Charities Bureau Overview

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Charities Registration Overview

Role of the New York Attorney General
 Formation of a Charitable Organization
 Registration Requirements for Charities
 Annual Financial Filings for Charities
 Charities Bureau Registry
 How to Get More Information

Role of the Attorney General

- Oversee charitable organizations that incorporate, solicit and/or hold assets in New York
- Oversee fundraising professionals that solicit contributions in New York
- Protect the interests of donors, charitable beneficiaries and nonprofits
- Promote nonprofit accountability
- Enforce New York laws

Role of the Attorney General

- **Charities Oversight Activities**
- Administer registration and reporting
- Monitor solicitation of contributions
- Review fundamental corporate changes
- Monitor corporate governance and fiduciary duties of Directors and Officers
- Enforce donor restrictions

Not-for-Profit Formation

Incorporation of Not-for-Profit Corporation

- File Certificate of Incorporation with NYS Dep't of State - <u>www.dos.state.ny.us</u>
- Hold Board meeting and adopt by-laws
- Federal Tax Exempt Status
 - Apply to IRS <u>www.irs.gov/charities/index.html</u>
 - Exempt from federal income tax
 - 501(c)(3)s may receive tax-deductible donations
- State Tax Exemptions
 - Apply to NYS Dep't of Taxation & Finance
 - Exempt from NYS Income and State Sales Tax
- Registration with the Charities Bureau

Registration and Filing Requirements for Charitable Organizations

- >Why is registration important?
- >Which organization must register?
- > Which organizations are exempt?
- ➤How does an organization register?
- How does an organization claim an exemption from registration?
- >What must be filed annually?

Importance of Registration and Reporting

- Provides data to assist Attorney General with regulatory and law enforcement efforts
- Provides centralized source of information for
 - Members of the public
 - Funders
 - The press
 - "Watchdog" organizations
 - Other nonprofits and government agencies
- Enhances fiscal transparency

Which Organizations Must Register? 3 categories

- Estates, Powers and Trusts Law (EPTL)
- Charitable Organizations incorporated, formed and/or that conduct activity In New York
- Executive Law, Article 7-A (Article 7-A)
- Organizations that solicit charitable contributions in New York
- "Dual Registrants"
- Organizations that must register and file under both the EPTL and Article 7-A

EPTL Registration

- Charitable organizations that are incorporated, formed or otherwise conduct activity in New York
- "Charitable" is broadly defined
 - Includes IRC 501(c)(3)s and "Type B" NY notfor-profit corporations
 - Type B purposes: charitable, educational, religious, scientific, literary, cultural, prevention of cruelty to children/animals
 - Includes other organizations with public purpose

EPTL Registration Exemptions

- Government entity
- Reports annually to US Congress or NYS Legislature on finances
- Religious organization
- Educational institution, museum or library incorporated under NY Education Law or special act
- Historical society
- Hospital, skilled nursing facility, diagnostic/treatment center
- Organized for benefit of members, not public
- Volunteer firefighters/ambulance
- > Cemetery
- > PTA
- Insurance corporation

Article 7-A Registration

- Organizations that solicit or receive charitable contributions in New York
- "Charitable" is broadly defined
 - Includes organizations that are charitable under EPTL
 - Also includes benevolent, philanthropic, patriotic, and law enforcement support organizations
- Solicitation is broadly defined
 - Not just telemarketers or mass mailers
 - Grant application constitutes solicitation, including grant from state agency
 - EPTL 8-1.4(s)- An organization "Shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with" all applicable registration and filing requirements

Article 7-A Registration Exemptions

Exemption Categories:

- Some similar to EPTL (Governmental, Religious, PTA)
- Some differences
 - No exemption for hospitals or cemeteries
 - Contributions threshold (Contributions >\$25,000 from NY & no FRPs)
 - Exempt if confined solicitation targets, i.e.
 - Educational institutions that confine solicitation to students, alumni, faculty, trustees
 - Membership organizations that confine solicitation to members
 - Law enforcement organizations and historical societies that confine solicitation to members

Article 7-A Registration Exemptions - Continued

Exempt if:

- Confined solicitation agents, i.e., veterans or volunteer firefighters/ambulance organization when members do fundraising without compensation
- Receive allocation from Federal Fund, United Way, etc., no FRP, and < \$25,000 in other contributions
- Already reporting to Government, i.e.:
 - Receive most \$ from single government agency to which it reports annually, and < \$25,000 in other contributions from New York
 - Educational institution or library that reports annually to State Ed Dep't

