

# Understanding Charitable Solicitation and Contributions: Rules You Need to Know



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# Overview

The United States is the most generous country in the world:

- In May 2015, there were approximately 1,521,052 charitable organizations in the United States
- Approximately 91% of high net worth households give to charity. On average, high net worth donors gave \$25,509 to charity in 2015. By comparison, general population households gave \$2,520 on average. Charitable Giving Statistics, NPTrust, (2018) (<http://www.nptrust.org/philanthropic-resources/charitable-giving-statistics>).
- In 2017, the largest source of charitable giving came from individuals at \$286.65 billion, or 70% of total giving; followed by foundations (\$66.90 billion/16%), bequests (\$35.70 billion/9%), and corporations (\$20.77 billion/5%).
- In 2017, the majority of charitable dollars went to religion (31%), education (14%), human services (12%), grantmaking foundations (11%), and health (9%).



## Overview

This generosity, however, has attracted criminals who profit from dishonest fundraising practices. To curb the exploitation of generous citizens, a patchwork of state-by-state fundraising regulations exist to protect consumers and nonprofits from deceptive and unscrupulous fundraising practices.

List of U.S. Charity Offices:

<https://www.nasconet.org/resources/state-government/>



# Charitable Solicitation and Fundraising Rules



# Solicitation

- The legal term for fundraising is “charitable solicitation.”
- The definition of “charitable solicitation” is extremely broad. In most jurisdictions, a solicitation includes a direct or indirect request for a contribution with the understanding that it will be used for a charitable purpose, and likely includes all of the following methods:
  - Oral or written request.
  - The distribution, circulation, mailing, posting, or publishing of any advertisement or publication.
  - The making of any announcement to the press; over the radio; or by television, telephone or telegraph, concerning an event to which the public is requested to attend or make a contribution to.
  - The sale or attempted sale of any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission or any other thing; the use of the name of any charitable person in any offer or sale as an inducement or reason to purchase such item; or the making of any statement in connection with any such sale, that the whole or any part of the proceeds from such sale will be used for any charitable purpose.



# Solicitation

What about the internet?

- Charleston Principles:

- Every nonprofit that raises funds using the internet and social media should be familiar with the Charleston Principles. The Charleston Principles are guidelines on charitable solicitations using the internet, and were approved by the National Association of State Charity Officials in March 2001. See: <http://www.nasconet.org/wp-content/uploads/2018/04/Charleston-Principles.pdf>
  - In general, if a charity has a website with a passive “donate here” button, that, alone, is not enough to require solicitation registration in multiple states. However, if the charity responds to a donation from that “donate here” button with an active request for further donations, such as “thank you for your donation, please consider another donation...,” the charity has now solicited and is required to register.
- Be aware that that no matter what vehicle your nonprofit is using for fundraising (Twitter, Facebook, texting, phone calls, or old-fashioned snail mail and personal “asks”) if the underlying activity is solicitation – defined as *asking for a donation* – that's regulated activity in most states.
- Crowdfunding and giving days can trigger registration requirements in multiple states.



# Fundraising Regulations

Fundraising regulations generally come in 2 flavors:

- Charitable Solicitation Registration: To facilitate fundraising regulation, state authorities have traditionally required charities soliciting their residents for donations to register with its state charity office.  
<https://www.nasconet.org/resources/state-government/>.  
Registration allows the state to monitor who is soliciting within the jurisdiction, ensuring a responsible party can be contacted if complaints arise.
- Professional Fundraiser Registration: Many states also regulate the activity of paid fundraising consultants and require them to register with the designated state body. Paid fundraising consultants are usually called “Professional Fundraisers” or “Professional Solicitors.”



# #1: Charitable Solicitation

## #1: Fundraising by the Charity & Disclosure of Charitable Contributions



# #1: Charitable Solicitation

## Fundraising by the Charity:

- The general rule is: Charitable organizations must file a registration statement with the state's charity office (sometimes it's the Attorney General's Office; sometimes it's the Secretary of State's Office) prior to any charitable solicitation, and an annual return thereafter. Late fees apply so be sure to note renewal deadlines.
- Exceptions:
  - Certain jurisdictions have exemptions from this filing requirement for specific types of organizations.
  - Some jurisdictions do not have a filing requirement at all.



# #1: Charitable Solicitation

## Fundraising by the Charity:

- Common exemptions from charitable registration:
  - Charitable organizations that are composed ENTIRELY of volunteers (no paid staff) and receive less than \$X in annual contributions from the public. (NOTE: Some jurisdictions say \$25,000; some say \$5,000; some say \$50,000; some say “receive contributions from fewer than 10 people.”)
  - Religious organizations exempt from filing Form 990s
  - Accredited educational institutions/schools
  - Organizations that solely solicit contributions from its voting members
- There are others, so check state-by-state where your charitable organization “does business.”



## #1: Charitable Solicitation

- Each state's system of fundraising regulation is different.
- Nonprofits have long agonized over the complexity of complying with the existing national patchwork of inconsistent and ever changing laws.
- These laws, although attempting to protect the public from deceptive fundraising practices, is costly and burdensome for charities.



