

Fiduciary Practices for Nonprofits Organizations



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What forms must be filed with the IRS?



- All 501(c)3 non-profits regardless of income and most federally tax-exempt organizations, with the exception of churches and state institutions, must file annual returns with the IRS.
 - Form 990
 - Form 990-N
 - Form 990-EZ
- In addition, the following may need be filed with NYS:
 - CHAR500
 - Along with the CHAR500, Form 990 or 900-EZ is required by NYS even if not required by the IRS

Form 990 Requirements



- Gross receipts greater than \$200,000 or total assets greater than \$500,000
- Must be filed electronically
- Due date is the 15th day of the 5th month following the end of the tax year
- Extension of time to file using Form 8868 provides an additional 6 months
- Penalty for failure to file can range from \$20/day to \$100/day not to exceed \$50,000

Form 990-N Requirements



- Gross receipts average is less than \$ 50,000
- Must be filed electronically, there is no paper form
- May file 990-EZ or 990
- Due date is the 15th day of the 5th month following the end of the organization's tax year
- There is no extension
- No penalty for filing late
- Failure to file for 3 years will result in the loss of federal tax-exempt status

Form 990-EZ Requirements



- Gross receipts less than \$ 200,000 AND total assets less than \$ 500,000
- Must be filed electronically
- Due date is the 15th day of the 5th month following the end of the organization's tax year
- Extension of time to file using Form 8868 provides an additional 6 months
- Penalty for failure to file is \$ 20/day not to exceed the lesser of \$ 10,000 or 5% of gross receipts

Sales Tax



- Tax exemption is granted by the IRS by applying for tax exemption with Form 1023, which can be found online.
 - To receive tax exemption from NYS, organizations must also apply to the NYS Department of Taxation & Finance with Form ST-119.1, which can also be found online.
- Sales tax filings are due:
 - 20th of the following month for Monthly Filers
 - 20th of the month for Quarterly Filers (Mar, Jun, Sept, Dec)
 - 20th of March of the following year for Annual Filers
- NYS Sales Tax can be filed directly with the NYS Department of Taxation & Finance online at tax.ny.gov
- Penalty for failure to comply with sales tax laws can range from \$50 to \$10,000.

Sales Tax on Purchases



- All purchases, such as purchases of tangible personal property & services, food & drink, payment of admission, and rent for hotel occupancy, are exempt from sales tax.
 - Organizations must provide vendors with their exemption certificate or other documentation to prove their tax exemption at time of purchase
 - To qualify as an exempt purchase, both the name of the organization and its employee, officer, or agent must be identified on any bill or invoice.
 - Payment must be made using cash, a check, or a debit or credit card of the organization.
 - Purchases are subject to sales tax when the purchases are for the personal use of the purchaser and not for the organization.

What else is subject to Sales Tax?



- The retail sale of tangible personal property made by any shop or store operated by the organization is subject to sales tax
- Sales tax can also depend on the following factors:
 - Degree of regularity, frequency, & continuity.
 - ✦ The sale of food from restaurants, bars, cafeterias, concession stands, that operate with a degree of regularity, frequency, & continuity is subject to sales tax. For example, A monthly dinner would be considered “regular” & would be subject to sales tax; however, holding two dinners a year would not be considered “regular” & is thus tax exempt.
 - ✦ If the sale of other goods or services offered is presently subject to sales tax, any other sales offered by the organization become subject to income tax, regardless of frequency.
 - Ownership of title of goods sold during fundraising.
 - ✦ When fundraising, if the organization purchases the merchandise from a vendor to obtain title and then sells it to its customer, the sale is not subject to sales tax. If the exempt organization does not acquire the title from the vendor & rather solicits sales on behalf of the vendor, than the sale is subject to tax.

