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California Attorney General Proposes Revisions to Registration and Reporting Requirements for Charitable Trustees and Related Registrants

In addition to the latest legislative developments recently **reported** by David Levitt, we would like to provide a short overview of new rules **proposed** by the California Attorney General concerning registration and reporting requirements for charitable trustees and related registrants in California. Rosemary E. Fei first reported on this development in her Nonprofitlawmatters blog **post** from January 17, 2019. Subsequently, Tania Ibanez, who leads the Attorney General's Charitable Trust Section, spoke to members of the California Lawyers Association's Nonprofit Organizations Committee to review the proposed changes and to explain the rationales behind them.

Among the key changes to the initial registration form required for charities and other trustees of charitable assets, the proposed rulemaking would require each registrant to report:

- All "doing business as" names, to assist the Attorney General in identifying new registrants that have taken over the operations of existing problem charities;
- All instances where it shares revenue or governance with another charity;
- All states where it solicits donations or otherwise operates;
- Any suspensions or revocations of tax-exempt or corporate status;
- Relations by blood, marriage, or adoption among directors, officers, trustees, and employees; and
- Court/administrative proceedings against officers, directors, or trustees involving any solicitation or registration, as well as criminal convictions of the same involving misuse or misappropriation of funds or any crime involving deception in the operation of a charity.

The proposed rules also clarify the definitions of "educational institutions" and "government entities," both of which are exempt from registration.

Furthermore, with regard to the required periodic reporting for registrants:

- The proposed changes clarify that a taxable nonprofit may file its federal Form 1120 (to resolve the question of whether a pro forma Form 990/990-EZ must be completed simply for Attorney General purposes);
- Organizations falling below the threshold where a substantive federal return is required (currently $50,000) would have to file the (proposed) Form CT-TR-1 with their annual report;

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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- Registrants would have to disclose the percentage of their gross annual revenue madeup by in-kind (i.e. noncash) contributions. The stated purpose of this question is to reveal situations where registrants use such gifts to inflate revenues artificially;
- Registrants would no longer be asked whether their non-program expenditures exceeded 50% of gross revenues, but they must now break out program expenses and total expenses; and
- Registrants would have to reveal whenever they hold restricted-purpose assets while having a negative balance in unrestricted assets. This new question is directed mainly towards identifying financially unstable fiscal sponsors.

The proposed rulemaking would also enhance reporting requirements for commercial fundraisers, commercial coventurers, and charities that conduct raffles.

The comment period for this proposed rulemaking ended in February; we are monitoring developments and will provide additional updates as revisions are released.

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