities.

Other Required Financial Statements Unique to Nonprofit Organizations – In addition to the “basic financial statements” described in the preceding pages, nonprofit organizations that receive federal, state or local funding may be subject to additional reporting rules under OMB Circular A-133 or *Government Auditing Standards*. Generally, those nonprofit organizations expending \$500,000 or more of federal awards, either directly or indirectly, are subject to the reporting requirements of OMB Circular A-133 and will have additional reports rendered on the following:

- Expenditures of federal awards.
- Compliance with laws and regulations and internal control over financial reporting.
- Compliance with requirements applicable to each major program and internal controls over compliance.

Recipients of federal and other funding have a fiduciary responsibility to maintain financial and other records as required by their contracts with funding agencies.

# **Legal Issues in Establishing Nonprofit Organizations (A Primer on 501(c)(3) Status)**

## ***Background***

The principal vehicle for formation of a nonprofit organization under New Jersey law is incorporation under the New Jersey Nonprofit Corporation Act (the "Act"), codified at Title 15A of the New Jersey Statutes. The Act became effective in 1983 and was the product of a comprehensive revision of the New Jersey laws regulating nonprofit corporations. Nonprofit organizations had existed in the state since colonial times. Until the late 1800's, there had been no comprehensive body of law governing nonprofit corporations generally. In 1898, a statute was enacted to address associations organized as not-for-profit. Over the next 80 years, such statutory framework and case law developed on a piecemeal basis. As a result, there was no coherent body of law to provide guidance for those operating as nonprofit organizations. The main purposes of the Act when adopted in the early 1980's were to provide a general corporate form for the conduct of nonprofit activities and to make the law governing nonprofit corporations as nearly compatible with the New Jersey Business Corporation Act as practicable. The Act, as it has been amended and interpreted in cases over the years, provides a broad and flexible legal context for the governance and operation of New Jersey nonprofit organizations.

## ***Formation of Nonprofit Corporations***

New Jersey nonprofit corporations are formed under the Act by filing a certificate of incorporation with the New Jersey Department of the Treasury. The Act provides that corporations may be organized for any lawful nonprofit purpose and includes a broad non-exhaustive list of examples of purposes which are for other than pecuniary profit. N.J.S.A. §15A:2-1(a). Unlike business corporations, nonprofit corporations shall not have or issue capital stock or shares. N.J.S.A. §15A:2-1(d). The Act provides for nonprofit corporations either with or without members. Although the concept of membership is similar to the status of shareholders of for profit corporations, they are distinguishable in that no dividends or income or profit are distributed to members of nonprofits. Nonprofit entities with members are sometimes referred to as mutual benefit organizations, being those which serve their designated members, such as labor unions, trade associations and condominium associations.

The Act sets forth the requirements for the certificate of incorporation. N.J.S.A. §15A:2-8. For example, the filing must state the purpose, indicate whether or not the corporation will have members, and identify the initial trustees. Upon incorporation and at all times thereafter, New Jersey nonprofit corporations must have at least three trustees constituting the board. N.J.S.A. §15A:6-2. After filing the certificate of incorporation, the board shall conduct an organizational meeting in order to adopt bylaws, elect officers, provide for initial members (if there are to be members), and attend to such other matters as the board may determine. N.J.S.A. §15A:2-9. Bylaws are critical to the corporation as they govern its internal procedures and operations. Certain of the Act's provisions on governance and operations are mandatory. However, the majority are written to provide a general corporate form for the conduct of the entity's activities; drafted to permit for variations and modifications from the form to the extent the particular corporation may agree upon in its organizational documents, subject only to certain overriding interests of the State.

While the Act provides for the certificate of incorporation and bylaws as the main operating instruments for nonprofit corporations, in practice, a trend has evolved



for a third critical document, the mission statement. The mission statement is without the legal formalities and technicalities of the other corporate organizational documents. The mission statement is often the public face of the organization - communicating to supporters, beneficiaries and the public at large a concise presentation of the essential purposes of the nonprofit.

### ***Exemption from Federal Taxation***

Exemption from Federal income taxation is a privilege and not a right. In order to be eligible for such exemption, the entity must demonstrate compliance with the Internal Revenue Code of 1986, as amended (the "Code"), and its underlying regulations, and bears the burden of proving eligibility for exemption. Section 501(c) of the Code outlines a variety of types of entities which are exempt from taxation ranging from charitable foundations to social welfare organizations to political organizations to governmental entities. Section 501(d) of the Code relates to religious organizations which are beyond the scope of this publication. Entities qualifying under Section 501(c) are known as exempt entities, as they are generally exempt from Federal income tax.

The most recognizable form of tax exempt entities are charitable organizations, which are addressed under Section 501(c)(3) of the Code. A Section 501(c)(3) charity is defined as an entity "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals." The Code further provides that no part of the net earnings of a charitable organization may inure to the benefit of any private individual, no substantial part of the activities may consist of carrying on propaganda or otherwise attempting to influence legislation (typically referred to as lobbying), and the organization may not participate in any political campaign for or against any candidate for public office (referred to as electioneering).

The significant effect of being classified as a charitable organization under the Code is that, in addition to being exempt from Federal taxation, charitable status permits it to accept tax-deductible charitable contributions. In other words those individuals or corporations making contributions to such entities are eligible to claim a deduction on their Federal income tax returns in connection with cash or in-kind contributions made to charitable organizations.

In order to qualify as a charitable organization under the Code, the entity must meet both the organizational and operational tests. The organizational test requires that the entity be organized "exclusively" for one or more permissible exempt purposes, whereby the entity's certificate of incorporation and bylaws must identify its exempt purpose(s) and, upon dissolution, its assets must be dedicated to an exempt purpose. To satisfy the operational test, an entity will be regarded as "operating exclusively" for one or more exempt purposes if it engages "primarily" in activities to accomplish the purposes identified in Section 501(c)(3) of the Code. The Code does accommodate certain activities by organizations which are unrelated to the exempt purposes, as long as they are insubstantial. A critical aspect of Federal exemption is that the entities serve a public, rather than a private, interest. In recent years, Congress has paid particular attention to the issue of private insiders inappropriately benefiting from their association with charitable organizations. These instances of private inurement are referred to as excess benefit transactions. Congress has enacted intermediate sanctions to penalize both the insiders who engage in such transactions and those board members approving such transactions.

The Code divides Section 501(c)(3) charitable organizations into two classes, namely private foundations and public charities. Most organizations are presumed to be private foundations unless they notify the Internal Revenue Service (the “IRS”) that they are not. In order to be a public charity, an entity must qualify under one of the specific categories of exclusion under the Code. Several categories relate to the nature of the organization, such as churches, educational organizations such as a schools or colleges, hospitals or medical research organizations operated in conjunction with a hospital, endowments for the benefit of state and municipal colleges and universities, or governmental units. If the entity is not able to achieve public charity status by virtue of the nature of its organization, it must be what is referred to as a “publicly supported organization.” The underlying concept of a publicly supported organization is that a minimum percentage of its support must be broad-based rather than from concentrated sources. This is measured by the one-third support test, which refers to the fact that one-third of the total support for the organization is “qualifying public support”. Public support is that which comes from the general public, the government and other publicly supported nonprofit organizations. While all public support is included in the calculation of the total support, there are limits as to how much of such contributions are treated as “qualifying public support” (i.e., no more than 2% percent of the organization’s total support). Given the presumption of being a private foundation, those failing to meet these tests will be characterized as private foundations for Federal tax purposes. Such entities maintain the benefit of exemption from Federal taxation and the ability to provide the benefit of a tax deduction to contributors, but private foundations are subject to more restrictive rules than public charities.

### ***Application for Recognition of Exemption***

Typically, after a nonprofit corporation has filed its certificate of incorporation and attended to its corporate organizational matters, a filing is made with the IRS in order to request recognition of exemption from federal taxation. The application process provides for submission of required forms which vary depending upon the subsection under Section 501(c) of the Code applicable to the organization. Further, for Section 501(c)(3) organizations, the application gives the entity the opportunity to prove that it qualifies as a public charity as opposed to a private foundation. If the application is acceptable to the IRS, a letter of determination will be issued to the organization recognizing its exemption. Such letter often serves as the basis for the entity seeking exemption or relief from certain state or local taxes. The Code provides for ongoing compliance necessary in order to maintain exempt status, including recordkeeping requirements and filing of annual informational returns or electronic notices in the case of small charitable organizations.

## ***New Jersey Charities Registration and Certain Other Filings***

Upon filing of a certificate of incorporation for a nonprofit corporation, the New Jersey Department of Treasury provides a copy of such filing to the Office of the Attorney General, which refers the matter to the New Jersey Division of Consumer Affairs (“DCA”). Pursuant to the Charitable Registration & Investigation Act of 1994, all charities must file initially and annually with the Charities Registration Section of the DCA. The Charities Registration Section’s purpose is to protect the public from fraud and deceptive practices in charitable fundraising. Thus, the annual filings required of charities provide for financial disclosures to be available to the general public. Professional fundraisers are also required to make annual filings, and all contracts between charities and professional fundraisers must be in writing and filed with the Charities Registration Section. The obligation to file such contracts is upon both the fundraiser and the charitable organization. To the extent funds are solicited in other states, comparable filings may also be required.

One type of fundraising often pursued by charitable organizations is charitable gaming, which includes raffles and other games of chance. In order to engage in such activities in the State of New Jersey, municipal and state registrations must be obtained. The charitable organization must be registered at the State level in order to sponsor gaming activities and municipal licenses which are necessary for each particular gaming event.

# **An Overview of Nonprofit Board Responsibilities**

## ***Responsibilities of the Board***

The primary responsibility of the board of any corporation, whether profit or nonprofit, is to oversee the operations of the organization to assure effective governance and management. A nonprofit organization revolves around proper governance; this includes ensuring that the provisions of the organizational documents are carried out and providing for the election of officers, hiring an Executive Director and staff, and the establishment of committees to assist in carrying out the board's functions. In the case of a business corporation, one of the Board of Directors' primary responsibilities is to maximize profits for the benefit of the shareholders. Conversely, the trustees of a nonprofit corporation are not acting for private benefit, but rather in pursuit of the organization's purpose, which is essentially a public purpose. While fiscal oversight and financial responsibility are critical roles of any type of governing body, the board of trustees of a nonprofit is often also charged with hands-on responsibility to engage in fundraising activities for the benefit of the organization. Equally important, the Board of Directors must manage and maintain its core values, and rely on its members' collective wisdom and foresight to carry out the organization's intended mission.

As a result of high-profile scandals in the private sector over the past decade and the enactment by Congress of the Sarbanes-Oxley Act of 2002, boards have been called upon to improve their management and corporate governance, including closer scrutiny on self-dealing transactions and compensation-related issues, and the enactment of codes of ethics and business conduct. The Act sets forth the standard of care required by trustees and members of board committees; that they shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions. The provision in the Act mirrors that in the New Jersey Business Corporation Act, and both are a codification of the historical principles that the duties of care and loyalty guide actions of boards. In carrying out such responsibilities, the trustees must have a clear understanding of the organization's purposes and mission. In order to effectively support the carrying out of such purposes and mission, the board members must stay involved and informed as to matters affecting the entity. This is to be accomplished by regular attendance at meetings, transcribing of board minutes, keeping apprised as to financial status of the organization and reviewing, and insuring receipt of, information and documents critical to the operations of the organization. To the extent that the organization engages in grant making activities, the board is often responsible for monitoring that the grants are awarded to organizations within the purposes outlined in the mission statement. In addition, to the extent that the organization is funded by grant funds, the board must provide oversight to insure that the funds are in fact used in accordance with any restrictions imposed by the grant.

