



*The Honorable Diane L. Harkey  
California State Board of Equalization  
Vice Chair - Fourth District  
Nonprofit Seminar*



## Board of Equalization Functions

- Administers over 30 different tax and fee programs for the State.
- Funding supports education, health care, public safety, transportation, social services, etc.

## Course Objectives

- How Sales & Use Tax Law impacts nonprofit and faith-based organizations.
- How and where to get help.



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## Presumptions of the Sales Tax Code

- All sales are taxable unless otherwise specifically exempted.
- Claimed exemptions must be supported by documentation.
- Taxpayer is responsible for maintaining and providing documentation for potential examination.



## What Is Tangible Personal Property?

Personal property, which may be touched, held, weighed, or measured.



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## What Is A Sale?

Any transfer of title or possession, of tangible personal property for a consideration, regardless of when payment is received.

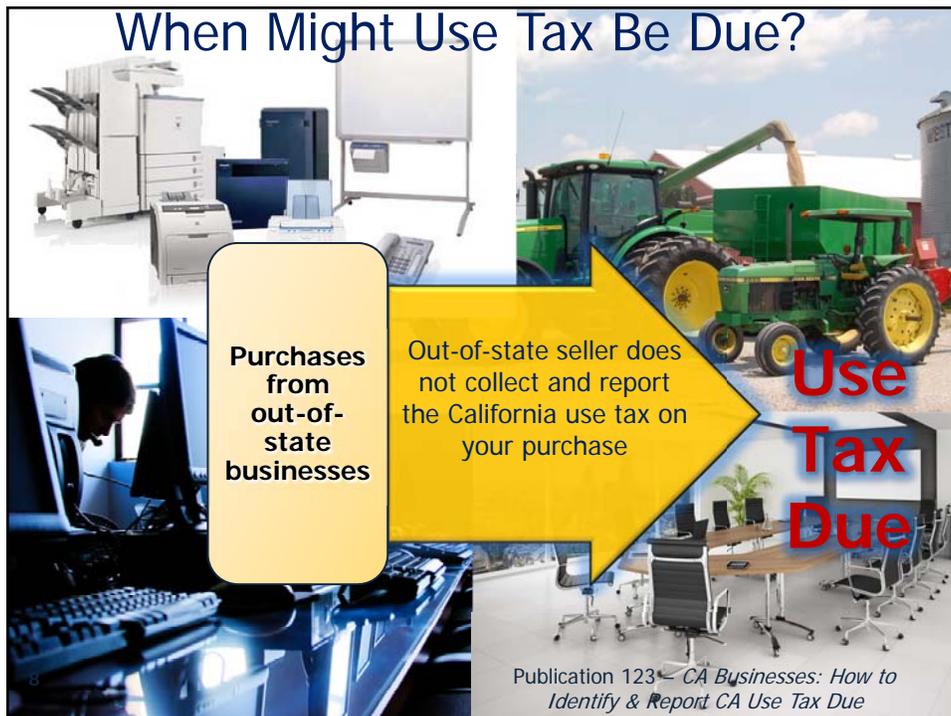


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## What Is Sales Tax?

- ⇒ Sales tax is imposed upon the retailer (seller) on the sale of tangible personal property at retail in the State of California.
- ⇒ Retailers may be reimbursed for the sales tax by their customers.
- ⇒ Tax is due based upon the gross receipts from retail sales.

## When Might Use Tax Be Due?



**Purchases from out-of-state businesses**

Out-of-state seller does not collect and report the California use tax on your purchase

**Use Tax Due**

Publication 1234 - CA Businesses: How to Identify & Report CA Use Tax Due

## When Might Use Tax Be Due?

Inventory items purchased with a resale certificate without payment of tax



Items withdrawn from inventory for use other than resale (including use as gifts and free samples or for personal use)



**Use  
Tax  
Due**

Resale Inventory



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Analysis of the California Sales and Use Tax Law

## What Is Use Tax?

- ❖ California purchaser owes and must pay the use tax due on items purchased for use, stored, consumed, or given away in California ***without*** payment of sales tax.
- ❖ Use the same tax rate applicable to the place in California where the item is used, stored, or otherwise consumed and apply it to the total *purchase price*.



## Do I Need a Seller's Permit?

- ❖ Every person, (i.e. individual, firm, partnership, corporation, nonprofit, etc.) engaged in the business of selling or leasing tangible personal property
- ❖ Wholesalers, as well as retailers, must secure such permit.
- ❖ No fee is required to obtain a permit



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## How Do I Apply For a Seller's Permit?

CA.GOV California State Board of Equalization

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Home | File a Return | Make a Payment | Taxes & Fees | Forms & Pubs | Permits & Licenses | eServices | News & Events

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Popular Topics

- ➔ Tax Rates (July 2013) Lookup
- ➔ City and County Sales and Use Tax Rates
- ➔ Online Services Overview
- ➔ Sales and Use Tax
- ➔ Verify a Seller's Permit
- ➔ Sales and Use Tax Filing Help
- ➔ Forms and Publications
- ➔ Register for a Permit, License, or Account
- ➔ Tax Departments
- ➔ Sales Tax Forms Numeric

eReg

How Do I...

- ➔ Register for Permit, License, or Account
- ➔ Verify a Permit or License
- ➔ Find a City or County Sales Tax Rate
- ➔ Change My Business Information
- ➔ Request Extension or Relief from Penalty/Interest
- ➔ Close a Permit, License, or Account
- ➔ Find Information About Use Tax
- ➔ Learn About the Fire Prevention Fee
- ➔ Reduce My Property Tax Assessment

Business Center

- ➔ Starting or Closing Your Business?
- ➔ Small Business Tax Guide
- ➔ What is a Seller's Permit?
- ➔ Industry Guides
- ➔ Resale Certificate Tips
- ➔ Internet Sales Information
- ➔ Registration for Out-of-State Sellers
- ➔ California Tax Service Center
- ➔ Useful Forms & Publications
- ➔ Helpful Tax Seminars

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## Temporary Seller's Permit OK?

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- Yes, if:
  - ▣ You hold less than three fundraisers involving taxable sales per year.
  - ▣ You may find it easier to hold a *regular* Seller's Permit to avoid having to reapply before each event, or if you hold annual fundraisers.
  - ▣ Tax Returns for Temporary Seller's Permit holders are due the month following the fundraiser.

## No Blanket Exemption

- In general, no blanket exemption from sales or use tax exists for nonprofit or charitable organizations.
- The organization's sales of tangible personal property are subject to tax.
- The organization's purchases of tangible personal property, including supplies are subject to tax.

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## Special Exemption for Certain Charitable Organizations

Sales made by a qualified charitable organization (as defined in Regulation 1570) are exempt.



## A “qualified” charitable organization:

1. Formed and operated for charitable purposes.
2. Qualify under R&T Code section 214 “welfare exemption” from property tax.
3. Be engaged in the relief of poverty and distress.



## A “qualified” charitable organization:

4. Sell or donate items to assist purchasers in distressed financial condition.
5. Make, prepare, assemble, or manufacture the items it sells or donates.



## Special Exemption for Certain Charitable Organizations

- Purchases by a “qualified” charitable organization for donation are exempt.
- However, purchases of supplies and assets are subject to tax.
- As a retailer they require to hold a permit.



## Exemptions for Certain Consumers

- Nonprofit parent-teacher associations
- Nonprofit youth organizations
- Friends of the library
- Parent cooperative nursery schools
- Nonprofit veterans' organizations

## Exemptions for Certain Consumers

- These nonprofit organizations are not retailers but CONSUMERS of the items they sell.
- Generally they are not required to hold a permit.
- They should not issue resale certificates.

## Exemptions for Certain Consumers

- Nonprofit parent-teacher associations



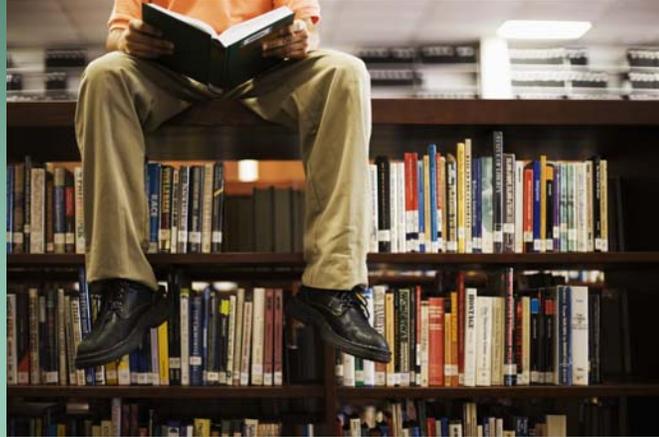
## Exemptions for Certain Consumers

- Nonprofit youth organizations



## Exemptions for Certain Consumers

- Friends of the library



## Exemptions for Certain Consumers

- Parent cooperative nursery schools



## Exemptions for Certain Consumers

- Nonprofit veterans' organizations



## Exemptions for Certain Consumers

- Nonprofit organizations operating within museums.



## Sales Tax Included in Gross Receipts

- ❖ Invoice should state "Price includes sales tax," not "Includes all applicable taxes."
- ❖ Post a clearly visible sign at the business premises, or include on a price tag or advertisement one of the following notices:

*"All prices of taxable items include sales tax reimbursement computed to the nearest mill"*

*or*

*"The price of the item included sales tax reimbursement computed to the nearest mill"*

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## Sales Tax Included in Gross Receipts

- ❖ When sales tax is included in the gross receipts, the tax amount needs to be deducted in order to reach the taxable measure.
- ❖ To find the ex-tax taxable measure when tax is included, divide sales by 1+ the tax rate.

(example with 8.25% tax rate)

$$10.00 \div 1.0825 = 9.24$$

$$10.00 - 9.24 = .76 \text{ tax included}$$

If the amount you reported as gross receipts includes sales tax, you must deduct "sales tax included" on the deductions tab of your return or report the calculated ex-tax gross receipts and take no deduction.

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## General Rule:

### Sales are Taxable Even if...

- ❑ The Item is Donated or Homemade.
- ❑ The Item is Bartered or Traded.
- ❑ The Proceeds Benefit the Organization.
- ❑ The Money Received is Designated as a Donation or Gift.

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## Taxable Activities

- Raffles
- Food sales
- Auctions  
(and silent auctions)
- Rummage sales
- Bazaars
- Carnival booths
- Vending machine sales
- Internet sales



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## Exemptions for the Sale of Meals and Food Products

Some nonprofits qualify for special exemptions from sales & use tax on meals and food. Those include meals or food:

- Delivered to elderly people and people with disabilities
- Sold at schools to students only
- Served at religious organization gatherings
- Furnished by social clubs and fraternal organizations to members only (less than once a week)
- Sold by nonprofit veterans organizations
- Served to residents of "institutions"
- Sold by nonprofit youth organizations



**Note: This exemption does not apply to alcohol or carbonated beverages sold separately.**

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## Food Products

The discussion of **taxable** food and beverage sales is divided into two categories:



**Food and beverages sold for consumption on the premises**



**Hot food products**

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## Sales of Food for Consumption On-site at Fundraising Events

### Type of sale, location:

- Food sold where admission is charged.

### Is sale usually taxable?

- Yes.



### Exception:

- Cold food sold in a form or quantity that buyers would normally take home.



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## Sales of Food for Fundraising

### Fund Raising Dinners.

- Taxable.
- Generally, the person serving the meal is responsible for the tax.

If a caterer serves the meal, the caterer is the retailer and is responsible for the tax.



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## Other Non-taxable activities...

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- Donations without receiving merchandise of equal value in return
- Tickets when food is not included in the ticket price
- Tickets and raffles where a prize is not guaranteed to everyone

## Other Non-taxable activities...

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- Sale of non-tangible products like services
- Sales of gift cards and coupon books
- Sales of advertising NOT involving and exchange of merchandise or goods

## Items Donated by Business from Resale Inventory

Items withdrawn from resale inventory and donated to *certain* nonprofits are not subject to use tax by the business making the donation. Nonprofits include:

Religious, museums, art galleries, literary groups, nonprofit schools and hospitals, medical assistance and research groups, Red Cross, Salvation Army, nonprofit educational organizations, scientific, performing arts groups, children or animal protection, fraternal lodges, plus Country, State, County or City.

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## Other *Donation* Guidelines...

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- Items *purchased* for donation subject to tax
- Nonprofits considered "Consumers" do not collect tax on donated items sold
- Loans to schools for educational purposes not taxable

## Gift Basket - Taxability

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To determine how to tax a gift basket that contains a variety of items, you will need to know:

- The % of non-food items\*
- The value of the container (basket)
- Whether you have records (receipts) for the value of the contents



\*(Alcoholic and carbonated beverages considered non-food items)

## Gift Basket...with receipts

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- If the value of the nonfood products exceeds 10 percent of the entire contents, not including the container (basket), you simply tax the retail value of the nonfood product

wine and knife (over 10%)	- \$60
cheese, crackers, nuts	- <u>\$40</u>
total	\$100
+ basket	\$10
total value	<u>\$110</u>
only collect sales tax on	\$60



## Gift Basket...without receipts

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- If the value of the nonfood products exceeds 10 percent of the entire contents, not including the container (basket), you tax the retail value of the entire basket and contents

wine and knife (over 10%)	- \$60
cheese, crackers, nuts	- <u>\$40</u>
total	\$100
basket	<u>\$10</u>
collect sales tax on	\$110



## Gift Basket...non-taxable

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- If the value of the nonfood products *is less than* 10 percent of the entire contents, and the container is less than 50%, the entire basket is non-taxable

coffee mug (under 10%)	\$4
food items	<u>\$46</u>
total	\$50
basket (under 50%)	<u>\$10</u>
collect no sales tax on	\$60



## Filing Requirements

When you are issued a seller's permit, the Board will assign you a reporting basis, based on the information you furnished.

