

Requirements of State Registration for Charitable Organizations

Presented by

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HBE Nonprofit Roundtable
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Regulation

What Activity Is Regulated?

- ▶ A “solicitation” is any direct or indirect request for a contribution of money or property, whether express or implied, through any medium, on the representation that the contribution will be used for charitable purposes.
 - ▶ asking for a gift
 - ▶ selling goods or services to benefit a charity

Regulatory Goals and the First Amendment

▶ Regulatory Goals

- ▶ Prevent fraudulent solicitation activity
- ▶ Protect charitable assets
- ▶ Ensure that charitable funds are used for the stated purposes
- ▶ Enhance transparency

▶ The First Amendment

- ▶ At the same time, the solicitation of charitable contributions is fully protected activity under the First Amendment.

State Registration and Reporting

- ▶ 45* states plus DC have some sort of statutory scheme to regulate charitable solicitations and the use of nonprofit assets within their borders.
- ▶ Registration and reporting requirements are imposed on **charities, fundraising counsels, professional fundraisers, commercial co-venturers, and charitable fundraising platforms.**
- ▶ Each group is required to file annual registrations and/or financial reports and/or a copy of its IRS Form 990 and copies of contracts.

*The number of states in which registration is described as required varies based upon the nature of the organization

Charitable Organizations

- ▶ Primarily Section 501(c)(3) and (c)(4) organizations
- ▶ Could include individuals and other types of entities
 - ▶ Most state statutes do not limit their definition of “charitable organization” based on tax-exempt status or classification
- ▶ 40* states plus DC require charities to register prior to soliciting charitable contributions

Filing Requirements – Charitable Organizations

- ▶ State-specific Registration/Reporting Forms
- ▶ IRS Form 990 and Financial Statement (compiled, reviewed, or audited)
- ▶ Charter Document, Bylaws, IRS Determination Letter, IRS Form 1023 (with initial registration)
- ▶ Fundraising Contracts
- ▶ Filing Fee

Information and materials must be timely filed (initially, before solicitation and annually, before expiration), accurate, complete, and free of material misrepresentations and omissions.

Professional Fundraisers (Solicitors)

- ▶ For “compensation”, directly or indirectly solicits any “person” on behalf of a charitable organization
 - ▶ “Persons” solicited can include for-profit companies
- ▶ Often has custody/control of contributions
- ▶ May be paid based upon the amount of funds raised
- ▶ Required to register in 43* states, post bonds, and file contracts and campaign reports

Filing Requirements-Professional Fundraisers

- ▶ State-specific Registration/Reporting Forms
- ▶ Charter Document, Bylaws or Operating Agreement (with initial registration)
- ▶ Fundraising Contracts/Contract Reporting Forms
- ▶ Campaign Finance Reports
- ▶ Bonds
- ▶ Filing Fee

Information and materials must be timely filed (initially, before solicitation and annually, before expiration), accurate, complete, and free of material misrepresentations and omissions.

Fundraising Counsels (Consultants)

- ▶ For “compensation”, helps plan, manage, advise, assist, or prepare materials with respect to the solicitation of contributions
- ▶ Does not solicit and does not have custody or control of contributions
- ▶ May not be paid based upon the amount of funds raised
- ▶ Required to register in 28* states and post bonds in a few

Filing Requirements-Fundraising Counsels

- ▶ State-specific Registration/Reporting Forms
- ▶ Charter Document, Bylaws or Operating Agreement (with initial registration)
- ▶ Fundraising Contracts/Contract Reporting Forms
- ▶ Campaign Finance Reports (in a few states)
- ▶ Bonds (in a few states)
- ▶ Filing Fee

Information and materials must be timely filed (initially, before solicitation and annually, before expiration), accurate, complete, and free of material misrepresentations and omissions.

Commercial Co-venturers

- ▶ A for-profit company that advertises that the purchase or use of goods, services, entertainment, or any other thing of value will benefit a charitable organization.
- ▶ Must register, file contracts and campaign reports in AL, MA and SC (+ CA optional); must file contracts and/or campaign reports in HI and MS. IL has orally advised CCVs are charitable trusts.
- ▶ 20 other states regulate the activity (e.g., contracts, advertising disclosures) but do not require the for-profit to register or file contracts or campaign reports.

Filing Requirements-Commercial Co-Ventures

- ▶ State-specific Registration/Reporting Forms
- ▶ Charter Document, Bylaws or Operating Agreement (with initial registration)
- ▶ Fundraising Contracts
- ▶ Campaign Financial Reports
- ▶ Bonds
- ▶ Filing Fee

Information and materials must be timely filed (initially, before solicitation and annually, before expiration), accurate, complete, and free of material misrepresentations and omissions.

