

What Every Non-Profit Organization Should Know

The following comes from publicly available information published by the IRS; California's Attorney General, Secretary of State, Board of Equalization, and Alcoholic Beverage Commission; and the National Council of Nonprofits. CGCI is neither a law firm (and thus is not giving legal advice) nor a tax advisory firm. If you need further information or guidance you may contact the agencies directly or a local legal or tax advisor.

What is a non profit organization?

- A non-profit organization (NPO or not-for-profit organization) is an organization that **does not distribute its surplus funds to owners or shareholders**, but instead uses them to help pursue its goals and objectives. Examples include charities (i.e. charitable organizations) and public arts organizations.
- It does not issue stock or dividends to directors or shareholders
- Note: in California:
 - A charity may operate under any of several legal forms, including a nonprofit corporation, a trust or an unincorporated association. Most California charities are organized as nonprofit corporations. The most common are public benefit corporations, mutual benefit corporations and religious corporations.
 - It is not essential to form a nonprofit corporation, a trust or other legal entity to create a charity. Any individual or organization who solicits funds and represents that such funds will be used for charitable purposes may be held to be a "trustee for charitable purpose" and accountable for such funds.
 - **All charitable** corporations, unincorporated associations, trustees, or other persons holding assets in trust for charitable purposes must register with the California Attorney General's Registry of Charitable Trusts and renew the registration annually.

Does a non-profit have to be tax exempt?

- The failure of a public benefit corporation or trust to qualify for exemption from income tax does not necessarily free the organization and its responsible directors, officers or trustees from accountability as a charity.

Can a non-profit earn "profits"?

- Yes...more accurately called a "surplus", such earnings must be retained by the organization for its self-preservation, support of its objectives, expansion and future plans.

Can a non-profit retain earned revenues, i.e. "endowments"?

- Yes...NPOs can keep significant funds to use in future.
- Many universities and foundations have large endowments to carry out their charitable missions: Bill & Melinda Gates Foundation - \$37.1 billion, Ford Foundation - \$13.8 billion, Harvard University - \$31.7 billion

Protecting your tax exemption

- A 501(c)(3) organization must (most important and commonly reviewed are highlighted)
 - satisfy annual filing requirements,
 - continue to be operated for its exempt purposes, ensuring that its earnings do not inure to the benefit of any private shareholder or individual,
 - not operate for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests,
 - not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory,
 - not provide commercial-type insurance as a substantial part of its activities,
 - not have purposes or activities that are illegal or violate fundamental public policy,
 - absolutely refrain from participating in the political campaigns of candidates for local, state, or federal office
 - restrict its lobbying activities to an insubstantial part of its total activities.

Reporting/filing requirements:

IRS

- 501(c)(3) organizations with incomes less than or equal to \$50,000 (for tax years beginning in 2010) are required to electronically file the form 990-N ePostcard.
 - Note: this is increase in total income from previous level of \$25,000
 - Income over \$50,000 requires filing a longer form 990; there is NO prohibition against having or retaining income over a specific amount.

- IRS will automatically revoke tax-exempt status for all organizations (that means clubs, APS, or districts) that fail to file form 990-N ePostcard for 3 consecutive years.

California

- Starting January 1, 2011, the State of California requires small taxexempt organizations with normal gross receipts of \$25,000 or less, to electronically file an annual informational notice the e-Postcard Form 199N beginning with their 2010 tax year.
- **All charitable** corporations, unincorporated associations, trustees, or other persons holding assets in trust for charitable purposes must register with the Attorney General's Registry of Charitable Trusts and renew the registration annually. (See www.oag.ca.gov/charities)
- All non-profit organizations must submit application for registration in the California raffle program by September 1 of each year. An annual raffle report must be filed.
- All registered organizations are listed on the California Attorney General's website under "Charities" and can be searched via the registry search.

Do we have to pay sales tax, since we are a nonprofit and exempt from income taxes?

- Absolutely! The 501(c)(3) status applies only to Federal and State income tax
- California Sales Tax is governed by the State Board of Equalization (BOE); See BOE Publication 18 Nonprofit Organizations

Raffles & Auctions:

- Selling tickets for raffles is considered "gaming" and California has a 90/10 rule only 10% of the expected raffle revenue may be used to purchase raffle prizes ...(90% of the proceeds must be used to pursue your organization's objectives. NOTE: donated prizes eliminates the 10% restriction to purchase prizes.)
- 50/50 Raffle is illegal in the state of California. (see 90/10 rule above)
- Wine; May NOT be offered as a raffle prize...may be auctioned but see note below regarding alcohol "sales"
- Silent and live auctions are not considered gaming but the proceeds generated are subject to sales tax as are white elephant sales, plant table sales, etc.

Alcoholic beverages as prizes in raffles, auctions or other fundraisers:

(Summarized from Alcoholic Beverage Commission, ABC, documents)

- ABC regulations state that any time money is being paid for an alcoholic beverage it constitutes a sale of alcohol and requires the seller to hold a liquor license. Nonprofits often conduct a variety of activities which directly or indirectly are still considered sales, such as:
 - Sales of food, meals, beverages, and similar items under a number of different circumstances;
 - Sales of tickets that buyers will exchange for food, beverages, or physical products;
 - Sales of tickets for fundraising events when the ticket price includes amounts for food or beverages;
 - Sales of items at rummage sales, bazaars, carnival booths, community events, and other fundraisers;
 - Sales of merchandise in Internet, live, or silent auctions.
- For nonprofits which conduct such sales irregularly, ABC regulations would require the nonprofit to obtain a temporary permit to conduct the sale.

For CGCI members:

- The CGCI Liability Insurance policy has a clause regarding coverage for liquor liability. Insurance coverage is EXCLUDED if the nonprofit is in the business of manufacturing, distributing, SELLING, SERVING or
- FURNISHING alcoholic beverages.
- Conclusion from the above regulations: if a nonprofit obtains a permit to sell alcohol either directly or indirectly via raffle baskets, auctions, etc., then the activity will be excluded from coverage under the CGCI liability insurance policy.
- Simplest solution to the above situation: Select garden-related items for all gift baskets/prizes used in raffles, auctions, etc.