- A tax return (with payment) is due each period
- *Even if no sales are made, you must file a "0" return*
- E-filing is the BOE method for filing tax returns

Yearly  
(Calendar Year)

Fiscal Yearly  
(July 1 - June 30)

Quarterly  
(Calendar Quarters)

Quarterly  
Prepayment

Quarterly  
Prepayment with  
EFT (Electronic  
Funds Transfer)

43 Publication 159 – eFiling

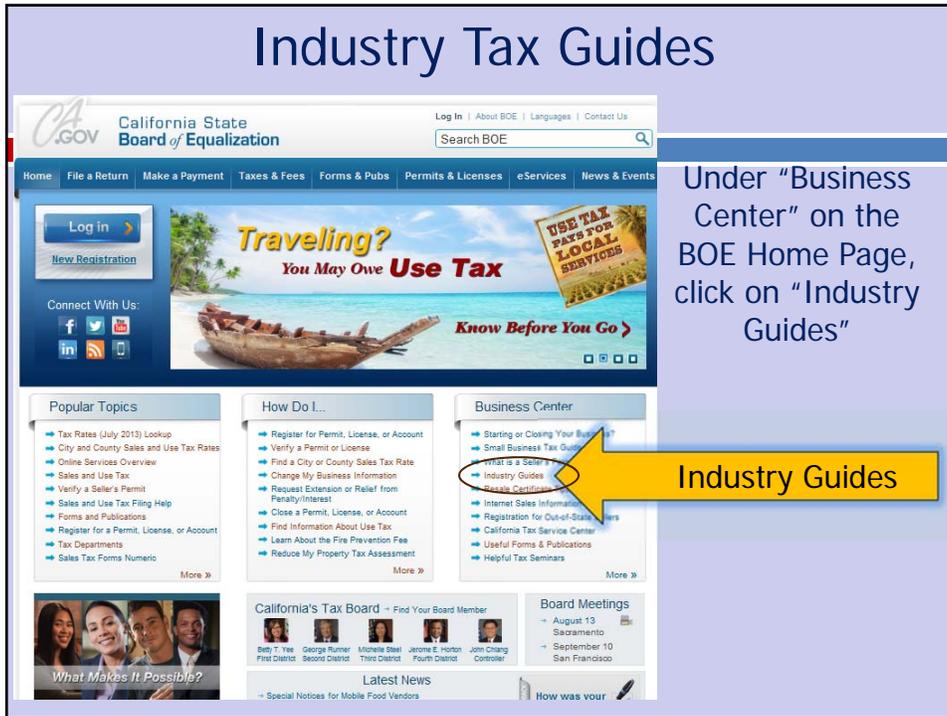
## Books and Records

- Records of all sales, including sales you believe are nontaxable
- Records of purchases
- Documentation to support claimed deductions
- Records must be maintained for at least four (4) years



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## Industry Tax Guides



The screenshot shows the California State Board of Equalization (BOE) website. The main navigation bar includes links for Home, File a Return, Make a Payment, Taxes & Fees, Forms & Pubs, Permits & Licenses, eServices, and News & Events. A search bar is located in the top right. Below the navigation is a banner for 'Traveling? You May Owe Use Tax' with a 'Know Before You Go' button. The 'Business Center' section is highlighted, and a yellow arrow points to the 'Industry Guides' link within it. Other links in the Business Center include 'Starting or Closing Your Business?', 'Small Business Tax Guide', 'What is a Seller's Permit?', 'Registration for Out-of-State Sellers', 'Internet Sales Information', 'Registration for Out-of-State Sellers', 'California Tax Service Center', 'Useful Forms & Publications', and 'Helpful Tax Seminars'.

Under "Business Center" on the BOE Home Page, click on "Industry Guides"

Industry Guides

## Online Industry Guides



The screenshot shows the 'Tax Guide for Nonprofit Organizations' page. The header features a blue banner with the text 'VOLUNTEER' and 'Tax Guide for Nonprofit Organizations' over an image of hands raised. Below the banner is a navigation menu with tabs for Overview, Getting Started, Industry Topics, Types of Organizations, and Resources. The 'Industry Topics' tab is selected, showing a list of organization types with expandable sections:

- Charitable Organizations That Relieve Poverty and Distress**  
You generally must hold a seller's permit, even if all of your sales are nontaxable.
- Cultural Organization: Museums, Government Art Programs, Library Support Organizations, and Zoological Societies**  
You generally must hold a permit if you make sales of merchandise. Unless you qualify for a special exemption listed below, your sales are taxable.
- Veterans' Organizations**  
You are required to register for a seller's permit. Generally, items you sell are taxable.
- Religious Organizations**  
Your sales and purchases of goods, including food for other than the specific exemption for meals below, are generally taxable. You are required to register for a seller's permit.

❖ [http://www.boe.ca.gov/industry/nonprofit\\_organizations.html](http://www.boe.ca.gov/industry/nonprofit_organizations.html)

## Taxpayer Information Section



Taxpayer Information Section  
(general tax questions  
answered)  
**1-800-400-7115**  
Mon – Fri, 8:00 a.m. to 5:00  
p.m.

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## BOE Social Media Services

Connect with the BOE on the following  
social media outlets



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## Get It in Writing

Revenue and Taxation Code section 6596 -  
Excusable Delay-Reliance on Advice, states:



"If the Board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of taxes imposed by §6051 and §6201 and any penalty or interest added thereto...".

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§6596

## Thank You

Thank you for all the important work you do for the  
State of California.



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# Where Do Grassroots Nonprofits Get Money?

Nancy Berlin  
California Association of Nonprofits (CalNonprofits)  
August 2016

## What does CalNonprofits do for nonprofits?

Lobby and advocate in Sacramento  
Research

Help nonprofits exercise their voting force

Nonprofit Overhead Project  
Nonprofit Student Debt Project

Health insurance for 19,000 nonprofit staff  
Discounts on office supplies etc. for our members

**We are a membership alliance of 10,000 nonprofits in  
California**

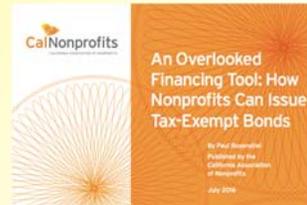
## New publications

- **Compliance Checklist: complete list of forms to file with links to blank forms and instructions**

<http://calnonprofits.org/resources/nonprofit-compliance-checklist>

## How Nonprofits Can Issue Tax-Exempt Bonds

Coming soon:  
**Student Debt Toolkit**



## Economic strength

Nonprofits are a large and vital part of California's economy, with nonprofit economic activity contributing

**15%**

– or 1/6 – of California's gross state product (GSP).

California foundations make nearly **\$2 billion in grants**

to California nonprofits annually.

Nonprofits generate

**\$208 billion in annual revenue**

and hold \$328 billion in assets.

There are

**25,000 nonprofits**

with paid staff and 50,500 identified as grassroots or mostly voluntary.

*The nonprofit sector is a growth industry; while the total number of nonprofits has leveled off since 2009, the California sector has **grown in revenue, assets, jobs, and wages.***

Despite being exempt from corporate income tax, nonprofits generated

**\$37 billion in taxes**

in 2012 at federal, state and local levels.

Each year California nonprofits bring in at least **\$40 billion in revenue from out-of-state sources.**





**Note: Not the same as  
“Where should *our* organization  
get money?”**

 **CalNonprofits** California's nonprofits & the communities we serve  
CALIFORNIA ASSOCIATION OF NONPROFITS

[www.calnonprofits.org](http://www.calnonprofits.org)

**Total Revenue**

- Contributed revenue**
- Earned revenue**

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[www.calnonprofits.org](http://www.calnonprofits.org)

### More about contributed income sources

**Total Revenue**

- Contributed revenue**
  - Institutions**
    - Churches
    - Foundations
    - Corporations
    - Service clubs (Rotary)
  - Individuals: how we ask people**
    - Mail
    - Phone-a-thon
    - Memberships
    - Pledges
    - Major gift asks
    - Wills

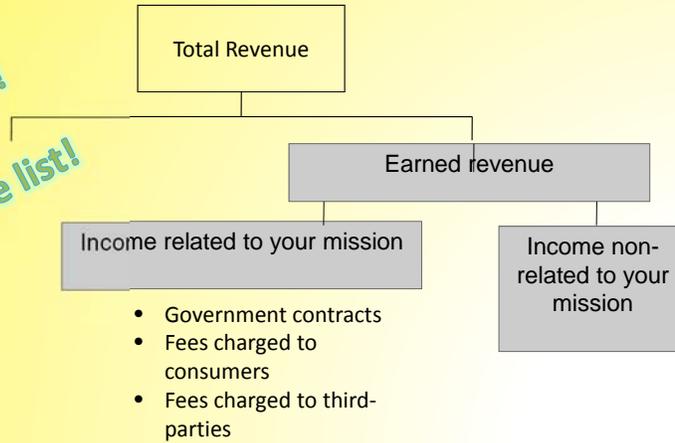
*Examples!  
Not a complete list!*

*CalNonprofits* California's nonprofits & the communities we serve  
CALIFORNIA ASSOCIATION OF NONPROFITS

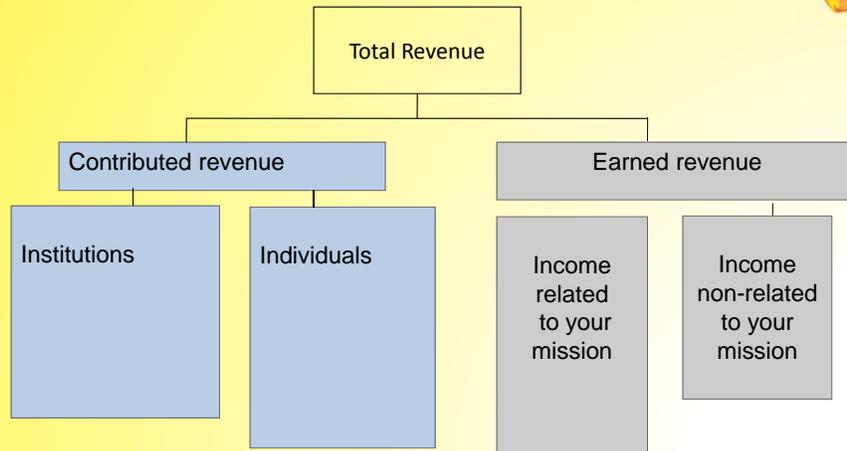
[www.calnonprofits.org](http://www.calnonprofits.org)

## More about earned income sources

Examples!  
Not a  
complete list!



## Total Revenue



For each of the following funding sources



1. Types
2. How to find them

3. What they frequently give
4. What they typically require  
(what you need)

## • Foundations



### 1. Foundation types

- Private, family foundations  
Ex: Girard Foundation
- Community foundations  
Ex: Orange San Diego Foundation
- Public foundations  
Examples: Women's Foundation of California

### 2. How to find foundations

- \* Look at similar organizations and see what foundations fund them  
Foundation Center libraries:
  - Foundation Center <http://foundationcenter.org/>

## Foundations

### 3. Foundations frequently give:

- Grants of \$2,500 +
- Usually for specific projects

### 4. Foundations frequently require:

- 501(c)(3) status or working under someone who has it
- Excellent writing skills
- Ability to frame your work in the language of foundations
- Patience: it sometimes takes months for them to decide
- Willingness to have them come visit to your site
- People who are very conscientious with paperwork



## Corporations

### 1. Corporation giving types

- Corporations – “corporate giving,” “community relations,” advertising
- Corporate foundations – usually a separate arm of the corporation
- Mid-sized and small nearby businesses

### 2. Corporations typically give:

- Small grants of \$500 - \$3,500
- Non-cash (in-kind) donations such as food, unsold clothing
- Event sponsorships
- Scrip (Safeway, Target)



## Corporations continued



### 3. Corporations typically give to:

- Non-controversial causes
- Small grants of \$500 - \$3,500
- Nonprofits near the corporate HQ
- Nonprofits where a corporation's employees volunteer
- Nonprofits that give a corporation a lot of visibility

### Corporations typically require:

- 501(c)(3) status or working under someone who has it
- A connection to a senior employee or volunteer manager



## Churches and religious organizations



### 1. Types of church and religious giving

- Churches, temples, congregations
- Church groups (example: United Methodist Women)
- They might ask their congregation to donate to you

### 2. How to find them:

Ask everyone you know!

