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The background of the slide features a blurred image of several people in business attire sitting around a table. They appear to be in a meeting or collaborative work environment. On the table, there are documents, a laptop, and a pen. The scene is lit with warm, natural light, possibly from a window. A solid blue semi-transparent overlay covers the middle portion of the image, providing a background for the text.

# Nonprofit Tax Guidance

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## ... What are we Covering Today?

- New York State Nonprofit Financial Reporting Program.
- Employees of Nonprofit Organizations.
- Encouraging Charitable Contributions.
- Form 990 Review and Information Requests.
- Resources.

# New York State Not-for-Profit Financial Reporting Program

# Polling Question

Has your organization received the letter from New York State on the Not-For-Profit Financial Reporting Program?

- A. No.
- B. Yes, but we ignored it.
- C. Yes, and we have looked into the filing requirement.

## ... Financial Reports Requirement

- If your not-for-profit organization is required to register with the New York State Attorney General's Charities Bureau and is:
  - A 501(c)(3) organization that provides support for a 501(c)(4) organization engaging in lobbying; or
  - A 501(c)(4) organization that spends on advocacy related media,

You may be required by law, to file financial reports with the New York State Department of State.



## ... Financial Reports Requirement

Funding Disclosure Report – 501(c)(3) organizations required to register in NYS pursuant to Executive Law Section 172.

- Required when:
  - In-kind donations such as HR, office space, or supplies are made to a 501(c)(4) organization;
  - The value of the donations for a reporting period (beginning 1/1 and ending 6/30 or beginning 7/1 and ending 12/31) exceeds \$10,000 and;
  - The 501(c)(4) organization is required to file a Source of Funding Report with the Commission on Ethics in Lobbying and Government.

## ... Financial Reports Requirement

Financial Disclosure Report – 501(c)(4) organizations required to register in NYS pursuant to Executive Law Section 172.

- Required when:
  - When expenditures for communications in any form are made to 500 or more members of a general public audience;
  - The communications refer to and advocate for or against an official executive or administrative body, legislative body, for any rule, regulation, hearing, or decision OR advocate for or against any action by an elected official, executive, or administrative body or legislative body; and
  - The value of the expenditures for the covered communications exceeds \$10,000 in a calendar year.



## Required Funding Disclosure Report

- Report Includes:
  - Information specifically required by Exec Law Section 172-(e)2 or Section 172-f; and
  - A copy of the Annual Financial Report(s) encompassing entire reporting period for which the Funding Disclosure is made, or the most recent Annual Financial Report filed.
- Report must be filed with the Department of State within 30 days of the close of the reporting period, the filing fee is \$25.

# Employees of Nonprofit Organizations

## ... Compensation

**Last year** we touched upon nonprofit organizations being able to compete against for-profit companies in attracting and retaining talent.

- Limited budgets have always been an area of concern.
- Forced to look towards alternative sources (i.e. grants) to cover payroll.
- What are other areas an organization can emphasize to stand out among candidates?

## ... Public Service Loan Forgiveness Program (PSLF)

- Final regulations will become effective on July 1, 2023.
- Those employed by a nonprofit or the government may be eligible for loan forgiveness, cancellation, and/or consolidation under PSLF up to \$20,000.
  - The loan must be through the Federal Direct Student loan program – specifically the “William D. Ford Federal Direct Loan Program.”
- This program is important as it incentivizes employees to remain in the nonprofit sector, as well as provides relief for public services professionals who are often paid less.
- <https://studentaid.gov/pslf/>

## ... Qualifying Employment for PSLF

- Nonprofit employees at a 501(c)(3) charitable nonprofit may earn forgiveness of outstanding Federal loans under PSLF after:
  - 10 years at a qualifying employer;
  - Making 120 qualifying monthly payments;
  - Their loans are not in default; and
  - They are under a qualifying repayment plan.
- Qualifying employment includes fulltime employment (30 hours a week) at:
  - Government agency (Federal, state, local, or tribal).
  - Charitable nonprofit tax-exempt under 501(c)(3).
  - Full-time AmeriCorps or Peace Corps member.

