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Delivering **Confidence**

Be prepared, avoid hearing from the IRS and Charities Bureau

Presented by:
Shannon T. Forkin, CPA, CGMA – Tax Partner
Elaine S. Buffington, CPA – Tax/Audit Partner

January 9, 2025

What will be covered today?

- Common Form 990 Reporting Issues
- Top 10 Audit Triggers for Form 990
- NYS Charities Bureau Filing & GAAP Basis Filing Requirement
- BOI Reporting Requirements
- Energy Tax Credits
- Tax Policies and Provisions Affecting Nonprofits - TCJA
- Resources

Common Form 990 Reporting Issues

Filing the Correct Form for your Organization

The IRS has many forms that nonprofits could be required to file, it is important to select the correct form to file.

- **Form 990, Return of Organization Exempt From Income Tax** This form is required for all filers whose gross receipts are equal to or greater than $200,000 **and** total assets at the end of the year are equal to or greater than $500,000.
- **Form 990-EZ, Short Form Return of Organization Exempt From Income Tax** This form is required if an organization has gross receipts <$200,000 **and** total assets at the end of the year are <$500,000.
- **Form 990-N, ePostcard** This form is filed electronically and is for small tax-exempt organizations who generally have gross receipts <$50,000.
- **990-PF, Return of Private Foundation** This for is for all 501(c)(3) private foundations and 4947(a)(1) non-exempt charitable trusts.

Filing a Timely Return

The year end date of your organization will determine when your return is due to be filed

Ending date of tax year	Initial return due date	Extended due date
December 31	May 15	November 15
November 30	April 15	October 15
October 31	March 15	September 15
September 30	February 15	August 15
August 31	January 15	July 15
July 31	December 15	June 15
June 30	November 15	May 15
May 31	October 15	April 15
April 30	September 15	March 15
March 31	August 15	February 15
February 28/29	July 15	January 15
January 31	June 15	December 15

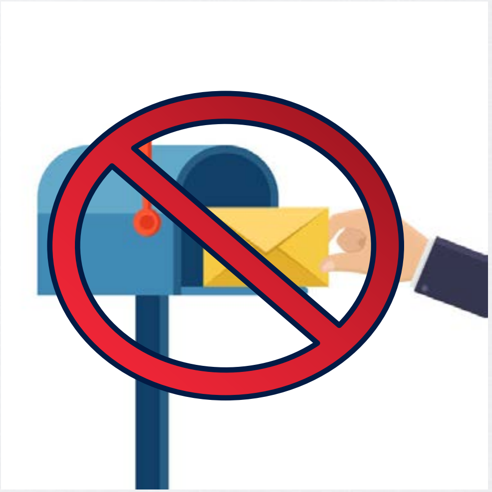
Penalties due to Late Filing

Filing a late return can result in penalties if the organization does not provide reasonable cause, the amount of penalty is determined by the gross receipt amount of the organization.

- Gross receipts of less than $1,208,500 the penalty is $20 a day for each day the return is late up to a maximum penalty of $12,000 or 5% of the organization's gross receipts, whichever is less. This increases to $120 a day, up to a max of $60,000 for an organization with gross receipts over $1,208,500.

Not Filing Electronically

- For tax years ending July 31, 2020, and later, you MUST file your nonprofit return electronically
- Filing electronically makes the filing process simpler and quicker, if you paper file your return the IRS will reject the submission, and you will potentially incur late filing fees even though the form was completed in a timely manner



Statements and Descriptions

- Various parts of the Form 990 request that additional information or a statement that further explains the organization's activities and procedures are provided. Many tax form preparation software carry these explanations over from one year to the next.
- All statements should be reviewed annual to ensure accuracy and make sure that the descriptions fully answer the question and that nothing has changed during the year.
- The three largest programs section is a great place to inform potential donors about the work the organization does.

Contact Information

- Verify the Organization's address and telephone number are accurate and have not changed from the prior year
- The principal officer and signing officer should be who is currently the main contact person

Other IRS Filings and Tax Compliance

- Check that a number is being reported for the forms 1096 and W-3s reported
- Check that the number of voting members appears accurate
- Any policies that the organization does not have, consider implementing
- Briefly review questions to see if there are changes from the prior year that would warrant a change in response

Board Members Listing

- Details of the governing body including title and average hours worked weekly for the organization are required to be reported
- Often your tax year and your board terms will not align exactly. You should report everyone who served on the board at anytime during the time period the Form 990 covers.