NOTE:

The above is by no means an exhausted list. The following publication goes into further detail regarding what is or isn't subject to tax to include specific examples, <https://www.tax.ny.gov/pdf/publications/sales/pub843.pdf>

Disclosure Statement



- Must disclose that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the contribution over the fair market value (FMV) of the goods or services provided by the charity
- Must provide the donor with a good faith estimate of the fair market value of the goods or service provided or received by the donor

Disclosure Statement



- Not required when:
 - Donation of \$ 75 or less per year
 - Goods or services provided have an insubstantial fair market value “token gift” or the gift was low-cost in comparison to the overall donation
 - ✦ Token gift is an item received that is less than 2% of the donation or \$111, whichever is less
 - ✦ Amount is based on FMV not the cost to the non-profit organization
 - ✦ Low-cost is an item that costs the organization no more than \$11.10, has the organizations name or logo on it and the contributed amount was at least \$55.50

Procedures for Acknowledging Donations



- Provide acknowledgment to donors
 - Acknowledgements should be in writing on the organization's letterhead which shows the amount of the donation and the date
 - Keep a donor list with addresses, this information may be needed to tax reporting purposes
 - From 990 schedule B (\$5,000 or 2%)

Audited Financial Statements



- Thresholds applicable to annual reports with an original or extended filing due date between July 1, 2017 and June 30, 2021:
 - Gross Revenue and Support
 - ✦ Up to \$ 250,000 No Audit or Review Required
 - ✦ At least \$ 250,000 but not more than \$750,000 CPA Review
 - ✦ More than \$ 750,000 CPA Audit
- Thresholds applicable to annual reports with an original or extended filing due date on or after July 1, 2021:
 - Gross Revenue and Support
 - ✦ Up to \$ 250,000 No Audit or Review Required
 - ✦ At least \$ 250,000 but not more than \$1,000,000 CPA Review
 - ✦ More than \$ 1,000,000 CPA Audit

Audit Report



- **Audit Report:**
 - A written opinion provided by an independent CPA regarding an entity's financial statements
 - Discloses to the reader whether the financial statements are free of material misstatements

- **Types of Opinions:**
 - Unqualified Opinion – financial statements as a whole are fairly presented and do not contain any material misstatements
 - Qualified Opinion – issued when a scope limitation exists and/or a portion (or all) of the financial statements were not prepared in accordance with GAAP.
 - Adverse Opinion – financial statements do not fairly present the financial position or activities of the organization
 - Disclaimer of Opinion – this is issued when the auditor is not independent or there is a scope limitation that is significant enough that the auditor cannot issue an opinion

- **The typical audit report contains three paragraphs covering the following:**
 - The responsibilities of the auditor and the management of the entity
 - The scope of the audit
 - The auditor's opinion of the entity's financial statements

Selecting an Auditor



- When selecting an Auditor, it is beneficial to seek out recommendations from fellow Board Members or from members of other similar organizations in terms of both size & industry.
- Questions to ask when selecting an auditor:
 - How many audits of nonprofit organizations have they performed?
 - Can they complete the work within the time frame required?
 - Do they possess the necessary knowledge required for your industry?
 - Does the organization require a Yellow Book or Single Audit?
 - Do they have a copy of their most recent peer review available?

Role of Management in an Audit



- Preparation of appropriate financial statements to include the Schedule of Expenditures of Federal Awards (SEFA)
- Design, implementation, and maintenance of internal controls relevant to the fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- Providing the auditor with access to personnel, accounts, books, records, supporting documentation, and other information needed for the audit.
- Prompt follow up and corrective action on audit findings

Financial Reporting Practices for 501(c)3



- Should be someone charged with monitoring
- Should be on regular basis: *Monthly or Quarterly*
- Should include the basic financial statements
 - Statement of financial position
 - Statement of activities
 - Statement of cash flows
 - Statement of functional expenses

The Statement of Financial Position



- The Statement of Financial Position:
 - Summarizes the assets and liabilities of an organization as of a specific point in time
 - Three sections; assets, liabilities, net assets
- Net Assets:
 - With Donor Restrictions:
 - ✦ These funds have donor-imposed restrictions
 - Without Donor Restrictions:
 - ✦ These funds have no donor-imposed restrictions

The Statement of Financial Position (Cont'd)



- Board members should pay particular attention to these four issues relative to the Statement of Financial Position:
 - Trends:
 - ✦ Analyze the year-to-year trends to determine the financial health or lack thereof of the organization
 - Liquidity:
 - ✦ Refers to the organization's ability to draw on cash required to satisfy immediate obligations
 - Debt:
 - ✦ Should be familiar enough with the terms of loan agreements to assess the financial ability of the organization to cover the debt service
 - Unrestricted Net Assets:
 - ✦ The extent of cash reserves available in the event of significant economic issues that may arise in the future

