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Annual filing requirements for California nonprofit organizations

Failure to file may lead to fines, suspension, forfeiture of corporate status, or even loss of exemption.

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Applying for recognition of tax-exempt status marks only the beginning of a nonprofit organization's (NPO) compliance with federal and state filing requirements. While not intended to be exhaustive, this article summarizes important filing requirements for NPOs operating in California.

Federal requirements: annual information return

Tax-exempt organizations generally must file an annual Form 990, **Return of Organization Exempt From Income Tax**, information return, subject to certain exceptions. (Churches and certain political organizations have no Form 990 filing requirement.) For a full list of exceptions, see the Form 990 instructions, available at www.irs.gov.

Most exempt organizations, including those exempt under IRC §501(c)(3) and classified as public charities, file either a Form 990, Form 990-EZ, or Form 990-N, depending on the organization's gross revenues in the reporting year and the organization's total assets. These filing requirements are summarized in the table on page 112.

Organizations classified as IRC §501(c)(3) private foundations file a different return, called a Form 990-PF.

Form 990: The IRS recently completed an extensive redesign of the Form 990 for tax years beginning in 2008. (The IRS has not redesigned the Form 990-PF for private foundations and has indicated no immediate plans to do so.)

The new Form 990, consisting of an eleven-page "core form" and sixteen possible schedules, is more extensive than the prior form and includes a new section on governance and management, as well as an additional detailed disclosure of executive compensation and relationships with other entities.

Organizations required to file the new Form 990 should become familiar with the new reporting requirements well in advance of the

end of the filing year, so they can take the necessary steps to submit a complete return with all of the required information.

Form 990-EZ: The Form 990-EZ is a shorter return that has not been subject to recent significant revision. Smaller NPOs may be eligible to file the simpler Form 990-EZ, particularly during the three-year transition period for introducing the new Form 990 (see the table on page 112), and should take advantage of this opportunity. Certain NPOs, such as sponsors of donor-advised funds, must complete a full Form 990 return and cannot use the Form 990-EZ.

A Form 990, 990-EZ, or 990-PF must be filed by the 15th day of the 5th month after the close of the NPO's fiscal year — i.e., May 15 for organizations on a December 31 calendar year. NPOs can use IRS Form 8868, **Application for Extension of Time To File an Exempt Organization Return**, to request an automatic three-month extension as well as an additional three-month extension (not automatic), as long as the request is filed on or before the return is due.

The standard penalty for filing late is \$20 per day from the date the return is due up to \$10,000 or 5% of the NPO's gross receipts (whichever is smaller). NPOs with annual gross receipts exceeding \$1 million are subject to a penalty of \$100 for each day failure continues (with a maximum penalty of \$50,000).

Form 990-N: An NPO that would otherwise be required to file a Form 990, but falls below the annual gross revenues threshold for filing a Form 990 or Form 990-EZ, must instead submit an annual electronic filing with the IRS, called a Form 990-N (**e-Postcard**).

The Form 990-N filing requirement is effective for tax years ending on or after December 31, 2007. The form must be filed at: <http://epostcard.form990.org>

The Form 990-N is due by the 15th day of the 5th month after the close of an NPO's tax year. Extensions are not available, although no financial penalties exist for late filings. Form 990-N cannot be filed until after the applicable tax year ends.

An NPO that fails to file a Form 990-N, or a full Form 990 or 990-EZ return, for three consecutive years will automatically lose its tax exempt status. The organization's status will be considered revoked after the due date for the filing of the third annual return.

Form 990-T (unrelated business income): If an NPO regularly

carries on a trade or business whose conduct is not substantially related to its exempt purpose, and if the annual gross income from it equals or exceeds \$1,000, the income from that business must be reported yearly on IRS Form 990-T, **Exempt Charity Business Income Tax Return**.

The NPO will be taxed on this income at the regular corporate tax rate unless the income falls under an exception. Any taxes owed must be paid on a quarterly basis. If the total expected tax for the year is \$500 or more, the organization must make quarterly payments of its estimated unrelated business income tax. The Form 990-T is due the 15th day of the 5th month after the end of the organization's fiscal year. Extensions may be requested by filing IRS Form 8868.

California requirements: FTB

FTB Form 199: California law requires a tax-exempt organization with gross receipts normally above \$25,000 to file a California Form 199, **California Exempt Organization Annual Information Return**, with the FTB.

Form 199 is due on the 15th day of the 5th month after the close of the organization's fiscal year. An organization that cannot file by that date may take an additional seven months to file without submitting a written request for extension, as long as its status is in good standing and not suspended. (If the organization owes any tax for the year, it also may need to file Form FTB 3539, Payment for Automatic Extension for Corporations and Exempt Organizations).

Organizations required to file Form 199 must pay a \$10 filing fee, with certain exceptions, including an exception for charities primarily supported by contributions of the general public.

FTB Form 3509 (political and legislative activities): A charity (exempt under [R&TC §23701\(d\)](#), the state equivalent of IRC §501(c)(3)) that engages in political or legislative activities must attach a Form 3509, **Political or Legislative Activities By Section 23701d Organizations**, to its Form 199. Organizations with such activities also may be subject to registration and reporting requirements under federal, state, or local campaign finance or lobbying disclosure laws.

FTB Form 109 (unrelated business income): If an NPO regularly carries on a trade or business that is not substantially related to its exempt purpose, and if the annual gross income equals or exceeds \$1,000, the income from that business must be reported yearly to

the FTB on California Form 109, California Exempt Organization Business Income Tax Return, due on the 15th day of the 5th month after the end of the organization's fiscal year along with Form 199.