Example: Tax year ends 12/31 but board terms end 6/30, you still must report board members who served only 1/1-6/30

*Keep a detailed list of rotating board members throughout the year to assist you in completing this section of the return

Top 10 Audit Triggers for a Form 990

Top 10 Audit Triggers for From 990 (from the Foundation Group)

1. Filing an Incomplete Return
2. Acknowledging a Diversion of Assets
3. Acknowledging Prohibited Political Activity
4. Unrelated Business Income
5. Acknowledging Excess Benefit Transactions with Disqualified Persons
6. Unreasonable Compensation
7. Foreign Grant Activity
8. Fundraising Income and Expense Discrepancies
9. Non-Employee Services, But No 1099-NEC
10. Loans to Disqualified Persons

1. Filing an Incomplete Return

- Incomplete returns are fairly common, this happens most often when the person filing the return is a volunteer of the organization or occasionally a tax professional who is not familiar with non-profit filings. Especially common with the long version of Form 990 as it is a very complex return.
- Make sure all schedules that are “checked off” are completed and attached
- This does not mean that every single incomplete return will be audited, it depends on what information is left out. It is important to note that the IRS treats an incomplete return as though it was never filed, so if an incomplete return was filed, even in a timely manner, it gets tossed and the organization may still be subject to late filing penalties.

2. Acknowledging a Diversion of Assets

Part VI of form 990: Governance, Management and Disclosure

Part VI, Line 5: Did the organization become aware during the year of a significant diversion of the organization's assets?

- What this questions is asking is if there had been any embezzlement or other transactions that resulted in the organization's money or other assets being diverted to personal or some other inappropriate use.
- If there is a diversion of assets in the current year a detailed explanation of the diversion, and its remedy, must accompany the return. With an explanation to the answer "yes" an audit is still possible, **without** an explanation it is almost certain.

3. Acknowledging Prohibited Political Activity

Part IV of Form 990: Checklist of Required Schedules

Part IV, Line 3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I

- This question is generally aimed at 501(C)(3) organizations to see if they have participated in campaigns or public office, which is strictly prohibited, or excess lobbying activity.
- A truthful answer to all Form 990 questions is necessary but take into consideration that an answer of "yes" to this question could especially lead to an audit.

4. Unrelated Business Income (UBI)

- UBI is an income an organization generates from an ongoing business activity that is not directly related to the organization's exempt purpose and is from a trade or business.
- While UBI does not disqualify your exempt status, it should not be substantial or make up a large portion of the organization's income. (above 20% of total income)
- UBI should always be reported properly and all required taxes on it paid. Note that UBI does put the organization under more scrutiny.
- UBI can trigger an audit if it is over $1,000 and a 990-T is not filed or if UBI is more then 20% of the organization's total income.

5. Acknowledging Excess Benefit Transactions with Disqualified Persons

Part IV of form 990: Checklist of Required Schedules

25a	**Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.** Did the organization engage in an excess benefit transaction with a disqualified person during the year? *If "Yes," complete Schedule L, Part I*	25a		
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? *If "Yes," complete Schedule L, Part I*	25b		

An excess benefit transaction, as defined by the IRS, is a transaction in which an economic benefit is provide by an applicable organization, directly or in-directly, to or for the use of a disqualified person. The value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization.

A disqualified person is any person who was in a position to exercise substantial influence over the organization during the lookback period, which is the 5-year period before the excess benefit transaction.

5. Acknowledging Excess Benefit Transactions with Disqualified Persons

Answering “yes” to Part IV line 25a or 25b is a big audit trigger and can also lead to substantial fines.

Compensation or other benefits to a person of power in excess of what is reasonable or exceeds what the individual may have paid for is prohibited. Acknowledging that this has happened is a big audit trigger and can lead to personal fines being levied against the members of the board.

