

PUBLICATION

Spotlight on Nonprofit Organizations: Registration Requirements for Charitable Soliciting

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A majority of states have enacted regulations requiring nonprofit organizations and their service providers to register within the state if they intend to solicit contributions. While there is a developing effort to standardize the regulation procedures, the current requirements for both nonprofit organizations and their service providers vary considerably by state. Organizations intending to engage in solicitation should pay close attention to their respective state's regulations and registration procedures so that they may correctly ascertain whether they are subject to such laws. Many states also apply registration requirements to professional solicitors and professional fundraising counsel.¹

Stemming from the variance in state laws and the broad definitions of 'solicitation' and 'organization,' as applied to such laws, many tax-exempt entities are surprised to learn that they fall within the purview of a particular state's regulation of nonprofit entities. It is important for organizations to consult the state rules governing any state in which they intend to solicit funds. This should be closely scrutinized by nonprofit organizations so that they may fully determine whether such state's rules apply to their specific organizational purpose.

Many states provide for specific registration exemptions to nonprofit organizations operated within their respective districts. Among those who provide exemptions are: Alabama, Georgia, Mississippi and Tennessee. While the registration exemptions for nonprofit organizations vary among these states, a few of the common exemptions extended include: educational institutions meeting state-specific requirements; volunteer fire departments and rescue units; fraternal, social, and patriotic organizations; and other organizations which do not intend to solicit funds in excess of specifically enumerated amounts.

If a nonprofit organization determines that it is subject to a state's registration requirements, the promulgated procedures must be strictly followed. Failure to do so may result in the application of noncompliance monetary penalties against an organization.²

Overview of Certain State Requirements

Below is a general overview of the procedural requirements for nonprofit organizations that intend to solicit funds in a few southeastern states and their respective periods of effectiveness.

Alabama: Nonprofit organizations who wish to solicit funds from within the State of Alabama are required to register by filing a registration statement with the Attorney General, upon a form proscribed by the Attorney General. Along with an organization's initial registration statement, applicants must include: 1) a copy of the charitable organizational charter; 2) the articles of incorporation or organization; 3) an agreement of association; 4) an instrument of trust; 5) a copy of the constitution or other organizational instrument and bylaws; along with 6) a statement setting forth the place and date when the organization was established, the form of the organization and any tax exemption determination letters evidencing federal and/or state tax exemption status, if applicable. All registrants must also file a registration form signed by the president or other authorized officers and the chief financial officer of the organization. The registration application should be submitted along with a check for twenty-five dollars.

Registration statements remain valid indefinitely so long as the organization files an annual report within 90 days of the close of the organization's fiscal year, along with the remittance of a twenty-five dollar check.

Georgia: All nonprofit organizations that intend to solicit within the State of Georgia must file a completed charitable organization registration form (Form C-100) with the Secretary of State. All applications must be accompanied with an initial filing fee of thirty-five dollars. If the organization has received or collected any financial contributions during its preceding fiscal year, an IRS form 990 or 990E-Z which the organization filed for the previous two taxable years must be attached to the registration form, and any financial statements should be filed in accordance with the following:

a. If the organization collected or received greater than one million dollars in either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries prepared in accordance with generally accepted accounting principles.

b. If the organization collected or received greater than five hundred thousand dollars, but less than one million dollars in either of its two preceding fiscal years, the financial statements shall be reviewed a certified public accountant, and such certified public accountant's report should be prepared and attached in accordance with generally accepted accounting principles.

c. If the organization collected or received less than five hundred thousand dollars in either of its two preceding fiscal years, the financial statements should be submitted for such years. The financial statements do not have to be reviewed or certified.

d. If no funds have been received or collected in the two preceding fiscal years, an organization must attach a signed statement from an officer of the organization to that effect.

The registration remains valid for a period of two years, but it must be renewed annually to remain effective.

Louisiana: Nonprofit organizations who intend to solicit contributions in the State of Louisiana must file a Unified Registration Statement with the Attorney General's office along with a twenty-five dollar check, made payable to the Louisiana Department of Justice. Applicant organizations must also file a copy of the articles of incorporation, the bylaws, an IRS 501(c)(3) tax exempt determination letter (if applicable), the most recent form 990 for the organization, any contracts with professional solicitors, and a list of all other states in which your organization is registered.

The registration remains effective one year from issuance.

Mississippi: Nonprofit organizations who intend to solicit funds within the State of Mississippi must complete the registration by filing with the Mississippi Secretary of State. Applicant must include: 1) a completed unified registration statement; 2) a non-refundable fifty dollar registration fee; 3) copies of any contracts between the charitable organization and any professional fundraisers relating to financial or other compensation or profit to be derived by the professional fundraisers; 4) a financial report and other information and documents required by Miss. Code Ann. §79-11-507;³ 5) an alternate address, different from that of the charitable organization for which registration is sought, for each of the president, chief executive officer or executive director (or equivalent thereof), and the chief financial officer or treasurer (or equivalent thereof) of the organization; ⁴ and 6) for initial filing of registration organizations should also file a copy of the current charter, articles of incorporation, bylaws and/or any instrument of organization and any federal tax exemption determination letter

from the IRS or notification of any rescission of, challenge to or investigation of the charitable organization's federal tax exemption.

A nonprofit organization registration is valid for a period of one year from the date of issuance.

Tennessee: Nonprofit organizations that intend to solicit contributions in the State of Tennessee must file a completed application for registration form with the Secretary of State's office. Accompanying the form, applicants should submit a fifty dollar filing fee and a summary of financial activities form. If the applicant is tax exempt, it should file an IRS form 990, form 990 E-Z or 990 N for the most recently completed fiscal year, along with its other registration materials. If the applicant organization grossed more than five hundred thousand dollars in revenue, excluding grants from governmental agencies and 501(c)(3) private foundations, it must submit audited financial statements. All applicant organizations should file governing documents (articles of incorporation, if incorporated, by laws, etc.) and an IRS determination letter granting tax exempt status, if applicable.

A nonprofit organization registration is valid for a period of one year and must be renewed within 6 months after the close of each organizational accounting year.

Summary

As is obvious from this general overview pertaining to just a few southeastern states, the process of registering and maintaining compliance with the appropriate branch of state government can be quite daunting for a nonprofit organization. Each such organization must address these compliance requirements based on the facts and circumstances that are unique to that organization.

Should you have any questions regarding nonprofit organization registration and compliance requirements in these or any other states, please contact any attorney in the Firm's Tax Department.

¹ Those states employing registration requirements for professional fundraising counsel and professional solicitors require registration of the respective parties prior to engaging in any services with or on behalf of the organization(s) by which they are engaged. Organizations and their affiliated parties should consult their state-specific regulations before entering into any agreements or terms of service.

² Some states have noncompliance monetary penalties exceeding \$10,000.

³ Miss. Code Ann. §79-11-507 pertains to other financial statements required by the Secretary of State's office and should be consulted when completing the registration.

⁴ Be advised that any supplied alternative addresses are available to the public upon request and therefore, the Mississippi Secretary of State's office recommends home addresses not be used.