## Churches and religious organizations



### 3. What they typically give

- Small amounts
- Non-cash (in-kind) donations such as space for meetings and events

### 4. Congregations usually require:

- Congregation members who are active in your organization
- Willingness to go talk in person and ask for donations



## Individuals

### 1. Types of individual donors

- People you know
- People you ask



### 2. How to find individuals who will give:

- Start with everyone you know
- Find out who's giving to similar organizations
- Ask lots of people and see who responds (by mail or phone or social media)

## Individuals



### 3. What individuals typically give:

- Membership dues
- Annual small-ish donations
- Attendance at fundraising event
- Large-ish donations
- Bequests and “planned gifts”
- Scrip and candy (etc.) sales
- Raffle tickets

### 4. What individual donors usually want:

- To be asked by someone they know
- To be asked for a specific amount (\$50, 5 raffle tickets, \$10,000)
- To be told (in general terms) what it will be used for (bus costs, music concert)
- To be thanked in writing soon after

## Ways to ask Individuals



### A. Staff and board asks:

- By mail
- By phone
- By email
- By text
- One-to-one in person
- At an event

### B. Asking your supporters to ask others:

- Send letters to people you know
- Send emails to people you know
- Ask via Facebook, Instagram, etc.
- Sell scrip, raffle tickets, etc.
- Join them at an event
- Invite them and a staffperson to lunch together

## Government

### 1. Types of government contracts

- City, county, state and federal contracts for services
- Typically \$10,000 +, often repeat annually

### 2. How to find government agencies that give:

- Attend events like this one!
- Ask similar organizations for suggestions
- Ask your elected officials for introductions



## Government

### 3. Government agencies typically contract for:

- Health and human services such as help for disabled people, childcare, homeless shelters, services for elderly, arts education for children
- Community activities such as festival, health fair

### 4. Government agencies typically require:

- More than a couple of years in business, credible board and staff
- Relationships with elected officials and/or administrators
- Developed accounting systems
- Tolerance for paperwork and bureaucracy



## More fundraising resources

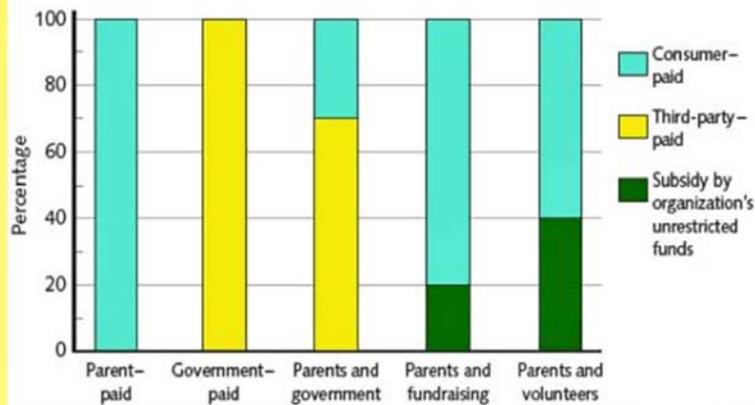
[www.grassrootsfundraising.org](http://www.grassrootsfundraising.org)

Foundation Center  
<http://foundationcenter.org>



## Similar organizations get money differently

Business Models for Five Preschools



## The four rules



1. You need a plan:  
What you're going to do (hold a phone-a-thon)  
How much you plan to raise (\$1,000: 50 people who give \$20)  
Who's in charge (Alicia)  
When (July)
2. Everybody has to do something
3. Nobody has to do everything
4. Clear expectations for all

## The best time to plant a tree is 20 years ago . . .





**. . . and the second best time is**

**now**



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CALIFORNIA ASSOCIATION OF NONPROFITS

[www.calnonprofits.org](http://www.calnonprofits.org)



**If you would like a copy of these slides:**

**Please give me your business card or a piece of paper with your name and email on it**

**If you don't have an email, give me your name, organization name and street address**



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CALIFORNIA ASSOCIATION OF NONPROFITS

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State of California  
**Franchise Tax Board**

Exempt Organizations  
Filing and Compliance

General Information

## Overview

- Application Process
- Filing Requirements
- State and Federal Differences
- Suspensions and Revocations
- Resources

FTB 932  
916-845-4171

## Application Process

## Application Process

To receive tax-exempt status in California, an organization must file **one** of the following with the Franchise Tax Board:

- Form 3500, *Exemption Application*.
- Form 3500A, *Submission of Exemption Request* - for organizations that have already been granted tax-exempt status by the Internal Revenue Service (IRS)



## Application Process – Form 3500

Form 3500, *Exemption Application*, requires organizations to:

- State which California R&TC section they are applying for.
- Answer questions on SIDE 1 through SIDE 8.
- Complete the *Specific Section Questions* listed for the R&TC section they are applying under.
- If applicable, complete Schedule A (churches), Schedule B (hospitals) or Schedule C (credit counseling organizations)

## Application Process – Form 3500

The following must be attached to Form 3500:

- \$25 Application fee, payable to the Franchise Tax Board.
- Copy of organization's creating document
- Copy of organization's bylaws or proposed bylaws

May also be required:

- An IRS federal determination letter.
- Covenants, Conditions, and Restrictions (CC&R) if the organization is a homeowner's association.
- Trust Agreement

## Application Process – Form 3500A

Can only be used by organizations who have never had California Exemption

- Answer questions in Parts I, II, and III
- Attach a copy of the federal determination letter received from the IRS granting exemption under Internal Revenue Code Sections 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), or 501(c)(7).

The effective date of California exemption will be the date of exemption as listed on the federal determination letter. If the federal effective date is later than the incorporation date, the organization should consider filing Form 3500.

## Application Process

FTB treats Form 3500 and Form 3500A as:

- A revivor request if the organization is suspended.
- A claim for refund.
- A request for reinstatement of exemption if an organization had their tax-exempt status revoked as a result of non-filing or non-payment of a balance due. (Must file Form 3500)

## Information, Disclosure, and Privacy

- FTB keeps the application and all associated documentation confidential until FTB issues a tax-exempt status determination or acknowledgement.
- During the application process, FTB does not discuss the application with any unauthorized person.
- Once exemption is granted, Form 3500, Form 3500A, and all supporting documents become open to public inspection.



## Filing Requirements

## Filing Requirements

Tax-exempt organizations may have to file one or more of the following:

- **Information Returns**
  - Form 199 – *California Exempt Organization Annual Information Return*
  - FTB 199N – *California e-Postcard* – Available online only
- **Income Tax Returns** (to report taxable income)
  - Form 109 – *California Exempt Organization Business Income Tax Return*
  - Form 100 – *California Corporation Franchise or Income Tax Return*

## Filing Requirements – Information Returns

All organizations must annually submit an information return to the FTB except for the organizations that have received California exemption as:

- a Church
- a Political Organization under 23701r
- a Pension Plan or IRA

## Filing Requirements – Information Returns

### 199 or 199N?

- Form 199 is required to be filed annually for organizations with total gross receipts (including pledge income) “normally” above a minimum amount (aka filing threshold.)
- The term "normal" means an average of up to 3 years.
- FTB 199N is filed for organizations whose normal income is at or below the filing threshold.
- Private Foundations and Nonexempt Charitable Trusts must file Form 199 regardless of income amounts.



Exempt Organizations  
Filing and Compliance

FTB 932 (REV 01-2016)

## Filing Requirements – Form 199 vs. FTB 199N

Exempt under all R&TC Sections 23701 (except Churches or political)	Gross Receipts normally:	Form filed:
Tax year 2012 and subsequent:	More than \$50,000	199
	Equal/Less than \$50,000	199N
Tax year 2010 and 2011 :	More than \$25,000	199
	Equal/Less than \$25,000	199N
Tax year 2009 and prior:	More than \$25,000	199
	Equal/Less than \$25,000	None
Private foundations and Nonexempt charitable trusts	All	199

Refer to FTB Pub 1068 for more information

Exempt Organizations  
Filing and Compliance

FTB 932 (REV 01-2016)

## Filing Requirements – FTB 199N

FTB 199N, *California e-Postcard*, requirements:

- Exempt organizations file FTB 199N if they have a gross receipts average less than the filing threshold.
- Filing the FTB 199N is free.
- FTB 199N can only be filed online.
- Only for Tax years beginning 1/1/2010 or later.
- The organization may choose to file the complete Form 199.



## Filing Requirements – E-file

- Effective 1/1/2015, Form 199 must be electronically filed if it was prepared using tax preparation software.
- Hand-prepared Form 199 (including fill-in forms prepared online) may still be submitted by mail.
- Penalties will be assessed for not e-filing.
- E-file Waiver available online (request waiver before filing.)



## Filing Requirements – Fees

### Form 199

- Organizations pay a \$10 fee if they file and pay on time.
- The fee is \$25 if they file and/or pay late.

### Form 199N

- No filing fee



## Filing Requirements – Fees

Exceptions to Form 199 filing fee:

Organizations which have received tax-exemption under R&TC Section 23701(d) can request a fee exception if they are:

- An exclusively religious organization.
- An organization that is controlled by a religious organization.
- A school.
- A charitable organization that is primarily supported by the general public or funded by the U.S. or any state.

The fee exception must be requested by checking the appropriate box on Form 199.

## Filing Requirements – Due Dates

- Form 199 or FTB 199N must be filed on or before the 15th day of the 5th month after the close of the organization's tax year.
  - An automatic 7 month extension is given to file Form 199 if the organization is not suspended on the original due date.
- \* For calendar year-end organizations, filing is due 5/15, and extended date is 12/15.



## Filing Requirements - Penalties

- FTB imposes a late penalty if an organization does not file Form 199 by the extended due date, regardless of when the fee is paid.
- The penalty is \$5 per month, or portion of a month, the Form 199 is late.
- The maximum penalty is \$40.
- FTB imposes the penalty from the original due date of the return.
- There is no penalty assessed for filing a late Form 199N.

Organizations that fail to file their Form 199 or FTB 199N for three consecutive years may have their exemption revoked.

## State and Federal Differences

## State and Federal Differences

### Minimum Tax

- California Law imposes a minimum \$800 franchise tax for all corporations that are not specifically exempt.
- Federal Law does not have a minimum tax.

### Excise Tax

- Federal Law imposes a tax for excess accumulation of funds.
- California Law does not have excise taxes, but will consider revocations if audit shows an org is not operating as promised.

## State and Federal Differences

### Churches and Very Small Organizations

- For federal purposes, churches and organizations with annual receipts less than \$5000 that meet the requirements of IRC section 501(c)(3) can self-declare that they are automatically tax-exempt and do not have to apply for recognition of tax-exempt status from IRS.
- For California purposes, all nonprofits (including churches) must file an Exemption Application (Form 3500) along with all required documentation and FTB must make a determination that the organization qualifies for tax-exempt status.

## State and Federal Differences

### Limited Liability Companies (LLCs)

- Federal law allows LLC's to receive exemption if they are owned by another exempt organization and elect to be treated as disregarded entities and file with their non-profit owner.
- California does not follow IRS laws regarding disregarded entities. CA law allows LLCs tax-exempt status only for the following:
  - The LLC is seeking exemption as a title holder and they meet **all** of the requirements of R&TC Sections 23701h or 23701x.
  - The LLC elects on federal Form 8832, *Entity Classification Election*, to be treated as a corporation and it meets **all** the other requirements of R&TC Section 23701.

## Suspensions and Revocations

- Franchise Tax Board (FTB) Suspensions
- Secretary of State (SOS) Suspensions
- Attorney General's Office, Registry of Charitable Trusts
- Dissolving an Exempt Organization

## Franchise Tax Board Suspensions

Reasons for FTB suspension include:

- Failure to file a return.
- Nonpayment of balance due.
- Failure to pay a penalty imposed by the Secretary of State (collected by FTB) for failure to timely file a Statement of Information with SOS. (see next slide)

Organizations that are FTB suspended will have their tax exempt status immediately revoked, and will need to re-apply for exemption.

## Secretary of State (SOS) Suspensions

Reasons for SOS suspension include:

- Failure to file a Statement of Information with SOS.
- File this form online through SOS website at [sos.ca.gov](http://sos.ca.gov)  
(HOA's must file their Statements of Information in the mail)

SOS Suspensions are automatically reported to FTB.

Organizations that are SOS suspended will have their tax exempt status revoked by FTB, and will need to re-apply for exemption.

## Attorney General's Office, Registry of Charitable Trusts

Charities and organizations with charitable assets may be required to register and file with the Attorney General's (AG) Office, Registry of Charitable Trusts (RCT).

Organizations that fail to comply with RTC requirements are reported to FTB, and may have their tax-exempt status revoked.

## Dissolving an Exempt Organization

Organizations that are discontinuing operations must formally dissolve. See Attorney General's Publication, *General Guide for Dissolving a California Nonprofit Corporation* (available on the AG website: [oag.ca.gov](http://oag.ca.gov) and search for "dissolve".)

Effective 1/1/16, Nonprofits that are no longer operating can be dissolved by a simplified process.

- Automatic if suspended, and not filing more than 4 years
- Short form if incorporated in error less than 2 years ago
- Voluntary if file form to certify not operating
  - Allows FTB to abate Tax
  - Allows SOS to dissolve w/o AG clearance

## Resources:

- FTB Exempt Forms and Publications
- Exempt Organizations Webpage
- Taxpayers' Rights Advocate
- Contact Information

## FTB Exempt Forms and Publications

### Exemption

- Pub. 927 – *Introduction to Tax-Exempt Status*
- Instructions to Form 3500 and Form 3500A

### Filing

- Pub. 1068 - *Exempt Organization – Filing Requirements and Filing Fees*
- Instructions to Form 199 and FTB 199N (Information Returns)
- Instructions to Form 109 and Form 100 (UBI Tax Returns)

## Exempt Organizations

Website: [ftb.ca.gov](http://ftb.ca.gov) and search “charities”.

The Exempt Organizations Unit webpage includes:

- What’s new
- Filing requirements
- Tax-exempt process
- Exempt forms and publications
- Self Services
- Lists of Exempt Organizations and Revocations
- Links to other agencies you may be required to file with

Webpages are continuously updated with new information.

