

Fundraising

State Registration of Charitable Solicitations

- ❑ State governments regulate a nonprofit's charitable solicitations.
 - ❑ Deceptive or abusive techniques are prohibited.
 - ❑ Use IRS Form 990 and 990-EZ to disclose the percentage of funds raised that are used for program expenses vs. fundraising and administrative expenses.
- ❑ Adopt policy regarding donor privacy and use of donor names.
 - ❑ Credit card companies will require strict safeguarding of the donor's information.
 - ❑ Small nonprofits can use Network for Good or other third party processors to avoid the cost of complying with the requirements.

State Registration of Charitable Solicitations

- ❑ 39 states and the District of Columbia require nonprofits to register with the state before raising funds, including:
 - ❑ CT, DC, GA, MD, NJ, NY and VA.
- ❑ Requirements differ depending on the state.
- ❑ Generally a nonprofit must register to solicit the general public for charitable contributions.

Determining Where to Register

- ❑ Ask: “Has my organization purposefully directed a charitable solicitation to a resident of State X?”
 - ❑ If yes:
 - ❑ Does that state require registration?
 - ❑ If yes:
 - ❑ What kind of solicitation was it? And does the organization conduct activities or have a presence in that state?
- ❑ A nonprofit must register in every state where it solicits contributions if that state requires registration. Registering only in the jurisdiction where the nonprofit is incorporated is not sufficient.
 - ❑ Particularly importance in places like NYC and DC metro area.

Registration Process

- ❑ The organization must disclose financial and other information in its registration.
- ❑ The registration fee ranges from \$0 to \$2,400.
- ❑ Registration is required prior to soliciting. The nonprofit may be subject to fines for failure to register before soliciting.
- ❑ Nonprofit organizations, paid solicitors, fundraising consultants and commercial co-venturers are required to register. It is illegal to use an unregistered fundraising solicitor or consultant in some states.

Exceptions to Registration

- ❑ Every state has certain exceptions to the registration requirements. The most common exceptions are:
 - ❑ Religious organizations
 - ❑ Organizations raising small amounts of money – usually less than a few thousand dollars in total, not just from that particular state.
 - ❑ Certain types of organizations (schools, fire departments, etc.)

Activities That Require Your Nonprofit to Register

- ❑ The term “soliciting” encompasses a wide range of activities, including:
 - ❑ Fundraising appeals made to the general public, including appeals made via mail, email, Facebook, Twitter, telephone, public service announcements or other broadcast advertisements, on-line advertisements or in-person solicitation.
 - ❑ Solicitation of corporations and private foundations.
 - ❑ Government grants.
 - ❑ Ticket sales and other requests in connection with special events, such as galas, silent auctions, golf tournaments, and similar events.
- ❑ Some states will exempt an organization from registering if it only solicits from the government, corporations or foundations in that state.

Where to Register

- ❑ A nonprofit must register in every state where it:
 - ❑ Is physically “present” in the state
 - ❑ Has offices or regularly conducts business in the state
 - ❑ Soliciting via mail, telephone and other clear solicitation to people in the state creating a “presence”
 - AND
 - ❑ Solicits contributions

The Charleston Principles: Internet Fundraising

- ❑ State charity officials have issued advisory guidelines – known as the “Charleston Principles” about internet fundraising and who must register in a state. In determining whether to register, the nonprofit should ask:
 - ❑ Does the nonprofit’s website allow for on-line donations?
 - ❑ If yes, does the organization receive contributions on a repeated and ongoing basis or substantial basis through its website from a particular state? If yes, the organization may need to register in that state.
 - ❑ Do offline solicitations ask a donor to complete the donation on-line or does the nonprofit solicit via emails by promoting website giving? If yes, the nonprofit must register in every state where it solicits donors using this method or from which it regularly receives donations.

The Charleston Principles: Internet Fundraising

- ❑ If the nonprofit's website does not allow for on-line donations, does the nonprofit:
 - ❑ Use its website to invite offline donations or send emails or other communications to individuals in the state directing them to the website solicitation, and
 - ❑ Receive contributions from the state on a repeated and ongoing basis or substantial basis?

- ❑ If yes, the organization may need to register in that state.

The Charleston Principles: Internet Fundraising

- ❑ If a nonprofit re-solicits donors who donate via its website, the return mail may trigger the registration requirements, even if the initial donation did not.
- ❑ If a nonprofit fundraises using social media the same rules apply.

Solicitation by Email

- ❑ Soliciting via email is the same as soliciting via telephone or direct mail.
- ❑ The nonprofit must register in a state IF:
 - ❑ The nonprofit knows or reasonably should know that the person being solicited is a resident of the state.
 - ❑ In such case, the nonprofit must register in that state if it is otherwise required.

Unified Registration Statement

- ❑ The States designed the Unified Registration Statement for nonprofits registering in multiple states. It is the alternative to filing individual forms in each state. More information can be found at www.multistatefiling.org.
 - ❑ Some states require additional information.
 - ❑ Not accepted by every state.
 - ❑ Only for use with initial registration – not for annual updates.

Charitable Solicitor

- Individuals soliciting contributions on behalf of a nonprofit are also subject to the charitable solicitation laws.
- Generally, employees and volunteers are not required to register in order to solicit funds. However, in some jurisdictions, an individual employee or volunteer may have to register if engaging in person-to-person fundraising, such as on the street or in the airport.

