

New Department of State Filing Requirements for NYS Nonprofit Organizations

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Earlier this year, proposed regulations were passed as part of the NY Executive Law, potentially requiring charities to file up to three additional reports with the NYS Department of State. Effective January 1, 2021, charitable organizations that are required to file an annual financial report, the CHAR 500, with the NYS Attorney General's Charities Bureau under Article 7-A will also be required to file an additional annual financial report online.

Each financial report below has a \$25 filing fee. The Annual Financial Report requires a copy of the organization's Form 990 along with a completed copy of Schedule B with all donor information disclosed. In addition, the NYS Attorney General requires registered organizations under Article 7-A to submit audited or reviewed financial statements with their CHAR 500. The threshold for audited financial statements is increasing effective July 1, 2021.

Types of Reports

There are three different new annual report filings with the NYS Department of State as follows.

Annual Financial Disclosure Report

Any charitable organizations registered with the NYS Attorney General's Charities Bureau under Article 7-A to solicit contributions in New York and that received more than \$250,000 in gross revenue and support in a fiscal year are now also required to file the same annual financial report (CHAR 500) with NYS Department of State as they did with the NYS Attorney General's Charities Bureau.

In addition, any registered charitable organizations required to file a Funding Disclosure Report) and/or a Financial Disclosure Report (see both of these reports referenced in detail below) are also required to file the Annual Financial Disclosure Report with the NYS Department of State.

The Annual Financial Report needs to be filed with the Department of State on or before the fifteenth day of the fifth calendar month after the close of the charitable organization's fiscal year. Currently, an automatic 180-day extension is granted by the NYS Attorney General's Charities Bureau to file the CHAR 500. Current proposed regulations on the new filing are incomplete and do not directly address extensions. It is presumed that the new Annual Financial Disclosure Report will be allowed an extension; however, this is pending additional information from the NYS Department of State. Organizations with a December 31, 2020 year-end that are required to submit this filing would be due May 15, 2021.

Funding Disclosure Report

Section 501(c)(3) charitable organizations are required to file a new funding disclosure report with the NYS Department of State if they made in-kind donations greater than \$10,000 during a six-month reporting period to 501(c)(4) organizations. In-kind donations may include services, staff/personnel time, and rent-free space.

The Funding Disclosure Report needs to be filed with the Department of State within 30 days of the close of a reporting period. Reporting period refers to the six-month period within a calendar year starting January 1st and ending June 30th or the six-month period within a calendar year starting July 1st and ending December 31st.

Financial Disclosure Report

Section 501(c)(4) organizations are required to file a new Financial Disclosure Report with the NYS State Department of State if the organization's expenditures on "covered communications" exceed \$10,000 in the calendar year.

"Covered communications" include communications to 500 or more members of the general public audience in the form of: (i) an audio or video communication via broadcast, cable or satellite; (ii) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or (iii) other published statement which: refers to and advocates for or against a clearly identified elected official or the position of any elected official or administrative or legislative body relating to the outcome of any vote or substance of any legislation, potential legislation, pending legislation, rule, regulation, hearing, or decision by any legislative, executive or administrative body.

The Financial Disclosure Report needs to be filed with the Department of State within 30 days of the close of the reporting period.

Department of State Review

All of the above reports are subject to review by the Department of State. Such reports can be published by the NYS Department of State on their website if it is determined by the State Department that the reports are inconsistent with the organization's charitable purpose. Any reports published will not include the names and addresses of the donors on Schedule B.

Opposition to Additional Filing

The current proposed regulations are being opposed and litigated by various legal associations and nonprofits as a redundant tax filing. Organizations are working with the state legislature to remove this requirement since it duplicates the Attorney General's filing. Further updates will be provided once available.

NYS Audit Threshold

Beginning on July 1, 2021, NYS is increasing the current audit threshold of \$750,000 of revenue and support to \$1 million in revenue. Organizations whose CHAR 500 have an original or extended due date that falls after July 1, 2021 will be able to take advantage of the new audit threshold. A certified review report is required if the organization has revenues between \$250,000 - \$1 million; if an organization's revenue exceeds \$1 million, a certified audit report will be required.

Contact Us

If your organization is impacted by any of these new regulations or you would like further information on any topics covered in this article, please contact your PKF O'Connor Davies Relationship Manager or Tracy Cai, CPA, Tax Supervisor at tcai@pkfod.com or Melissa Modelson, CPA, Senior Tax Manager at mmodelson@pkfod.com.

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