CA.GOV State of California Franchise Tax Board

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Charities and Nonprofits (Exempt Organizations)

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Forms & Pubs  
Online services  
199N e-Postcard  
Entity Status Letter  
Web Pay  
Pay by Credit Card  
Other Agencies

LiveChat

What's new

- Dissolutions for Nonprofit Corporations (Posted October 2015)  
Beginning January 1, 2016, inactive nonprofit corporations, which are eligible for administrative dissolution under the recently enacted law under AB 557, can be automatically or voluntarily dissolved. There are three new ways a nonprofit corporation can be dissolved:
  - Automatic dissolution - Allows the FTB to automatically administratively dissolve a corporation that is suspended or forfeited for a period of more than 48 continuous months and is no longer in business. Due to the anticipated high number of nonprofit organizations that may meet the requirements, it will take time for FTB to complete the automatic process.
  - Short form dissolution - Secretary of State will allow a short form dissolution for eligible nonprofit corporations that file for dissolution within 24 months from the date the articles of incorporation were filed.
  - Voluntary dissolution - FTB will be developing a form that practitioners and/or nonprofit corporations can complete and submit to FTB to voluntarily request the administrative dissolution of nonprofit organizations that may be eligible. The form should be ready in early 2016.

Additional information will be made available to provide guidance to nonprofit organizations on the new law as procedures are developed.

Filing for Exemption Status

Most charities and nonprofit organizations must apply for and receive a determination or acknowledgement letter from us in order to be recognized as tax-exempt in California.

- The Tax-Exemption Process
- Active Versus Inactive Status
- California Tax-Exempt Status and Federal Exemption
- Disclosure of Application Materials
- Nonprofit Versus Tax Exempt

Filing Requirements

- Exempt Returns Filing Requirements
- Reporting Nonprofit Organizations that Receive Public Resources and Engage in Campaign Activity

Organization Lists

## Taxpayers' Rights Advocate

If the Organization is unable to resolve their issues, they may then contact our Taxpayers' Rights Advocate.

Website: [ftb.ca.gov](http://ftb.ca.gov) and search for **Advocate**

Telephone: 800.883.5910 / Fax: 916.843.6022

Mail:

Taxpayers' Rights Advocate  
Executive and Advocate Services MS A381  
PO Box 157  
Rancho Cordova CA 95741-0157

(Include daytime telephone number)

## Contact Information:

EXEMPTS ORGANIZATIONS UNIT MS F120  
FRANCHISE TAX BOARD  
PO BOX 1286  
RANCHO CORDOVA CA 95741-1286

For more information, call FTB's Exempt Organizations Unit at **916.845.4171**, weekdays, 7 a.m. to 4:30 p.m., except state holidays.

Or go to [ftb.ca.gov](http://ftb.ca.gov) and search for **charities**.

Exempt Organizations  
Filing and Compliance

FTB 932 (REV 01-2016)



**Diane L. Harkey**  
Vice Chair, 4th District  
State Board of Equalization



## In Partnership with:

Ben Hueso  
California State Senator, 40<sup>th</sup> District

Greg Cox  
San Diego Supervisor, 1<sup>st</sup> District

John McCann  
Councilmember, City of Chula Vista

FEATURED SPEAKER:  
Jason Paguio  
President & CEO, Chula Vista Parade Band Foundation

## WELCOME!

Free South Bay  
Tax Seminar for Nonprofit and Exempt Organizations



## THE REGULATION OF CHARITIES & PROFESSIONAL FUNDRAISERS BY THE CALIFORNIA ATTORNEY GENERAL



## Outline of Presentation

- Overview of the Attorney General's Oversight Responsibilities
  - AG's Registry of Charitable Trusts
  - Enforcement Program
- The Duties of Charities and their Directors, Officers, and Trustees
- Charitable Fundraising
- Tips for Responsible Charitable Giving
- Raffles
- Resources and Contact Information



## The Registry's Role

- The Registry manages registration and annual reporting requirements
  - Initial registration must be within 30 days of receiving assets (money, real property, or other assets)
  - Initial registration requires a copy of governing instrument, IRS Form 1023, and bylaws (see Registration Checklist at [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities))
  - Annual reporting (IRS Form 990 and RRF-1)
  - Exempt from registration and reporting, but not oversight: religious corporations, educational institutions, hospitals, health care service plans



## The Registry's Role (continued)

- The Registry receives and reviews notices of specific transactions required to be submitted to AG, such as:
  - Sale/disposition of substantially all assets
  - Voluntary dissolution
  - Merger
  - Conversion (to mutual benefit or for-profit )
  - Self-dealing transactions
  - Loans to directors/officers
  - Sale/transfer of nonprofit hospital facilities

(Corp. Code, § 5000 et seq.)



## Transactions Requiring Attorney General Notice or Consent

- Consent:
  - Voluntary dissolution – requires AG waiver
  - Conversion to mutual benefit or for-profit
  - Merger involving a nonprofit public benefit corporation and a for-profit corporation
  - Loans to directors and officers (with exceptions)
  - Sale or transfer of nonprofit health facility
- 20-Day Notice Only:
  - Sale or disposition of substantially all assets
  - Merger involving two nonprofit public benefit, or religious, corporations

See Nonprofit Transactions Guide at [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities)



## Enforcement Program

- The AG safeguards, preserves, and recovers charitable assets through investigations, audits, and legal actions
- We focus on fraud, mismanagement, and the diversion of charitable assets from their intended use
- Cases are developed from complaints, review of annual filings, and whistleblowers



## Types of Enforcement

- Informal Contact
- Audit Letter
- Subpoena
- Corrective Action Letter
- Assurance of Voluntary Compliance
- Administrative Action
- Civil Litigation
- Criminal Charges and Prosecution



## Non-Profit Governance

- Directors and Officers are responsible for managing and preserving charitable assets
- CA Nonprofit Public Benefit Corporation Law governs Board duties and responsibilities
- Activities and affairs of a corporation must be conducted, and all corporate powers exercised, by or under the direction of the Board
- This ultimate decision-making role cannot be delegated to anyone else

See parts VI and VII of Form 990, and Guide to Form 990 at [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities)



## Non-Profit Governance: Board Duties and Responsibilities

- Statutory standard: a director must perform his/her duties
  - In good faith
  - In a manner the director believes to be in the best interest of the organization
  - With such care, including reasonable inquiry, as an ordinarily prudent person would do in the same position under similar circumstances



## Non-Profit Governance: Critical Principles

- Be actively engaged: ask questions and demand answers!
- Scrutinize budgets and keep an eye on potential risks
- Avoid conflicts of interest and self-dealing transactions
- Scrutinize executive compensation
- Make sure Officers and employees are doing their jobs
- Closely examine and monitor fundraising practices Charity Officers and Directors are accountable for charitable assets
- Officers/Directors may be personally financially liable for harm their actions/inaction caused the charity



## Caution: Use of Restricted Assets

- Assets are restricted by charity's governing documents, donor designation, or content of solicitation
- Duty to use in accordance with restriction
- Must be able to account for use in accordance with restriction
- Avoiding problems:
  - Segregate
  - Scrutinize charity's solicitation language



## Complying with Other Government Agencies' Regulations

- Secretary Of State
- Franchise Tax Board
- IRS
- Some local jurisdictions regulate solicitations
  - [see list on AG website Resources page]
- Multi-state solicitation campaigns
  - [information available at [www.multistatefiling.org](http://www.multistatefiling.org)]



## The Independent Audit Requirement

- Applies to the following entities with \$2 million or more in gross revenue\*
  - Nonprofit Corporations
  - Unincorporated Associations
  - Trusts
  - [Unless exempt from registration and reporting]

\*Audit FAQ's are available on AG's website



## Independent Audit Requirement: Definition of "Gross Revenue"

- Follow instructions for Line 12 of IRS Form 990 and Line 12, column (a) of IRS Form 990PF.
- Non-cash and one-time contributions, and income from special events are included in the definition.
- Revenue from government grants and contracts for services for which an accounting is required are excluded from the definition.



## Independent Audit Requirement (continued)

- Independent audited financial statements must be made available to the Attorney General and the public
- Includes all statements and notes but NOT the management letter
- Complete no later than 9 months after close of fiscal year



## Audit Committee Requirement

- If required to conduct independent audit, must have an audit committee
  - Appointed by governing Board
  - May be only one person
  - Can be non-governing Board members
  - Cannot include 50% or more of members of Finance Committee
  - Cannot include President/CEO, Treasurer/CFO, staff members, or employees



## Duties and Responsibilities of the Audit Committee

- Recommend hiring and firing of auditor to the Governing Board
- Confirm that financial affairs are in order
- Review and accept/reject audit
- Approve non-audit services by auditor



## Executive Compensation Review

- Review and approval of executive compensation is a critical responsibility
- “Compensation” includes salary, bonuses, and retirement and all other benefits
- Compensation review requirement applies to all
  - Nonprofit corporations
  - Unincorporated associations
  - Charitable Trusts

Gov. Code, § 12586, subd. (g)



## Executive Compensation Review (continued)

- Must be reviewed and approved by Board or authorized committee of Board for the following positions:
  - President or CEO
  - Treasurer or CFO
  - Or others with comparable powers and duties



## Executive Compensation Review (continued)

- Review and approval required at 3 points:
  - Initial hiring of the Officer
  - Upon renewal or extension of the Officer's employment term
  - Modifying the Officer's compensation
- Compensation must be "just and reasonable" (consider comparables, officer's qualifications, & other factors)



## Executive Compensation Review (continued)

- Review is ALSO required for at-will Officers on initial hiring and whenever compensation modified
- No review required for staff or Officers paid more than President or CEO, and Treasurer or CFO, but the charity must ALWAYS exercise due care to ensure that the compensation is just and reasonable
- Excessive executive compensation is considered a waste of charitable assets and can result in liability for Board members and Officers; it can also jeopardize tax-exempt status



## Top 10 Ways to Get Investigated

- Using misleading or coercive solicitations
- Late, missing, or incorrect regulatory filings
- Failing to aggressively monitor fundraisers
- Lack of, or unenforced, internal controls
- Granting too many, or too few, people access to foundation funds
- Allowing self-dealing transactions without the requisite formalities required by law
- Lack of regular Board meetings
- Failing to regularly evaluate CEO/Executive Director's performance
- Inadequate documentation of Board meeting minutes [and poor record-keeping in general]\*
- Failing to ensure restricted gifts are used only per restriction

Note: The AG has a 10-year statute of limitations



## Common Excuses

- We've always done it that way.
- I didn't know I had to register/No one told me.
- "So and So" was supposed to do that.
- We're a volunteer Board and don't have time to...
- I completely trusted ...
- Only our Treasurer gets to see the financial records.
- We threw those records away. No one told us we had to keep them.
- If you have to give 90% of the raffle's proceeds to charity then no one will want to do them.



## Charity Fundraising: Commercial Fundraisers (CFRs)

- Definition:
  - Any individual/entity who does any of the following for compensation:
    - Solicits assets for charitable purposes
    - Receives or controls such assets
    - Employs any compensated person to do either
- All CFRs must be registered with the AG's Registry

Gov. Code, § 12599



## Charity Fundraising: CFR's Notice of Intent to Solicit

- All CFRs must file Notice of Intent to Solicit
  - Filed with Attorney General's Registry
  - 10 working days before the start of a solicitation campaign or event
  - Exception for disaster solicitations – provide notice concurrent with commencement of campaign



## Charity Fundraising: Contract Requirement

- Charity and CFR must enter into written contract for every solicitation campaign or event
- Contract is voidable unless the commercial fundraiser is registered with the Attorney General
- Must be signed by an official authorized by the charity's governing Board

See model contract on the AG's website



## Charity Fundraising: Terms Required for CFR Contracts

- The written contract must state:
  - Charitable Purpose
  - Obligations of both parties
  - Fee arrangement
  - Effective, start, and termination dates
  - 5-day limit to transfer contributions from CFR to charity
  - Charity control of content and frequency
  - Maximum amount to secure attendance at, or sponsorship of, an event
  - Cancellation rights

Gov. Code, § 12599, subd. (i)



## Charity Fundraising: Fundraising Counsel (FRC)

- Definition:
  - A Fundraising Counsel is any individual or entity who for compensation
    - Plans, manages, consults or prepares material for solicitation of assets for charitable purposes
    - Does not solicit assets for charitable purposes
    - Does not receive/control such assets
    - Does not employ persons who solicit assets or receive/control such assets

Gov. Code, § 12599.1



## Charity Fundraising: Requirements for FRCs

- Fundraising counsel must be registered with the AG's Registry
- Notice of Intent to Solicit required of FRCs is the same as with CFRs
- Written fundraising contract required
  - Required terms are the same as for CFR's with one addition: must state that FRC will not solicit, receive, or control donated funds, assets, or property or employ another to do so



## Charity Fundraising: Contract Cancellation Rights

- Applies to all fundraising professionals
- Contract voidable if CFR or FRC not registered with Attorney General
- Right to cancel for any reason w/in 10 days of execution

Gov. Code, § 12599.3



## Charity Fundraising: Points to Remember

- Charities are required by law to exercise control over fundraising activities
  - Approve written contracts
  - Approve content of solicitation
  - Assure no coercion
  - Honor “Do Not Call” requests
- Charities and their fundraisers must all be registered with the Attorney General
- CFRs must transfer donated funds to charity or to account controlled solely by charity within 5 days of receipt  
Gov. Code, § 12599.6



## Charity Fundraising: Prohibited Acts

- Violations of the registration and reporting requirements (for charities & fundraisers)
- Unfair or deceptive acts or fraudulent conduct
- Using any name or symbol that suggests a contribution is for a particular charitable organization when that is not true
- Representing that a contribution will be used for a charitable purpose when that is not true



## Charity Fundraising: Prohibited Acts (continued)

- Representing that a person endorses a charitable solicitation unless that person has agreed to do so in writing
- Representing that contributions solicited will be given to another charity unless that charity has given prior written consent
- Misrepresenting the net proceeds to be received by the charity
- Other prohibited acts (Gov. Code, § 12599.6)



## Contracting with Fundraising Professionals

- Do:
  - Check charity and CFR/FRC registration status
  - Review annual CFR report on AG's website for CFR's previous NET proceeds to charity
  - Ask for and check CFR's/FRC's references
  - Review model contract on AG's website before signing
  - Review the script/pitch and materials before approving
  - Before campaign starts, contact local government agencies to determine whether additional permits/licenses are required
  - Before signing any contract get an unambiguous and clear written estimate for all campaign costs and make sure that these estimates match those quoted in the contract
  - Keep copies of relevant documents (contract, invoices, bank records, etc.)