6. Unreasonable Compensation

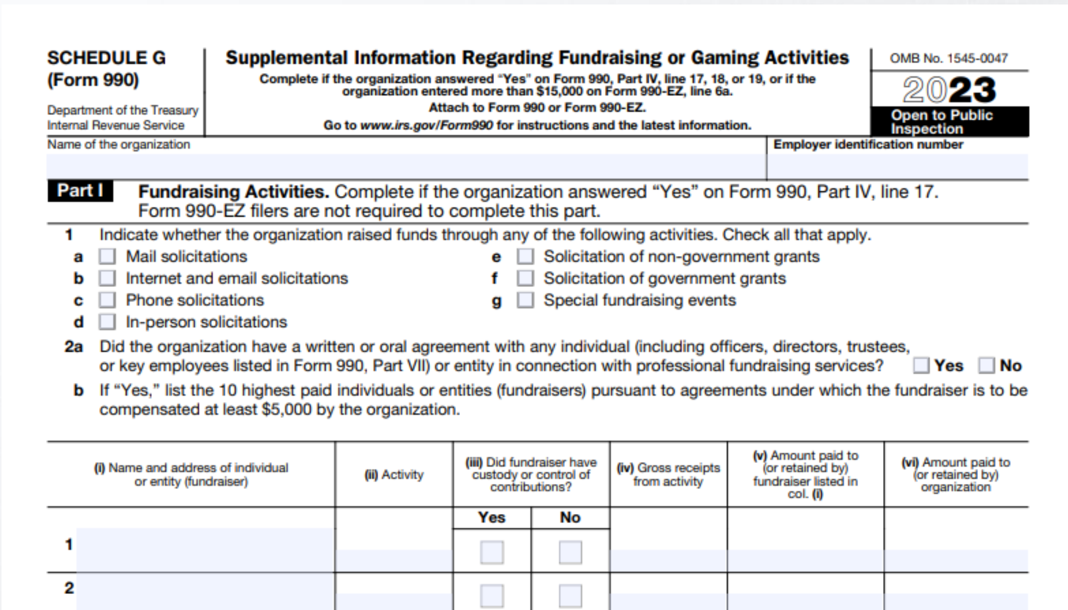
- The IRS requires salaries and wages paid to employees on a nonprofit to be limited to "reasonable compensation."
- While there is not a specific definition to "reasonable compensation," comparing the compensation of employees to that of other similar organizations is a good place to start. The compensation paid to employees should not impact the ability of the organization to carry out their mission.
- If the compensation of employees is deemed to be excessive the IRS may determine that the organization is focused on individual gain rather than public benefit.

7. Foreign Grant Activity

- U.S. nonprofit organization are not prohibited from conducting activities overseas, but this is a highly scrutinized activity.
- Questions asked on Form 990 pertain to foreign bank accounts, activities in foreign countries and foreign organization grant-making. Inconsistencies or answers that point to a lack of U.S. control are a big audit trigger.
- It is important to keep complete records of foreign activity and ensure you are reporting things correctly.

8. Fundraising Income and Expense Discrepancies

Nonprofit organizations report fundraising income and expenses on Schedule G if they had more than $15,000 in fundraising income.



SCHEDULE G (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Information Regarding Fundraising or Gaming Activities

Complete if the organization answered "Yes" on Form 990, Part IV, line 17, 18, or 19, or if the organization entered more than $15,000 on Form 990-EZ, line 6a.

Attach to Form 990 or Form 990-EZ.

Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No. 1545-0047

2023

Open to Public Inspection

Name of the organization

Employer identification number

Part I **Fundraising Activities.** Complete if the organization answered "Yes" on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- **a** ☐ Mail solicitations
- **b** ☐ Internet and email solicitations
- **c** ☐ Phone solicitations
- **d** ☐ In-person solicitations
- **e** ☐ Solicitation of non-government grants
- **f** ☐ Solicitation of government grants
- **g** ☐ Special fundraising events

2a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? ☐ **Yes** ☐ **No**

b If "Yes," list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least $5,000 by the organization.

	(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col. (i)	(vi) Amount paid to (or retained by) organization
			Yes	No			
1			☐	☐			
2			☐	☐			

This is not as common as an audit trigger but be aware that a high income and very low expense fundraising operation will raise questions, and more so the opposite, large expenses with little revenue.

9. Non-Employee Services, But No 1099-NEC

- This is a fairly common occurrence, your organization reports that it paid independent contractors but did not distribute any Form 1099-NEC. Not only will the organization be penalized per 1099 but it is a red flag to the IRS if the amount of compensation paid to contractors is relatively is high.

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

OMB No. 1545-0116

Form **1099-NEC**

(Rev. January 2024)

For calendar year

Nonemployee Compensation

PAYER'S TIN

RECIPIENT'S TIN

1 Nonemployee compensation
$

Copy 1

For State Tax Department

RECIPIENT'S name

2 Payer made direct sales totaling $5,000 or more of consumer products to recipient for resale ☐

3

Street address (including apt. no.)