## ... Student Loan Repayment

- The Consolidated Appropriations Act signed into law in 2020, allows employers to offer up to \$5,250 in student loan repayment benefits.
- This is not considered taxable income to the employee; therefore, no tax paid on this benefit.



# Encouraging Charitable Contributions

## ... Fundraising Effectiveness Project (FEP)

- COVID-19 brought on a drop in returning donors as well as new donors, new and new retained donors have dropped for the 4<sup>th</sup> quarter in a row.
  - Charitable contributions in U.S. increased significantly in quarter two of 2022 due to a recapture of pre-COVID donors who paused their giving due to the pandemic.
- U.S. fundraising is up 2.2% while the donor pool continues to shrink.
- Donations are up 6.2% overall despite the number of donors dropping by 7%.

## ... Fundraising Effectiveness Project (FEP)

- Donations of less than \$100 decreased by 17% and donations between \$101-500 have decreased by 8%, 98% of donors are one-time donors, donor retention is down 4.2%.
- There needs to be an increase in donor retention efforts to increase donor retention back up to pre-COVID levels.

# Polling Question

What types of gifts/contributions does your organization receive?

- A. Cash only.
- B. Cash and non-cash items such as stock, or crypto, etc.
- C. We don't receive contributions.

## Charitable Contribution Deductions

The CARES Act changed deductions of charitable contributions, they expired at the end of 2021 and will not extend into 2022 or 2023.

- Charitable contributions will once again only be deductible if a taxpayer itemizes their deductions.
- Under the CARES Act, taxpayers who did not itemize could deduct up to \$300 or \$600 married filing joint for cash contributions made – these are no longer applicable for the tax year 2022 or after.

## Charitable Contribution Deductions

The CARES Act also temporarily suspended the limits on charitable contributions made in 2021. These changes are not applicable for 2022, the limits have been reverted to pre-CARES rates.

- For individuals, deductible contributions return to 60% of their AGI.
- For corporations, deductible contributions return to 10% of taxable income.
- The enhanced deduction limit for businesses donating food inventory for the care of the ill, needy, and infants has returned to 15%.



## ... Cryptocurrency

The ability to accept donations of cryptocurrency largely increase the donor pool, there are donors who are only willing to donate cryptocurrency, if cryptocurrency is not accepted at one charity, they will find one that accepts it.

- Cryptocurrency has a large social media presence which will connect you to a larger audience and a completely new demographic.
- Ability to accept many types of cryptocurrency will further increase donor pool and attract more donors.
- More NFT projects are increasingly donating a portion of their sales – in 2021 creators and platforms donated \$12 million in crypto.
- Donations of cryptocurrency are considered in-kind gifts (not a cash or cash-equivalent security), the value cannot be stated on the donor receipt, rather what was donated and the quantity. The donor must substantiate the value on their tax return if they wish to claim a tax deduction.

## ... Accepting Cryptocurrency

How to accept donations of cryptocurrency.

- **Use an intermediary 501(c)(3) such as a donor advised fund (DAF) to minimize legal, accounting, and administrative burdens.** With this method you are not taking custody of cryptocurrency, the intermediary is responsible for all reporting and converting to cash.
- **Use a crypto donation processor to receive crypto directly.**
- **Use an embeddable checkout experience through a crypto exchange.** For minimal fees, crypto exchanges offer checkout experiences that nonprofits can embed into their websites.
- **Use your own crypto wallets and receive donations without any intermediary.**

## ... Contributions of Stock

- Donating appreciated shares of stock provides value, will save the donor by not having to pay taxes on the capital gains.
- The donor will also have a tax-deductible charitable contribution (subject to regular contribution rules) for the fair market value (FMV) of the stock at the time of transfer.
- Written communication from the organization should be given to the donor containing the name of the organization and the date and amount of the contribution.

## ... Required Minimum Distributions

Individuals have the opportunity to give through a Qualified Charitable Distribution (QCD):

- Must be given to a 501(c)(3) organization eligible to receive tax deductible contributions. Not eligible for a donor advised fund.
- Direct transfer of funds from IRA custodian to a qualified charity; which satisfies the RMD for the year.
- The QCD excludes the amount donated from the individual's taxable income (unlike regular withdrawals from an IRA).
- Maximum QCD is \$100k/person, if the individual is 70 ½ or older and this can be split between multiple charities. Note: Secure Act 2.0 has this indexed for inflation after 2023 but no age change has been indicated.

