

Keeping Track of Nonprofit Government Filings: 990s, Annual Reports, Taxes, and More

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Is your nonprofit up to date on its government filings? Many nonprofits have recently filed their IRS Form 990 annual information returns. But several more government filing and reporting requirements may apply for nonprofits, in distinctly separate legal compliance areas. The following is a list of federal and state requirements, along with some recommendations for staying on top of these important matters.

A. Key Government Filings

In many ways, nonprofits operate like any business – and businesses have plenty of government compliance obligations. The specific types of compliance may vary, however, given a nonprofit's nature and the state in which it operates. The key regular filings are as follows:

1. **IRS Form 990:** Every Section 501(c) tax-exempt nonprofit must file a version of the IRS Form 990 information return. Organizations with less than \$50,000 in annual revenues are generally eligible for the very simplified Form 990-N, which must be filed online. Other nonprofits must file the Form 990-EZ, which calls for minimal financial and program activity, or the Form 990, which is quite extensive and should be completed with professional assistance. The Form 990 is due within four and a half months after the organization's fiscal year-end (i.e., by May 15 for a calendar fiscal year). An organization's late-filed Form 990 may result in unpleasant financial penalties. Further, an organization's failure to file a Form 990 for three consecutive years will result in automatic revocation of its tax-exempt status, and therefore a new obligation to file Form 1120 corporate tax returns (unless the organization is able to get its tax-exempt status retroactively reinstated).
2. **State annual report:** Many state "Secretary of State" or "Department of State" offices require nonprofits to file a short annual report, typically only listing the organization's directors and officers, any updated address information, and little else. Other states impose this "check-in" filing requirement biennially or not at all. Failure to file a state annual report can lead to a "not in good standing" status or even administrative corporate dissolution. Thankfully, both adverse consequences can typically be fixed simply by filing the missing annual reports.

3. **State charitable solicitation renewals:** States vary widely in their charitable solicitation registration requirements and ongoing annual reporting requirements. Initial registration thresholds typically depend on the type and extent of fundraising activity, and religious exemptions may or may not be available. Specific forms and filing deadlines are also extremely state-specific. Accordingly, nonprofits that engage in fundraising across multiple states are wise to seek professional assistance for both initial registrations and annual filing requirements. Such matters are usually handled through a state Attorney General’s charitable trust division, which is empowered to regulate charitable solicitation activity and to protect charitable assets.
4. **Federal and state employment taxes:** Like any business, nonprofits with employees must comply with the IRS and state department of revenue requirements, including tax reporting, withholding, and remittances. The government takes these tax compliance matters very seriously, and so should nonprofits! Employment taxes thus should be paid promptly and accurately, with help from a reputable payroll service and/or accountant particularly with respect to regularly required employment tax reports.
5. **State unemployment taxes:** In most states, nonprofits that have employees enjoy special privileges regarding unemployment taxes. For example, they pay taxes only under SUTA (“State Unemployment Tax Act”), not under FUTA (“Federal Unemployment Tax Act”). In addition, nonprofits may qualify under specific state law for “reimbursable” status rather than mandatory payment into the state unemployment insurance system, small employer exclusion, and even a religious employer exclusion. Typically, however, most nonprofits with employees must file quarterly reports – on pain of expensive penalties for noncompliance. Check with knowledgeable legal counsel for further guidance.
6. **State property and sales tax exemption reporting.** Ongoing reporting compliance varies widely among states. In Illinois, for example, a nonprofit’s state sales tax exemption status must be renewed every five years, through a new application with updated financials and program activity information. And a nonprofit that owns real estate (other than religious institutions) must file an annual exemption report with the county assessor’s office.

B. Keeping Track of It All

Two excellent tools for monitoring these periodic filing requirements are (a) a corporate data sheet, and (b) a corporate notebook.

A corporate data sheet should contain key information that allows any nonprofit leader, at a glance, to understand the organization’s foundational elements and filing obligations. Our law firm typically includes the following nonprofit information: (1) the corporation’s official name; (2) its federal employer identification number; (3) its tax-exempt classification under Section 501(c); (4) date of incorporation, and of articles of amendment; (5) date of current bylaws adoption; (6) fiscal year end; (7) date of IRS approval for tax-exempt status; (8) state

charitable solicitation registrations and annual renewal filing deadlines; (9) IRS Form 990 filing requirements; (10) registered agent information; (11) state exemption filings; (12) corporate policies and their dates of adoption; (13) intellectual property; and (14) other key corporate information specific to that organization.

The corporate notebook should serve as a helpful repository of key corporate governance matters for nonprofit leaders, so that they may more effectively carry out their fiduciary responsibilities. The notebook may be maintained electronically or in paper version. Our law firm typically includes the following information in a corporate notebook: (1) the corporate data sheet; (2) the nonprofit's articles of incorporation and any amendments thereto; (3) bylaws; (4) corporate policies; (5) the IRS FEIN letter; (6) the IRS Form 1023 application for tax-exempt status (or Form 1024, if applicable instead); (7) IRS Form 990 filings for most recent three years; (8) state charitable solicitation registrations and any recent years' filings; (9) state annual reports (filed with the state Secretary of State); (10) state sales tax exemption letters; (11) key property ownership and related property tax exemption certificates; (12) recent corporate minutes; (13) any key corporate resolutions; (14) corporate financials; (15) annual conflict in interest disclosure statements (increasingly required by state charitable regulators); and (16) other corporate governance guidance.

Through developing a solid understanding of these various legal areas and information management tools, a nonprofit's leaders should be well equipped to safeguard their nonprofit's legal compliance. In addition, they will be better positioned to effectively promote the organization's mission without undue legal compliance distractions.



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