

THE LONG ARM OF CHARITABLE SOLICITATION LAW

Must charities register as "doing business" or fundraisers in every state with a registration requirement because their websites are available to users in every state? The Pennsylvania Attorney General thinks so. One IRS official has even queried whether noncompliance with state registration requirements could adversely affect an organization's tax-exempt status due to a violation of public policy. According to the IRS' CPE text, the cost of registering with all fifty states could exceed \$150,000 a year.

In an attempt to offer some clarity to the murky legal landscape facing charities and state regulators, the National Association of State Charity Officials ("NASCO") has released non-binding guidelines, known as "The Charleston Principles." The Charleston Principles attempt to address the application of state registration requirements to charities soliciting donations over the Internet. The Charleston Principles are intended to serve as non-binding guidance to state regulators.

In general, the Charleston Principles attempt to define the type and extent of activity that will trigger the duty to comply with a state's registration requirements. Arizona imposes relatively few registration requirements on exempt organizations, making it easy for Arizona charities to overlook other states' registration requirements. The following summarizes the key points:

Activities that <u>do</u> trigger a duty to register:	Activities that <u>do not</u> trigger a duty to register:
A charity is domiciled in the subject state and passively or actively solicits contributions over the internet.	A charity, operating on a purely local basis or within a limited geographic area, does not target states outside its operating area if the charity's website makes clear that its fundraising focus is limited to that area even if it receives contributions from outside that area on less than a repeated and ongoing basis or a substantial basis.
A charity is domiciled in the subject state and its principal place of business is located in that state.	
A charity is not domiciled in the subject state, but its non-internet activity in that state would require registration under existing law.	
A charity solicits donations through an "interactive website"; and the charity either: <ul style="list-style-type: none"> • "specifically targets persons" located in the subject state for solicitation; or • receives contributions from the state on a "repeated and ongoing basis or a substantial basis" through its website. 	
A charity solicits donations through a non-interactive website, and the charity either: <ul style="list-style-type: none"> • invites further offline activity to complete a contribution; or • establishes other contacts with the subject state (i.e., by sending e-mail messages or other communications that promote the site). 	

Clarifying Terminology

Fortunately, NASCO recognized the need to define many of the Charleston Principle's terms. Very generally, an "interactive website" is defined as a website that permits a contributor to make a contribution or purchase a product by electronically completing the transaction. For example, the capacity to accept donors' credit card information or permit donors to authorize an electronic funds transfer online would make a website "interactive."

NASCO defines "specifically targeting persons" as either (a) an express or implied reference to soliciting contributions from that state; or (b) affirmatively appealing to residents of that state, such as by advertising or sending messages to persons located in that state (electronically or otherwise) when the entity knows or reasonably should know that the recipient is physically located in that state.

Defining "repeated and ongoing basis or a substantial basis" proved more problematic. NASCO defines the term as receiving contributions within the entity's fiscal year of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. Recognizing the difficulty of applying this standard, NASCO advises states to set numerical thresholds. As an example, NASCO provides that a state could require an entity to register when it receives \$25,000 in online contributions or contributions from 100 contributors located in the subject state in any one year.

In conclusion, the Charleston Principles provide a useful indication of the majority of state regulators' thinking on the multi-state registration issue. While these draft guidelines are not binding authority, compliance with the Charleston Principles should serve as persuasive evidence of an organization's good faith attempt to comply with the law in the event a dispute over registration arises.

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