## ... Additional Considerations

Will individuals donate less to charitable organizations if they will not be receiving a tax benefit?

- “Bunching” - doubling of contributions within one year.
- Use of donor-advised funds.

# Form 990 Filings



# Polling Question

Are you current on your Form 990 (or equivalent) filing?

- A. No.
- B. Yes.
- C. What is a Form 990?

## ... E-Filing IRS forms

### Mandatory e-filing:

- Form 990, Return of Organization Exempt from Income Tax.
- Form 990-EZ, Short Return of Organization Exempt from Income Tax.
- Form 990-PF, Return of Private Foundation.
- Form 990-N (e-Postcard).
- Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under Section 6033(e)).
- Form 1120-POL, U.S. Income Tax Return of Political Organizations.
- Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.
- Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns (extension form for Form 1120-POL).
- Form 8868, Application for Extension of Time To File an Exempt Organization Return.

## ... Electronic Filing for CHAR500

- Effective September 19, 2022, New York Charities Bureau requires filing online at: [https://www.charitiesnys.com/annual\\_filing.html](https://www.charitiesnys.com/annual_filing.html).
- Step-by-step checklist to ensure you have all that you need to complete your online filing.
- Returning users can check their filing status online.

## ... Audit Requirements for CHAR500

- An Audit is required for organizations with over \$1,000,000 in total revenue and support.
- A Review is required for organizations with revenue greater than \$250,000 and up to \$1,000,000.
- For New York State Charities Bureau purposes, the total revenue and support is the amount reported on Form 990 Part I, line 12 or Form 990-EZ Part I, line 9.

## ... IRS Filing Penalties

- Failure to file return due in 2023.
  - \$20/day, not to exceed the lesser of \$11,000 or 5% of the annual gross receipts.
  - Organizations with annual gross receipts in excess of \$1,129,000 subject to \$110/day, not to exceed \$56,000.
- Penalties waived for failure to file return.

## Information to Gather for Preparation of the Form 990

- Listing of officer/directors (active during year and currently).
- Form W-3 and W-2s, officer compensation, and benefits.
- Form 1096 and Form 1099s.
- Updated mission statement, by-laws, policies, etc.
- Number of volunteers (an estimate is fine).
- Large contributions received (over \$5k or 2% rule).
- Breakdown of fundraising activities.



## ... 990 Reporting – PPP, ERC, PRF

- Payroll Protection Program loan forgiveness, Employer Retention Credits, and Provider Relief funds should be reported as income or contributions from a governmental unit on Part VIII, line 1e.
- Note that Schedule B reporting would also be required if thresholds are met.

## ... Executive Compensation

Form 990, Part VII and Schedule J is where executive compensation is reported.

- Per instructions compensated employees should be reported in order from highest to lowest compensation. Compensation may include includes wages (Form W-2), Nonemployee Compensation (Form 1099-NEC), and other benefits received.
- Report Officers, Directors, and Trustees that served at any time during the fiscal year.

## ... Executive Compensation

- IRS permits nonprofits to pay executives “fair and reasonable” compensation.
- There is not a formula to determine what is reasonable.
- However, if the organization is not paying the right amount, it could be subject to taxes.
- The penalties for an excess benefit transaction are levied on both the executive who received the benefit and the board members who approved it or didn’t prevent it.
- Biggest risk is the reputation of the the organization and individuals involved.

## ... Executive Compensation

Document with explanations of your compensation practices.

- How is compensation structured?
- Do salaries in this industry need to be competitive?
- What are comparable salary rates?
- Does this tie in with the organization's mission?
- Terms and Members that voted.
- Process and decision.

## ... Part IV: Checklist of Required Schedules

- All applicable sections should be completed.
- If a box is checked yes, then the supporting schedules needs to be completed and attached.

## ... Schedule B Reporting

Tax-exempt organizations other than 501(c)(3) or Section 527 no longer required to disclose names and addresses of contributors.