While Sarbanes-Oxley is only required for public companies, the basic tenets and principles of Sarbanes-Oxley have worthwhile implications for the nonprofit sector.

Generally, Sarbanes-Oxley seeks to:

- Increase investor and shareholder confidence in public reporting and reduce aggressive financial reporting
- Ensure effective internal controls surrounding financial reporting
- Reduce fraud and increase accountability for expenses
- Ensure the board of directors is independent from the company
- Increase accountability of the executive team for financial reporting and information disclosed to the market

To a certain extent, nonprofit organizations must adhere to an even higher standard than public companies, as the public at large, and third party recipients of the nonprofit's mission, are causing the board and the executive director to live in a fish bowl.

It is imperative that trustees exercise independent judgment in making corporate decisions, and that such judgment be exercised with full disclosure to the entire board of any personal interest or other facts or circumstances which may give rise to a perceived or actual conflict of interest. A special position of trust among a board demands avoidance, recognition or transfer of conflicts of interest. In the case of the intermediate sanctions imposed by the IRS for excess benefit transactions, organizational managers may be liable for excise taxes to the extent that they have approved an excess benefit transaction.

It is best practice for all organizations, whether for profit or not, to have a well developed audit committee. The audit committee performs the unique role within a nonprofit organization to proactively oversee the organization's financial and compliance reporting and disclosure process. The audit committee should be entrenched in the control environment and areas where fraud may occur. While management is held accountable for the validity and accuracy of the financial statements, the audit committee monitors and analyzes information from the Chief Financial Officer, the internal auditor, the external auditor and the Executive Director. The audit committee must be knowledgeable in the organization's operating procedures and business risk model. To that point, it is most important for the audit committee to establish a "tone at the top", setting an example of integrity and ethical financial reporting decision making. The Journal of Accountancy outlines "Eight Habits of Highly Effective Audit Committees".

- Define the audit committee's mission, by drafting a charter.
- Outline specific competencies audit committee members must possess.
- Active participation among all members is essential.
- The committee is able to interview anyone it chooses.
- An agenda should be planned prior to each meeting.
- Decision-making processes should be logged and detailed.
- At the beginning of each meeting, review the minutes from the prior meeting.
- At the end of each meeting, summarize it.

Aside from nonprofit corporations with members, nonprofit boards are self-perpetuating; the existing trustees are responsible for insuring that the board is equipped to continue to carry out the organization's purposes and mission. This involves periodic self-evaluation by the board as to its continued objectivity, vitality and suitability to adapt to the organization's evolving needs. An aspect of board involvement is the constant effort to both conduct internal assessments and recruitment to identify productive and contributing board members. At times, this is manifested by rotation of board members on and off boards or effectuated with staggered board terms. Orientation of new board members is critical to insure that they become familiar with the obligations of board members in general, as well as the particularities of the mission statement, and are integrated into the board and committee structures.

## ***What is the “Reasonable Person” Standard?***

Widely cited in United States legal precedent, the reasonable person’s philosophy is:

- Prudence is the guide
- Look before you leap
- Record details in all financial dealings
- Scrupulously follow process
- Rely on knowledge of experts when needed
- Investigate action taken as exhaustively for the organization as one would for one’s own life
- Seek a firm and objective basis for knowledge and governance (e.g., the truth)

You need to apply a standard of “reasonableness” – of what is fair and just.

The reason is simple – the term “fiduciary responsibility” is misunderstood by many who serve on nonprofit boards.

Contrary to popular understanding, “fiduciary” does not merely refer to financial responsibility.

The term fiduciary means, “Of, relating to, or involving, confidence or trust; owing another the duty of good faith.”

This obviously extends far beyond the world of finance alone.

There are six basic areas of governance for which a nonprofit board, and, therefore, each individual board member, is ultimately responsible.

- 1) Strategic Planning: determining the nonprofit’s mission and purpose, approving overarching goals and objectives of all programs, monitoring achievements and outcomes against those established goals.
- 2) Financial Accountability: ensuring that the nonprofit is properly managed that financial control systems are in place, and that proper judgment is used in all business and financial transactions.
- 3) Fund Development: identifying and approving fund development goals and plans; participating in fundraising activities, especially in the cultivation and solicitation of individual donors.
- 4) Public Relations: enhancing the public image of the organization.
- 5) Appraising the Executive Director: selecting, supporting and conducting an annual performance review of the Executive Director.
- 6) Maintaining the Board: selecting, recruiting and nurturing new board members, developing and reviewing the performance of board members, assessing its meetings and its own performance as a board.

In order to accomplish these duties, board members need to understand that there are four distinct “roles” they can play in their nonprofit organization:

1. Board members govern the nonprofit by making policies in partnership with staff
2. Board members actively fundraise on behalf of the nonprofit
3. Board members provide free advice when asked by management on business and programmatic areas within their expertise
4. Board members volunteer in the service delivery of the organization

What role a board member plays at any given time may vary depending upon the stage of development of the nonprofit organization. For example, an organization in its early stage of development – or to use the terminology of Karl Mathiason of the Management Assistance Group in Washington, D.C., the “Phase of Creativity” – may require that board members spend much of their time playing roles two through four above, and spend less time on the first role. An organization that has a more established staff and infrastructure will require that board members concentrate on the first two roles above. Thus, while all roles are important, emphasis changes with the developmental life cycle of the nonprofit organization.

One of the more novel contributions to board theory of the last decade has been from John Carver, a board consultant from Indiana. In watching what most boards actually do, Carver observed that many board members feel their major job is watching over, scrutinizing and approving organizational behavior. Staying on top of things is, of course, important in managing or governing anything. But, Carver contends, a big mistake is made if we believe that “watching over” and “approving” are the central responsibilities of a governing board. They are not. The central function of a governing board is to lead, according to Carver. “Watching over” and “approving” are not leading. They are, however, crucial activities for ensuring that board committees, staff and volunteers are, in fact, following the dictates and directions of the leading body.

Thus, the board must first identify and clarify those dictates and directions. This is done through the setting of goals and objectives. As Carver says, “Board governance is about creating the future, about carving what can be out of what is, and about creating community by linking leadership to leadership.” Once a governing board has done its job of leading, it is then ready to monitor, as it now has the objectives by which to judge. The clearer a board is about what it wants; the easier it is to tell if that goal has been achieved. Following this line of reasoning, then, strategically planned outcome goals are the most important part of a governing board’s work. Outcome goals identify the dream—the desired and ultimate impact the organization wishes to achieve. Outcome goals are usually found in the mission statement and overarching goals of a strategic plan.

When the board meets as a whole body to lead and govern, the focus of board governance meetings needs to be devoted to the long term. Meetings need to be primarily concerned with creating the future, rather than passively reviewing the past. The focus is external (i.e., what has changed out there? What is our positioning in the community and how do we compare to other similar organizations? How will that trend affect our ability to provide services?), and not internal. To facilitate this process, some organizations have turned to using a strategic agenda, as opposed to the traditional agenda. Whereas a traditional agenda is simply a series of seemingly disconnected reports from individuals and committees, a strategic agenda is organized topically around the strategic goals a board has identified. In this model, committees and individuals report piecemeal on their work as it relates to a particular strategic topic on the agenda.

Board governance results in policy making. However, it is not always clear to board members how to make policy or what a policy actually is. Policies are ways for nonprofits to set limits and to develop systems for how things should be done within

the organization. Policies serve as management guidelines so that when implemented, they accomplish the day-to-day running of the organization without constant board approval or interference. By Webster's dictionary definition, policies are, "A definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions."

There are several levels of policies:

**Major** policies are always a board governance responsibility. They deal with questions such as: "What is our mission?"; "To what ends are we working?" "What is going on out there and how will it impact our organization?" and "How does something align with our values and key operating principles?"

**Secondary** policies and **functional** policies are a shared governance and management responsibility. They deal with areas including: "Who do we serve and with what range of services?" "How do they access our services?" and "How much money will it cost and how will we get it?"

**Minor** policies, **standard operating procedures** and **rules** are a management responsibility, including areas such as, "How do we do this on a daily basis?"; "What's the process for that?" and "What rules need to be instituted?"

To be effective, policies should be developed with staff, approved by the board, distributed to everyone affected by them, consistently enforced, regularly reviewed and updated, and be consistent with by-laws, mission, and articles of incorporation.

Today, many boards are doing a good job in assuming their responsibilities to plan strategically, appraise the executive director, oversee financial accountability and even help raise funds (generally, the least liked responsibility, and therefore, often the least assumed!). There is, however, one area of responsibility where boards appear to be falling short: boards need to be better at both monitoring their own activities and accomplishments and developing board members and leadership succession plans. Recent research suggests that boards that engage in periodic self-assessment and reflection are the leaders of stronger, healthier organizations. Thus, boards should be sure to do the following:

- Set boundaries through job descriptions for the board as a whole
- Establish Board committees and committee chairs; include individual board members and the executive director. (The executive director is responsible for other staff job descriptions, but may ask the board for input.)

**Make sure the board has enough people doing the right things.** This means that the Board Development Committee must develop and maintain profiles of what the board should ideally "look like" compared to what it is, and then it must identify the discrepancies. This requires that the Board Development Committee looks closely at the organization's purpose and strategic goals, and then reflects on the qualities, skills, experiences, interests, relationships, and connections that board members need to bring to the board room. Asking each board member to write and sign a letter of agreement each year that identifies just what it is he/she can commit to that year is one way of introducing a level of accountability. This letter will also help to identify gaps on the board that will need to be filled.

**Make sure the content and process of its board meetings are appropriate and meet the needs of the board.** From time to time, the board needs to take a few moments to answer the following questions, and then decide to make the necessary modifications:



- Are our board and committee meetings effective? Should we change our agenda style to a strategic agenda, consent agenda or reverse agenda (an agenda that moves the routine, reporting pieces of the agenda to the end and brings to the front the work that requires creative and high energy levels, such as new business)?
- Are we talking about the right things?
- Are we making major policy or meddling and micro-managing?
- Do we have too much / too little / enough information to make informed decisions?
- Is there too much / adequate discussion and participation?
- Is committee work done in committee, and recommendations and outcomes brought to the board for approval, or is the board redoing the work of the committee?
- Are overarching issues discussed by the full board?

In sum, a board can and must help the nonprofit if the nonprofit is to thrive. Board members must be committed to the mission; they must participate by asking questions and analyzing answers, and they must participate in everything from decision making to fundraising to support the nonprofit. As Karl Mathiason says, “A board is not a simple mechanism to be kept running smoothly by an occasional oiling. On the contrary, a board is a complex organism, requiring care and nurture to make it effective.” In the best nonprofits, a healthy governing board provides a strong competitive advantage that is well worth the effort needed for its creation and maintenance.

Does your board actively shape policies that are best for your organization, or simply try to fit your organization into someone else’s politically correct mold?