When to Register

EPTL

Within 6 months of conducting charitable activity in New York

Article 7-A

• Prior to solicitation

Dual

• Whichever is earlier of the above two

What to Submit to Register

CHAR 410, plus attachments

- Certificate of incorporation or other organizing document
- By-laws or other organizational rules
- IRS Form 1023/1024 application for tax exemption
- IRS tax exemption determination letter
- Financial report for the year prior to registration

Fee: EPTL - \$0 Article 7-A or Dual - \$25

Unified Registration Statement available to multi-state filers

Once registered, organization will receive Charities Bureau registration number and written confirmation of registration

How to Claim an Exemption

Unregistered organizations exempt from registration are not required to claim an exemption; they may submit an exemption request by completing CHAR410 with all attachments, including Schedule E with any additional attachments.

Registered organizations that believe they are exempt must claim an exemption by completing CHAR410-A (the Amendment form) with all attachments.

Once Charities Bureau determines organization is exempt, the organization will receive a Charities Bureau ID number and written confirmation of its exemption.

Registration of Fund Raising Professionals (FRPs)

> Who must register?

- Professional Fund Raiser (PFR) independently engaged by a charity to conduct a solicitation and/or handle the donations
- Fund Raising Counsel (FRC) independently engaged by a charity to advise or assist with solicitations, but cannot solicit or handle donations
- Professional Solicitor (PS) employed or engaged by a PFR to solicit on behalf of a charity
- Registration and filing requirements vary depending on whether PFR, FC or PS

Filing of Annual Financial Reports

- Purpose and timing of filing
- Relationship to IRS Form 990
 - NY Attorney General's Office accepts Form 990 as substantial part of annual financial filing
 - Tax-exempt organizations with gross revenues of at least \$25,000 during their fiscal year must file Form 990 (Form 990-EZ if annual gross receipts less than \$100,000 and total assets less than \$250,000)
 - IRS published a new Form 990 in 12/07 that is a significant redesign and, among other changes, asks more governance questions - new form is for 2008 tax year, but there is a 3 year phase in period for smaller organizations

When to File Annual Financial Report

EPTL

- Within 6 months of end of fiscal year Article 7-A or Dual
- Within 4½ months of end of fiscal year
 Procedures for Requesting Extension
- Must be in writing first 3 month extension may be by email at charities.extension@oag.state.ny.us

What to Submit Annually

- CHAR 500 Same form regardless of registration statute
- Attachments
 - IRS Form 990, 990-EZ or 990-PF with all schedules
 - Independent accountants audit or review, based on total support/revenue
- Article 7-A schedules and additional documents for soliciting charities
 - Use of fundraising professionals
 - Receipt of government grants
- ➤ Fee
 - EPTL: \$25 to \$1,500 based on registrant's net worth
 - Article 7-A: \$10 or \$25, based on total support/revenue
 - Dual: sum of EPTL and Article 7-A fees

Required Solicitation Disclosures

Any solicitation used by or on behalf of a charitable organization must:

 Include name of the charity exactly as it is registered with the Charities Bureau and should accurately describe the organization, its activities and the purpose for which contributions are being solicited

•Advise potential contributors that a copy of the charity's most recently filed annual financial report is available from the organization itself or the Charities Bureau

Amendments and Re-Registration

Charities may amend registration by

- Filing Form CHAR 410-A, or
- Noting changes in Annual Filing, i.e CHAR500
- Registered organizations are supposed to notify Charities Bureau within 30 Days of change
- Form CHAR 410-R is for organizations whose registration was cancelled due to violation of Article 7-A or a reporting requirement
- Re-registrants must file delinquent annual financial reports

Charities Bureau Contact Information

General Registration Questions

- <u>Charities.Bureau@oag.state.ny.us</u>
- (212) 416-8401

Questions about Fundraising Professionals

- <u>Charities.Fundraising@oag.state.ny.us</u>
- (518) 486-9797

Complaint Form online at <u>www.oag.state.ny.us/charities/char030.pdf</u>

Charities Bureau Contact Information - continued

Internet site contains additional forms, instructions and guidelines for charities, fundraising professionals and the public <u>www.oag.state.ny.us/charities/charities.html</u>

Freedom of Information Law:

- FOIL form is available at <u>www.oag.state.ny.us/charities/char007.pdf</u>
- Email <u>Charities.FOIL@oag.state.ny.us</u>
- (212) 416-8390 for FOIL questions

Our Contact Information

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