The Statement of Activities



- The Statement of Activities (or Profit & Loss Statement) reports the results of the organization's financial operations for a specific period of time.
- As a board member, you should review the Statement of Activities and consider these four critical areas:
 - Budget vs Actual: As you review the Statement of Activities, review any variances between the budget and actual performance budget variances and ask the question “*Why*” to better understand the causes & effects of the variance(s).
 - Revenue & Support: Look for concentrations of income to determine if the organization has a concentration risk with a specific funding source
 - Trends: When reviewing expenses, review those that are increasing at a faster rate than the corresponding support or revenue (i.e., Salary & Wages)
 - Change in Net Assets: A positive amount is just as important to a not-for-profit as it is to a for-profit organization, it is ok for non-profits to generate a profit.

Statement of Cash Flows



- The Statement of Cash Flows converts accrual-based activity into a cash basis format to explain where cash came in & where cash went out.
- Cash flows are categorized into three categories:
 - Operating: includes the day-to-day activities of your organization
 - Investing: reports the purchases and sales of investments and capital assets such as property and equipment
 - Financing: reports the flow of cash to and from debt or other funding sources, including support received for long-term purposes such as endowment gifts and capital project funding
- The three net cash figures, when totaled, represent the change in cash from beginning to the end of the fiscal period. The ending balance should match the cash on hand as presented on the Statement of Financial Position at year-end.

The Statement of Cash Flows (Cont'd)



- When a board member is reviewing the Statement of Cash Flows it would be beneficial to review these areas:
 - Net Change in Cash: Organizations that consistently show a decrease in cash over several periods risk having cash flow issues
 - Trends: As with the other statements, reviewing trends can indicate the start of financial issues
 - Cash Flow from Operations: the objective should be to secure a positive cash flow from operations, but this will not always be the case
 - Days Operating Cash: An indicator of how long an organization can operate on the current cash balances
 - To calculate your days operating cash:
= $(\text{Total Cash Balance} \div \text{Total Cash Expenses}) \div 365 \text{ days}$
Whereas, Total Cash Expenses excludes depreciation & in-kind

Statement of Functional Expenses



- The Statement of Functional Expenses is an additional required statement for non-profit organizations
- The Statement of Functional Expenses classifies expenses according to their natural classification (payroll, rent, supplies, telephone, etc), and function/cost center (programs, management and general and fundraising)
- Functional expenses can be allocated between programs and supporting service categories based upon a reasonable allocation that can involve a variety of denominators, such as hours worked or square footage

Financial Reporting Fundraising Considerations



- Income & expenses incurred for fundraisers must be reported separately from program income & expenses.
- Non-profit 501(c)3 entities should consider whether the fundraiser is related to the organization's exempt purpose & whether *quid-pro-quo* applies.
 - When donors receive something in exchange for their donation (*quid pro quo*), the difference between the value of the donation & the gift/item/service exchanged is not deductible.
 - If unrelated to the organization's exempt purpose, the fundraising income is considered “unrelated business income” (UBI), which non-profits must pay income tax on (i.e., a library regularly offering a dog-grooming service to generate income)

Quid Pro Quo Contribution



- Internal Revenue Code § 170
- When a donor receives something of value in return for their contribution
- Organization is required to send a disclosure statements to the donor with the details of the transaction when the donation is greater than \$ 75
- Disclosure statement should be send timely
- Failure to send a disclosure statement can result in a civil penalty of \$10/contribution not to exceed \$5,000 per fundraising event

Unrelated Business Income (UBI)



- UBI results when an organization regularly carries on a trade or business that is not substantially related to its exempt purpose.
 - Trade or business – An activity which generates income from selling goods or providing a service with the intent to make a profit
 - Regularly carried on – activity is conducted with frequency and continuity in a similar fashion to that of commercial activities of non-exempt organizations
 - Not substantially related – activity does not contribute *importantly* to the accomplishments of the organization exempt purpose or programs

Unrelated Business Income (Cont'd)