## Contracting with Fundraising Professionals

- Do Not:
  - Be misled by “get-rich-quick” promises
  - Forget that donors care about the cost of fundraising - donors want a high percentage of their contribution to be used for program services, not for fundraising
  - Sign contracts for fundraising services without researching the company for complaints, etc.



## Record-keeping Requirements for CFRs

- Keep records for 10 years
- Document all revenue and expenses
  - Cash: date and amount
  - Non-cash: date, amount, name and address of donor
  - Name and address of each employee or agent involved
  - Bank account numbers, names, locations

Gov. Code, § 12599.7

Note: The AG has a 10-year statute of limitations



## Tips for Charitable Donors

- Do:
  - Learn about the charity & review its financial disclosure reports (ask for written information or research on the internet)
  - Ask if the solicitor is being paid to solicit
  - Ask what percentage of the donations raised is paying for fundraising expenses
  - Make sure donation is tax deductible
  - Watch out for “copy-cat” names
  - Confirm law enforcement agency appeal
  - Consider cost of “freebies”
- Do Not:
  - Make cash donations, or give SSN or credit card number to anyone
  - Give a donation when you feel pressured or uncomfortable



## Raffle Regulation: Overview

- A raffle is a type of lottery
- Lotteries are illegal unless there is a statutory exception
- Penal Code Section 320.5
  - Creates a limited “charity-raffle” exception to California law prohibiting lotteries



## Raffle Regulation: Definition

- A “raffle” involves the purchase of a chance to win a prize
- “Raffle” elements:
  - Pay money
  - Paper ticket with identifying number and detachable stub
  - Drawing held to determine winner



## Raffle Regulation: Limitations

- Must be an “eligible” organization:
  - A private nonprofit organization;
  - Qualified to do business in CA for at least one year before raffle conducted; and
  - Tax exempt under specific Rev. and Tax. Code sections

Does not include public schools or other government entities



## Raffle Regulation: Annual Registration

- Must be registered with Attorney General prior to conducting raffle: September 1 – August 31
- Separate from charity registration under Government Code
- Must have confirmation letter from Registry before raffle conducted
- Each chapter of statewide organization must register separately

Exemption: nonprofit religious organizations, educational institutions, hospitals, BUT must comply with all other provisions of § 320.5



## Raffle Regulation: Restrictions

- 90% of gross receipts from ticket sales for each draw must either:
  - Be used by the organization conducting the raffle for its charitable or beneficial purpose
  - Or given to another eligible organization to use for its charitable or beneficial purpose



## Raffle Regulation: Restrictions (continued)

- Proceeds must be used in California
- Non-restricted funds from sources other than tickets can be used to pay for costs
- None of the 90% restricted funds can be used to compensate a person in connection with operation of the raffle
- Can advertise, but not conduct raffles on the internet



## Raffle Regulation: Restrictions (continued)

- Cannot use gaming machines to conduct raffles
- Cannot sell tickets or conduct raffle in a satellite wagering facility, at a racetrack or gambling establishment
- No legal entity or individual may hold financial interest in the raffle except eligible organization conducting, or receiving proceeds from, the raffle



## Raffle Regulation: Reporting

- New: A single aggregate report for all raffles held during the year
- FAQs and reporting form on AG website
- Report(s) filed no later than 10/1
- Reporting requires precise financial records
  - Total funds received
  - Total expenses
  - Charitable or beneficial purpose for which proceeds used
  - Name of eligible organization receiving proceeds



## Raffle Regulation: Exemptions from Regulation

- A raffle is exempt if it meets all of these requirements:
  - It involves general and indiscriminate distribution of tickets;
  - Tickets are offered on same terms and conditions as tickets for which donation given; AND
  - Participants are not required to pay for a chance to win

Penal Code, § 320.5, subd. (m)



## Raffle Regulation: FAQs

- Do we have to register if we call it an “opportunity drawing?”
  - If participants are required to “pay to play” in order to have a chance to win a prize, the drawing is subject to the provisions of Penal Code section 320.5 and related regulations.
- Is a silent auction the same as a raffle?
  - No. In a silent auction only the person willing to pay the highest bid amount is able to obtain the item
- How do we register to hold a raffle?
  - At least 60 days before the raffle submit:
    - Application for registration, \$20 fee, and copy of FTB exemption letter/entity status letter
  - If less than 60 days before the raffle:
    - Applications are processed in the order they are received
    - No expedited services are available

(see raffle checklist on AG’s website)



## Raffle Regulation: FAQs

- What happens if we don’t register?
  - An eligible organization must be registered with the Attorney General prior to conducting any activity associated with a raffle. Failure to comply with the provisions of section 320.5 is a misdemeanor; violations may be forwarded to local law enforcement.



## Resources

- The AG's Website ([www.oag.ca.gov/charities](http://www.oag.ca.gov/charities))
  - Charity & Fundraiser Filings
  - Forms & Publications:
    - Registration guide
    - Guide to submitting transactions
    - Guide for Charities
    - Forms and instructions
    - Laws and regulations
    - Model contract
    - Resources re: conduct of raffles
  - Contact information for other government agencies, legal services, and technical assistance



## Resources and Contact Information

- Website:
  - [www.oag.ca.gov/charities](http://www.oag.ca.gov/charities)
- Registration:
  - [registration@doj.ca.gov](mailto:registration@doj.ca.gov); (916) 445-2021 ext. 4
- Registration Renewal:
  - [rrf1@doj.ca.gov](mailto:rrf1@doj.ca.gov); (916) 445-2021 ext. 5
- Delinquency:
  - [delinquency@doj.ca.gov](mailto:delinquency@doj.ca.gov); (916) 445-2021 ext. 6
- Raffles:
  - [raffles@doj.ca.gov](mailto:raffles@doj.ca.gov); (916) 445-2021 ext. 9
- Other Specific Questions:
  - [tania.ibanez@doj.ca.gov](mailto:tania.ibanez@doj.ca.gov)



## Questions & Comments

Alicia Berry  
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213.897.7485

## Property Tax Exemptions for Non-Profit Organizations

State of California  
Board of Equalization

County-Assessed Properties Division  
Property Tax Department  
Sacramento, CA

## Property Taxation (*ad valorem taxes*)

- In California, all property is taxable unless specifically exempt
- Exemptions -most are not automatic
- Property
  - Land, buildings and business personal property
- Publication 29, *California Property Taxes, An Overview* ([www.boe.ca.gov](http://www.boe.ca.gov))

## County Property Tax Administration

- Assessor
  - Values Property
  - Applies Exemptions
- Auditor
  - Computes Tax Rates
  - Calculates Fixed Charges
  - Calculates Special Assessments
- Tax Collector
  - Mails Tax Bills
  - Collects Payments
  - Issues Refunds

## Administration of Exemptions

- Exemptions administered by County Assessors
- Exemptions jointly administered by Board of Equalization and County Assessors

## Exemptions Administered Solely by County Assessors:

- Homeowners'
- Disabled Veterans'
- Church
- Religious
- Public School
  - Charter Schools may also qualify for Public School
- College
- Lessor's
- Free Public Library/Museum
- Historical Aircraft
- Cemetery

## Exemptions Jointly Administered by Board of Equalization and County Assessors:

- Veterans' Organization Exemption
- Welfare Exemption

## Welfare Exemption

- Non-Profit organizations provide for the *welfare* of the community
- Jointly administered by Board of Equalization and local County Assessor
- Allows broadest exemption of property
- Property owned or property leased from another entity receiving Welfare Exemption

## Qualifying Purposes of the Welfare Exemption

- Charitable
- Religious
- Hospital
- Scientific

Educational purposes may qualify  
(Property Tax Rule 143)

## Eligibility for the Welfare Exemption

- Non-Profit Organizations - Charitable, Religious, Hospital, Scientific
- Tax Exempt Status - IRS under IRC §501(c)(3) or FTB under R&TC §23701d
- Property ***used exclusively*** for qualified exempt activity

## Organizations that file for the Welfare Exemption

- Religious Organizations
- Charities
- Museums
- Theaters
- Zoological Associations
- Open-Space Preservation
- Organizations Involved with Rehabilitation
- Hospitals
- Clinics
- Low Income Housing
- Non-profit Schools
- Historical Associations

## Two-Part Process for Welfare Exemptions

Organization applies to:

1. Board of Equalization for the Organizational Clearance Certificate (OCC) and in some instances also a Supplemental Clearance Certificate (SCC)
2. County Assessor for the Welfare Exemption on property

## Part I–Application for Welfare Exemption (BOE)

### Forms filed with the Board of Equalization

- ✓ Form BOE-277, *Claim for Organizational Clearance Certificate-Welfare Exemption*

OR

- ✓ Form BOE-277-LLC, *Claim for Organizational Clearance Certificate-Welfare Exemption-Limited Liability Company*
- ✓ Form BOE-277-L1, *Claim for Supplemental Clearance Certificate for Limited Partnership, Low-Income Housing Property-Welfare Exemption*

## Organizational Clearance Certificate (OCC) Requirements

OCC claim form filed with the Board of Equalization

[www.boe.ca.gov](http://www.boe.ca.gov)

- ✓ Articles of Incorporation (formative documents)
- ✓ Tax Exempt Status letter from IRS or FTB
- ✓ Financial Statements-income statements and balance sheets
- ✓ Description of organization's activities

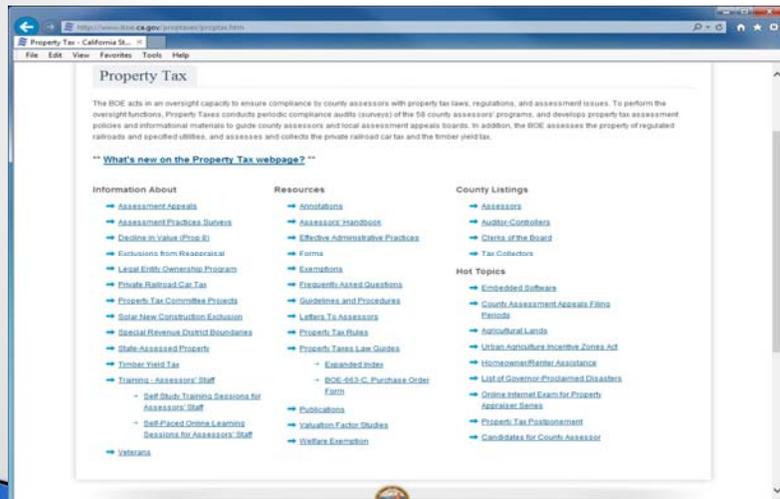
## Accessing the Organizational Clearance Certificate claim form (BOE)

- ▶ BOE website: [www.boe.ca.gov](http://www.boe.ca.gov)
  - Taxes & Fees
  - Property Taxes
  - ✓ Property Taxes Overview



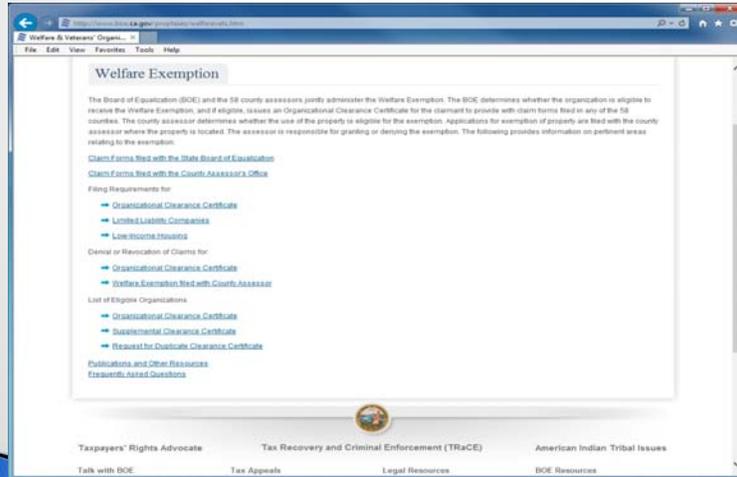
## Accessing the OCC Claim Form (BOE), cont'd