Charitable Fundraising Platforms—California

A “charitable fundraising platform” is “any person, corporation, unincorporated association or other legal entity that uses the internet to provide an internet website, service, or other platform to persons in this state, and performs, permits, or otherwise enables acts of solicitation to occur.” -Cal Gov. Code § 12599.9(a)(1)

Key New Requirements

- Registration and reporting
- Disclosures regarding who receives the funds, fees charged, time for delivering funds, etc.
- Limited exception permitting platforms to facilitate or enable solicitation benefiting non-consenting charities
- Limits solicitations or receipt of donations for the benefit of charities in “good standing” only
- Segregation of funds and accounting of fees
- Regulates the timing of the distribution of donations

Hawaii also has a new similar platform law that is effective 7/1/26

Registration Exemptions

Vary from state to state, but most common exemptions include:

Charitable Organizations

- Churches and in most states – “Religious Organizations”
- Organizations raising less than a specified dollar amount (most common is \$25,000 based upon annual national gross, not net)
- Educational institutions
- Hospitals
- Organizations for which solicitations limited to membership
- Volunteers soliciting for the benefit of a named individual

Fundraising Professionals

- Exempt in some states when charity is exempt

Fundraising Contracts

Many states require contracts between charities and their fundraising professionals to include certain provisions, such as:

1. Specific description of charitable purposes of the campaign, services to be provided by the fundraiser, and the fee charged.
2. Statutory right of cancellation for a limited period following the filing of the contract (NY and CA).
3. Statutory time-frame for professional fundraisers to deliver gross monetary contributions to the charity (e.g., within five days).
4. Certain states (e.g., MA, PA and VA) require that two representatives of the charity must sign the contract.

Solicitation Disclosures

- ▶ Written solicitations must include certain verbatim disclosure requirements and include information on where financial information about the charity can be obtained.
- ▶ Solicitations include websites, emails, direct mail, newsletters, signage, and donation jars/receptacles.
- ▶ Professional solicitors must identify themselves as such in any oral solicitations, and upon request, disclose the percentage of funds the professional solicitor will retain.

Contributions - Written Acknowledgments

The written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information.

1. name of the organization
2. amount of cash contribution
3. description (but not value) of non-cash contribution
4. statement that no goods or services were provided by the organization, if that is the case
5. description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution
6. if applicable, a statement that the organization's goods or services in return for the contribution consisted entirely of intangible religious benefits.

To claim a deduction for any monetary gift made, the donor must maintain a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution.

Solicitations: Prohibited Acts

- ▶ In conducting charitable solicitations, charities and their fundraisers are prohibited from utilizing any unfair or deceptive acts or practices* or engaging in any fraudulent conduct which creates a likelihood of confusion or of misunderstanding
- ▶ Charities and their fundraisers may not make any misrepresentations about the purpose or intended beneficiary of the solicitation, or the amount of the contribution that the charity will receive.

**Subject to First Amendment Protections*

Key Fundraising Issues Scrutinized By State Regulators

- ▶ Registration and reporting compliance
- ▶ Deceptive/misleading solicitations*
- ▶ High fundraising costs
- ▶ Gifts-in-Kind (GIK)
- ▶ Joint cost allocations

**Subject to First Amendment Protections*

Fundraising on the Internet

- ▶ Charleston Principles: Non-binding guidelines adopted by state charity officials in 2001 to guide states in enforcement of fundraising regulations.
- ▶ Jurisdiction to require registration is limited to those over whom state courts could constitutionally assert personal jurisdiction to enforce a registration requirement.
- ▶ Jurisdiction over deceptive solicitations is broader.

Charleston Principles

A state's registration requirements apply to:

1. Entities domiciled within that state;
2. Out-of-state entities whose non-internet activities would require registration in that state; or
3. Out-of-state entities that specifically target persons physically located in that state or receive contributions from that state on a repeated and ongoing, or substantial basis through or in response to a website solicitation.

Internet & Social Media Fundraising Issues

- ▶ Compliance with fundraising registration and reporting requirements
- ▶ Fraudulent solicitations via internet, email, mobile, and social media
- ▶ Charities' consent to use of their names on fundraising platforms
- ▶ Transparency in fundraising platform policies
- ▶ Data privacy issues relating to processing of donor data in charitable solicitations

Thank You for Joining Us !

Questions?

Please be advised that the information provided in the webinar is for general information purposes only and is not to be construed as legal advice.

Any views expressed are solely those of the speakers and should not be construed as the views of the organizations with which they are affiliated.

INFORMATION IS CURRENT AS OF THE DATE OF THIS PRESENTATION: September 18, 2025

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NONPROFIT EDUCATION SERIES

HBE

CPAs & Consultants | Wealth Management

May 28th, 2026

Multi-State Tax Considerations for Expanding Nonprofits

Presented by: Phillip Oman, CPA | Partner, HBE

Agenda

1. Navigating Nexus: What is it, How it works, and Does your Organization have it?
2. Sales Tax: When to Collect, When it's Due on Purchases, and how to Exempt
3. Remote Workforce: How out-of-state employees create employment tax complexities for organizations
4. What is UBIT (Unrelated Business Income Tax)?

