



Nonprofit Does Not Mean Tax Exempt

Purpose of this presentation

- Overview of requirements applicable to various taxes
- Income taxes and 501 (c) (3) organizations
- Sales & Use Taxes
- Raffles
- Where to go to get applicable forms and information
- To raise your awareness of your responsibilities as a nonprofit organization
- This is NOT a TAX course!!



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How to maintain Federal Tax-Exemption

- Organization is "organized and operated" for exempt purpose
- NO private benefit or private inurement
 - Can't draw a personal salary or receive other items of value for your work involved w/ the organization beyond fair market value
- Limits on Lobbying/Prohibition on Political Campaign Activity
 - Can't endorse or wear your cover at candidate rallies
 - Can endorse and wear your cover for support of propositions
- Responsible for Unrelated Business Income Tax
- Filing tax returns
- Disclosure Obligations



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Taxes that must be considered

- Federal Income Tax
- State Income Tax – Franchise Tax Board
- Property Tax – County Assessor
- Sale & Use Tax – State Board of Equalization
- Other specific taxes such as Employment Taxes – Not dealt with in this presentation



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Private Benefit/Private Inurement

- Organization cannot confer excessive financial benefits on "insiders"
 - Payment must be fair market value for services rendered
- Organization cannot provide substantial private benefits to ANY individual
- Compensation must be reviewed for reasonableness
- Presumption of Reasonableness
 - Must have comparable data
 - Cannot have the affected person/officer involved in the debate and vote



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How to Maintain Public Charity status for new and old detachments

- Determination Letter from the IRS generally treats a new organization (detachment) as a public charity for 5-year advance ruling period
- After 5 yrs, organization must file financial information on form 8734 to demonstrate public charity status
- Organization must continue to meet public charity tests and show support on form 990 to avoid being treated as a private foundation.
- At least one-third of funding must come from public and govt. grants.



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Unrelated Business Income Overview

- Business activities that are "unrelated" to the organization's exempt purpose must be insubstantial
 - Weekly car wash, breakfasts can be considered a regular business and are subject to taxation because it is treated as a business
- Organization must pay unrelated business income tax on income from:
 - Trade or business activities
 - Unrelated to exempt purpose and regularly carried on
- Sale of donated items aren't considered a regular business
- Internet income isn't subject to unrelated business income tax



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What is "Related Income?"

- The operation or business must contribute importantly to the exempt purpose
- Generating funds for the exempt purpose is NOT sufficient to make an activity related
- Examples:
 - Operating a Business for Job Training may be related to exempt purpose
 - Operating a gift shop to raise funds for programs are not likely related to exempt purpose



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Disclosure Requirements for Federal Tax-Exemption

- If required to file Form 990, must also make Form 990 available for public inspection along with
 - Original Tax Exemption Application Form 1023
 - Supporting Documents
 - IRS Determination Letter confirming tax-exempt status
- Must comply with California State Disclosure Rules too!



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Unrelated Business Income Tax Exceptions

- Not regularly carried on (i.e. annually)
- Activity performed mostly by unpaid volunteers
- Income from passive investments such as savings account



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Useful Resources

- IRS Website: www.irs.gov/eo
- IRS Publication 557 Tax-Exempt Status for your Organization www.irs.gov/publications/p557
- Public Counsel Website: www.publiccounsel.org/overview/cdp.html



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Filing Requirements to Maintain Federal Tax-Exemption

- If gross receipts exceed \$25,000, must file tax return
 - IRS Form 990
 - Franchise Tax Board Form 199
- Federal Tax ID Number does not mean Nonprofit Organization



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Corporations and unincorporated associations are subject to California corporation franchise or income tax EVEN IF they are organized on a nonprofit basis



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- A Nonprofit Corporation that does not have a determination of exemption from the State is subject to the franchise tax laws as any for-profit corporation
 - Must file FTB Form 100, CA Franchise or Income Tax and pay at least \$800 minimum franchise tax each year until it formally dissolves through the Secretary of State's Office (Receives its nonprofit Determination Letter)



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FTB Form 199 General Rule

- If gross receipts & pledges are normally:
 - Not more than \$25,000, not required to file Form 199
 - Greater than \$25,000, required to file Form 199



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Obtaining CA franchise exemption from income tax two things must occur:

1. Must apply for exemption by sending in:
 - An Exemption Application (FTB 3500)
 - \$25 application fee
 - All required documents
2. State must issue a determination of exemption



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Other criteria

- Organization existed one year or less
 - File Form 199 if gross receipts exceed \$37,000
- Existed two years
 - \$30,000 average for both years
- Three or more years
 - \$25,000 average for current year and the immediately preceding two prior years



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Cannot consider your organization exempt for CA tax purposes until the State has issued the determination letter.



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Gross Receipts Include:

- Receipts from all sources
- Total contributions, gifts, and grants
- Gross dues and assessments from members and affiliates for the year
- Gross sales during the year



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Form 199 is due on or before the 15th day of the fifth month after the close of the taxable year



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The Registry of Charitable Trusts (within the CA Dept. of Justice) is responsible for ensuring that charitable organizations use their funds and manage their assets properly



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FTB Form 109 is required when:

- Organization has income over \$1,000 from business or trade that is:
 - Unrelated to the organization's exempt purpose – EVEN IF the profits are used for exempt purposes
 - Regularly carried on



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Oh Boy! Another report to file!