4 Federal income tax withheld
$

City or town, state or province, country, and ZIP or foreign postal code

5 State tax withheld
$
$

6 State/Payer's state no.

7 State income
$
$

Account number (see instructions)

Form **1099-NEC** (Rev. 1-2024) www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

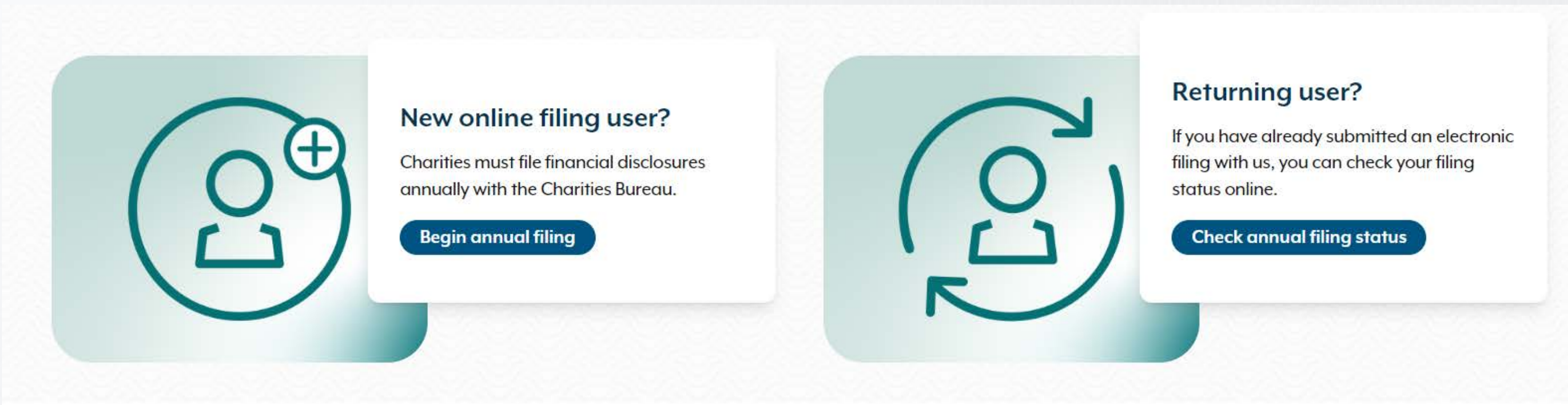
10. Loans to Disqualified Persons

- Loaning money to a disqualified person (officer, director, etc.) is generally considered unethical and in some states, it is prohibited by law.
- While not federally prohibited, the real audit trigger in this situation is not seeing a loan of this type decrease over time, that indicates a prohibited private benefit, and an audit could be in your future.

NYS Charities Bureau

Electronic Filing for CHAR500

- Effective September 19, 2022 New York Charites Bureau required filing online at: 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.



NYS CHAR500 GAAP Reporting Requirements

- NYS requires that all financial statements submitted with it must adhere to Generally Accepted Accounting Principles (GAAP)
- This means the organization must present their financial information according to standards set by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA).

Beneficial Ownership Information Reporting Requirements

Beneficial Ownership Information Reporting

- In 2021 Congress enacted the Corporate Transparency Act (CTA) to reduce illegal activity, such as money laundering by requiring the reporting of more ownership information from certain U.S. businesses. The goal is to make it harder for entities to hide income or other gains through ownership structures or shell companies.
- As of January 1, 2024 many U.S. companies are required to report information about their beneficial owners to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN), nonprofit entities are exempt from this filing requirement.
- As of January 1, 2024 entities that meet a certain criteria have to submit a BOI report to FinCEN. Beneficial owners are those who exercise substantial control, directly or indirectly over a reporting company or who own/control at least 25% of a reporting company's ownership interest.
- One year is given to file the report, there isn't any ongoing filing requirement unless an amendment is needed due to a change in the reported information.

Do nonprofits need to file a BOI report?

- All entities are required to file unless one of the 23 exemptions applies. **Nonprofits are exempt from BOI filing requirements.**
- An entity qualifies for the tax-exempt entity exemption if it meets any of the following criteria
  1. An organization that is described in section 501(c) and exempt from tax under section 501(a) of the Code.
  2. A tax-exempt entity as described in the Code, but has lost its tax-exempt status **less than** 180 days ago.
  3. A political organization as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code.
  4. A trust as described in section 4947(a)(1) or section 4947(a)(2) of the Code.

Do nonprofits need to file a BOI report?

