

# Henderson Caverly & Pum LLP

**NONPROFIT ORGANIZATIONS NEWSLETTER**  
*March 2018*

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## **THE RESTRICTION OF POLITICAL CAMPAIGN INTERVENTION BY SECTION 501(c)(3) TAX EXEMPT ORGANIZATIONS**



In light of the upcoming 2018 mid-term election, this is an important time to review the political campaign restrictions placed upon 501(c)(3) organizations.

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective

public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

As a key element in its program to secure compliance with the ban on political campaign activity by section 501(c)(3) organizations, the Internal Revenue Service educates organizations about the ban and puts them on notice of the enforcement program. Towards this end, the IRS employs an array of educational tools:

- Guidance to exempt organizations on how to apply the ban in various factual situations.
- Revenue Ruling 2007-41 and Fact Sheet 2006-17 distill IRS guidance in this area, each providing examples of how it applies.
- News releases and other resources for the media discussing the ban.
- The Tax Guide for Churches and Religious Organizations (Publication 1828) discusses the ban thoroughly.
- IRS Publication 4221-PC Compliance Guide for 501(c)(3) Public Charities discusses the ban on political activities.

- [Frequently asked questions](#)
- [Other resources](#)

If you have questions regarding the prohibition of political activities and your charitable organization, please [contact](#) our office.

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## CALIFORNIA FRANCHISE TAX BOARD - SUSPENDED EXEMPT ENTITIES

The [Franchise Tax Board](#) or the California [Secretary of State](#) can suspend an exempt organization for a number of reasons. Suspension affects an organization's tax-exempt status. It also affects its ability to enforce contracts.



A suspended organization can get back into good standing and regain its tax-exempt status.

### *Suspension causes and tax-exempt effects*

There are three primary ways an organization may become suspended:

- Failure to file a Statement of Information with California Secretary of State's office.
- Failure to pay an amount due.
- Failure to file any past due returns with the Franchise Tax Board.

An organization cannot legally transact business, defend, or initiate an action in court, protest assessments, or file a claim for refund of paid amounts when the Franchise Tax Board or the Secretary of State suspends it. It also loses the right to use its name.

An organization remains suspended by the Secretary of State until it meets all [revivor requirements](#).

To verify an organization's current status with the Franchise Tax Board or the Secretary of State, visit [kepler.sos.ca.gov](http://kepler.sos.ca.gov). The website only lists organizations that incorporated or qualified with the Secretary of State.

### *Tax-exempt status revocation*

The Franchise Tax Board revokes an organization's tax-exempt status the day either the FTB or Secretary of State suspends it. To verify your organization's status with the Franchise Tax Board, visit the FTB's [website](#).

### *Contract voidability*

Contract voidability is when a suspended or forfeited organization loses its right to enforce its legal contracts. If an organization enters into a contract while suspended or forfeited and then revives its active legal status, it cannot enforce that contract unless it gets relief from contract voidability. For more information about Contract Voidability and request relief from contract voidability, see the Franchise Tax Board's [website](#).

If your organization has been suspended by the FTB and/or the Secretary of State, or the Franchise Tax Board has revoked your organization's exempt status and you need assistance, please contact our [office](#).

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The IRS recently released Revenue Procedure [2018-15](#). As noted in Rev. Proc. 2018-15, the IRS generally will not require a new exemption application from a domestic Internal Revenue Code Section 501(c) organization that changes its form or place of organization. Rev. Rul. 67-390 and Rev. Rul. 77-469 are obsolete. Rev. Proc. 2018-15 is effective January 1, 2018.



The purpose of Rev. Proc. 2018-15 is to reduce compliance burdens on certain exempt organizations by providing the circumstances under which the IRS generally will not require domestic entities to file a new application when they change their form or state of organization. Rev. Proc. 2018-15 also notes that significant changes to programs, services, or the organizational documents are required to be reported on organizations' Forms 990.

If your organization needs assistance with a change of domestication or reincorporation in a different state, please contact our [office](#).



## EDUCATIONAL RESOURCES

### CALIFORNIA ATTORNEY GENERAL'S GUIDE FOR CHARITIES

The Attorney General's Office recently updated its [Guide for Charities](#). The Guide for Charities is a resource to help directors, officers, trustees, volunteers, fundraisers, and accountants in the nonprofit sector, understand their responsibilities and comply with California law.

On December 5, 2017, the Attorney General's office hosted a webinar to walk people through the Guide for Charities and to answer questions from the audience. This presentation highlighted and elaborated on some of the important topics covered in the Guide based on the Attorney General's Office day-to-day regulatory experience. A [video](#) the webinar is located on the Attorney General's website. A copy of the [webinar presentation materials](#) is also located on the Attorney General's [website](#).



The Guide is organized by Chapters. Chapter 1 provides an overview of the charitable sector and explains the most common legal forms of charitable organizations that may be created under the statutes of California. Chapter 2 explains the steps of forming a nonprofit corporation, while Chapter 3 explains the tax-exempt application process. Chapter 4 provides information about legal requirements involving employment practices. The Guide also explains other obligations, including fiscal responsibility requirements in Chapter 5, government reporting requirements in Chapter 6, director and officer obligations in Chapter 7, membership rights in Chapter 8, and fundraising obligations in Chapter 9. Chapter 10 and Chapter 11 explain the Attorney General's oversight over charities and nonprofit transactions. Meanwhile, Chapter 12 discusses the Attorney General's oversight of charitable trusts, religious nonprofits, and non-California entities.

In addition to the Guide for Charities, the Attorney General's [website](#) offers a variety of resources, including [publications](#), and tools for charities. Charities may also access their registration details using the

If you have questions regarding your organization's compliance with California law, please contact our office.

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## IRS AUDIT TECHNIQUE GUIDES FOR EXEMPT ORGANIZATIONS



The IRS makes available to exempt organizations the guides examiners use during audits of specific types of exempt organizations. While the guides are designed to provide guidance for IRS employees, they are also useful to the staffs and governing boards of exempt organizations. The guides recommend specific examination techniques, explain specialized business practices and terminology, and explore issues common to certain types of exempt organizations.

Audit guides are available for organizations exempt under Internal Revenue Code ("Code") Section 501(c)(3) and for organizations exempt under other Code Section 501(c) sub-sections, as well as for apostolic associations, charitable trusts, fundraising activities, health maintenance organizations, organizations conducting gaming activities, and political organizations.

The IRS' website also provides an explanation of the IRS audit process for charities and other nonprofit organizations.

If your organization is being audited and needs assistance, please contact our office.

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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](mailto:JGrissom@hcesq.com) | Fax: (858) 755-9900

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