- However, this information should still be kept in the organization's records.

## ... Schedule B Reporting

American for Prosperity Foundation v. Bonta – in July 2021, the Supreme Court ruled that the California law requiring nonprofits to disclose donors over \$5,000 violated the donors first amendment rights and would make donor's less likely to contribute due to risk of retaliation against them.

For New York State purposes, registrants other than private foundations that filed Schedule B with the IRS will be permitted to:

1. Submit Schedule B with only the amount of each donation and the state the donor is located; or
2. Select from a series of dollar ranges, the gross amount of contributions received from New York donors.



## ... Part VI: Governance, Management, and Disclosure

- The IRS uses the responses to these questions to potentially identify noncompliant organizations.
- The IRS is using more analytics in identifying audit targets and responding “no” to these questions may trigger further inquiry by the IRS.

## ... Governing Body and Management

- Distinguishes who is the governing body and who is independent.
- Discloses family or business relationship.
- Delegation of control to management company or other third-party.
- Significant changes to organizational documents.
- Significant diversion of assets.
- Who elects the board members.
- Document meeting and actions.

## ... Independent Board Members

A member of the governing body is considered “independent” only if all four of the following circumstances applied at all times during the year:

- The member was not compensated as an officer or other employee of the organization or of a related organization;
- The member did not receive compensation exceeding \$10k during the year as an independent contractor;
- Neither the member, nor any family member was involved in a transaction with the organization required to be reported on Schedule L; and
- Neither the member, nor any family member was involved in a transaction with a related organization required to be reported on Schedule L.

## ... Disclosure

- Form 990 public inspection compliance.
- Public disclosure of additional documents:
  - Governing documents;
  - Policies; and
  - Financials.
- Contact information for who maintains books and records.

# Polling Question

Who reviews your organization's Form 990 prior to filing?

- A. No one from the organization, the preparer just files it.
- B. The Executive Director or Treasurer.
- C. The full board.

## ... Policies

- Conflict of interest.
- Whistleblower.
- Document retention and destruction.
- Governance of chapters, affiliates, and branches.
- Committee responsibility for compilations, review, and audits.
- Governing body review of Form 990.

## ... Conflict of Interest Policy

- If an organization states that it has a conflict-of-interest policy, but it doesn't monitor conflicts, IRS might ask questions.
- Organization needs to describe their monitoring practices and how it deals with potential conflicts.
- The description should include:
  - Which persons are covered under the policy;
  - The level at which determinations are made;
  - The level at which the conflicts are reviewed; and
  - Restrictions imposed on persons with conflicts.



## ... Reviewing the Form 990

- Governing body should review Form 990 before it is filed.
  - A more in-depth review can take place by the Finance Director, Treasurer, or Finance Committee, but the board should at least receive a copy to review.
- It's a long form, do not review it all at once – break it into sections.
- Compare to the signed Financial Statements (if applicable).
- Highlight anything not understood and ask your financial professional questions.

## ... Reviewing the Form 990

Some questions to ask while reviewing the Form 990:

- What has changed or hasn't changed from last year? Why? Is it substantial?
- What is debt being used for? Is it decreasing?
- Are net assets increasing or decreasing?
- What are the restrictions on net assets?
- Are there any new sources of revenue?
- Is cash generated or used by operating activities?
- Does the functional expense allocation show a focus on programs?
- Under Part VI, are there any policies that should be put in place?

# Resources

## ... Nonprofit Resources

National Council of Nonprofits - [www.councilofnonprofits.org/](http://www.councilofnonprofits.org/)

- Valuable resource reporting on current trends and policies.

TechSoup - [www.techsoup.org](http://www.techsoup.org)

- Offer discounted services to implement and manage your organization's technology, can help reduce computer software expenses (i.e., QuickBooks).

GuideStar - [www.guidestar.org](http://www.guidestar.org)

- Provide nonprofit organizations with up-to-date data.
- How does your organization compare to those who are similar?

# Questions





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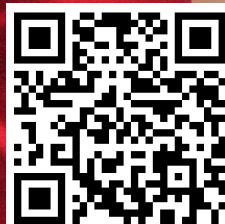
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