What is Nexus?

- Nexus is a state tax consideration and is required before a state tax department can impose tax obligations or filing requirements on an out-of-state organization. An organization can have nexus in one area but not another.
 - Remote worker in another state creates physical nexus in the remote worker's state
 - Having a certain amount of sales or transactions to a state can create economic nexus

Types of Nexus

- Physical Nexus – This is the classic standard and one that many organizations are familiar with.
 - Remote Employees
 - Traveling Staff
 - Inventory Storage
- Economic Nexus – This is the modern version for sales tax nexus and has been the standard many state departments have used since the Supreme Court’s ruling of South Dakota v. Wayfair post 2018.
 - States differ with the amount and/or number of transactions but \$100,000 of sales to a state should result in organization looking into with greater detail.

Sales Tax Considerations – Collection

- As mentioned above, \$100,000 is the most important number when dealing with sales tax.
- Previously, many states had an either or for total sales or number of transactions (typically 200) but many states have gone away with transactions and now only look at total sales to determine sales tax nexus.
- Even if selling to exempt organizations, many states will look at total “gross” sales when determining sales tax nexus.
 - \$105,000 of sales, \$100,000 to exempt nonprofits and \$5,000 to for-profits would create nexus and result in collection and filing of monthly/quarterly sales tax returns to the respective state.

Sales Tax Exemption Certificates - Purchasing

- As a reminder, a 501(c)(3) determination letter from the IRS exempts federal income tax only. It has no impact on sales tax at the state and local levels.
- No universal reciprocity – States won't recognize a NE sales tax exemption form in Iowa or Kansas.
- The Streamlined Sales Tax (SST) Certificate – This is a must if operating across multiple jurisdictions. Currently 24 states recognize this as a valid sales tax exemption including:
 - Iowa, Kansas, and South Dakota (States surrounding Nebraska)
 - Nebraska uses Form 13 – Exempt Sales Certificate
- Each state has different rules as to which nonprofit organization is allowed to exclude sales on purchases.
 - Nonprofit clubs would generally need to pay sales tax on purchases, whereas religious organizations would not.

Employment Tax Considerations

- Do all your organization’s employees work in Nebraska (home state)?
 - If not, is payroll being run correctly and withholdings being paid to the employee’s home state?
 - Through the end of 2024, Nebraska was one of only a few states with a “convenience of the employer rule”. This meant that if an employee worked remotely by their own choosing but could have worked in the office then their wages would be considered Nebraska.
 - Beginning January 1, 2025, Nebraska enacted new legislation (LB 1023) that an out of state employee would have to be physically present in Nebraska for a minimum of seven (7) days before the income is considered NE sourced.
 - Note that this rule does not apply to nonresident board of directors who receive compensation nor does it apply to nonresidents who are required to be in Nebraska for initial onboarding and training.

Employment Tax Considerations - Continued

- Checklist for out of state employees:
 - Have remote or out of state workers certify their physical remote address
 - Register with State DOR and DOL
 - Acquire state withholding and state unemployment numbers for payroll reporting
- Out of state workers commuting into the state would be considered Nebraska wages. If working hybrid, then would need to split out wages and withholding accordingly to both state rules.
- Going back to Nexus, having an employee in a state creates automatic nexus regardless of amount of sales received.
 - Hiring a remote employee in Iowa for a Nebraska nonprofit means the first taxable sale would have sales tax collection implications.

Unrelated Business Income Tax (UBIT)

- To expand an organization's impact, many nonprofits look beyond traditional grants and donations to generate unrestricted cash through commercial ventures. However, entering the active marketplace triggers unique tax rules. UBIT exists purely to level the playing field between tax-exempt organizations and traditional for-profit businesses.
- At face value, UBIT is a 21% federal tax (C-Corp tax rate) on taxable income earned from these types of commercial business streams. However, because this tax applies to net income rather than gross receipts, organizations can offset this potential liability by aggressively allocating direct expenses and overhead.
 - Common overhead expenses include facility costs, personnel costs, and operational costs
 - Allocated using a reasonable method and should remain consistent year to year.



Unrelated Business Income Tax (UBIT)

Three-Part Test

- To determine whether an activity is considered UBIT all three of the following must be met:
 1. Trade or Business – Conducted with the intent to generate profit
 2. Regularly Carried On – If a commercial business would operate year-round and the nonprofit does the same, then it's considered “regularly carried on”.
 3. Substantially unrelated – The activity must not be directly related with the exempt purpose of the organization.
- Safe harbors:
 - There are several other safe harbors that could make the above not be considered UBIT. Additionally, passive income including dividends, interest, royalties would be excluded.

Unrelated Business Income Tax (UBIT) Tax Forms

- Nonprofits with \$1,000 or more in gross receipts from unrelated business income are required to file with the IRS.
- Form 990-T is used to file federal return.
- Most states require a state return to be filed as well.
 - Nebraska (1120N)
 - Iowa (IA 1120)



Questions?



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