- Income generated to support an exempt purpose is not sufficient to deem the activity not subject to UBI
- Estimated tax payments
 - Estimates are due if the organization anticipates a tax liability to be more than \$500
 - Tax payments are due on the 15th day of the 4th, 6th, 9th, and 12th month of the tax year, not calendar year
- Filing Requirements
 - Form 990-T is used to report taxable business activity and is due at the same time as Form 990

Board of Directors - Index



- Questions you should ask before joining
- Time consideration for board duties
- Legal duties as a board member

Joining a Board



- **Questions to ask before joining**

- Is the organization current with tax filings; income tax, payroll tax, sales tax?
- Is the organization experiencing any financial distress?
- Who manages the organizations daily activities?
- Who are the other board members and is there anyone with a financial background?
- Are there controls in place that allow the organization to operate efficiently?
- Ask to see the most recent tax return and financial statements.

Time Necessary for Duties



- In addition, prior to joining a board, you will have to ask yourself whether you have the necessary time to carry out your various duties as a board member.

Legal Duties of a Board Member



- A board member is responsible for the governance of an organization and to set overall policies and make financial decisions that will sustain the organization into the future, which include the following:
- Duty of Care:
 - Requires a trustee to act in good faith by exercising due diligence, care, and skill in carrying out their duties as a trustee that would be expected by the public
- Duty of Loyalty:
 - Requires a trustee to act in a manner that furthers the best interest of the organization goals. Trustees should avoid conflicts of interest even the appearance of conflicts even if one does not exist
- Duty of Obedience:
 - Requires a trustee to insure the resources of an organization are used to fulfill its mission, and the organization complies with all laws and regulations and does not engage in any unlawful activity

Personal Liability of Board Members



- Board members can be held personally responsible for certain financial obligations of an organization
- Trust Taxes:
 - Payroll Tax
 - Sales Tax
 - Civil Penalties
 - Income Tax on UBIT

Duties of the Treasurer/Audit Committee



- Review financial reports
 - Question the detail
 - Question trend discrepancies
 - Review financials regularly: monthly or quarterly depending on size of the organization
 - Convey the financial information to the full board
- Review and approve annual budgets
- An audit committee may not always be necessary or practical depending on the size of the organization
- Hold finance committee meetings and create agendas for those meetings

The NYS Non-Profit Revitalization Act of 2013



- Some of the key requirements of the Act are:
 - A requirement that all non-profit organizations have a conflict of interest policy.
 - A requirement that transactions between a non-profit organization and a related party be approved in accordance with procedures set forth in the Act.
 - A prohibition against an employee of a non-profit corporation serving as the chair of the board of directors, unless service is approved by two-thirds vote of the entire board. The employee shall not be considered an independent director.
 - A requirement that a non-profit organization with 20 or more employees and \$1,000,000 gross revenue in the prior financial year must implement a whistleblower policy.
 - Changes to the financial reporting requirements for certain non-profit organizations that solicit donations in New York.

Independent Directors



- The Act requires non-profits to assign certain votes and responsibilities to “independent directors”
 - Conflict of Interest matters
 - Related Parties
 - Whistleblower Policy matters

Conflict of Interest Policy



- Requires that the person with the conflict of interest not be present at or participate in board or audit committee deliberations or vote on matters giving rise to such conflicts
- Prohibition of any attempt by the person with the conflict to improperly influence the deliberations or voting on the matter giving rise to such conflict
- Procedures for disclosing, addressing, and documenting related party transactions
- Requirement that the existence and resolution of the conflict be properly documented

Conflict of Interest Policy (Continued)



- The Conflict of Interest Policy must require that, prior to the initial election of any director, the director shall sign and submit to the Secretary a written statement identifying:
 - Any entity of which the director is an officer, director, trustee, member, owner, or employee with which the nonprofit has a relationship.
 - Any transaction in which the nonprofit participates in which the director might have a conflict of interest.
- The Policy must require that each director annually submit such written statement (identifying the transactions above) to the Secretary.
- The Secretary will provide a copy of the completed statements to the Chair of the Audit Committee or Board Chair, if they are not an Audit Committee member.
- Contact our office for a simple conflict of interest policy.

