

Henderson & Caverly Purn LLP

NONPROFIT ORGANIZATIONS NEWSLETTER

December 2018

HOLIDAY FUNDRAISING: IS YOUR NONPROFIT COMPLYING WITH CALIFORNIA RAFFLE REQUIREMENTS?

In California, charities and certain other nonprofit organizations may conduct raffles to raise funds for beneficial or charitable purposes. This exception to the general constitutional prohibition against lotteries requires that at least 90 percent of the gross receipts from these raffles go directly to beneficial or charitable purposes in California. Which organizations qualify and how the raffles must be conducted are governed by California Penal Code section 320.5. If participants are required to purchase a ticket in order to have a chance to win a prize, the drawing is subject to the provisions of section 320.5 and related regulations.



Unless specifically exempted, a nonprofit organization must register with the Attorney General's Registry of Charitable Trusts prior to conducting a raffle. In addition, the organization must file an aggregate financial disclosure report for all raffles held during the reporting year. Forms for registering and reporting activities are provided on the Attorney General's website.

The registration period for conducting raffles is September 1 through August 31 annually. Registration must be completed prior to conducting raffle-related activities, including the selling of raffle tickets. A nonprofit organization must obtain a confirmation letter from the Registry of Charitable Trusts prior to conducting any raffle activities. This includes selling tickets to an event that will be held in the future. If a nonprofit organization wishes to conduct a drawing after September 1 of any year, but wishes to sell tickets prior to September 1 of that year, the organization must register for both years. An organization must file the raffle registration form (Form CT-NRP-1) and a filing fee at least 60 days before the scheduled date of the raffle in order to give Registry staff sufficient time to process the form. The Registry does not confirm receipt of raffle registration forms. An organization that wants confirmation that the Registry has received a form must submit the form to the Registry by requesting "certified receipt," a service available at the U.S. Post Office.

As noted above, California laws require that 90 percent of the gross proceeds raised must go directly to beneficial or charitable programs ("90-10 Rule"). This means an organization is only allowed to utilize 10 percent of the gross proceeds to pay for expenses and the consignment cost of the raffled items. With the exception of eligible organizations defined in Penal Code section

320.6(c), charities must follow the 90-10 rule.

The organization is not precluded from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting the raffle. However, the organization must exercise due care in using other funds. The misuse of restricted assets or the use of unrestricted assets which results in losses to the corporation may subject the board of directors to personal liability for breach of fiduciary duty.

A nonprofit organization that has registered to conduct raffles must file a single aggregate report (Form CT-NRP-2) on or before October 1st for all raffles held during the reporting year (September 1 through August 31), regardless of the number of raffles held. Precise record-keeping is required. Reports that include estimates of proceeds and expenses will not be accepted for filing. If a raffle is a part of a larger fundraising event, the organization has an obligation to keep the accounting of the raffle proceeds and expenses separate from the larger event.

Violations of Penal Code section 320.5 may be forwarded to the local district attorney, city attorney, or county counsel for enforcement. In addition, the Attorney General may take legal action under the provisions of the Nonprofit Corporation Law for breach of fiduciary duty or waste of charitable assets.

For more information on raffle restrictions, eligible organizations, and registration requirements, please refer to the Attorney General's [website](#).

THINKING OF DISSOLVING YOUR NONPROFIT CORPORATION?



A California nonprofit corporation that decides to wind up operations must take certain steps to dissolve and distribute any remaining assets.

These steps apply after the nonprofit corporation's board of directors or its membership votes to cease operations but before any remaining assets are distributed.

The process for winding up the nonprofit corporation involves various governmental agencies, including the California Attorney General's Office, Secretary of State, Franchise Tax Board, and Internal Revenue Service.

Prior to disposing of any remaining assets, the nonprofit corporation must provide notice of the dissolution to the Attorney General's office and request a waiver of objections. A copy of the Attorney General's waiver of objections letter must be submitted with the Certificate of Dissolution when filed with the Secretary of State. The Attorney General's office publishes a [General Guide for Dissolving a Nonprofit Corporation](#), which briefly outlines steps to dissolving a nonprofit corporation.

If you require assistance with winding up and dissolving your nonprofit organization, please contact our [office](#).

FRANCHISE TAX BOARD'S BUSINESS ENTITY ESTIMATED PAYMENT NOTIFICATION PROJECT

The Franchise Tax Board recently announced that beginning early 2019, it will be providing business entities, including corporations, LLC's, and exempt organizations that have taxable income or unrelated business income, with a summary of their 2018 tax year estimated payment, transfer and credit

information. This is part of a pilot project to proactively address the most common reason tax professionals contact the FTB's Tax Practitioner Hotline: calling to verify payments.



FTB 3713, Summary of Account Payments, Transfers, and Credits to business entities who made an Estimated LLC Fee or Estimated Tax Payment for their 2018 tax year. The account summary will provide payment, transfer, and credit information including payment amounts and effective dates.

The summary will contain the same data that is available to the FTB's call center staff and is intended to assist business entities and/or their tax representatives with filing accurate and timely tax returns. Payment information is also available online to businesses and their tax representatives who have or register for a MyFTB account.