- Entities that assist nonprofit entities and subsidiary entities controlled by nonprofit entities are also exempt from BOI reporting. To qualify as an "assisting entity," an entity must meet all four of the following criteria.
    1. Operate exclusively to provide financial assistance to or hold governance rights over a non-profit organization.
    2. Be a U.S. person as defined in section 7701(a)(30) of the Code.
    3. Owned or controlled by one or more U.S. citizen or lawfully admitted permanent resident.
    4. Receive the majority of its funding or revenue from one or more U.S. citizen or lawfully admitted permanent resident.

Nonprofit Entities that may have BOI reporting requirements

- Nonprofit organizations that lose their tax-exempt status will have 180 days from revocation by IRS to file a CTA annual report, in a lot of cases this will come before you can reinstate your tax-exempt status.
- The CTA does not exempt nonprofits with their tax-exempt **applications pending** at the IRS.
- Organizations waiting tax-exempt status determination that were created before January 1, 2024 have an entire year to comply with CTA and should receive exempt status before the end of 2024.
- Organizations created in 2024 have 90 days to initially file and comply with CTA if they do not receive their exempt status in 90 days. If they receive the exempt status within the 90 days, they will not be subject to the initial filing.

Energy Tax Credits

2022 Inflation Reduction Act (IRA)

- IRA was passed to incentivize the acceleration of investments in clean energy solutions
- Non-profit organizations that want to participate in green investments or projects may be able to benefit from these incentives
- Investment Examples:
  - Building new energy-efficient buildings or making improvements to existing buildings
  - Installing Solar Panels
  - Purchasing new electric vehicles and installing charger for those vehicles

Overview of Energy Tax Credits

- IRC § 45 Electricity Produced from Certain Renewable Sources (PTC)
- IRC § 45X Advanced Manufacturing Production Credit (PTC)
- IRC § 48 Energy Credit (ITC)
- IRC § 48C Advanced Energy Project Credit (ITC)

Note that both ITC and a PTC credit cannot be taken

Monetization of the Credit

- A "direct pay" tax credit will be available. These credits will essentially be cash-back for an organization to use against project costs rather than be a credit against taxes paid or due.
- While non-profits typically owe no tax, they may elect to receive the credit they generate in an equal payment, similar to how a tax refund is claimed.
- Production Credit (PTC): the election applies to the 10-year period beginning when the facility is placed in service.
- Investment Tax Credit (ITC): the election can be claimed the year the property is placed in service.

Credit Structure: Base and Bonus

- The 2022 Base Rates for the PTC are currently 0.55 cents per kilowatt-hour (kWh) as adjusted for inflation and the base rate for ITC is 6%.
- If the project does not exceed one megawatt (MW) or meets the federal revealing wage and apprenticeship standards the rates can be increased by up to five times.
  - 0.55 cents per kWh is increased to 2.75 cents per kWh for the PTC and;
  - 6% is increased to 30% for the ITC.
- Currently under IRA, the credit amount is eligible for the increase if the project is started after 12/31/22.

Federal Prevailing Wage & Apprenticeship

Will qualify for the IRA clean energy credits if the following criteria are met:

- Prevailing wages: laborers and mechanics must be paid no less than prevailing wage rates for work in construction, repair or alteration.
- Apprenticeship Labor Hour and Participation: Apprentices from registered apprenticeship programs must be employed and they are required to work a certain number of hours.
- General record-keeping requirements are adhered to in order to establish these requirements have been met.

IRC § 45 Electricity Produced from Certain Renewable Sources (PTC)

- Production or output of electricity from a renewable energy source.
- Can elect for a "direct-pay" option of the credit payout, get cash-back in equivalent amount of the credit. This election must be made be the due date of the return filed.
- The credit is available for 10 years after the project is placed in service, if the project begins in 2025

*Note that if you fail to file a return for 3 years in a row you run the risk of losing your 501(c)(3) status.