*Truth is the biggest driver of change....*

## Board Policies: Audit Committee vs. Finance Committee

### WHAT'S THE DIFFERENCE?

#### AUDIT COMMITTEE VS. FINANCE COMMITTEE

<b>AUDIT COMMITTEE</b>	<b>SHARED RESPONSIBILITIES</b>	<b>FINANCE COMMITTEE</b>
<p>The audit committee is authorized to consider matters related to (a) the financial statements of the organization and other official financial information provided to the public;</p>	<p>The finance committee ensures that budgets and financial statements are prepared; the audit committee has oversight for ensuring that reports are received, monitored, and disseminated appropriately.</p>	<p>The finance committee shall oversee the preparation of the annual budget and financial statements.</p>
<p>(b) the systems of internal controls, including overseeing compliance by management with applicable policies and procedures and risk management (e.g., for organizations that are part of a national network, annually reviewing whether the organization meets the re-chartering requirements of its national organization);</p>	<p>The finance committee monitors financial transactions; the audit committee makes sure things are done according to policy and with adequate controls.</p>	<p>The finance committee shall oversee the administration, collection, and disbursement of the financial resources of the organization.</p>
<p>and (c) the annual independent audit process, including the recommended engagement of and receiving of all reports from the independent certified public accountants. The audit committee shall have such other duties as may be delegated to it by the board.</p>	<p>The finance committee provides guidance about what can be done; the audit committee ensures that independent oversight occurs.</p>	<p>The finance committee shall advise the board with respect to making significant financial decisions.</p>

## Non-Cash Contributions

### Why Should Your Organization Consider Non-Cash Contributions?

Most high net worth households have less than 10% of their net worth in cash, or cash equivalents. According to **Giving USA**, 87% of contributions to nonprofit organizations come from individuals, and over 99% of households earning in excess of \$200,000 make contributions to charity. According to the research of Paul Schirvish of Boston College, over \$41 trillion will pass inter-generationally from the “Baby Boom” Generation over the next 40 years, Dr. Schirvish estimates that 40% or over \$16.4 Trillion is earmarked for Philanthropic causes. Therefore it stands to reason that a non-profit should focus on non-cash gifts.

### What are Non-Cash Contributions?

Non-cash contributions are charitable gifts of something other than cash and may need action by the nonprofit organization to convert them into cash. There may well have positive tax ramifications for the donors to make gifts in this form rather than have the donor convert them to cash and contribute cash to the nonprofit organization.

### Stock and/or Publically Traded Securities

Many donors have appreciated stocks or securities that if they were to sell them would generate a capital gains tax liability to the donor. If however they transfer them to a nonprofit organization the donors receive significant tax benefits, the capital gains tax liability is eliminated, in addition to having them receive a charitable deduction for the market value of the security at the time of the gift. Note that a donor can only deduct charitable contributions up to 50% of his/her Adjusted Gross Income (AGI) in the year of the gift. If the donor gifts capital gains stock, he/she can only deduct the value up to 30% of his/her Adjusted Gross Income (AGI) in the year of the gift. The donor can carry forward the unused portion of the deduction into subsequent tax years for tax purposes.

### Personal Property

Unlike publically traded securities, the tax benefit to the donor for personal property items such as automobiles, boats, airplanes, furniture, jewelry, art work is at cost. This can be problematic for the artist whose work does carry a significant value. The only tax benefit the artist may receive in the way of a charitable deduction is the cost of his materials: paint, canvas, brushes, frames. Items of personal property are generally not needed to be used in the course of daily operation of the nonprofit organization, and may present a challenge to convert to cash to meet current obligations.

### Land or Real Estate

Gifts of real estate can present challenges. Is the proposed gift “raw” or undeveloped land, or what is the structure currently on the land? Is the proposed gift a “fee simple” gift or a gift of an easement to the property? How marketable is the property? Or would the nonprofit organization propose to use it. Are there any zoning issues that would preclude the nonprofit from using the property? What are the conditions of the structures? Are there any DEP hazards connected with the property? Who is the owner of the property and can the donor be in a position to actually make a gift of the property? Can the nonprofit organization hold or dispose of the easement for compensation?

What is the property worth? Is there a recent appraisal?

### Interests in Privately-Held Companies

Closely held stock, by its very nature is not the same as publically traded stock. There may be a limited market for the shares of a non-publicly traded company. What is the motivation of the donor to give you shares or interests in a non-publically traded company, or limited partnership? What is the timetable for converting these interests into cash for the benefit of the nonprofit organization? Is the nonprofit organization willing to hold these interests until they can be converted into cash?

### Deferred Gifts or Split Interest Gifts

These are commonly referred to as “Planned Gifts.” They can be as simple as a bequest or a complex charitable trust.

#### Bequests:

Gifts at death generally referred to in the donor’s will. They can be revoked by a new will.

#### Charitable Gift Annuities:

Organized by the nonprofit organization. These are highly regulated vehicles that can be very powerful planning tools for both the donor and the nonprofit organization. While irrevocable, the donor becomes a secured creditor of the nonprofit organization, and receives a lifetime or period certain cash flow.

#### Pooled Income Trust:

Like the Charitable Gift Annuity it is an irrevocable contribution to the nonprofit organization, but the donor is only entitled to a percentage of the income the pool generates. In periods like these of low interest rates they may not be attractive to the donor.

#### Life Estate:

The donor retains the ability to continue to use the property gifted to the nonprofit organization during his life, generally this is real property and the donor retains the right to either live in the house or continue to farm the property gifted to the nonprofit during his/her life time.

#### Charitable Trusts:

These are generally drafted by the donor’s attorney, and can be quite complex, but serve the planning concerns of the donor.

A Charitable Remainder Trust (CRT) will pay either a certain dollar amount (Annuity Trust) or a fixed percentage of the year end market value (Unit Trust) to the donor or any individual designated by the donor for that person’s life or for a fixed period not to exceed 20 years. The donor receives the tax benefit of being able to take the present value of the amount contributed to the trust as a current tax deduction and avoid the capital gains liability if the property or securities are liable for capital gains taxation upon sale or liquidation. This can be a very effective planning tool for the donor who wants to make a large commitment to the organization, but needs the assets to generate income during his or her life time. The eventual charitable beneficiary of the trust can be changed under certain circumstances.

A Charitable Lead Trust is like a CRT only inside out. It will pay the nonprofit organization either a certain dollar amount (Annuity Trust) or a fixed percentage of the year end value (Unit Trust) for a fixed period of years. If intentionally created as a “defective” trust or Grantor Trust, the

donor can receive a current tax benefit of the present value of the value of the property or securities contributed to the trust. The trust would then be liable for income tax on the income the trust generates for the duration of the trust. This vehicle is a very effective tool for the donor who wants immediate tax benefits for a multi-year commitment, and may be more enforceable than a mere pledge. This can be a very effective planning tool for the donor who may want to move considerable discounted assets to younger generations and avoid either Gift or Estate taxes. The charitable beneficiary may be able to be changed on a yearly basis.

### Gift Acceptance Policies

It is very important and the fiduciary responsibility of the board of a nonprofit organization to draft and enforce a Gift Acceptance Policy for noncash gifts. These questions are critical:

- How will you accept gifts of securities?
- Do you have a brokerage relationship to receive them and will you hold them or liquidate them immediately upon receipt?
- Will you accept gifts of personal property?
- What kinds of property will you accept?
- Can they be used in the normal operations of the organization?
- Will you accept gifts of art work, or jewelry, or fur coats made of the fur of endangered species?
- Will you accept gifts of real estate?
- Will you accept real estate only if you can use it in the normal operations of the organization?
- What inspections need to be made on site at the property prior to the acceptance?
- Will you only accept fee-simple gifts or will you accept easements or life estates?
- Will you accept gifts of non-public business interests? Under what circumstances?
- Will you pay for the legal fees to create and the administration fees to administer either a pooled income fund or a Charitable Gift Annuity?
- Will you accept the market and longevity risk that a Charitable Gift Annuity program entails?
- Will you agree to underwrite the legal and/or the administration fees for a donor to create and maintain a Charitable Trust?

All these issues should be considered prior to having the organization accept non-cash contributions.

## **INSURANCE AND RISK MANAGEMENT**

Included in this chapter are the key elements needed for protecting your nonprofit organization. These elements will provide information you need, so that you make good decisions regarding your insurance purchases. The primary goal is to create a process for the continuous functioning of your organization in the event of insurance or a financial loss.

Some of your insurance purchases are required by state law while others are based on contractual requirements and risk management objectives.

### **A. Commercial Property**

The commercial property insurance is designed to protect your nonprofits building(s) and personal property.

### **B. Computer EDP**

Computers and other electronic data processing equipment and media will be protected with this insurance endorsement. Covered items include data processing equipment, data processing media (i.e., DVDs, CDs, diskettes, tapes, etc.), and reproduction of data. Extra expense and business interruption can be included to reimburse your nonprofit organization for expenses that occur as a result of damage or loss to the insured items.

Some policies can even be written or tailored to include the resulting damage and loss as a result of a computer virus.

When considering this type of coverage you need to know if this is included in your business personal property limit. You should make certain that all of your nonprofit's computerized equipment, such as laptops, telephone systems and copiers are covered. Leased computers, copiers and telephone systems can be covered under this type of coverage for your organization.

### **C. Inland Marine**

An inland marine policy covers exposures that involve property and merchandise while in transit or "floating." Valuable papers and documents, as well as mobile equipment and other supplies are also covered by this type of policy.

An inland marine policy should consider inclusion of the following coverages:

#### Business Income

The business income policy, also known as business interruption, is designed to help cover potential losses resulting from an interruption of normal business. Business income lost due to an insured peril, often exceeds in cost the damages to your real and personal property. Extra expenses incurred because of interruption, can also be insured. The cost to enable your nonprofit organization to carry on its mission at another location is covered while your existing site is being repaired or rebuilt.

#### Boiler & Machinery

Boiler and machinery insurance protects your organization in the event of sudden and accidental mechanical equipment failure or damage of a covered object, which results in financial loss to your organization. It covers losses to your insured

property as well as the property of others. In the event an insured object causes an “accident”, the boiler and machinery policy would pay for damage and repair of property, excluding any subsequent fire related damage, which would be covered by your property insurance policy.

Boiler and machinery coverage is recommended and is included on many property forms automatically or via an endorsement on some property forms.

#### **D. Business Auto**

The business auto policy is designed to protect your nonprofit organization in the event of accident, theft, injury and other damages involving your vehicles and your employees while driving your nonprofit’s autos. Even if you own no autos or trucks, you have an exposure to a potential claim.

Business auto policies might consider inclusion of the following coverages:

##### Hired Car Liability

This coverage provides protection against damages when an employee is held liable for negligence while driving a vehicle being used under contract or borrowed by your organization. Third party claims are paid up to the stated policy limit.

##### Drive Other’s Car

This coverage protects your employees, or other specified individuals, when they are held liable for damages while driving a borrowed auto for personal use. This endorsement, which also covers the spouse of the employee, is normally purchased for the executives or officers of the nonprofit organization.

##### Non-Owned Auto

This coverage will protect your nonprofit organization in the event of negligence by an employee which occurs while they are driving a non-owned company vehicle such as their own personal auto while performing job related duties. Third party claims are paid up to the stated policy limit. The bookkeeper going to the bank to make a deposit who gets into an accident is a typical example that can result in a claim covered by this coverage.

#### **E. Crime-Combination**

The combination crime policy is designed to protect your nonprofit group in the event of loss due to burglary, robbery, fraud or employee dishonesty. Some people think of this as “BONDING” your employees.

Crime policies might include the following protection:

##### Computer Fraud

This coverage protects your nonprofit organization against loss resulting from malicious misuse of your computer system with the intention of financial gain by an individual or group, or with the intent to cause loss of property, monies or securities.

### Employee Dishonesty

This coverage will protect your nonprofit organization in the event fraudulent or dishonest acts are committed by an employee who results in loss of money, securities, or property. This coverage is also known as a "fidelity bond."

