

Henderson & Caverly Pum Charney LLP

EXEMPT ORGANIZATIONS NEWSLETTER

January 2017

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.



GAMING AND GAMBLING FUNDRAISERS

Many nonprofits use games of chance and auctions as fundraising vehicles, without realizing that “legalized games of chance” are regulated activities, and indeed illegal in many states.

California law allows eligible nonprofit organizations that have been in existence for at least three years to hold “charity poker night”

fundraisers under specific circumstances. Each eligible organization may register with the California Attorney General’s Bureau of Gambling Control to conduct one “poker night” fundraiser each year, at which participants may play controlled games. Gaming events include charity casino nights, poker nights, or other events that involve gambling. Such an event must be no more than five hours in duration. The current registration fee is \$100 and is non-refundable, even if the fundraiser is cancelled. All suppliers of equipment used in playing the controlled games must register with the Bureau of Gambling Control as well.

Pursuant to California Penal Code section 330, *et seq.*, slot machines and other games, including roulette, craps, twenty-one, or any banking or percentage game played for anything of value, are prohibited and cannot lawfully be played for charitable fundraising purposes. Only controlled games as defined by California Penal Code section 337j(e)(1) may be played at these fundraising events. The list of approved games can be found on the Bureau of Gambling Controls Standard Game List.

Winners’ prizes at these events must be donated, and cash prizes may not be awarded. No individual prize awarded may exceed a cash value of \$500, and the total value of prizes awarded may not exceed a cash value of \$5,000. Persons under the age of 21 may not participate. At least 90 percent of revenues generated at these events must go directly to the nonprofit organization, and no more than 10 percent of gross receipts may be paid as compensation to the entity or persons conducting the fundraiser, excluding a facility rental fee.

Organizations holding these fundraisers must maintain event records, and be willing to provide an itemized report to the Bureau of Gambling Control upon request. The report includes gross receipts, costs incurred, recipients of net profits, number of fundraiser participants, and prizes awarded. In addition, organizations must maintain event records for IRS reporting purposes and to determine any tax liabilities it may have.

The IRS also regulates games of chance, as well as the taxable income that is earned by victorious game players. If your organization’s revenue from gaming exceeds a certain threshold, you will be required to complete and attach Schedule G, supplemental Information Regarding Fundraising or Gaming Activities, to your Form 990 or Form 990-EZ. For details on the threshold amounts triggering filing of Schedule G, see instructions for Form 990 or Form 990-EZ, available on the Charities and Non-Profits section of the IRS’s website at <https://www.irs.gov/charities-non-profits>.

If your organization pays a winner of a game more than a certain threshold amount, you must report the amount and information about the winner to the IRS. The threshold amount at which winnings become reportable depends on the type of game involved. Each time you pay reportable winnings, you must complete IRS Form W-2G, *Certain Gambling Winnings*, to report those winnings to the IRS and to the person receiving the winnings (the "payee"). The payee should provide you with his or her identifying information. In addition to reporting the winnings to the IRS, your organization may be required to withhold regular income tax and backup withholding from the payee's winnings. For additional information, see IRS Publication 3079 *Tax-Exempt Organizations and Gaming* (<https://www.irs.gov/pub/irs-pdf/p3079.pdf>). Publication 3079 also provides a tax calendar for organizations that conduct gaming. In order to ensure that the income from a gaming event will not become taxable, the organization must make sure that the event is substantially related to its exempt purposes.

UPCOMING EVENTS

Jonathan A. Grissom, Chair of our Tax Exempt Organizations Practice Group, is scheduled to speak at the University of San Diego's Institute for Nonprofit Education and Research 2017 Nonprofit Governance Symposium on January 13, 2017. Mr. Grissom will participate in the Workshop titled "*Annual Housekeeping and Compliance Concerns.*"

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