Attorney General, Registry of Charitable Trusts

The California Attorney General regulates charities and paid fundraisers who solicit on their behalf. The term "charity," as understood by the Attorney General, includes all nonprofit public benefit corporations, regardless of tax status. Therefore, organizations tax-exempt under either IRC §501(c)(3) or §501(c)(4), if incorporated as a nonprofit public benefit corporation, are subject to the registration and reporting requirements of the Attorney General.

Nonprofit organizations that are not public benefit corporations and do not hold assets for charitable purposes are not subject to Attorney General charitable trusts regulation.

Form CT-1: Most charities holding assets in trust for charitable purposes or doing business in California, including corporations, unincorporated associations, and trusts, must register with the Attorney General's Registry of Charitable Trusts using Form CT-1, **Initial Registration Form**, within 30 days of initially receiving assets. Although this is a one-time, as opposed to an annual filing, it bears mentioning. The registration must describe the primary activity of the organization; list all trustees, directors and officers; and include a copy of the charity's organizational documents, federal tax exemption application, and IRS determination letter.

Hospitals, schools, and religious organizations are exempt from this Attorney General registration requirement.

Form RRF-1: Charitable organizations holding assets for charitable purposes that are required to register with the Attorney General (see Form CT-1 above) are also required to file Form RRF-1, **Annual Registration Renewal Fee Report**. The purpose of the Form RRF-1, as stated on the form itself, is "to assist the Attorney General's office with early detection of charity fiscal mismanagement and unlawful diversion of charitable assets."

A sliding-scale filing fee is due based on the NPO's gross annual revenue for the preceding fiscal year. The Form RRF-1 is due annually according to the same deadlines as the federal Form 990 return, including extensions, and a copy of the organization's Form 990 return (if filed) must be attached.

An organization must file the Form RRF-1 regardless of its gross revenue or total assets. Failure to file the Form RRF-1 or Form 990 could result in the loss of state tax-exempt status.

Submission of IRS Form 990: Charities with total gross revenue or assets of \$25,000 or more must also file a copy of the IRS Form 990, 990-EZ, or 990-PF with the Attorney General's Registry of Charitable Trusts.

In certain circumstances, a charity must file a Form 990 with the Attorney General even if the charity has no obligation to file the Form 990 with the IRS. For instance, a charity must file an IRS Form 990 or 990-EZ with the Attorney General if it has not filed a Form 990 for ten years or if its corporate articles were amended to change its charitable purposes. (For a more complete list of when an IRS Form 990 must be filed, see: ag.ca.gov/charities/content/new_990.php.)

In order to avoid possible public disclosure of donor information by the Attorney General Registry of Charitable Trusts, a charity should redact any information that might identify a donor from its Form 990 Schedule B (Schedule of Contributors) that is submitted with its Form RRF-1 or consider not including Schedule B at all.

When is a charity doing business in California? As noted above, the Attorney General exerts jurisdiction over charities "doing business in" California. According to the Attorney General, doing business in California includes soliciting donations in California "by mail, by advertisements in publications or by any other means from outside of California." Other examples of doing business in California include maintaining an office, holding meetings of the board of directors or corporate members, having officers or employees who perform work, and/or conducting charitable programs in the state.

Neither making grants to persons or organizations located in California, nor maintaining financial accounts or investments at a financial institution's office located in California, alone rises to the level of doing business in the state for Attorney General registration and reporting purposes.

Secretary of State

Statement of Information (SI-100): NPOs incorporated in California must file California Secretary of State Form SI-100, Statement of Information (Domestic Nonprofit, Credit Union, and Consumer Cooperative Corporations), every other year after incorporation, by

the last day of the month of incorporation.

The Secretary of State ordinarily will send the form to the NPO at its mailing address or the address of its registered agent. However, filing the Form SI-100 is the NPO's responsibility, whether or not the Secretary of State sends a form to complete. This form asks for the names and addresses of the organization's officers and its agent for service of process. Failure to file could result in a suspension of the NPO's corporate powers. Form SI-100 requires a \$20 filing fee and can be filled online with a credit card at:

<https://businessfilings.sos.ca.gov/>.

About the authors

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Tax year beginning in:	Form 990 Filing Thresholds for Tax-Exempt Organizations				
	Form 990-N	Form 990-EZ		Form 990	
	Electronic "ePostcard"	4-page Short Form + 7 possible schedules + other attachments		11-page Core Form + 16 possible schedules	
	IF...	IF...	AND...	IF...	OR...
	Gross receipts are:	Gross receipts are:	Assets are:	Gross receipts are:	Assets are:
2008	"normally" ** ≤ \$25,000	< \$1,000,000	< \$2,500,000	≥ \$1,000,000	≥ \$2,500,000
2009	"normally" ≤ \$25,000	< \$500,000	< \$1,250,000	≥ \$500,000	≥ \$1,250,000
2010+	"normally" * ≤ \$50,000	< \$200,000	< \$500,000	≥ \$200,000	≥ \$500,000

* Private foundations under IRC §501(c)(3) must file a Form 990-PF every year
 ** See link to Form 990-N on IRS website (www.irs.gov/charities) for definition of "normally"

This chart reflects general thresholds for triggering filing requirements. Certain exceptions may apply to specific types of organizations. Please review the instructions to each form carefully.

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