### Extortion

This coverage protects against loss due to the extortion (kidnap) of an insured employee or family member in exchange for ransom, whereas the individual(s) or property is subject to damage or harm.

### Forgery or Alteration

This insurance coverage protects your nonprofit organization in the event of forgery or alteration of your organizations business checks, promissory notes, drafts, consignments, or similar documents. An attached endorsement can protect against loss due to incoming documents, if so requested.

## **F. Directors and Officers Liability & Employment Practices Liability Insurance**

This policy will protect your officers and directors in the event they are held liable for damages caused by error, mismanagement, negligent acts, misleading statements, omission, or any other wrongful act that results in financial loss to others.

An organization reimbursement (or corporate indemnification) endorsement will reimburse a named insured director or officer for expenses incurred while defending against suits claiming wrongful acts committed.

This element of protection is NOT covered under any other policy form. It is essential that this coverage is purchased by your nonprofit organization to protect and indemnify your board members. This is an essential element in order to attract and retain quality board members. They need these protections since without this coverage they would be personally liable for their actions while on the board.

The EPLI policy can cover your nonprofit group in the event of a claim that may include: wrongful dismissal, discharge or termination, breach of written/oral/implied employment contract, employment misrepresentation, failure to promote, violation of employment discrimination law, deprivation of career opportunity, wrongful discipline, negligent employee evaluation, invasion of privacy, defamation, sexual or workplace harassment of any kind, constructive discharge, retaliation and humiliation, wrongful demotion, negligent reassignment, federal, state, and local civil rights and the punitive damages that might result.

Coverage can be tailored to include third party liability and those employees that are leased.

## **G. General Liability Coverage**

This policy provides payment in the event of a "liability" loss that causes injury or property damage. It protects your nonprofit against liabilities that arise from your daily operations, the products you sell, or the services you render.



### Employee Benefits

This coverage would protect your nonprofit organization in the event it was held liable for claims arising from your employee benefits program. In the event of loss due to improperly counseling plan participants, handling records carelessly, failing to enroll or terminate employees, or improperly interpreting coverage, you would be covered up to the stated limit.

### Premises/Operations

This coverage protects your nonprofit organization in the event of loss due to bodily injury or physical damage arising from ownership, maintenance or any use of the insured premises. It also covers the operations performed by your group.

### Personal Injury

This coverage protects your nonprofit organization in the event of "injury" due to: false arrest, detention, imprisonment or malicious prosecution; libel or slander; defamation of character; wrongful eviction or entry, or invasion of the right of private occupancy privacy. This coverage is enforced when you are held liable for damages.

### Fellow Employee

This coverage would protect employees when named as negligent in a claim filed by a fellow employee, for damages resulting from a work related injury. While Workers Compensation protects your nonprofit organization, an individual employee has no protection. This endorsement protects that individual employee in the event of suit.

### Additional Persons Insured

This endorsement extends your policy to include your employees as a Named Insured while acting within the scope of their work related duties.

### Host Liquor Liability

This coverage protects your business when held liable for loss or damage that occurs due to the serving of alcoholic beverages at a function deemed incidental to your operations.

It is necessary for you to amend your host liquor liability to schedule specific events when you are required to obtain a permit for a temporary liquor license.

If liquor is being served for a cost; coverage for your nonprofit needs to be secured and your current policy needs to be amended or a special events policy needs to be purchased.

## **H. Workers Compensation**

State law requires every employer to provide Worker's Compensation insurance for its employees. Benefits are paid to employee's who suffer a work related injury. A percentage of expenses are paid for lost wages, medical expenses and permanent disability or disfigurement.

The policy we recommend consists of the following coverages:

### Dividend Plan

This plan of coverage bases your final premium on the size of your standard pre-paid premium and the actual losses experienced throughout the policy year. This can result in reimbursement or dividend payment back to your nonprofit organization.

### Broad Form All States

This endorsement provides Worker's Compensation insurance to an employee working outside of your domiciled state.

This coverage includes all states, except those monopolistic states specifically excluded by the policy.

### Employer's Liability

This coverage protects your nonprofit organization in the event you are held liable for injuries suffered by an employee and the employee bypasses the benefits provided under your state workers compensation law and brings suit against your organization under common law. These limits should be no lower than \$500,000 and your umbrella or excess policy can be written to provide additional protection over these limits.

### Managed Care or Rate Deviations

Some carriers offer a discount off of the filed rates and may be able to offer discounts if your nonprofit qualifies. Managed care means that you receive a discount when you utilize the doctors in the network they provide.

## Financing for Nonprofit Organizations

### *What Nonprofit Organizations Offer Commercial Banks*

Nonprofit organizations offer commercial banks the opportunity to grow loans and deposits in a very competitive market. Doing business with nonprofits also offers the bank a chance to enhance its image in the community through exposure to the organization's board of directors, who are often people of significant stature in the community. These relationships have proven themselves to be profitable endeavors for banks due to the deposit account generation and financing opportunities they often provide.

### *Questions You Should Ask Before Choosing a Bank to Provide Services for Your Organization*

- Does the bank make a market in my specific industry?
- What geographic area does it serve?
- How does my organization compare, in terms of revenue size and loan needs, to similar existing clients of the Bank?
- Does the bank understand my organization's funding sources and any cyclical nature of payments?
- Does the bank have a dedicated relationship management and customer service team or do you have to rely on an 800 number?
- Does the bank offer deposit accounts and supporting cash management services? What is the availability of deposited funds? Does my organization have direct access to a cash management representative? Can the bank demonstrate their cash management services and capabilities?
- Will the bank provide me with a cost analysis compared to my existing deposit services provider?
- Can the bank provide my organization with industry references to verify its performance and capabilities?
- What is the account officer turnover rate?
- How responsive is the bank?

### *Initial Background Information a Lender Will Need*

**History of Organization:** Services provided and how they have evolved since inception

**Management Team:** Titles and functions of senior management; Length of tenure with organization and time in present position; Backgrounds prior to joining organization

**Board of Directors:** Complete list of members with background information and length of time on Board

**Funding Sources:** Major funders/grantors or sources of revenues

**Components of Loan Request:** Amount; Purpose; Requested Tenor; Collateral; Expected Source of Repayment

**Types of Loans:** Working Capital Line; Equipment/Lease Financing; Mortgage Financing; Pledge Loan; Credit Enhancement for Bond Issuances; Direct Purchase of Tax-Exempt Bonds, etc.

**Accounting Information:** Name of CPA firm and name of partner at CPA firm who handles your engagement

**Number of Employees:** Full-time; Part-time; Union or non-union; Length of current union contract

**Internal Financial Reporting:** Frequency; Listing of reports prepared (to include cash flow projections/budget)

### ***Initial Package of Financial Information Needed by the Lender on Loan Request***

Minimum of three (3) years audited financial statements  
Most recent interim financial along with prior year period for comparison  
Current budget  
Information on funding sources  
List of Board members  
Description of services provided by the organization  
Description of the project to be financed

### ***Structuring of Loans for Nonprofit Organizations***

There are a number of primary considerations each bank addresses when structuring financing packages:

Matching loan to purpose: Current assets, primarily receivables when lending to nonprofits, are financed via a working capital line of credit. This line would be expected to reduce in tandem with reductions in receivables, and thereby be available to support cash needs when receivables increase due to timing of revenue receipts. Typically, the line would include an annual 30 day period where there are no outstandings.

Fixed asset purchases such as equipment and furniture are financed through term debt or leasing, which is based on the useful life of assets. Working capital lines should not be used for fixed asset acquisitions.

Real estate acquisition and renovations are financed on a longer amortization of debt based on the extended useful life of this asset. Pledge receivables (typically through capital campaigns) to support real estate acquisition/renovations can be considered for financing based on term of the pledges and the anticipated payment of such pledges. Typical repayment is interest payable monthly with minimum annual principal reductions. The repayment matches the preponderance of pledges being collected. Financing for real estate acquisition/renovations can also be considered through a tax exempt bond issuance. In certain cases, the bond issuance is supported by a letter of credit issued by a bank or may be a private placement bond held by a bank.

The above is a general outline of loan structuring which serves the purpose of matching the loan repayment to the expected sources of cash. The structuring helps to maintain the integrity of an organization's balance sheet, which is of vital importance to lenders and the various organizations that supply grants and contributions to nonprofits.

**Supporting loans with collateral.** Each type of loan is typically supported by a specific match of collateral which by its nature is best suitable to short, intermediate or long term financing. The following collateral and ratios usually support the aforementioned loan facilities when banks lend to nonprofits:

**Working capital lines** are secured by receivables.

**Term debt and leasing facilities** are supported by fixed assets.

**Mortgage debt** / Bond issuance is secured by a first mortgage lien typically at up to 70% - 80% of the lower of cost or appraised value.

Pledge loans advance rates are based on the estimated quality of the pledges. Heavy concentration of pledges with a small group of individuals or lesser-known organizations may further limit the amount the bank will advance. This is due to concerns of negative impact if a particular pledge should become impaired. Pledges by their nature are not strong collateral, so a great deal of subjective analysis is undertaken by the bank to determine a comfortable advance level. Well-known donors, breadth of pledgors and prior success in an organization's campaign efforts can substantially contribute to the advance percentage the bank will allow.

All of the collateral segments in the preceding outline match collateral to specific facilities. A lender will also do an analysis of aggregate loan exposure to the aggregate collateral. A shortfall in a particular collateral segment can then possibly be offset by excess collateral in another segment. It is typical that all of a lender's loans are cross-collateralized.

**Loan pricing.** This is one of the earliest questions any borrower asks of a lender. It is a question that a lender cannot fairly answer until the lender is in receipt of the preliminary financial information as outlined earlier in this section. Among the factors that go into pricing of loan facilities are:

- Historical excess revenues
- Historical cash flow
- Strength of balance sheet
- Balance sheet liquidity
- Ability to service existing and proposed debt
- Overall collateral strength
- Industry trends
- Level of monitoring required

## Revised IRS Form 990 Poses Challenges

Following its first major revision in nearly 30 years, the new IRS Form 990 is in effect for the 2008 tax year, affecting returns due May 15, 2009, or after. The revised form is designed to increase transparency of tax-exempt organizations while presenting the IRS and stakeholders with a realistic picture of entities and their operations.

In particular, the redesigned form asks some specific questions about governance and management practices, including:

- Does your organization have a written conflict of interest policy?
- Does your organization have a whistleblower policy?
- Does your organization have a written document retention and destruction policy?
- Was your Form 990 provided to your governing body?

To streamline end-of-year information gathering, your organization should take the following steps:

- Develop, implement and/or revise your governance policies and practices (as needed).
- Review the revised Form 990, including all schedules and instructions, to determine what additional documentation your organization may need.
- Develop, implement and/or revise your information-gathering policies (if necessary) to ensure you have the processes in place to compile the data needed to complete the new form.

Finally, remember that despite the challenges, there are benefits. Form 990 gives your organization the opportunity to publicly share how your operations and finances align with your mission.

### What Changed

One of the goals of the revised Form 990 is for nonprofits to report all information directly on the core form and schedules, rather than including separate attachments. The revised Form 990 consists of an 11-page core form. In addition, the new form's 16 schedules are designed to require reporting of information only from those organizations that conduct particular activities (a checklist of required schedules is part of the new form). Additional changes include the following:

**Summary Page** – A summary page at the beginning of the new Form 990 is intended to provide a snapshot of your organization's activities and finances, including basic information about revenues, expenses, fundraising, compensation, unrelated business income, and the number of employees and board members. Both prior-and current-year data are required, resulting in a two-year comparison.

