

Henderson Caverly & Pum LLP

NONPROFIT ORGANIZATIONS NEWSLETTER
January 2018

IMPORTANT DEADLINES FOR YOUR NONPROFIT ORGANIZATION'S CALENDAR



There are a number of state and federal annual filing requirements for nonprofit organizations. To avoid risk of suspension, penalties, or loss of tax exempt status, it is important to ensure your organization has the various deadlines calendared.

1. Statement of Information filing

Nonprofit corporations incorporated in California must file California Secretary of State Form SI-100, Statement of Information (Domestic Nonprofit, Credit Union, and Consumer Cooperative Corporations), every other year after incorporation, in the calendar month during which the organization filed its Articles of Incorporation. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-100 may be filed online at: <https://businessfilings.sos.ca.gov/>.

Every foreign nonprofit corporation registered with the California Secretary of State to transact business in California must file Secretary of State Form SI-350, Statement of Information (Foreign Corporation). Form SI-350 must be filed annually by the last day of the month in which the corporation qualified to transact business in California. Failure to file could result in penalties and a suspension of the corporation's corporate powers. Form SI-350 may be filed online at: <https://businessfilings.sos.ca.gov/>.

2. Tax Return Due Dates

California:

California law requires a tax-exempt organization to file either a Form 199 Exempt Organization Annual Information Return, or 199-N (California E-Postcard), depending on the organization's gross receipts in the reporting year. Private foundations must file Form 199 every year, regardless of gross receipts.

Form 199 or Form 199-N must be filed with the Franchise Tax Board by the 15th day of the 5th month after the close of the organization's tax year. An organization that cannot file by that date may take an additional seven months to file without submitting a written request for extension, as long as its status is in good standing and not suspended. You may check your organization's status by visiting the Franchise Tax Board's [website](#). (If the organization owes any tax for the year, it also may need to file FTB Form 3539, Payment for Automatic Extension for Corporations and Exempt Organizations.)

An organization that fails to file the required Form 199 or Form 199-N for three consecutive years will automatically lose its tax-exempt status in California. The revocation of the organization's tax-exempt status is effective as of the filing due date of the third year. Under existing law, the Franchise Tax Board may also revoke an organization's California tax-exempt status if the IRS suspends or revokes the organization's tax-exempt status.

Federal:

Tax-exempt organizations generally must file an annual information return, Form 990 Return of Organization Exempt Form Income Tax, subject to certain exceptions. Most exempt organizations, including those classified as public charities, file either a Form 990, Form 990-EZ, or Form 990-N, depending on the organization's gross revenues in the reporting year and the organization's total assets. Organizations classified as private foundations or private operating foundations must file a Form 990-PF.

Form 990, 990-EZ, 990-N, or 990-PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period. Thus, for a calendar year taxpayer, Form 990, 990-EZ, 990-N, or 990-PF is due May 15 of the following year. An organization may request an automatic extension of time to file a return by using IRS Form 8868.

If an organization does not file a required return or files late, the IRS may assess penalties. In addition, if an organization does not file as required for three consecutive years, it automatically loses its federal tax-exempt status.

3. Attorney General Form RRF-1

Every charitable nonprofit corporation, unincorporated association or trustee holding assets for charitable purposes that is required to register with the California Attorney General's Office is also required to file an Annual Registration Renewal Fee Report (RRF-1). The purpose of the Form RRF-1, as stated on the form itself, is "to assist the Attorney General's office with early detection of charity fiscal mismanagement and unlawful diversion of charitable assets." The Form RRF-1 must be filed four months and fifteen days after the close of the organization's calendar or fiscal year. An entity whose registration is delinquent or has been suspended or revoked is not in good standing with the Registry and is prohibited from engaging in conduct for which registration is required, including solicitation for charitable purposes. Failure to file the Form RRF-1 could result in the loss of California tax-exempt status. Charities previously registered and in good standing with the Attorney General's office may now use the Attorney General's registration [online renewal system](#).

Extensions of time for filing the RRF-1 will be allowed if an organization has received an extension from the IRS for filing the IRS Form 990, 990-PF, or 990-EZ. An organization shall file both forms (RRF-1 and IRS Form 990, 990-PF, or 990-EZ) with the Registry of Charitable Trusts at the same time, along with copies of all requests to the IRS for an extension and, where approval of the extension is not automatic, a copy of each approved extension request. The Form 990-N due date cannot be extended.