Charitable Solicitor

- If a nonprofit hires an independent contractor to solicit contributions on behalf of the nonprofit:
 - The arrangement must be in writing. In many jurisdictions, the solicitor must file the contract with the state as part of the fundraiser's registration under the charitable solicitations act.
 - Check to make sure that the fundraiser is properly registered. In some states it is illegal to hire an unregistered fundraiser.
- Form 990 requires a nonprofit that hires a third-party fundraiser to report how much was raised by the fundraiser, and how much was actually received by the nonprofit.

IRS Rules Regarding Donations

- The IRS requires nonprofits to properly report and acknowledge cash and in-kind contributions. The nonprofit's failure to do so may result in IRS penalties. Under the IRS rules:
 - A donation of personal services or facilities – such as the free use of office space – is NOT deductible and should not be receipted.
 - The donor cannot take a deduction for a donation of any amount without a receipt from the nonprofit or bank or credit card record. The evidence of the donation must state the name of the charity and the date and amount of donation.

IRS Rules Regarding Donations

- A donor cannot claim a deduction for any single contribution of \$250 or more unless the donor has a written acknowledgement from the nonprofit. The donor must receive the acknowledgement by the time the donor files a tax return.
- The donor, not the nonprofit, is responsible for determining the value of all non-cash donations. The nonprofit should acknowledge receipt of the donated property, including a description of the property, but NOT include an estimate of the value.

Reoccurring Donations

- Donations throughout the year may be bundled into one acknowledgement. The acknowledgement should include:
 - Name of the nonprofit.
 - Amount of cash contribution or description of non-cash contribution.
 - One of the following:
 - Statement that no goods or services were provided (if true),
 - Description and good faith estimate of the value of goods the charity provided in return for the donation, or
 - Statement that goods or services provided consisted entirely of intangible religious benefits.

IRS Rules Regarding Donations

- The nonprofit must provide a statement to any donor who makes a payment of more than \$75, partly as contribution and partly as payment for goods or services received from the charity.
- The disclosure must:
 - Inform the donor that the amount of payment that may be deductible is limited to the amount given in excess of fair market value of goods or services.
 - Provide a good-faith estimate of fair market value of goods or services.
- The nonprofit is subject to a penalty of \$10 per donation if the nonprofit does not provide this information.

IRS Rules Regarding Donations

- Insubstantial goods or services provided in exchange for contribution do not have to be included in the receipt if:
 - The fair market value of the benefits received does not exceed the lesser of 2% of the donation or \$102, or
 - The donation is at least \$51 and the only items provided bear the organization's name or logo, and the cost of these items is within the limit for "low-cost articles." (\$10.20)
- Free, unordered low-cost articles are considered insubstantial.

Cause Related Marketing

- Arrangements where a for-profit company/commercial co-venturer uses the charity's name or logo to sell its products or services and makes a charitable donation based on sales.
 - Marketing approach: Company A does well by doing good for Charity B.
 - Payments should be structured as royalties.
 - The nonprofit cannot provide additional services to Company A. If the nonprofit does so, part of the income will be taxable as unrelated business income.

Cause Related Marketing

- State law: the commercial co-venturer may be subject to state registration and reporting under the state's charitable solicitations act.
 - The test is whether the products are sold in the state.
 - Some states require a contract that includes specific provisions.
 - Some states require the contract be submitted to the Attorney General of the state while some just require the nonprofit to retain the contract.

Selling or Licensing Intellectual Property

- ❑ Nonprofits may rent mailing lists without incurring taxable income.
- ❑ Logo may be rented as well.

Qualified Sponsorship versus Advertising

- Advertising income is unrelated business income and subject to tax.
- Sponsorship income is treated as a donation and not unrelated income, provided:
 - Acknowledgement of the sponsor includes only the sponsor's name, logo, address, phone number, description of product or services & hyperlink to main website.
 - The nonprofit does not make a statement about the quality or price of the goods or services.
 - The nonprofit does not endorse or encourage the use or purchase of donor's products or services.
 - No other "substantial return benefit" is provided to the donor.
 - Any goods and services received by the sponsor from the nonprofit do not exceed 2% of sponsorship payment for the year.

Special Events: Gaming

- ❑ Gaming: casino nights, poker, raffles, bingo, door prizes, etc.
- ❑ Gambling has three elements:
 - ❑ Chance
 - ❑ Prize
 - ❑ Consideration
- ❑ Gaming is illegal in many jurisdictions.
- ❑ If it is legal, it is heavily regulated and the nonprofit may need a local license.
- ❑ Winnings may be subject to income tax.
- ❑ There is a UBIT exception for traditional bingo.

Other Special Events

- Galas, silent auctions, dinners, wine tastings, or special performances.
 - A donor's deduction is reduced by the value of anything received in return for the ticket.
 - Silent auction donations are limited to what the donor pays in excess of value of the property.
 - Purchasing a chance to win is not deductible.
 - Celebrity appearances alone do not increase the fair market value of an event.
 - If the nonprofit gives something of value to the donor in exchange for the payment, there may be sales tax requirements
- Galas, silent auctions and similar events may be considered a charitable solicitation.