**Financial Information** – With the redesigned Form 990, you will report revenues and functional expenses somewhat differently. Many of the new reporting categories differ from standard nonprofit accounting classifications and may require revising your accounting systems and software. The new form requires nonprofits to break down contributions, gifts and grants into categories of:

- Federated campaigns
- Fundraising events
- Membership dues
- Related organizations

- Noncash contributions
- Other gifts, grants and contributions
- Government grants

You must also comply with the following changes:

- Utilize several new classifications of functional expenses, including fees for management, lobbying, investment services, advertising and promotion, office expenses, information technology and royalties.
- Itemize functional expenses categorized as “other expenses.” Note that “miscellaneous” expenses cannot exceed 5 percent of total expenses.

Note also that all nonprofit organizations that report on a GAAP basis are subject to accounting for uncertainty in income taxes. If income tax liabilities are accrued, the exact language that is put in the footnote is required to be duplicated on Schedule D of the new Form 990.

**Compensation** – In general, compensation of officers, directors and key staff is included in Part VII of the new Form 990, along with Schedule J, Supplemental Compensation Information. Some of the key differences include:

- Officers, directors and key employees must be combined in a single list.
- The threshold for reporting compensation of the five highest salaried employees is increased from \$50,000 to \$100,000.
- Compensation figures must be taken from Form W-2 or Form 1099.

**Governance and Operations** – You will now be required to disclose certain organizational practices, such as how executive compensation was established, and whether you made governing documents, financial statements and conflict of interest policies available to the public. In addition, you will need to indicate the following:

- Whether you contemporaneously documented meetings and actions.
- Whether you have a conflict of interest policy and if you monitored and enforced it.
- Whether you have whistleblower policies and if allegations are reviewed and resolved.
- Whether you have document retention/destruction policies in place.

In addition, you’ll be asked to describe in Schedule O the process by which your governing body reviewed the organization’s Form 990 before filing.

**Program Services** – The Statement of Program Service Accomplishments on the new Form 990 makes three major changes:

1. You will now need to report direct revenue related to each of your three largest program services in addition to reporting expenses for each program service. Direct revenue would include only income from fees for services and sales of goods directly related to a program; it would not include other indirect revenue or in-kind contributions.
2. You must describe your three most significant program service accomplishments on the core form as opposed to submitting attachments with more detailed information.
3. You must describe (in three lines) your most significant program service accomplishment for the year.

## Transition Period to New Form 990

To phase in the new form, the IRS has established a two-year period during which smaller organizations can file either the new Form 990 or the short Form 990-EZ (which has *not* been substantially modified).

- **For tax year 2008**, most organizations with gross receipts of less than \$1,000,000 and total assets less than \$2,500,000 may choose to file either the new Form 990 or the Form 990-EZ.
- **For tax year 2009**, most organizations with gross receipts of less than \$500,000 and total assets less than \$1,250,000 may choose to file either the new Form 990 or the Form 990-EZ.
- **Beginning in tax year 2010**, most organizations with gross receipts of less than \$200,000 and total assets less than \$500,000 may choose to file either the new Form 990 or the Form 990-EZ.

## The Implications

The implications of incorrect and incomplete Form 990 reporting are serious. IRS penalties aside, your Form 990 is easily available to the general public and will certainly receive scrutiny. Make sure you carefully review the revised reporting requirements to ensure that you are in full compliance. You may also want to encourage the board of directors to review the completed Form 990 prior to filing.

## Smaller Nonprofits Also Face Reporting Changes

Beginning in 2008, nonprofits with less than \$25,000 in annual gross receipts will be required to file an e-Postcard (Form 990-N) every year. The only information required on the e-Postcard includes the organization's name, mailing address, website address, employer identification number and annual tax period; the name and address of a principal officer of the organization; and a statement that the organization's annual gross receipts are normally less than \$25,000.

An organization that fails to file Form 990-N for three consecutive years will automatically have its tax-exempt status revoked. Accordingly, it is critical that responsible officers of small nonprofits implement procedures to ensure that the Form 990-N filings are completed.



## Nonprofit Tax Issues

### *Unrelated Business Income Tax (UBI)*

Tax exempt organizations may still be liable for income tax if it receives income from activities unrelated to its exempt purpose. An exempt organization that earns more than \$1,000 of **gross** unrelated business income must file 990-T and pay tax (UBIT) on any net income.

UBI is income which meets three tests:

1. It is from a trade or business
2. It is regularly carried on
3. It is not substantially related to an organization's exempt purpose

In addition, UBI may not be taxable if it falls into certain categories of exceptions and exclusions.

Generally speaking, if your organization sells goods or services to generate income, even if it is conducting the activity as part of a larger group of activities related to its exempt purpose, the activity is a trade or business. In most instances, an activity is considered regularly carried on if it is conducted in the same manner and frequency as a for-profit organization would conduct the activity. The IRS gives this example:

A hospital auxiliary operates a health food stand for one week at a preventative health education conference. Because the activity is a one-time occurrence and is unlikely to compete with for-profit health food stores that operate year-round, the activity is not “regularly carried on.” However, if the hospital auxiliary operates a health-food stand daily at the hospital, that is likely the **regular** conduct of a trade or business.

If the activity meets the above two tests, the last item to consider is if the activity is substantially related to your organization's 501(c)(3)'s exempt purpose. The important thing to remember here is that the generation of money to support your exempt purpose does not qualify as a “substantially related” activity.

### ***Common Exceptions and Exclusions to UBI:***

The IRS code specifically excludes certain types of income from UBIT. Some income excluded includes interest and dividend income, rents from real property, royalty income and gains or losses from the sale of property. Additionally, some types of income are exceptions to UBIT, a few common exceptions are:

Volunteer workforce - If 85% or more of the work is performed by uncompensated volunteers, the income is exempt from UBIT.

Convenience of members - If the trade or business activity is run primarily for the convenience of members, students, patients, employees, or officers, the income is exempt from UBIT.

Sale of donated merchandise - Income earned from the sale of goods that substantially all of which was donated, is exempt from UBIT.

Distribution of low-cost articles - If the organization distributes items that the cost to the organization qualifies as low cost (currently \$9.10), and then receives a donation in return, the income received is considered a full contribution and is exempt from UBIT calculations.

Convention or trade show activity - The IRS recognizes that many organizations regularly conduct activities in conjunction with an annual meeting, trade show or convention. The regulations state in order to qualify as exempt from UBIT the activities must be either to promote and stimulate interest in the products and services of the exempt organization and/or its community; or to educate attendees about issues of the organization's industry. For example: At their annual convention, an exempt organization charges exhibitors a rental fee for space to set up their display. This income may be excluded from the UBIT calculation if the display meets the above standards.

Sponsorship - Many times an exempt organization will seek sponsors for its fundraising events. To qualify as exempt from UBIT the payment can only buy an acknowledgement of the contributor's name, logo or product line and it cannot be used to advertise the contributor's products or services.

A complete list of the exceptions and exclusions to UBIT can be found in IRS publication 598, Tax on Unrelated Business Income of Exempt Organizations, which can be downloaded at <http://www.irs.gov/pub/irs-pdf/p598.pdf> .

## **Charitable Gaming**

Many organizations conduct some sort of gaming in order to raise income. Gaming activities include: bingo, keno, slot machines, beano, raffles, 50/50s, lotteries, pull-tabs, scratch-offs, pickle jars, punchboards, tip boards, tip jars, paramutual betting, Calcutta wagering and certain video games. In almost every case, gaming activities **do not** further an exempt purpose and will therefore generate unrelated business income (UBI) unless exceptions or exclusions apply (as in the exception for traditional bingo).

A 501(c)3 organization can lawfully conduct gaming if it is not a substantial part of the organization's activities and the funds raised are used for the organization's exempt purpose.

An exempt organization may still be responsible for filing W-2G, Statement for recipients of certain gambling winnings, when prizewinners receive over certain dollar amounts. The organization may also be required to withhold federal income tax from the amount won. This includes prizes that are non-cash (such as a vacation or big screen television) where the fair market value of the item won is the amount of the winnings. In this case, the winner would have to pay the withholding tax to the organization which should be collected when the prize is awarded.

The IRS discusses gaming and reporting requirements in its publication 3079, Gaming Publication for Tax-Exempt Organizations.

## **Jeopardizing Exemption Status**

Once an organization receives its IRS determination letter stating that it qualifies for exempt status, the organization must continue to act in accordance with that ruling in order to retain its status. There are four ways that an organization can lose its exempt status. These are:

## ***Private Inurement/Benefit***

A 501(c)3 must not conduct any activity that will substantially benefit a private interest of any individual or organization. A public charity must serve the public interest. The code further states that “no part of an organization's net earnings may inure to the benefit of a private shareholder or individual.” This means that no part of the exempt organization's assets or income can accrue to insiders. The most common infraction in this area is in paying unreasonable compensation to insiders or transferring property to them at less than fair market value. Any amount of inurement is grounds for losing the tax exempt status and, even in cases where the IRS does not revoke the exempt status, the insider involved may be subject to large excise taxes.

## ***Lobbying***

Activities that are conducted in an effort to influence legislation are severely restricted for 501(c)3 organizations. Lobbying includes contacting, or encouraging the public to contact, a member or employee of a legislative body in order to propose, support or oppose legislation. If lobbying is a substantial part of the organization's activities, it may be jeopardizing its exempt status.

Organizations may elect to have their lobbying activities measured under an expenditure test, known as the 501(h) election. Under this election, a 501(c)3's lobbying activity will not jeopardize its exempt status so long as its expenditures related to lobbying remain under the amount specified in Code section 4911. For more information on this election, please contact your Sobel advisor.

## ***Political Campaign Activity***

501(c)3 organizations are ***strictly prohibited*** from engaging in any political campaign activity. This includes any activity that is directly or indirectly participating or intervening in any political campaign either on behalf of or in opposition to any candidate for public office. This includes, but is not limited to, making contributions, making public statements or endorsing a candidate. ANY political campaign activity may jeopardize the organization's exempt status and may cause the organization to become subject to excise taxes on its political expenditures. Organizations should also note that this prohibition applies to all levels of candidates from local to national level.

## ***Excessive Unrelated Business Income***

If an organization receives an excessive amount of its support from unrelated business income it may be jeopardizing its exempt status. Please review the section for Unrelated Business Income (UBI) to learn more about this topic.

## ***Substantiation of Contributions***

There are two rules that must be followed in order to meet IRS substantiation and disclosure requirements:

1. A donor is responsible for obtaining a written acknowledgement from a charity for contributions they claim as a deduction on their income tax return. An exempt organization can assist a donor by providing a timely written statement that includes:
  - The name of the organization
  - The amount of the cash contribution

- A description of the non-cash contribution
  - A statement that no goods or services were provided by the organization in return for the contribution (if applicable)
  - A description and good faith estimate of the value of any goods or services that were provided in return for the contribution
  - A statement that any goods or services provided consisted entirely of intangible religious benefits (if applicable)
2. A charitable organization is required to provide a written disclosure to a donor who receives goods or services in exchange for a single payment in excess of \$75. This usually is in the form of a payment that is partially a contribution and partially for goods or services, otherwise known as a quid pro quo contribution. For example: a donor writes a check to an organization for \$200 in order to attend its annual benefit concert. The concert ticket has a fair market value of \$50. The donor's tax deduction may not exceed \$150 because the donor's payment of \$200 exceeds \$75.