4. Annual meeting of Board Directors

The full Board should meet periodically, and at least once annually, to conduct the organization's business, whether in person or by scheduled conference call. If possible, a schedule of Board meetings should be fixed at the beginning of the year. Further, while routine decisions may be made by unanimous written consent, major decisions, such as those affecting an organization's policies and practices, should generally be contemplated and decided upon in the context of a Board meeting, which may be held telephonically.

Reminder: Note the new law adopted as of January 1, 2015, which provides that a California nonprofit corporation may not have non-voting members on the Board of Directors. The new law explicitly states that "[a] person who does not have authority to vote as a member of the governing body of the corporation, is not a director ... regardless of title." (California Corporations Code § 5047)

If you have questions regarding your organization's annual filing requirements, please call us at (858) 755-3000 or email us at JGrissom@hcesq.com.

IRS Resource for Tax Exempt Organizations

The IRS recently released a new video presentation titled "Reasonable Cause" on its StayExempt.org website. The Reasonable Cause presentation focuses on reasonable cause for abating first-tier excise taxes imposed on private foundations. Examples include:

- Self-Dealing Exemption. Discusses self-dealing under Internal Revenue Code Section 4941 and the exception for compensation to disqualified persons.
- Disqualified Persons: Private Foundations. Covers Section 4946, which addresses disqualified persons with respect to a private foundation.
- Disaster Relief: Existing Organizations. Discusses requirements for established disaster-relief organizations.



The Reasonable Cause video is located at <https://www.stayexempt.irs.gov/home/depth-topics/reasonable-cause>.

In the **NEWS**

IRS - UPDATE TO IRS FORM 1023

In December 2017, the IRS updated its Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code and the Instructions to Form 1023. The newly revised forms are located on the IRS' website. The most notable change to the IRS Form 1023 is the User Fee (see Part XI, page 11).



In addition to updating its Form 1023, the IRS recently released Revenue Procedure 2018-5. Rev. Proc. 2018-5 updates the Schedule of User Fees previously provided in Rev. Proc. 2017-5 (updated annually) to a flat user fee of \$600 for all Section 501 applications other than Form 1023-EZ applications. As noted on the recently revised Form 1023, you may call the IRS' Customer Account Services at 1.877.829.5500 for current user fee information. You may also view the IRS' webpage User Fees for Tax Exempt and Government Entities Division.

If you require assistance in preparing and submitting an IRS Form 1023 application for your organization, please call our office or email [Jon Grissom, Esq.](mailto:Jon.Grissom@hcesq.com)

FRANCHISE TAX BOARD - WHAT'S NEW



Veteran's organizations exempt under IRC 501(c)(19) can get California exempt status with short form exempt application.

Previously, veterans' organizations were required to file Franchise Tax Board Form 3500, Exemption Application to obtain tax-exempt status. Effective January 1, 2018, veterans organizations that are federally tax-exempt under Internal Revenue Code Section 501(c)(19) may submit a copy of their Internal Revenue Service tax-exempt determination letter and Form 3500A, Submission of Exemption Request, to the Franchise Tax Board to establish their state income tax exemption.

If your organization needs assistance in filing for tax exempt status, please call us at (858) 755-3000 or email JGrissom@hcesq.com.

Visit our Nonprofit Organizations Group website

<http://www.californianoanprofitlaw.com/>



Subscribe to our Nonprofit Organizations Newsletter!

Access Past Newsletters and Blog Posts

San Diego (Main office): 12750 High Bluff Drive, Ste. 300, San Diego, CA 92101

Rancho Santa Fe (by appointment): 16236 San Dieguito Road, Ste. 3-10, Rancho Santa Fe, CA 92067

Los Angeles (by appointment): US Bank Tower, 633 W. 5th Street (26th Floor), Los Angeles, CA 90013

Phone: (858) 755-3000 | Email: JGrissom@hcesq.com | Fax: (858) 755-9900

Legal Disclaimer: This newsletter is prepared for informational purposes only and should not be construed as legal advice. Its contents should not be acted upon without specific professional advice from legal counsel. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.