- ▶ Property Tax home page



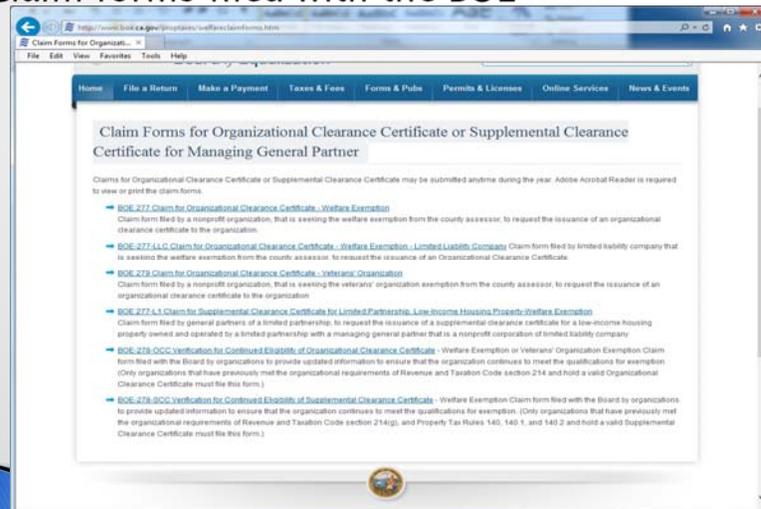
## Accessing the OCC Claim Form (BOE), cont'd

- ▶ Welfare Exemption home page



## Accessing the OCC Claim Form (BOE), cont'd

- ▶ Claim forms filed with the BOE



## Completing the OCC Claim Form (BOE)

- ▶ Checklist pages 1-2

The screenshot shows a PDF document titled "CHECKLIST FOR CLAIM". At the top, it states: "THE FOLLOWING DOCUMENTS MUST BE SUBMITTED WITH THE CLAIM FORM. IF ALL DOCUMENTS ARE NOT SUBMITTED, YOUR CLAIM WILL BE RETURNED." Below this, there are four main categories of documents to be submitted, each with a checkbox and a brief description of what to include:

- FORMATIVE DOCUMENTS**: Corporations: Copy of the articles of incorporation and each amendment, if any, certified by the Secretary of State. Non-corporations: Copy of the constitution, trust instrument, etc., and each amendment, if any.
- TAX-EXEMPT STATUS LETTER**: Copy of letter(s) evidencing exemption from federal income tax (section 501(c)(3) of the Internal Revenue Code), and/or a copy of the letter evidencing exemption from state franchise or income tax (section 23701d of the Revenue and Taxation Code). If your Internal Revenue Service tax-exempt status letter has an advanced ruling period that has expired, please include an updated IRS status letter. *If the tax exempt letter is a group ruling letter, submit documentation evidencing that your organization falls under the group ruling letter.*
- FINANCIAL STATEMENTS**: Copy of operating statement (income and expenses), balance sheet (assets and liabilities), and notes to financial statements for the calendar or fiscal year immediately preceding the claim year and each subsequent year to date. For example, if filing for fiscal year 2006/07 in 2008, financial statements for calendar or fiscal years ending in 2005, 2006 and 2007 must be submitted. Check registers and/or tax return forms 990 are not acceptable substitutes for financial statements.
- ACTIVITIES**: Documentation supporting/describing the activities of the organization. For example, pamphlets, brochures, and web pages are acceptable forms of documentation.

## Completing the OCC Claim Form (BOE), cont'd

- ▶ Form BOE-277, page 3

The screenshot shows the "CLAIM FOR ORGANIZATIONAL CLEARANCE CERTIFICATE - WELFARE EXEMPTION" form. The form is titled "STATE OF CALIFORNIA BOARD OF EQUALIZATION" and includes the following sections:

- NAME OF ORGANIZATION** and **WEBSITE ADDRESS (if any)**
- MAILING ADDRESS (number and street)**
- CITY, STATE, ZIP CODE**
- CORPORATE ID NUMBER (if any)** and **FISCAL YEAR OF CLAIM (per instructions)** (20 - 20)
- FORMATIVE DOCUMENTS**:
  - 1. IS THIS ORGANIZATION A CORPORATION?  YES  NO. If YES, go to (A) below, if NO, go to (B) below.
    - A. Date of Incorporation (Date filed with Secretary of State): \_\_\_\_\_  
Dates of all amendments to the Articles of Incorporation, if any: \_\_\_\_\_  
*ATTACH A COPY OF THE ARTICLES OF INCORPORATION AND EACH AMENDMENT, CERTIFIED BY THE SECRETARY OF STATE.*
    - B. Date of Organization (Date filed with Secretary of State): \_\_\_\_\_  
Dates of all amendments to the constitution, trust instrument, or other document evidencing the nature of the organization: \_\_\_\_\_  
*ATTACH A COPY OF THE CONSTITUTION, TRUST INSTRUMENT, ETC., AND EACH AMENDMENT.*
- TAX-EXEMPT STATUS LETTER**:
  - 2. IS THE ORGANIZATION EXEMPT FROM FEDERAL INCOME TAX UNDER THE PROVISIONS OF SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE AND/OR EXEMPT FROM STATE FRANCHISE OR INCOME TAX UNDER THE PROVISIONS OF SECTION 23701d OF THE REVENUE AND TAXATION CODE?  
 YES  NO. If YES, attach a copy of the letter evidencing the exemption.  
If NO, the organization is not eligible for the Organizational Clearance Certificate unless it is a volunteer fire department, or public facility financing corporation, which is exempt under section 23701f of the Revenue and Taxation Code or 501(c)(4) of the Internal Revenue Code.
- FINANCIAL STATEMENTS**:
  - 3. DOES THE ORGANIZATION HAVE CERTIFIED/AUDITED FINANCIAL STATEMENTS?  YES  NO  
Attach copy of the financial statements for the calendar or fiscal year immediately preceding the claim year, and for each subsequent year.

## Completing the OCC Claim Form (BOE), cont'd

### ▶ Form BOE-277, page 4

The screenshot shows a web browser window displaying the BOE-277 form. The browser address bar shows 'http://www.boe.ca.gov/programs/pdf/boe277.pdf'. The form is titled 'ACTIVITIES' and contains the following sections:

8. IS THIS ORGANIZATION ORGANIZED AND OPERATED FOR CHARITABLE, RELIGIOUS, HOSPITAL, AND/OR SCIENTIFIC PURPOSES?  YES  NO If YES, please identify the purpose of the organization and provide additional information as requested below. If necessary, this information may be provided on a supplemental attachment.

CHARITABLE PURPOSE: CHECK THE BOX THAT BEST DESCRIBES THE ORGANIZATION'S ACTIVITIES

- SOCIAL SERVICES
- LOW-INCOME HOUSING AND/OR ELDERLY HANDICAPPED HOUSING
- MANAGING GENERAL PARTNER OF LIMITED PARTNERSHIP THAT OWNS AND OPERATES LOW-INCOME HOUSING PROPERTY. Submit a Claim for Supplemental Clearance Certificate, BOE-277-L1, for each limited partnership property.
- OTHER

RELIGIOUS PURPOSE: CHECK THE BOX THAT BEST DESCRIBES THE ORGANIZATION'S ACTIVITIES

- CHURCH, OR CHURCH AND SCHOOL
- HOUSING OF RELIGIOUS PERSONNEL
- OTHER

HOSPITAL PURPOSE: CHECK THE BOX THAT BEST DESCRIBES THE ORGANIZATION'S ACTIVITIES  
If the operating revenues, exclusive of gifts, endowments and grants-in-aid, exceed operating expenses by an amount equivalent to 10% of those operating expenses, describe the use(s) of the surplus revenue.

- HOSPITAL
- MULTI-SPECIALTY CLINIC
- OTHER

SCIENTIFIC PURPOSE: CHECK THE BOX THAT BEST DESCRIBES THE ORGANIZATION'S ACTIVITIES

- CHARTERED BY THE CONGRESS OF THE UNITED STATES. OBJECTIVE IS TO ENCOURAGE OR CONDUCT SCIENTIFIC INVESTIGATION, RESEARCH AND DISCOVERY FOR THE BENEFIT OF THE COMMUNITY AT LARGE
- MEDICAL RESEARCH
- OTHER

9. STATE FULLY ALL ACTIVITIES IN WHICH THE ORGANIZATION IS ENGAGED. INCLUDE ALL ACTIVITIES SINCE JANUARY 1 OF PRIOR YEAR, AND PROVIDE DOCUMENTATION DESCRIBING THE ACTIVITIES.

## Part II-Application for Welfare Exemption (County Assessor)

### Forms filed with the local County Assessor

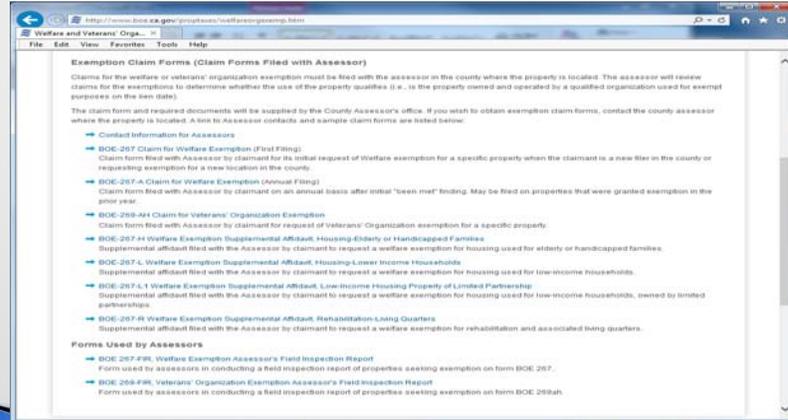
- ✓ Form BOE-267, *Claim for Welfare Exemption (First Filing)* OR
- ✓ Form BOE-267-A, *Claim for Welfare Exemption (Annual Filing)* OR
- ✓ Form BOE-269-AH, *Claim for Veterans' Organization Exemption*

#### Supplemental Affidavits for certain uses

- ✓ Form BOE-267-H, *Housing-Elderly or Handicapped*
- ✓ Form BOE-267-L, *Housing-Lower Income Households*
- ✓ Form BOE-267-L1, *Low-Income Housing Property of LP*
- ✓ Form BOE-267-R, *Rehabilitation-Living Quarters*

## Exemption Claim Forms (County Assessors)

- Form BOE-267, *Claim for Welfare Exemption (First Filing)*



## Welfare Exemption Claim (County Assessors)

- After first filing, Welfare Exemption claim due annually, February 15
- File for each property location
- Exempt activity must commence within 180 days of acquisition
- Assessor performs site visit

## Retroactive Filing with County Assessors

- Eligible from date the property is acquired
- May file claim for prior years; however, statute of limitations for a refund is 4 years
- Maximum late-filing penalty - \$250 per year
- Late-filing penalty deducted from refund
- Separate claim filed for each property and year
- Document exempt activity on each claim

## Property Used by Other Organizations

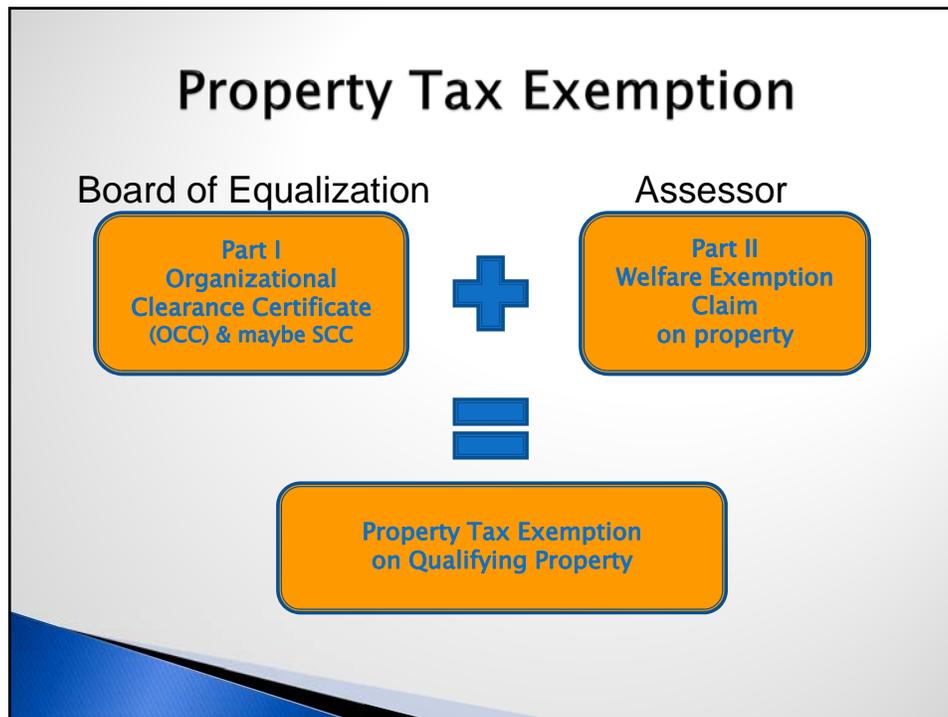
- Exempt use only
- Outside organization must be non-profit:
  - IRS under IRC §501(c)(3), 501(c)(4) and/or
  - FTB under R&TC §23701d, f, or w
- Owner must have user's tax exemption letter on file

## Property Used by Other Organizations, cont'd

- Property used by other organizations once a week or less does not require a claim... **but**
  - Meetings must be incidental
  - Owner must have user's tax exemption letter
  - No commercial or for-profit activities
  - Occasional user and property use must meet requirements of R&TC §214(a)(1) to (5)
- Property used more than once a week requires the other qualifying organization to obtain an OCC (BOE) and Welfare Exemption claim (County Assessors)  
(*Be wary of fundraising by other organizations – see AH 267 Part I, Chapter 3-pg 29 and Chapter 4-pg 49*)