The FTB expects the account summary to be mailed out by the end of January/beginning of February 2019.

CALIFORNIA ATTORNEY GENERAL BECERRA RECOVERS NEARLY \$8 MILLION AGAINST CORRUPT OPERATORS OF SHAM CHARITY FOR WOUNDED VETERANS



On November 13, 2018, the California Attorney General Xavier Becerra announced a jury verdict in favor of the State against individuals who fraudulently solicited charitable donations under the pretext of assisting wounded veterans and their families and instead illegally enriched themselves with the donated funds. In April 2017, Attorney General Becerra filed a lawsuit alleging that the operators committed fraud against California donors. Following trial, the jury awarded nearly \$8.8 million to the state against defendants Matthew G.

Gregory and spouse Danella J. Gregory, their adult children Matthew J. Gregory and Gina D. Gregory, and their business Gregory Motorsports.

“These unscrupulous con artists exploited the generosity of Americans by falsely claiming to help our country’s wounded warriors and their families. Instead, they used our charitable donations for personal gain,” said Attorney General Becerra. “A jury of their peers has justly slapped down the Gregory family and their corrupt enterprise. But there are more sham charities out there plotting to defraud us. That’s why the California Department of Justice has ramped up its investigation and enforcement against suspect charities. We intend to hold them accountable before they prey on you.”

In this case, the jury found that the defendants, as directors of Wounded Warriors Support Group and Central Coast Equine Rescue and Retirement, breached their fiduciary duty to act in the best interest of the two charities. Wounded Warrior Support Group, a nonprofit that purportedly supported military veterans and their families, is located in Carmel-by-the-Sea, California, and engaged in fundraising and raffle activities in Alameda County and throughout the State of California. Central Coast Equine Rescue and Retirement, a nonprofit with a mission to rescue abused and unwanted horses and educate the public on the horses’ care and neglect, operated out of Livermore, California, and Carmel-by-the Sea, California.

The jury found that the defendants breached their fiduciary duty by failing to use donated funds for charitable purposes for which the donations were sought. The filed complaint alleged that the defendants instead spent the donated proceeds for personal use, including shopping at Victoria’s Secret, paying off personal credit card debt, traveling, dining, and purchasing dressage equipment, admittance to traffic school, and other personal expenses. The jury also found that the defendants conducted misleading and deceptive fundraising by running illegal charity raffles in locations throughout California; breached their fiduciary duty to act in the best interest of the charities by filing false reports with the Attorney General’s Office; violated the Attorney General’s Cease and Desist Orders; engaged in self-dealing transactions; gave improper loans to directors; and operated the two charities without keeping corporate records and minutes. Against the non-director defendants, the jury found that they aided and abetted the directors in their unlawful acts to

advance their own interests and financial gain.

The jury found the defendants acted illegally a total of 3,430 times and awarded damages to the state as follows:

- Against Matthew G. Gregory: \$1.35 million for breach of fiduciary duty; \$1.35 million for deceptive and misleading solicitations; \$641,528 for self-dealing transactions; and \$500,000 for unjust enrichment.
- Against Danella J. Gregory: \$500,000 for unjust enrichment.
- Against Matthew J. Gregory: \$1.35 million for breach of fiduciary duty; \$1.35 million for deceptive and misleading solicitations; and \$562,782 for unjust enrichment.
- Against Gina D. Gregory: \$251,129 for aiding and abetting a breach of duty; \$2,700 for deceptive and misleading solicitation; and \$751,129 for unjust enrichment.
- Against Gregory Motorsports: \$146,000 for aiding and abetting a breach of duty.

In addition, the court issued a separate judgment for the involuntary dissolution of both charities as well as an order permanently prohibiting the individual defendants from operating or serving on the board of any California charity and from soliciting charitable donations or holding charitable raffles.

FTB NEWS:

NEW LAW LETS CALIFORNIA FTB DISSOLVE INACTIVE COMPANIES



In the November issue of Tax News, the Franchise Tax Board notes that beginning January 1, 2019, eligible domestic corporations and domestic limited liability companies (LLCs) that have ceased doing business and have no assets may be eligible for administrative dissolution/cancellation under recently enacted AB 2503. The bill provides two options for administrative dissolution of qualified entities:

- Administrative Dissolution/Cancellation – Authorizes the FTB to administratively dissolve those domestic corporations and LLCs that are suspended, have ceased doing business, been suspended for 60 or more consecutive months, paid all taxes, and filed all returns due as of the date the entity ceased doing business.
- Voluntary Administrative Dissolution/Cancellation – Authorizes the FTB to abate, upon written request by a qualified entity, the unpaid qualified taxes, interest and penalties for the taxable years in which the entity certifies, under penalty of perjury, that it was not doing business, and does not have any remaining assets in the business.

The FTB noted they are currently developing policies and procedures to enable their staff to easily identify and process business entities that meet the requirements for an Administrative Dissolution/Cancellation. However, due to the projected high volume, they anticipate it will take time to fully implement these processes.

If you have questions regarding the administrative dissolution or cancellation of your organization, please contact our office.

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