The written disclosure should contain the same information describe in 1. above but is not required when the goods or services meet certain exceptions such as for token (low cost) goods, membership benefits, or intangible religious benefits or where there is no donation element involved in the transaction.

Failure by charities to provide timely written disclosure can result in penalties of \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing.

### **Public Disclosure Requirements**

Generally, an exempt organization must have certain documents available for public inspection and provide copies of such documents to individuals requesting them. These documents include Form 990, 990-EZ, 990-PF, 990-T and applications for exemption including Form 1023, Form 1024 and others.

IRS regulations specifically exclude the name and address of any contributor so a tax-exempt organization is generally not required to disclose the names or addresses of its contributors on its annual return, including Schedule B (Form 990, 990-EZ, or 990-PF). However, any contributors' names and addresses listed on an exempt organization's exemption application are subject to disclosure. This general exclusion for contributor information on annual returns does not apply to private foundations, or to political organizations described in section 527.

Since an organization does not have to comply with individual requests for these documents if it makes the documents widely available, many organizations post the documents on a readily accessible worldwide web site. To qualify, the documents must be posted in a format that meets certain criteria. One format that currently meets the criteria is Portable Document Format or PDF.

### **Change in Purpose or Activities**

Once an organization is recognized as tax exempt by the IRS, it must notify the IRS of any changes to its organizing documents, by-laws, activities or exempt purpose. An organization that is required to file an annual return must report the changes on its return. If it does not have to file an annual return, the organization must report the changes to the Exempt Organization Determinations Office. For example, if an organization decides that it will start offering scholarships as one of its program activities, the organization must include the same information that

would have been requested on an initial application for exemption about its scholarship program to the IRS.

### **Providing Scholarships, Fellowships, etc.**

In general, payments made to individuals may further an organization's educational purpose if the selection was racially non-discriminatory, based on need and/or merit, or to a charitable class rather than to pre-selected individuals.

When completing Form 1023, Application for Exemption or when notifying the IRS of scholarship activity at a later date, the organization must submit the following information:

- A description of the different grant programs and the purpose of each program
- An explanation of how the programs will be publicized and whether they will be to the general public or another group of recipients. This information must include specific information about the geographic area and the means by which the programs will be publicized.
- The basis and procedure for how recipients will be determined
- Samples of any solicitation materials or announcements of award winners must be submitted.
- An explanation of how records and case histories will be maintained.

### **Special Events**

Many organizations run special events such as dinners, golf outings, raffles, carnivals, etc. as a way to raise money for their exempt purpose. These special events only incidentally accomplish an exempt purpose and their primary purpose is to raise funds to finance the organization's exempt activities. Record keeping for special events should be meticulous in order to avoid any misclassification of income.

Sponsorship income, as described in the section on UBI, should be recorded separately from gross revenue and contributions. Gross revenue and contributions is earned by offering the goods or services that have more than a nominal value for a payment that is more than the direct cost of those goods or services. When reporting special event income on Form 990 or 990-EZ an organization must distinguish between:

- Gross revenue - the *retail value* of the goods or services; and
- Contributions - any amount received that exceeds the retail value of the goods or services given.

For example, an organization hosts a golf outing as a special event. The retail value of a round of golf at the chosen course is \$100. Each participant pays \$250 to participate in the outing. The organization reports \$100 per ticket as gross revenue and \$150 per ticket as contribution.

In addition, expenses relating to each event should be maintained separately in the organization's records. Direct expenses are reported on page 9, line 8b of Form 990 while indirect expenses are reported on page 10 as fundraising on the Schedule of Functional Expenses. For example, in the instance of a golf outing, the course fees would be a direct expense of the event while printing and mailing of the invitations would fall under fundraising. When considering what expenses are direct think about the retail value of the goods or services provided. In this example, what would an individual person purchasing a \$100 round of golf be paying for? It would

pay for the use of the greens, a caddy, or perhaps a golf cart rental. It would not pay for the printing of invitations.

## **Supporting Organizations**

Supporting organizations are public charities that carry out their exempt purpose by supporting one or more other exempt organizations, usually other public charities. This classification can be important to an organization that would otherwise be a private foundation, which is subject to many more rules and regulations. A supporting organization must have a strong relationship with the organization it supports in order to avoid classification as a private foundation. This relationship would allow the organization that is being supported to oversee the operations of the supporting organization.

In addition to being organized exclusively for exempt purposes, a supporting organization must be organized and operated exclusively to support specified supported organizations. There are three relationships that are defined by the IRS and are all intended to ensure that the supporting organization is responsive to the supported organization. The types of supporting organizations are:

Type I - Organizations that are operated supervised or controlled by the supported organization. (Parent-Sub relationship)

Type II - Organizations that are supervised or controlled in connection with the supported organization (Brother-Sister relationship)

Type III - Organizations that are operated in connection with the supported organization. Since this is the least formal relationship, a type III organization must also meet other tests to determine responsiveness.

The Pension Protection Act of 2006 changed requirements for supporting organizations and included the new Type III - Fully Integrated as qualified distributions for private foundation's contributions.

Type III - Fully Integrated - Newly defined in section 4943(f) of the Pension Protection Act as an organization which is not required under regulations established by the Secretary to make payments to supported organizations due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

## **Donor Advised Funds**

When a separate account or fund is set up by a charity in order to receive contributions from a donor or a group of donors, this maintained fund is called a donor advised fund. Payments to a donor advised fund may only qualify as a completed gift to the charity if the charity has final say-so over how the fund's assets are invested and distributed in furtherance of its exempt purposes. Donors may recommend charitable distributions from the account but the charitable organization must have the autonomy to accept or reject the donor's recommendations and make its own decisions.

According to IRS Guidance Notice 2006-19, The Pension Protection Act of 2006 (PPA) also treats as a taxable distribution any distribution from a donor advised fund to a Type II supporting organization that is not functionally integrated or to any other supporting organization if the fund's donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the

grantee if the sponsoring organization does not exercise expenditure responsibility with respect to such distribution.

Donor advised funds are coming under greater scrutiny and regulatory control due to certain abusive arrangements that have been found to be set up primarily for the donor's own benefit. Exempt organizations that participate in these types of arrangements may jeopardize their tax exempt status. Please speak to your tax advisor immediately if you are unsure about your organization's donor advised fund activities.

# Payroll and Nonprofit Tax Reporting

## ***Federal Forms to be Filed***

Every nonprofit organization paying wages to its employees is required to withhold from the employees' gross earnings specified amounts of Federal Income, Social Security, and Medicare taxes under the Federal Contribution Insurance Act (FICA).

Federal Income Tax is a prepayment of the employee's personal income tax obligation. The amount of tax withheld from the employee's compensation is based on the pay period, the employee's marital status and the number of exemptions the employee has claimed on Federal Form W-4. The amount to be withheld is determined from the tables in the Federal Circular E published by the Internal Revenue Service.

Wages are subject to the FICA tax, which is really made up of two taxes:

- 1) Social Security tax of 6.2% up to a maximum amount of annual compensation, and
- 2) Medicare tax of 1.45% on all compensation.

FICA taxes are withheld from employee compensation and matched by the employer. The Federal forms relating to these taxes are Form 941 and Form 8109.

**Form 941** – is the “Employer’s Quarterly Federal Tax Return.” It summarizes and reports to the IRS the amount of Federal Withholding, Social Security, and Medicare withheld from all the employees, and the employer’s portion of the Social Security and Medicare taxes.

For the Quarter:  
Jan-Feb-March  
April-May-June  
July-Aug-Sept  
Oct-Nov-Dec

The Due Date is:  
April 30  
July 31  
October 31  
January 31

If you deposit taxes (see Form 8109 on next page) on a regular basis, you have 10 additional days at the close of the quarter to file Form 941. For example, if you deposited all of the required taxes for the quarter ended March 31, the Form 941 for that quarter will be due on May 10 instead of April 30.

**Form 8109.** This is the Federal Tax Deposit Coupon Book containing fifteen coupons for depositing all types of taxes. Check the box marked “941” and use this coupon to deposit Income, Social Security (FICA), and Medicare taxes withheld from employees' wages and the employer's FICA and Medicare taxes. Take the deposit, along with the coupon, to an authorized financial institution or a Federal Reserve Bank or branch. If preferred, you may mail your coupon and payment to the address listed on page 46. The frequency of these deposits depends on the amount of taxes due in a given pay period.

## **Summary of Current Regulations for FICA, Medicare and Federal Withholding Taxes:**

### *Making Payment*



Employers with less than a \$2,500 tax liability during the quarter may make a payment with Form 941. If unsure whether tax liability will be less than \$2,500, make the appropriate deposit to avoid deposit penalties.

### *Deposit Schedules*

There are 2 deposit schedules

- Monthly
- Semiweekly

These schedules determine which set of deposit rules must be followed when an employment tax liability arises. The deposit schedule is not determined by how often employees are paid, but are based on the date wages are paid.

### *Lookback Period*

- The deposit schedule used is based on the total tax liability reported on Form 941 during a four quarter lookback period.
- The lookback period begins July 1 and ends June 30  
Ex: For calendar year 2001, the lookback period is

Quarter 1	07/01 – 09/30
Quarter 2	10/01 – 12/31
Quarter 3	01/01 – 03/31
Quarter 4	04/01 – 06/30

### *Scheduled Deposits:*

- If the tax liability is under \$50,000 for the entire four quarter lookback period, you are a monthly depositor and your taxes are due by the 15<sup>th</sup> day of the month following the month for which you are making the deposit. If the tax liability is \$50,000 or more for the lookback period, you are a semiweekly depositor and should follow the schedule below:
- If an employer's payday falls on a Wednesday, Thursday or Friday, taxes must be deposited by the following Wednesday.
- If an employer's payday falls on a Saturday, Sunday, Monday or Tuesday, taxes must be deposited by the following Friday.

### *Next Day Deposits*

- Employers with an accumulated liability of \$100,000 or more on any day must deposit the tax within one banking day.
- If over \$100,000 is accumulated in one day for a semiweekly depositor, stop accumulating at the end of that day and begin to accumulate new totals on the next day and continue to follow the regular semiweekly schedule (see above).
- If over \$100,000 is accumulated in one day for a monthly scheduled depositor, stop accumulating at the end of that day and begin to accumulate new totals on the next day, BUT follow the semiweekly deposit schedule for the rest of the calendar year and for the following calendar year.

### *Electronic Deposits*

- Taxes must be paid using the Electronic Federal Tax Payment System (EFTPS) if:
  1. The total deposits of all depository taxes (such as employment, excise tax and income tax), in 2007 were more than \$200,000

Or

  2. Use of EFTPS was required in 2008, or any prior year.

- Transactions for EFTPS must be initiated one business day before the date the deposit is due.
- If you are required to use EFTPS and fail to do so you may be subject to a 10% failure-to-deposit penalty.

For more information or to enroll in EFTPS, call 1-800-555-4477.

#### *Federal Tax Deposit Coupons*

- These coupons are used for all deposits, except for those done by EFTPS. Use Form 8109, Federal Tax Deposit Coupon to make the deposit at a financial institution that is authorized to accept Federal tax deposits.
- New employers will automatically receive the coupon book 5-6 weeks after receiving an employer identification number.
- All other employers will be sent the coupon books automatically, when the previous book is used up. (The IRS keeps track of the number of FTD coupons used.)

**FORM W-2.** This form is the “Wage and Tax Statement.” It summarizes the gross compensation paid to, and the taxes withheld from, an employee. At the end of each calendar year, a W-2 is prepared for each employee, reporting the employee’s wages (salary) for that year.