## Partial Exemption

- Property may qualify for a full or partial exemption
- Exemption is pro-rated for *use* – not *time*
- Exemption is reviewed annually as of January 1
- Vacant, unused, or excessive land does not qualify



## Board of Equalization Website [www.boe.ca.gov](http://www.boe.ca.gov)

- Revenue and Taxation Code section 214:  
<http://www.boe.ca.gov/lawguides/property/current/ptlg/rt/214.html>
- Assessors' Handbook Section (AH 267), *Welfare, Church, and Religious Exemptions*:  
<http://www.boe.ca.gov/proptaxes/pdf/ah267.pdf>
- Claim for Organizational Clearance Certificate:  
<http://www.boe.ca.gov/proptaxes/welfareclaimforms.htm>
- Irrevocable Dedication and Dissolution Clause language: [www.boe.ca.gov/proptaxes/pdf/rules/Rule143.pdf](http://www.boe.ca.gov/proptaxes/pdf/rules/Rule143.pdf)

## Board of Equalization Website, cont'd **www.boe.ca.gov**

➤ Publications and Forms

[http://www.boe.ca.gov/cgi-bin/form\\_search.cgi](http://www.boe.ca.gov/cgi-bin/form_search.cgi)

➤ Publication 149 – *Property Tax Welfare Exemption:*

[www.boe.ca.gov/proptaxes/pdf/pub149.pdf](http://www.boe.ca.gov/proptaxes/pdf/pub149.pdf)

➤ Publication 48 – *Property Tax Exemptions for Religious Organizations*

<http://www.boe.ca.gov/proptaxes/pdf/pub48.pdf>

## Board of Equalization Website, cont'd **www.boe.ca.gov**

➤ Frequently Asked Questions:

[www.boe.ca.gov/proptaxes/faqs/faqspropindex.htm](http://www.boe.ca.gov/proptaxes/faqs/faqspropindex.htm)

➤ List of Eligible Organizations:

[www.boe.ca.gov/proptaxes/welfareorgeligible.htm](http://www.boe.ca.gov/proptaxes/welfareorgeligible.htm)

➤ Taxpayers' Rights Advocate Office:

<http://www.boe.ca.gov/tra/tra.htm>

## Exemption Contact Information

- Board of Equalization County-Assessed Properties Division:

**1-916-274-3350**

- Board of Equalization Exemptions Section:

**1-916-274-3430**

- County Assessors' contact information:

<http://www.boe.ca.gov/proptaxes/assessors.htm>

# Thank you!

*Your work as a non-profit is vital to our community. Thank you for enhancing the lives of your fellow Californians!*

State of California  
Board of Equalization

# State Payroll Taxes and the Nonprofit Organization



v15a

## Introduction

Taxpayer Education and  
Assistance Program

*[www.edd.ca.gov](http://www.edd.ca.gov)*

Taxpayer Assistance Center:  
1-888-745-3886

## Agenda

- EDD Overview
- Types of workers
- Wages
- Nonprofit organizations
- Special Exclusions
- Methods of financing Unemployment Insurance (UI)
- Reporting and depositing forms
- Resources

## EDD Overview

- Unemployment Insurance Branch
- State Disability Insurance Branch
- Workforce Services Branch
- Tax Branch

## Types of Workers

- Employees
  - Common Law
  - Statutory
  - Excluded Services
- Independent Contractors

### Resources:

*Employment (DE 231)*

*Types of Employment (DE 231TE)*

## Primary Factor for Common Law Employee

The right of the principal, whether or not exercised, to control the manner and means of the worker accomplishing a desired result.

## Secondary Factors for Common Law Employee

- Distinct trade or occupation
- Supervision
- Skill level
- Tools and place of work
- Length of time
- Method of payment
- Regular part of the business
- Belief of the parties
- Extent of actual control
- Services benefit the principal
- Ability to earn a profit or incur a loss

## Statutory Employee

A worker who is not considered to be a common law employee but is an employee by law under a specific statute.

Examples include, but are not limited to:

- ✓ Officer of a corporation.
- ✓ Certain Limited Liability Company (LLC) members.

Resources:

*Statutory Employees* (DE 231SE)

*Limited Liability Entities* (DE 231LLC)

## Excluded Services

Certain employees and specific types of employment are not subject to one or more state payroll taxes.

Example:

- ✓ Employees of a church or convention or association of churches.

Resource:

*Exempt Employment (DE 231EE)*

## Independent Contractor

The company has the right to control or direct only the results of the work and not the means and methods of accomplishing the results.

## Wages

Payments made to an employee for services performed:

- Checks
- Cash
- Non-cash
  - Lodging and meals
  - Personal use of company vehicle

Resource:

*Wages* (DE 231A)

*Types of Payments* (DE 231TP)

## Registration for Nonprofit Entity

- Must register within 15 days after paying wages in excess of \$100 in a calendar quarter.
  - *Registration Form for Nonprofit Employers* (DE 1NP).



e-Services for Business

<https://eddservices.edd.ca.gov>

## 2016 State Payroll Taxes

STATE	UI Unemployment Insurance	ETT Employment Training Tax	SDI State Disability Insurance	PIT Personal Income Tax (State Income Tax)
Who Pays	Employer	Employer	Employee	Employee
Rate	3.4%	0.1%	0.9%	DE 44
Wage Limit	\$7,000	\$7,000	\$106,742	None

## Types of Nonprofit Organizations

Nonprofit organizations exempt under Internal Revenue Code (IRC), Section 501(c) organizations, include, but not limited to:

- Religious and charitable organizations
- Social welfare organizations
- Federal credit unions
- Social and recreational clubs

## Taxability of Wages for Nonprofit Organizations

Nonprofit organizations, except for special exclusions for some Section 501(c)(3) IRC organizations, are subject to:

- Unemployment Insurance (UI)
- Employment Training Tax (ETT)
- State Disability Insurance (SDI)
- Personal Income Tax (PIT)

Resource:

*Nonprofit and/or Public Entities (DE 231NP)*

## Examples of Nonprofit Section 501(c)(3) IRC Special Exclusions from UI and SDI

- Services for a church, convention of churches, or organization operated primarily for religious purposes.
- Services by a duly ordained, commissioned, or licensed minister or member of religious order.
- Services for a rehabilitation program by a participant in the program.

## Taxability of Wages for Nonprofit Section 501(c)(3) IRC Special Exclusions

- Employees are exempted from UI and SDI coverage, and their wages are not subject to UI, ETT, and SDI taxes.
- Employee wages are subject to PIT withholding (some exceptions).

## Elective (Specialized) Coverage for Exempt Employees

- Employers may elect UI and SDI for exempt employees.
  - *Application for Unemployment and Disability Insurance Elective Coverage For Employees Exempted Under the California Unemployment Insurance Code (DE 1378).*

## Elective (Specialized) Coverage Requirements

- Request must be in writing, filed with and approved by the EDD.
- Election must remain in effect for at least two complete calendar years.
- Termination request must be in writing.

Resource:

- *Specialized Coverage (Elective Coverage for Exempt Workers)* (DE 231SC)

## Methods of Financing UI

Nonprofit organization exempted under Section 501(c)(3) IRC may select one of the two methods of financing the UI costs.

- Tax rate method, or
- Reimbursable method

## Tax Rate Method

- New employers are assigned a 3.4 percent UI rate for a period of two to three years.
- Employers pay a percentage on the first \$7,000 in wages paid to each employee in a calendar year.
- UI rate schedule and amount of taxable wages are determined annually.
- EDD notifies employers of their tax rates each December.

Resource:

- *California System of Experience Rating (DE 231Z)*

## Reimbursable Method

- Employer must reimburse the EDD on a dollar-for-dollar basis for benefits paid to former employees.
- *EDD sends a Statement of Account (DE 2176) to bill the employer.*
- Election must remain in effect for not less than five complete calendar years.
- Employers will remain liable to reimburse UI benefits for three calendar years after terminating the election.

## Reimbursable Method Potential Liability

### Nonprofit organization

- Pay 100 percent of regular benefits and only 50 percent of extended benefits.
- Potential liability of \$28,800 per employee.

### Resource:

*Potential Liability for Unemployment Insurance Benefits When Electing the Reimbursable Method of Financing Under the California Unemployment Insurance Code (CUIC) (DE 1378F)*

## Electing the Reimbursable Method for UI

- File a *Selection of Financing Method by a Nonprofit Organization Described in Section 501(c)(3) of the Internal Revenue Code* (DE 1SNP).
- Include copy of the exemption letter or copy of IRS Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3)*.
  - The effective date is the first day of the quarter in which it is filed.

## Reporting and Depositing Forms

- *Report of New Employee(s)* (DE 34)
- *Report of Independent Contractor(s)* (DE 542)
- *Payroll Tax Deposit* (DE 88)
- *Quarterly Contribution Return and Report of Wages* (DE 9)
- *Quarterly Contribution Return and Report of Wages (Continuation)* (DE 9C)

## e-Services for Business



- Fast, easy, and secure way to manage your payroll taxes online.
- View and edit returns or reports prior to submission.
- Available 24 hours a day, 7 days a week.

[www.edd.ca.gov/Payroll\\_Taxes/e-Services\\_for\\_Business.htm](http://www.edd.ca.gov/Payroll_Taxes/e-Services_for_Business.htm)

## Additional Resources

- *California Employer's Guide* (DE 44)
- *Fact Sheet: Payroll Taxes* (DE 8714E)
- *Casual Labor* (DE 231K)
- *Employment Work Status Determination* (DE 231ES)

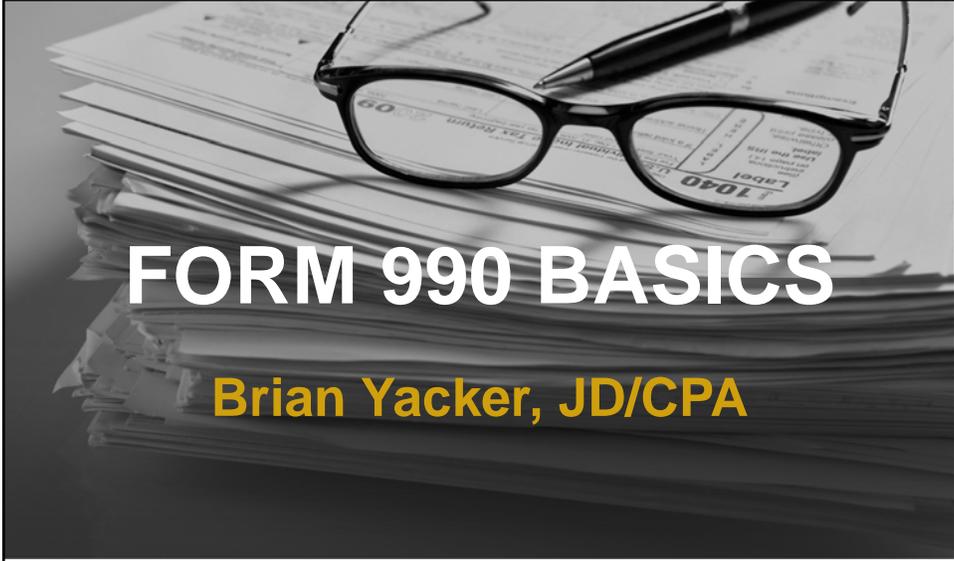
## Additional Resources (continued)

- *Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding* (DE 1870)
- *Employment Determination Guide* (DE 38)
- [www.edd.ca.gov/Payroll\\_Tax\\_Seminars/](http://www.edd.ca.gov/Payroll_Tax_Seminars/)

Thank you for  
attending!



v15a

A stack of papers, likely tax forms, with a pair of black-rimmed glasses and a black pen resting on top. The papers are slightly blurred, suggesting a shallow depth of field.