- Most charitable organizations must register with the Registry
- Once registered, they must annually file a report with the Registry
- Penalties for not reporting:
 - Disallow the organization's exempt status and
 - Asses \$800 minimum tax for each year the organization does not file
- Questions about the Registry? www.ag.ca.gov/charities



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Form 109 must be filed on or before the 15th day of the fifth month after the end of the taxable year.



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FTB Forms used by Exempt Organizations

- FTB 3500, Exemption Application
- Form 199, Annual Information Return
- Form 109, Unrelated Business Income Tax Return
- FTB 3555A, Request for Tax Clearance – Exempt Organizations



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FTB Exempt Organization Publications

- Overview of Exempt Organizations, FTB Pub. 927
- Exempt Organizations – Requirements for Filing Returns and Paying Filing Fees, FTB Pub. 1068
- Exempt Organizations – Guide for Political Organizations, FTB Pub. 1075
- Instructions for Exempt Organizations Requesting a Tax Clearance Certificate, FTB Pub. 1038A
- Franchise Tax Board Website: www.ftb.ca.gov



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Use by other non profit organizations

- Non profit using exempt property once a week or less – Owner needs to have users tax exemption letter on file – 501 (c) (3)
- Meetings incidental and **not fundraising**
- Non Profits using exempt property more than once a week must file exemption claims and qualify



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For Veterans' Organizations, Property can be exempted by the Board of Equalization and the Assessor



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Contacts:

- Board of Equalization – www.boe.ca.gov
- Your Local Assessor – List of Assessors is on the BOE website



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Who Should File?

Non Profit tax exempt organizations that:

- Own property that is used exclusively for the actual operation of a qualified exempt purpose
- Rent property from a qualified non profit that is used exclusively for the actual operation of a qualified exempt purpose
- Hold a current tax exempt letter IRS or FTB under IRC 501 (c) (3)



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Sales and Use Tax Nonprofit Organizations - Definitions

What is a Sale?

- Any transfer of title or possession, of tangible personal property for a consideration, regardless of when payment is received

What is Tangible Personal Property?

- Personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses

Who is a Retailer?

- Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others

Who is a consumer?

- One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing



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Sales Tax vs. Use Tax

Sales Tax

- Tax Imposed on retailer
- Seller reports and pays the sales tax due on items sold at retail in CA
- Tax measured by the gross receipts from the sale



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Taxable Activities

- Raffles
- Food Sales
- Auctions (including silent)
- Rummage sales, carnival booths
- Vending machine sales



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Use Tax

- Tax imposed on purchaser
- CA consumer or purchaser owes and must pay the use tax due on items purchased without payment of tax
- Out of state retailers engaged in business in CA must collect and pay use tax on items sold to Californians
- Tax measured by the purchase price

Tax rate is the same for both sales & use tax



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Sales of food at fundraising events

- Cold beverages – No. Exceptions, 1) Alcoholic and carbonated beverages and 2) may be taxed when sold in a combination package.
- Cold food (candy, snack food etc.) – No. Exceptions, May be taxable when sold in a combination package
- Hot prepared food – Yes. Tax not applicable to individual hot drinks and bakery goods
- Combination packages – Yes, but depends on contents of package
 - A hot prepared food product or hot beverage and any other food item
- Cold food products only i.e. sandwiches, tax does not apply
- Meals served at fundraisers is usually taxed
- Food where admission is charged or dining facilities available usually taxable. Exception when food prepared as food would normally take home



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In general, no blanket exemption from sales or use tax exists for nonprofit or charitable organizations

Do you need a seller's permit?

- Every person, firm, corporation, etc., engaging in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, must apply to the State Board of Equalization for a permit



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Fund Raising Dinners

- Taxable
- Generally, the person serving the meal is responsible for the tax
- If a caterer serves the meal, the caterer is the retailer and responsible for the tax



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Resale Certificates

- Resale Certificates are issued for purchases of items that will be resold or incorporated into products that will be resold



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Who may conduct a raffle?

- Private nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle
 - More information at www.ag.ca.gov/charities
- Must be registered with the Registrar of Charitable Trusts before conducting a raffle (Attorney General)
 - Forms are on the website but must be mailed with \$20 registration fee (CT-NRP-1)
- Registration forms due by Sept 1
- Reports must be made for every raffle held and submitted – Nonprofit Raffle Report form (ct-NRP-2)
- Reports must be submitted annually



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How to Obtain a Permit

- Complete application BOE-400-SPA
- Submit application

BOE Information Center

- website www.boe.ca.gov

Sales and Use Taxes: Exemptions and Exclusions – Pub 61



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Statutory restrictions on the conduct of raffles and money obtained from raffles

- 90% of all gross receipts generated from the sale of raffle tickets must be used by the organization for its charitable or beneficial purposes
- 10% of gross receipts may be used to procure prizes. Prizes may be obtained by using other sources of income and donations



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What is a Raffle?

- A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased.
- Awarding raffle prizes by use of a gaming machine are prohibited.



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What about charity poker games or monte carlo nights?

- These are illegal except for licensed gaming establishments

Raffle Information

- www.ag.ca.gov/charities/
- Website contains a number of publications that may be downloaded

Attend a FREE Tax Seminar for nonprofit and exempt organizations

- www.boe.ca.gov/sutax/nonprofitsched.htm