- Copy A of the W-2 is mailed with Form W-3 to the Social Security Administration.

Copy 1 of the W-2 is mailed with Form NJ W-3 to New Jersey.  
Copy D of the W-2 is kept for the employer’s files.

Copies B, 2 and C of the W-2 are given to the employee no later than January 31<sup>st</sup> of the following year.

**Form W-3.** Form W-3 is the “Transmittal of Income and Tax Statements.” The wages paid and taxes withheld for all employees, in total, are reported on this form. It is sent to the Social Security Administration with all A Copies of all the employees’ W-2 Forms. The W-3 must be filed no later than February 28<sup>th</sup> of the following year.

**Form W-4.** When an employee is newly hired, the new employee must complete the Form W-4, Employee’s Withholding Allowance Certificate. The W-4 reports the employee’s marital status and the number of allowances the employee wishes to claim for income tax purposes. An allowance may be claimed for the employee, the employee’s spouse, and dependents of the employee, for blindness and for being age 65 or over. Any time an employee’s marital status or number of allowances changes, a new W-4 must be filled out by the employee and given to the employer. Employers may be requested to send to the Internal Revenue Service copies of any Form W-4 on which an employee has claimed 10 or more withholding allowances. Also, if any employee is expected to earn more than \$200.00 per week and claims exemption from all income tax, the employee’s W-4 must be sent to the Internal Revenue Service. These W-4s are to be mailed with the Form 941 at the end of the quarter.

**Form I-9.** When an employee is hired he/she must also complete Section 1 of Form I-9, Employment Eligibility Verification. The employee must provide a form of identification from the list of acceptable documents found in the instructions to Form I-9 to prove that he/she is eligible to work in the United States. The employer

is responsible for ensuring that Section I is timely and properly completed by the employee before completing Section 2 of Form I-9. The employer must complete Section 2 by examining the evidence of identity and employment eligibility within three business days of the date of employment.

**Form 990.** Organizations exempt from taxes under the Internal Revenue Code (IRC) Section 501(d) are required to file a Form 990 annually, except the following types of organizations:

- A church, an association of churches, or a church auxiliary
- An exclusively religious activity of any religious order
- An organization which normally does not have more than \$25,000 in gross receipts or the year\*
- A mission society sponsored by, or affiliated with, a church
- A school which is affiliated with a church and is below college level
- A state institution
- A corporation organized under an Act of Congress

For tax year 2009 (generally filed in 2010) and tax year 2010 (generally filed in 2011) an organization may file a simplified form, 990-EZ, if gross receipts are less than \$500,000 and \$200,000 AND total assets are less than \$1,250,000 and \$500,000, respectively.

**Form 990PF.** Private foundations are required to file Form 990PF annually.

\*If an organization that normally does not have gross receipts in excess of \$25,000 is sent a 990 package by the Internal Revenue Service, it should file the form by doing the following:

Attach the preprinted label to page 1 of the form and check the box in the area under Section k. Sign and mail the form to the Internal Revenue Service Center.

Both the 990 and 990PF must be filed with the Internal Revenue Service by the 15<sup>th</sup> day of the fifth month after the end of the organization’s fiscal year. An automatic three-month extension to file the 990 and 990PF can be requested by completing Form 8868 by the due date of the return. If necessary, an additional three-month extension may be granted by the IRS by filing another Form 8868.

The following schedule should be used to determine the date when the 990 is due.

<u>IF THE FISCAL YEAR ENDS</u>	<u>DUE DATE</u>
January 31	June 15
February 28/29	July 15
March 31	August 15
April 30	September 15
May 31	October 15
June 30	November 15
July 31	December 15
August 31	January 15
September 30	February 15
October 31	March 15
November 30	April 15
December 31	May 15

**Form 990T.** This is the Exempt Organization Business Income Tax Return. This form must be filed by any tax-exempt organization which receives, within its fiscal

year, gross income of \$1,000 or more from an unrelated trade or business. This form must be filed with the Internal Revenue Service by the 15<sup>th</sup> day of the fifth month after the end of the organization's fiscal year (See previous schedule.)

**Form 990-N.** Beginning in 2008, small tax-exempt organizations that previously were not required to file returns may be required to file an annual electronic notice, Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*. Organizations that do not file the notice will lose their tax-exempt status.

Small tax-exempt organizations, whose gross receipts are normally \$25,000 or less, are not required to file Form 990, *Return of Organization Exempt From Income Tax*, or Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*. With the enactment of the Pension Protection Act of 2006 (PPA), these small tax-exempt organizations will now be required to file electronically Form 990-N, also known as the e-Postcard, with the IRS annually. Exceptions to this requirement include organizations that are included in a group return, private foundations required to file Form 990-PF, and section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ. In addition, this filing requirement does not apply to churches, their integrated auxiliaries, and conventions or associations of churches.

To file the 990-N you can access the system link at <http://epostcard.form990.org>.

The PPA requires the IRS to revoke the tax-exempt status of any organization that fails to meet its annual filing requirement for three consecutive years. Therefore, organizations that do not file the e-Postcard (Form 990-N), or an information return Form 990 or 990-EZ for three consecutive years, will have their tax-exempt status revoked as of the filing due date of the third year.

**Form 8282.** This form must be filed by donee organizations who sell, exchange, consume or otherwise dispose of (with or without consideration) charitable deduction property within two years after the date the original donee received the property. This form is due within 125 days after the date of disposition.

**Form W-2-G.** This form is used to report gambling winnings of \$600 or more. Form 5754 should be used if more than one person is entitled to any part of the winnings.

**Form 1099-MISC.** When an organization pays more than \$600 in any calendar year to an individual who is not a direct employee (i.e. to a consultant), Form 1099-MISC must be filed. Form 1099-MISC is the Statement for Recipients of Miscellaneous Income. Federal Circular E (publication 15) may be consulted for information on who is and who is not considered a direct employee. Copy A of the 1099 is mailed with Form 1096 to the Internal Revenue Service by February 28<sup>th</sup> of the following year. Copy B is to be given to the recipient by January 31<sup>st</sup> of the following year. Copy C of the 1099 is kept for the organization's records.

**Form 1096.** This form is a transmittal or cover form, which must accompany all copies of the 1099 Forms filed. A Copies of the 1099 forms are to be mailed with a 1096 no later than February 28<sup>th</sup> of the following year. A separate 1096 must be used for each type of 1099 (i.e., 1099-MISC, 1099-INT, etc.).

**Form 4720.** This form is used by a private foundation, foundation manager, or disqualified person if subject to penalty taxes. The filing due date is the 15<sup>th</sup> day of the fifth month after close of taxable year.

**Form 1120POL.** This form is used by political organizations. The filing due date is the 15<sup>th</sup> day of the third month after close of taxable year.

**Form 1120H.** Homeowner's associations use this form. The filing due date is the 15<sup>th</sup> day of the third month after close of taxable year.

## **NEW JERSEY FORMS TO BE FILED**

### *Charities Registration and Investigation Section*

Every charitable organization – except those listed in (2) below – which intends to solicit contributions in New Jersey, from individuals or from governmental agencies, must file a registration statement with the State's Charities Registration and Investigation Section prior to any solicitations.

Religious organizations and educational institutions (approved by the State Department of Education) and certain local units of a parent organization are exempt from registration requirements.

Prior to soliciting contributions, organizations should fill out **Questionnaire Form CRI-100** to have the State of New Jersey determine the registration requirements.

Filing of Annual Reports – in every case an affidavit or an annual report must be filed as follows:

- File **Short Form CRI-200** if the organization:

1. Did not solicit or intend to solicit and did not, in fact, receive contributions in excess of \$25,000, and if all the fundraising functions are carried on by persons who are unpaid for such services;
2. Is exempt from long form registration by reason of any of the following status:
  - a. A fraternal, patriotic, social or similar organization.
  - b. Persons requesting contributions for the relief of a specified individual, whose contributions are turned over (without any deductions) to the named beneficiary; and
  - c. A local post, camp, chapter or similarly designated element.

All other "organizations" should file Long Form CRI-300. An audited financial statement must accompany this form if gross revenue is more than \$250,000.

Filing fees for gross contributions are \$30 for short form filers.

Filing fees for gross contributions are as follows for long form filers:

less than \$100,000	\$60
\$100,000 to \$500,000	\$150
more than \$500,000	\$250

## Forms to be Filed and How to Obtain the Necessary Forms

### **FEDERAL**

Forms Distribution Center  
P.O. Box 85074  
Richmond, VA 23261-5074  
(800) TAX-FORM (1-800-829-3676)

All Forms: Via Fax                      1-973-368-9694r  
All Forms: Via E-mail                  [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html)

### **NEW JERSEY**

New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 504-6200  
[www.state.nj.us/oag/ca/charity/charfrm.htm](http://www.state.nj.us/oag/ca/charity/charfrm.htm)

New Jersey Division of Taxation  
Regulatory Services Branch  
PO Box 269  
Trenton, NJ 08695-0269  
(609) 292-5994  
(800) 829-3676 to request forms and publications  
[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

## Where to Mail the Forms

### **FEDERAL FORMS**

Mail to:

Forms W-3 and W-2's:  
Social Security Administration  
Data Operations Center  
1150 E. Mountain Drive  
Wilkes-Barre, PA 18769-0001

Forms 941 & 940EZ – if no tax is due with return:  
Department of the Treasury  
Internal Revenue Service  
Cincinnati, OH 45999-0005

Form 941 if tax is due with 940(V)  
Internal Revenue Service  
PO Box 804522  
Cincinnati, OH 45280-4522

Form 940-EZ if tax is due with 940-EZ(V):  
Internal Revenue Service  
PO Box 804522  
Cincinnati, OH 45280-4522

Forms 990:  
Internal Revenue Service  
Ogden, Utah 84201-0027

### **NEW JERSEY FORMS**

Mail to:

New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 504-6200  
<http://www.state.nj.us/oag/ca/charity/charfrm.htm>

## Where to Obtain Additional Information

### **FEDERAL**

Internal Revenue Service  
General Information  
(877) 829-5500, TE/GE Division, Customer Service  
P.O. Box 2508  
Cincinnati, OH 45201  
[www.irs.gov](http://www.irs.gov)  
Tax Information for Charities & Other Non-Profits  
[www.irs.gov/charities/](http://www.irs.gov/charities/)

### **NEW JERSEY**

New Jersey's Business Registration  
and Commercial Recording Services  
General Information  
(609) 292-9292  
[www.state.nj.us/njbgs/](http://www.state.nj.us/njbgs/)

New Jersey Division of Consumer Affairs  
Charities Registration Section  
124 Halsey Street – 7<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 504-6200  
[www.state.nj.us/oag/ca/charity/charfrm.htm](http://www.state.nj.us/oag/ca/charity/charfrm.htm)

Center for Nonprofit Corporations  
1501 Livingston Avenue  
North Brunswick, NJ 08902  
(732) 227-0080  
[www.njnonprofits.org](http://www.njnonprofits.org)

### **Requirements of New Employers**

New employers must have a Federal Identification Number.  
Application is made by filing Form SS-4. Apply to:

Internal Revenue Service  
600 Arch Street  
Philadelphia, PA 19106  
[www.irs.gov](http://www.irs.gov)  
1-800-839-1040



## Helpful Web Sites

Charity Navigator  
1200 MacArthur Boulevard, 2<sup>nd</sup> Floor  
Mahwah, NJ 07430  
(201) 818-1288, Fax: (201) 818-4694  
[www.charitynavigator.org](http://www.charitynavigator.org)

Charity Navigator touted as America's premier independent charity evaluator, works to guide intelligent giving. They help charitable givers make intelligent giving decisions by providing information on over 5,400 charities and by evaluating the financial health of each of these charities. They ensure their evaluations are widely used by making them easy to understand and available to the public free of charge.