# FORM 990 BASICS

**Brian Yacker, JD/CPA**



August 24, 2016

## DIFFERENT VERSIONS



### FORM 990-N

- Filing Thresholds
  - Annual gross receipts normally \$50,000 or less
  - NOT available for supporting organizations or private foundations
- Filing Considerations
  - Must file online
    - <https://epostcard.form990.org/>
  - Due 4.5 months after year end
    - No extensions permitted
  - Lose tax exemption no questions asked if fail to file for three consecutive years

## DIFFERENT VERSIONS



### FORM 990-N (CONT'D)

- Filing Considerations (cont'd)
  - Takes approximately 10 minutes per year to file

#### Information Needed to File e-Postcard



Completing the e-Postcard requires the eight items listed below:

1. [Employer identification number](#) (EIN), also known as a Taxpayer Identification Number (TIN).
2. [Tax year](#)
3. Legal name and mailing address
4. Any other names the organization uses
5. Name and address of a principal officer
6. Web site address if the organization has one
7. Confirmation that the organization's annual [gross receipts](#) are \$50,000 or less
8. If applicable, a statement that the organization has terminated or is terminating (going out of business)

## DIFFERENT VERSIONS



### FORM 990-EZ

- Filing Thresholds
  - Annual gross receipts less than \$200,000 **AND**
  - Fair market value of assets less than \$500,000
- Filing Considerations
  - Due 4.5 months after year end
    - Two 3-month extensions permitted
  - Lose tax exemption no questions asked if fail to file for 3 consecutive years
  - Four-page core form
    - File following Schedules if applicable
      - A | B | D | F | G | L | O | R
  - Do not file many in our practice
    - Many donors require full 990
    - Form 990-EZ filer must still exhibit good governance
    - Many parent organizations require full 990

## DIFFERENT VERSIONS



### FORM 990

- Filing Thresholds
  - Annual gross receipts greater than \$200,000 **OR**
  - Fair market value of assets greater than \$500,000
- Filing Considerations
  - Due 4.5 months after year end
    - Two 3-month extensions permitted
  - Lose tax exemption no questions asked if fail to file for three consecutive years
  - 12-page core form
    - File up to 16 Schedules if applicable

FORM 990



## GENERAL OVERVIEW

- Public Disclosure
  - Past three years' Form 990 (also applies to Form 990-T)
    - Available on GuideStar
    - NOT include Schedule B
- Incomplete Returns
  - Deemed to be return never filed
    - Late filing penalties can accumulate
- Late Filing Penalties
  - ALWAYS try to get abated before paying
- E-filing
  - Highly recommended even if not legally required
- Filing Exemptions
  - Churches | Public Schools | Governmental Instrumentalities

YH ADVISORS, THE EXEMPT ORG EXPERTS

FORM 990 BASICS

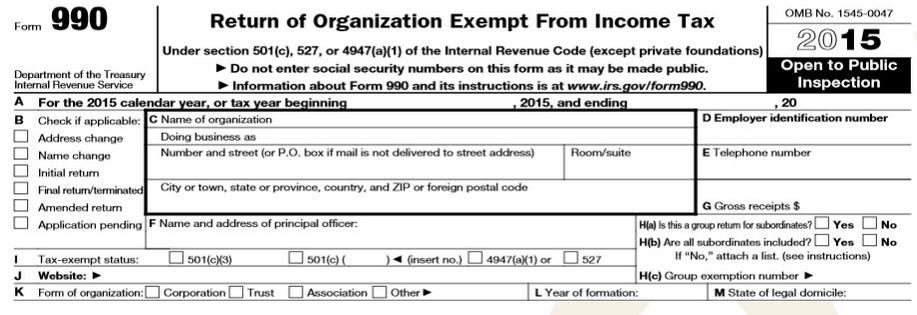
233

FORM 990



## HEADING

- Box B – various check boxes
- Box C / Box D
  - Very important to have correct
- Box J – web site



**Form 990** **Return of Organization Exempt From Income Tax** OMB No. 1545-0047

Department of the Treasury  
Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.  
▶ Information about Form 990 and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990).

**A** For the 2015 calendar year, or tax year beginning \_\_\_\_\_, 2015, and ending \_\_\_\_\_, 20

**B** Check if applicable:

Address change

Name change

Initial return

Final return/terminated

Amended return

Application pending

**C** Name of organization

Doing business as \_\_\_\_\_

Number and street (or P.O. box if mail is not delivered to street address) \_\_\_\_\_ Room/suite \_\_\_\_\_

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

**F** Name and address of principal officer: \_\_\_\_\_

**D** Employer identification number \_\_\_\_\_

**E** Telephone number \_\_\_\_\_

**G** Gross receipts \$ \_\_\_\_\_

**H(a)** Is this a group return for subordinates?  Yes  No

**H(b)** Are all subordinates included?  Yes  No  
If "No," attach a list. (see instructions)

**H(c)** Group exemption number ▶ \_\_\_\_\_

**I** Tax-exempt status:  501(c)(3)  501(c) ( ) ◀ (insert no.)  4947(a)(1) or  527

**J** Website: ▶ \_\_\_\_\_

**K** Form of organization:  Corporation  Trust  Association  Other ▶ \_\_\_\_\_

**L** Year of formation: \_\_\_\_\_ **M** State of legal domicile: \_\_\_\_\_

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# FORM 990



## PART I

### ➤ Summary

- Most information flows from other portions of Form 990, EXCEPT
  - Line 1 – most significant activities or mission
  - Line 6 – estimated number of volunteers
- Key ratio ➔ Line 16b / Line 8 (should be between 5% - 15%)

		Prior Year	Current Year
Revenue	8	Contributions and grants (Part VIII, line 1h) . . . . .	
	9	Program service revenue (Part VIII, line 2g) . . . . .	
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d) . . . . .	
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e) . . . . .	
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1-3) . . . . .	
	14	Benefits paid to or for members (Part IX, column (A), line 4) . . . . .	
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10) . . . . .	
	16a	Professional fundraising fees (Part IX, column (A), line 11e) . . . . .	
	b	Total fundraising expenses (Part IX, column (D), line 25) ▶	
	17	Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e) . . . . .	
	18	Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25) . . . . .	
	19	Revenue less expenses. Subtract line 18 from line 12 . . . . .	

# FORM 990



## PART III

- Organization's Mission (Line 1)
- Conducting New Program Service Activities (Line 2)
  - "Better late than never" approach
- Detailed Description of Program Service Activities

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**Part III** Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:  
.....  
.....

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ?  Yes  No  
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services?  Yes  No  
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: \_\_\_\_\_) (Expenses \$ \_\_\_\_\_ including grants of \$ \_\_\_\_\_) (Revenue \$ \_\_\_\_\_)

# FORM 990



## PART V

- Independent Contractors (Line 1)
- Employees (Line 2)
- Unrelated Business Income (Line 3)
  - Form 990-T filing requirement
- Foreign Bank Accounts (Line 4)

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**Part V** **Statements Regarding Other IRS Filings and Tax Compliance**  
Check if Schedule O contains a response or note to any line in this Part V

	Yes	No
<b>1a</b> Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable . . . . .		
<b>1b</b> Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable . . . . .		
<b>1c</b> Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners? . . . . .		
<b>2a</b> Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return . . . . .		
<b>2b</b> If at least one is reported on line 2a, did the organization file all required federal employment tax returns? . . . . .		
<b>3a</b> Did the organization have unrelated business gross income of \$1,000 or more during the year? . . . . .		
<b>3b</b> If "Yes," has it filed a Form 990-T for this year? If "No" to line 3b, provide an explanation in Schedule O . . . . .		
<b>4a</b> At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)? . . . . .		
<b>4b</b> If "Yes," enter the name of the foreign country: <input type="text"/> See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).		

# FORM 990



## PART VI

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**Part VI** **Governance, Management, and Disclosure** For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.  
Check if Schedule O contains a response or note to any line in this Part VI

**Section A. Governing Body and Management**

	Yes	No
<b>1a</b> Enter the number of voting members of the governing body at the end of the tax year . . . . . If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.		
<b>1b</b> Enter the number of voting members included in line 1a, above, who are independent . . . . .		
<b>2</b> Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? . . . . .		
<b>3</b> Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person? . . . . .		
<b>4</b> Did the organization make any significant changes to its governing documents since the prior Form 990 was filed? . . . . .		
<b>5</b> Did the organization become aware during the year of a significant diversion of the organization's assets? . . . . .		
<b>6</b> Did the organization have members or stockholders? . . . . .		
<b>7a</b> Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body? . . . . .		
<b>7b</b> Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body? . . . . .		
<b>8</b> Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
<b>8a</b> The governing body? . . . . .		
<b>8b</b> Each committee with authority to act on behalf of the governing body? . . . . .		

## FORM 990



### PART VI (CONT'D)

- Voting Board Members (Line 1)
  - Independence (not compensated by the exempt organization)
- Relationships Amongst Insiders (Line 2)
  - Insider = Voting Board member | Officer | Key Employee | Related | Former
- Outsourcing of Management Functions (Line 3)
- Changes to Governing Documents (Line 4)
- Significant Diversions of Assets (Line 5)
- Documentation of Meetings (Line 8)
  - Board meetings
  - Board Committee meetings

## FORM 990



### PART VI (CONT'D)

- Section B Procedures + Policies
  - NOT required by law
    - HOWEVER, highly recommended to avoid "red flags"

**Section B. Policies** (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
10a	Did the organization have local chapters, branches, or affiliates?		
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?		
b	Describe in Schedule O the process, if any, used by the organization to review this Form 990.		
12a	Did the organization have a written conflict of interest policy? If "No," go to line 13		
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?		
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done		
13	Did the organization have a written whistleblower policy?		
14	Did the organization have a written document retention and destruction policy?		
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a	The organization's CEO, Executive Director, or top management official		
b	Other officers or key employees of the organization		
	If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).		

## FORM 990



### PART VI (CONT'D)

- Section B Procedures + Policies (cont'd)
  - Review of Form 990 (Line 11)
    - Board review (Subcommittee OK)
    - Forward final filing copy to entire Board before submit to the IRS
      - Should document in Board minutes
  - Conflict of interest policy (Line 12)
    - Transactions with insiders should generally be avoided
      - If are going to conduct, then need to follow conflict of interest policy
  - Whistleblower policy (Line 13)
  - Document retention and destruction policy (Line 14)
  - Reasonable compensation documentation procedures (Line 15)
    - Very important to consider if compensating Executive Director or top financial individual

## FORM 990



### PART VII

- Compensation Table
  - Reportable parties
    - Voting Board member | Officer | Key employee | Highly compensated employees | Former
      - Officer includes top management and top financial individuals
  - Reportable compensation
  - Estimated benefits

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Institutional trustee	Individual trustee or director	Officer	Key employee	Highest compensated employee	Former			
(1) .....										
(2) .....										

**FORM 990**

**PART VIII**

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**Part VIII Statement of Revenue**  
Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns . . . . .	1a			
	b	Membership dues . . . . .	1b			
	c	Fundraising events . . . . .	1c			
	d	Related organizations . . . . .	1d			
	e	Government grants (contributions)	1e			
	f	All other contributions, gifts, grants, and similar amounts not included above	1f			
	g	Noncash contributions included in lines 1a-1f: \$				
	h	<b>Total.</b> Add lines 1a-1f . . . . .				
Program Service Revenue			<b>Business Code</b>			
	2a	.....				
	b	.....				
	c	.....				
	d	.....				
	e	.....				
	f	All other program service revenue .				
	g	<b>Total.</b> Add lines 2a-2f . . . . .				

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**PART VIII (CONT'D)**

- Part VIII, Columns
  - (A) Total revenue
  - (B) Program service revenue (Line 2)
    - Examples
      - » Museum admissions fee | School tuition | Hospital patient charges
  - (C) Unrelated revenue
    - Subject to the unrelated business income tax
  - (D) Excluded revenue
    - Unrelated revenue excluded from unrelated business income tax
      - » Passive | Not regularly carried on | Donated goods | Convenience
- Contributions Revenue (Line 1)
  - Membership
  - Fundraising
  - Governmental

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PART IX



➤ Columns

- (A) Total expenses
- (B) Program service expenses
  - Includes both direct and indirect
    - » Indirect expense allocation methodologies
- (C) Management and general
  - Legal | Accounting | Insurance | Interest | Board meetings
- (D) Fundraising
  - Not include special events expenses

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**Part IX Statement of Functional Expenses**  
*Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).*

Check if Schedule O contains a response or note to any line in this Part IX

**Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.**

		(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21 . . .				
2	Grants and other assistance to domestic individuals. See Part IV, line 22 . . . . .				
3	Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16 . . . .				

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PART X / PART XI / PART XII



➤ Part X – Balance Sheet

- Red flags
  - Loans to/from Insiders
- Restricted funds
- Net assets

➤ Part XI – Reconciliation of Net Assets

- Typical reconciling items
  - Unrealized gains and losses
  - Donated services / facilities

➤ Part XII – Financial Statements and Reporting

- Method of accounting
- Financial statements

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## FORM 990 SCHEDULES



### MOST COMMON SCHEDULES PREPARED

- Schedule A – public support test
- Schedule B – schedule of contributors
- Schedule D – Balance Sheet support
- Schedule F – foreign reporting
- Schedule G – fundraising activities
- Schedule I – domestic grantmaking
- Schedule L – transactions with insiders
  - “Red flag” Schedule
- Schedule O – additional information
  - Required of all Form 990 filers
- Schedule R – related parties

## OTHER CONSIDERATIONS



### IRS AUDIT ACTIVITY

- Private Inurement
  - Insider transactions
  - Reasonable compensation
- Information Tax Returns
  - Employment taxes
  - Worker classification
- Lobbying / Political
- Unrelated Business Activities
- Other
  - Expense allocations

## OTHER CONSIDERATIONS



### STATE CHARITABLE REGISTRATION

- Overview
  - Required of charitable organizations soliciting contributions from residents of states other than California
    - 38 of 50 states have charitable solicitation registration requirements
      - Forms, fees and filing requirements vary by state
- California Annual Registration
  - Form RRF-1

MAIL TO:  
Registry of Charitable Trusts  
P.O. Box 903447  
Sacramento, CA 94203-4470  
Telephone: (916) 445-2021

WEB SITE ADDRESS:  
<http://aq.ca.gov/charities/>

#### ANNUAL REGISTRATION RENEWAL FEE REPORT TO ATTORNEY GENERAL OF CALIFORNIA

Sections 12586 and 12587, California Government Code  
11 Cal. Code Regs. sections 301.307, 311 and 312

Failure to submit this report annually no later than four months and fifteen days after the end of the organization's accounting period may result in the loss of tax exemption and the assessment of a minimum tax of \$800, plus interest, and/or fines or filing penalties as defined in Government Code section 12586.1. IRS extensions will be honored.



State Charity Registration Number \_\_\_\_\_

Check if:  
 Change of address

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## FOR MORE INFORMATION...



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