IRC § 45 – Qualified Projects

- Wind
- Closed and open loop biomass*
- Geothermal
- Landfill Gas
- Trash
- Solar Energy
- Qualified Hydropower
- Marine and Hydrokinetic Facilities

*Credit amount is reduced by ½ for open loop biomass facilities

IRC § 48 Energy Credit (ITC)

- Purchase of parts, materials, and labor in relation to energy property, such as solar panels
- A project can contain multiple pieces of energy property, each individual project will have its own ITC
- IRA extends the ITC and offers a base and bonus structure to the credit for energy properties that began before 1/1/25

IRC § 48 – Qualified Energy Properties

- Solar (< 5 MW output)
- Fiber-optic Solar
- Qualified Fuel Cell
- Qualified Microturbine
- Combined Heat and Power (CHP) Systems
- Small Wind (< 5 MW output)
- Waste Energy Recovery Property

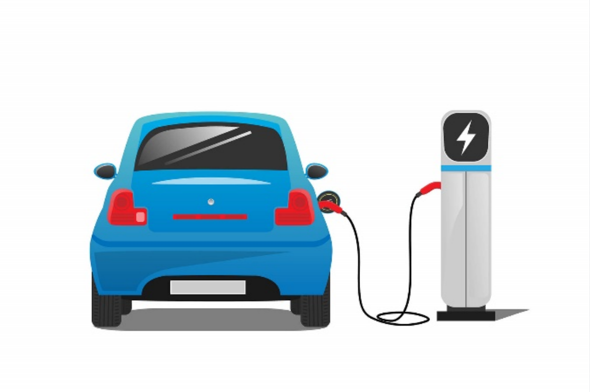
<u>Additional Technologies with IRA</u>

- Qualified Biogas Property
- Electrochromic Glass
- Energy Storage Systems
- Fuel Cells
- Microgrid Controllers

Examples of Credits Non-profits can Claim

Commercial Clean Vehicle Credit: The credit can be up to 30% of the vehicles total cost, there are limitations to this credit based on size and type of electric vehicle.

- Credit is limited to $40,000 and up to $7,500 for vehicles weighing less than 14,000 lbs
- **Alternative Fuel Infrastructure Tax Credit:** a credit of up to 30% can be claimed for qualified project costs
- Limited to $100,000 per project



Tax Policies and Provisions Affecting Nonprofits

Tax Cuts and Jobs Act

While nonprofits do have tax-exempt status, there are still several policies that impact them. The Tax Cuts and Jobs Act (TCJA) of 2017 has several parts that have impacted non-profits, such as:

- Increase in standard deduction has impacted charitable giving
- Change in the corporate income tax rate that also applies to tax-exempt organizations
- An excise tax on executive compensation over $1 million

Other Tax Laws and Provisions

- The increase in the standard deduction impacts charitable giving negatively, more policies favor this over itemized deductions. By favoring the standard deduction taxpayers are not incentivized to donate to non-profits as much.
- Recently tax polices have resulted in lower corporate tax rates. This leads to higher income for corporations allowing for more available funds for charitable giving. This could have the opposite effect where corporate tax breaks are eliminated, and they are no longer incentivized to donate.

How to be prepared

Nonprofits should stay on top of any proposals to tax laws to be prepared for any changes. Changes can have a large impact on charitable giving, tax-exempt status and other aspects of running a successful nonprofit organization.

It is important to brainstorm for some of these potential changes, it may be beneficial to diversify funding to fill in gaps from potential drop in individual donations. It would be beneficial to invest in financial or advising services to stay on top of the ever-changing tax world.

Resources

Nonprofit Resources

- National Council of Nonprofits - www.councilofnonprofits.org/

Valuable resource reporting on current trends and policies

- TechSoup - www.techsoup.org

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

- GuideStar - www.guidestar.org

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

- Tax Foundation – www.taxfoundation.org

Nonpartisan tax policy 501(c)(3) nonprofit

Questions

Shannon T. Forkin, CPA, CGMA
Tax Partner

Email: sforkin@dmcpas.com

Web: www.dmcpas.com

Address:
Mohawk Harbor
200 Harborside Drive
Suite 201
Schenectady, NY 12305

Phone: (518) 836-5661, ext. 151

Scan to add Shannon to your contacts.

Elaine Buffington, CPA
Tax/Audit Partner

Email: ebuffington@dmcpas.com

Web: www.dmcpas.com

Address:
213 North Street Suite 101
Auburn, NY 13021

Phone: (315) 253-9744, ext. 268

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Shannon T. Forkin, CPA, CGMA
Tax Partner

Email: sforkin@dmcpas.com

Web: www.dmcpas.com

Address:
Mohawk Harbor
200 Harborside Drive
Suite 201
Schenectady, NY 12305

Phone: (518) 836-5661, ext. 151

Scan to add Shannon to your contacts.

Elaine Buffington, CPA
Tax/Audit Partner

Email: ebuffington@dmcpas.com

Web: www.dmcpas.com

Address:
213 North Street Suite 101
Auburn, NY 13021

Phone: (315) 253-9744, ext. 268

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