### **National Center for Charitable Statistics**

2100 M St, NW  
Washington, DC 20037  
(866) 518-3874  
[nccs.urban.org](http://nccs.urban.org)

The National Center for Charitable Statistics (NCCS) is the national repository of data on the nonprofit sector in the United States. Its mission is to develop and disseminate high quality data on nonprofit organizations and their activities for use in research on the relationships between the nonprofit sector, government, the commercial sector, and the broader civil society.

For information and technical assistance for local 990-NACs please contact:

### **Local 990-NAC Project Office**

c/o National Society of Fund Raising Executives  
1101 King Street, #700  
Alexandria, VA 22314  
Phone: (800) 666-3863  
E-mail: [form990@nsfre.org](mailto:form990@nsfre.org)  
[www.qual990.org](http://www.qual990.org)

For information about National 990-NAC, please contact:

### **The National Center for Charitable Statistics at the Urban Institute**

2100 M Street, NW  
Washington, DC 20037  
Phone: (202) 833-7200  
E-mail: [NCCS@ui.urban.org](mailto:NCCS@ui.urban.org)  
[www.qual990.org](http://www.qual990.org)

The Quality 990 ([qual990.org](http://qual990.org)) web site encompasses a number of projects and activities to improve the quality of IRS Form 990 reporting by nonprofit organizations. [www.dol.gov/elaws](http://www.dol.gov/elaws)

Elaws Advisors help you understand your rights and responsibilities under the employment laws and regulations administered by the Department of Labor (DOL).

### **The Management Assistance Program for Nonprofits**

2314 University Avenue West, Suite 28  
St. Paul, MN 55114-1629  
General phone: (651) 647-1216, Fax: (651) 647-1369  
[www.mapfornonprofits.org](http://www.mapfornonprofits.org)

The Management Assistance Program for Nonprofits' web site contains the Free Management Library, a complete, highly integrated library of resources for nonprofit and for-profit businesses.

**CompassPoint Nonprofit Services**

San Francisco Office  
731 Market Street, Suite 200  
San Francisco, CA 94103 USA  
General Info: (415) 541-9000  
[www.compasspoint.org](http://www.compasspoint.org)

Providing nonprofits with the management tools and concepts necessary to best serve their communities. Web site contains, "The Nonprofit Development Library" which is free to the public, with over 900 books, 15+ periodicals, and Internet access to help nonprofit staff & volunteers find the fundraising and management information they need.

**GuideStar.com**

Philanthropic Research, Inc.  
[www.guidestar.org](http://www.guidestar.org)

GuideStar is a national database of information on nonprofit organizations produced by Philanthropic Research, Inc., a 501(c)(3) public charity founded in 1994. The mission of the organization's web site is to "revolutionize philanthropy and nonprofit practice with information." You can look up detailed results, financial, and programmatic information on most nonprofit agencies.

**Nonprofit World Magazine**

[www.nonprofitworld.org](http://www.nonprofitworld.org)

Nonprofit World is a bi-monthly magazine – published since 1983 – that provides busy nonprofit leaders with concise and practical articles whose advice can be easily implemented. In addition to current issues, members also receive access to an online archive of over 700 searchable and printable articles dating back to 1996 – an indispensable resource for any nonprofit leader or board member.

For more than 50 years, Sobel & Co. has set the standard in serving nonprofit organizations. We currently work with more than 160 nonprofit and social service organizations, delivering the services and solutions they need to survive and thrive.

We have accomplished this by offering a combination of specialized technical skills, industry credentials and an ongoing commitment to remain at the cutting edge of the nonprofit and social services sector.

Our impeccable credentials, responsive professionals and proven track record ensures that our clients receive the highest level of service possible delivered by a dedicated team with a depth of industry experience.

To ensure our clients' success, we work closely with their Boards of Directors, audit and finance committees and executive directors. In doing so, we make sure they receive accurate and timely financial reports and, as importantly, relevant and practical strategic advice.

Our first concern is our clients and we are committed to helping them reach their goals.

At Sobel & Co., we know our nonprofit clients have unique requirements based on the specific demands and regulations of their industry. As such, we have tailored our services to fit their critical needs. We offer:

- Accounting and auditing (HUD, A133, private schools, schools for the disabled, operational, etc.)
- Benchmarking
- Board governance
- Budgeting
- Competitive analysis
- Compensation studies
- Consulting services
- Cost certifications
- Cost containment reviews
- Forensic accounting/litigation support
- Fraud vulnerability studies
- Fundraising
- Grant compliance reviews
- Internal audit
- Internal control reviews
- Leadership training
- LIHTC projects
- REAC electronic filing
- Retreat facilitation
- Strategic planning
- Tax planning and compliance
- Team building

For further information about Sobel & Co., please visit [www.sobel-cpa.com](http://www.sobel-cpa.com)

For further assistance, please contact Ron Matan, Partner in Charge of the Nonprofit and Social Services Group, at 973-994-9494 or by e-mail at [Ron.Matan@sobel-cpa.com](mailto:Ron.Matan@sobel-cpa.com).



Founded in 1919 by David T. Wilentz, Wilentz, Goldman & Spitzer, P.A. (“Wilentz”), today has approximately 150 attorneys, with offices in New Jersey, New York City, Philadelphia and Pittsburgh. WG&S is one of the largest law firms in the State of New Jersey. Among the professionals at WG&S are a former justice of the New Jersey Supreme Court, and former Superior Court judges, judicial clerks, prosecutors and deputy state attorney generals. WG&S has been at the forefront of numerous landmark cases and precedent-setting decisions, and continues to be involved in drafting important legislation.

WG&S is a full service firm providing legal expertise in a broad range of areas, such as corporate and business law, securities, commercial and public finance, land use, environmental, construction, real estate, redevelopment, intellectual property, technology, healthcare, tax, utilities, commercial litigation and appellate practice. WG&S provides the legal services and advice to a broad range of clients in both the public and private sector, including a variety of nonprofit organizations, charitable family foundations, governmental entities and boards.

Although the firm has grown substantially since its beginnings 90 years ago, the firm’s culture and core values have not changed; competent, effective and practical legal advice, for each and every client, remain the focus of the firm. Wilentz, Goldman & Spitzer is a name that has become synonymous with law firm excellence and a commitment to make a difference for the businesses and individuals it serves. Practicing law, teaching the law, and shaping the law is what Wilentz attorneys do. The firm is proud of its heritage and cherishes its client relationships. All of the attorneys at Wilentz are dedicated to maintaining the reputation, service and results the firm’s clients have come to expect and that is Wilentz’s Commitment to Make a Difference.

For further information about Wilentz, please visit [www.wilentz.com](http://www.wilentz.com).

For assistance, please contact Brett R. Harris, Esq. at (732) 855-6122 or Peter R. Herman, Esq. at (732) 855-6046.



**America's Most Convenient Bank®**

TD Bank provides a complete range of financing products to serve its not-for-profit partners. Our experienced lending professionals develop innovative financing solutions to address the unique challenges facing our NFP clients. TD Bank has completed many complex transactions for NFPs, including such groups as: Colleges/ Universities, Senior/Affordable Housing Groups, Private / Charter Schools, Museums, Government Entities, and Healthcare Organizations.

We provide outstanding personalized service for all types of financing, including: Credit enhancement of public placement bond debt (TD Bank carries an investment grade credit rating), Tax-exempt private placement debt held in our own portfolio, working capital lines of credit and equipment financing.

TD Bank, America's Most Convenient Bank, is one of the 15 largest commercial banks in the United States with \$134 billion in assets, and provides customers with a full range of financial products and services at more than 1,000 convenient locations from Maine to Florida. TD Bank, N.A., is headquartered in Cherry Hill, N.J., and Portland, Maine. TD Bank is a trade name of TD Bank, N.A. For more information, visit [www.tdbank.com](http://www.tdbank.com).

TD Bank, America's Most Convenient Bank, is a member of TD Bank Financial Group of Toronto, Canada, a top 10 financial services company in North America and one of just three triple-AAA-rated banks on the New York Stock Exchange.

For further information, please contact Call Don Buckley for Northern New Jersey, Nick Miceli for Central New Jersey, Jim Kiernan for Monmouth through Cape May Counties or Rob Curley for Southern New Jersey at **1-888-751-9000**.



Located in Cedar Knolls, Morris County New Jersey, ADP/Statewide Agencies, Inc. is one of the premier and most professional Property and Casualty Independent Insurance Agencies in New Jersey and the New York Metropolitan Area.

In addition to writing specialized Workers Compensation programs for Nonprofit and Social Services Agencies, the Agency with its array of twenty nine insurance carriers, most of whom maintain an A or better rating with AM Best and Company, also offers the following products and services:

- Commercial Property and Liability Package Programs
- Group Discounts on several commercial and personal lines insurance products
- Workers Compensation Products, including group dividends with some insurance carriers
- Pay as you go Workers Compensation Programs which coordinate payroll with insurance to avoid costly Workers Compensation audits
- Lower Deposit Premiums and Better Insurance Premium Installment Programs
- Superior Directors and Officers and Employee Practices Liability Coverages
- Twenty four hour, seven day a week Claims hotline services
- Tailored Insurance Programs for Nonprofit and Social Service Agencies, which are designed for easy understanding and specific coverage needs
- Crime Coverages including Employee Dishonesty and Identity Theft
- Member of the Morris County Chamber – Nonprofit Committee

Having the best in the aforementioned Agency and Insurance Carrier resources are really the tools that are used by our Agency Professionals who provide many years of experience and expertise to provide the best in Risk Management and Services to our clients. It is this talent that separates ADP/Statewide Agencies Inc. from other Agencies.

Further inquiries may be directed to Jim Mignone, Vice President at 973-867-0733, (cell 973-886-9493) and Vince Basciano, Vice President at 973-867-0717.

# MorganStanley SmithBarney

## The HTC Group

Morgan Stanley Smith Barney is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services formed from the joint venture of Morgan Stanley and Smith Barney in 2008. Morgan Stanley was originally formed under the authority of the Glass-Steagall Act in 1932. The Firm's employees serve clients worldwide including corporations, governments, institutions, and individuals from more than 1000 offices in 36 countries. For further information about Morgan Stanley, please visit [www.morganstanley.com](http://www.morganstanley.com).

**The HTC Group** at Morgan Stanley Smith Barney is unique, with over 65 years in combined investment management experience; we have over 20 years of non-profit experience. Our focus is on:

- Planned Giving Support: making planned giving as simple and turn-key as possible
- Retirement Planning: helping the non-profit to recruit and retain good talent, with a great plan
- Endowment Management: satisfying prudent fiduciary responsibilities
- Cash Management: offering protection and efficiency with the organization's cash
- Special Needs Planning: helping families protect their special needs loved ones

We each apply our non-profit professional experience to provide significant value to our clients' Planned Giving efforts, blending the technical aspects of gift planning with the art of knowing the necessary steps to close the gift.

For further assistance, please call Geoffrey S. Close, CIMA(r), CAP(tm), CWS(tm), CWPA(r), First Vice President/Wealth Advisor, Morgan Stanley Smith Barney, 1200 Mount Kemble Avenue, Morristown, NJ 07960 at (973) 425-2309, or email at [geoffrey.close@morganstanley.com](mailto:geoffrey.close@morganstanley.com)

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