Related Parties in Detail



- Persons bearing a relationship to a board member, management, or a key employee to include:
 - Family members, such as brothers, sisters, parents, grandparents, spouses, children, grandchildren
 - Step-parents, uncles, in-laws, cousins, nephews, & ex-spouses are not considered related parties.
- Examples of Related-Party Transactions include:
 - Transactions where a related-party is a Customer, Employee, Vendor, Affiliated Entity
 - Transactions such as, sales, leases, services, & loans/deposits

Whistleblower Policy



- Any nonprofit that has 20 or more employees and gross revenue in excess of \$1,000,000 must adopt a Whistleblower Policy:
 - Purpose is to protect people from retaliation who report suspected improper conduct
- The policy must include the following:
 - Procedures for reporting violations or suspected violations of law or nonprofit policies, including procedures for preserving the confidentiality of reported information.
 - Requirement for an administrator (can be an employee, director, or officer) of the Whistleblower Policy be designated who will administer the policy and report directly to the Audit Committee, or other independent Committee of the Board.
 - Requirement that a copy of the policy be distributed to all directors, officers, employees, and volunteers who provide substantial services to the nonprofit.

Compliance and Proper Asset Management



- Depending on the size of the Organization.
 - Assess Asset Risk
 - ✦ Insurance reasons
 - ✦ Collections such as art
 - ✦ Take physical inventory of all assets

Paid Family Leave (PFL)



- PFL is a program to provide wage replacement income to employees during a period of qualified absence from work
- Guarantees the employee that they will be able to return to their job after a qualified absence
- Benefits commenced: January 1st, 2018

Eligibility for PFL



- Required minimum amount of time an employee must work at the same employer to qualify for PFL benefits
 - Full Time: employees who work a regular schedule of 20+ hours per week become eligible after 26 consecutive weeks.
 - Part Time: employees who work a regular schedule of 20+ hours per week become eligible after 175 days, does not have to be consecutive.
- Employment with a previous employer does not count for PFL at the current employer, PFL time resets to -0- days.
- Not Eligible:
 - Independent Contractors/Freelance workers
 - Farm Workers
 - Volunteers
 - Any other unpaid workers

PFL Benefit Calculation



- Maximum PFL benefit is based on the 2022 New York State average weekly wage of \$1,594.57 .
- The average weekly wage is to be adjusted annually

Year	Weeks Available	Maximum % of Wage	Maximum Weekly Wage
• 1/1/2019	10	55%	\$797.59
• 1/1/2020	10	60%	\$870.10
• 1/1/2021	12	67%	\$971.61
• 1/1/2022	12	67%	\$1,068.36

How Can PFL be Used?



- Providing care for an eligible relative with a serious health condition
 - Who counts as a eligible relative?
 - ✦ Child, Parent, Spouse, Grandparent, Grandchild, Domestic Partner, Step Parent
- Bonding after a birth, adoption, or foster care
- Active duty deployment, but not for one's self
- Employee must give 30 days notice when possible but not necessary

How Can PFL be Used? (Continued)



- Employees can take paid family leave to attend to family matters if a family member is on active duty or has been notified of an impending call to active duty in the armed forces of the United States.
- Qualified family members:
 - Spouse
 - Domestic partner
 - Child
 - Parent

When Can PFL be Used?



- PFL can be used at anytime, does not have to be in consecutive days.
- An employee's entitlement to paid family leave for a birth expires at the end of the consecutive 52-week period beginning on the date of the birth/adoption
- DBL and PFL cannot be taken together, and cannot exceed 26 weeks total within the consecutive 52-week period beginning on the date of the birth
- Babies born in 2017
- Adoptions or foster care

PFL Premiums



- The 2022 weekly contribution rate is 0.511% of the employee's gross weekly wage, capped at a maximum amount of \$ 1.97/week per employee and \$ 7.88/month
- The PFL rate is set by NY State and may be adjusted on an annual basis to be effective January 1
- Updated rates are set and announced by New York State on September 1 of each year for the following calendar year.

PFL Penalties



- **Non-compliance:** the NYS Workers' Comp Board may assess penalties for non-compliance, up to one half of 1% of the employers' weekly payroll for period of noncompliance, plus payment of any PFL claims and an additional sum of up to \$500.

NYS Charities Bureau Guide



- See publication prepared by the NYS Charities Bureau titled:

“Right From the Start: Responsibilities of Directors of Not-for-Profit Corporations”.

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