# #1: Charitable Solicitation

## State-by-State Approach:

- Pros:
  - Allows you to be more targeted in your approach to registration, registering only in jurisdictions where it's absolutely necessary (saving \$, and time in future years)
- Cons:
  - Each jurisdiction has its own form and its own laws
  - Requires a search for the forms, but now Google makes this easier and most jurisdictions have the forms on-line and/or an on-line registration process
  - Many state registration forms require signatures by more than one corporate officer, so allow time to collect the necessary signatures well in advance of filing deadlines
- Helpful resource: <https://www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration>



State	Requirements for Exemption	Statutory Citation	Fee
Alabama	Contributions of \$25,000 or less, and no hired fundraisers	Al. Code Sec. 13A-9-71,72	\$25
Alaska	Contributions of \$5,000 or less (excluding grants) OR contributions are from 10 persons or less, and no hired fundraisers. No paid officers.	AS 45.68.10,120 et seq. and AAC 12.010 et seq.	\$40
Arizona	No registration required	ARS 44-6551 to 44-6561	
Arkansas	Nonprofits raising less than \$25,000 per year with no paid staff or hired fundraisers	Ark. Code ann. 4-28-401	\$0
California	Any charity organized in another state that is not "doing business" or holding property in California	Cal. Govt. Code 12580 to 12596; Cal Code of Reg., Title 11 300 to 310, 999.1 to 999.4; Bus. & Prof. Code Sec. 17510 to 17510.85, 22930; Cal. Corp. Code Sec. 5250.	sliding scale based on revenue/assets
Colorado	Charities that do not raise or receive gross revenue over \$25,000 (excluding grants) OR contributions are from 10 persons or less.	Colo. Rev. Stat. 6-16-101	\$10
Connecticut	Contributions of \$50,000 or less, and no hired fundraisers	C.G.S. 21A-175, 190(d)	\$50
Delaware	No registration required		
D.C.	Total gross receipts of less than \$1,500, and no paid staff (including no paid fundraisers)	D.C. Code 44-1701, 1703	\$70
Florida	Contributions of \$25,000 or less, and no hired fundraisers.	F.S. 496.405, 406	sliding scale based on revenue
Georgia	Organizations with less than \$25,000 in annual revenue	O.C.G.A. 43-17-1, 9	\$35 initial; \$20 renewal
Hawaii	Contributions of \$25,000 or less, and no hired fundraisers	Hawaii Rev. Stat. 467B	\$0
Idaho	No registration required		
Illinois	No applicable exemption	760 ILCS 55/1 and 225 ILCS 460/1	\$15
Indiana	No registration required		
Iowa	No registration required		
Kansas	Contributions of \$10,000 or less	KSA 17-1760	\$35
Kentucky	No applicable exemption	K.R.S. 367.650	\$0
Louisiana	All organizations are exempt unless they hire fundraisers	La. R.S. 51: 1901 to 1904; La. Admin. Code, Title 16, Part III, Chpt. 5, Sec. 515	\$25
Maine	Charities that do not raise over \$10,000 OR contributions are from 10 persons or less, and no hired fundraisers. No paid officers.	9 M.R.S.A. Chpt. 385, Sec. 5001 to 5018	\$50 initial; \$25 renewal
Maryland	Contributions of \$25,000 or less, and no hired fundraisers. BUT: Orgs exempt because they receive less than \$25,000 in charitable contributions must file "Exempt Organization Fundraising Notice" Form SS-208.	Ann. Code, Bus. Reg. Art., Sec. 6-101	sliding scale based on revenue



Massachusetts	Contributions of \$5,000 or less OR contributions are from 10 persons or less, and no hired fundraisers.	Mass. Gen. Law, Chpt 12 & 68	\$50 initial
Michigan	Charities that receive \$25,000 or less annually, the organization has no hired fundraisers, and its financial statements are available to the public.	MCLA 400.27, 283	\$0
Minnesota	Contributions of \$25,000 or less, and no paid staff.	Minn. Stat. Chpt. 309	\$25
Mississippi	Contributions of \$4,000 or less, and no hired fundraisers.	Miss. Code Ann. Sec. 79-11-501	\$50
Missouri	All 501(c)(3) organizations are exempt	RSMo. Sec. 407.450	\$15
Montana	No registration required		
Nebraska	No registration required		
Nevada	No applicable exemption	N.R.S. 82A.110	\$0
New Hampshire	No applicable exemption	R.S.A. 7:19 to 7:32-I	\$25 initial; \$75 renewal
New Jersey	Contributions of \$10,000 or less, and no paid staff (including no hired fundraisers)	NJSA 45:17A	sliding scale based on contributions
New Mexico	No applicable exemption	NMSA 22 Sec. 57-22-1	\$0
New York	Contributions of \$25,000 or less, and no hired fundraisers	NY EXEC § 172-a	\$25
North Carolina	Contributions of \$25,000 or less, and no hired fundraisers. No paid officers/trustees/directors.	Chapter 131 F	sliding scale based on contributions
North Dakota	No applicable exemption	N. Dak. Century Code, Chpt. 50-22	\$25 initial; \$10 renewal
Ohio	Contributions of \$25,000 or less, and no hired fundraisers.	O.R.C. 1716	sliding scale based on contributions
Oklahoma	Organizations raising less than \$10,000.	Title 18 O.S. Sec. 552	\$65 initial; \$15 renewal
Oregon	No applicable exemption	Ore. Rev. Stat. 128.610 to 129	sliding scale based on revenue
Pennsylvania	Contributions of \$25,000 or less, and no paid staff.	10 P. S. 162.1	sliding scale based on contributions
Rhode Island	Contributions of \$25,000 or less, and no hired fundraisers.	RI ST 5-53.1-3	\$90
South Carolina	Contributions of \$20,000 or less and no paid staff (including no hired fundraisers)	S. Carolina Code or Laws Sec. 33-56-50	\$50
South Dakota	No registration required		
Tennessee	Contributions of \$30,000 or less.	T.C.A. 48-101-502, 504, 506	\$50 initial; renewal - sliding scale based on revenue
Texas	No registration required		
Utah	No applicable exemption	U.C.A. 13-22-8	\$75
Vermont	No registration required		



Virginia	Contributions less than \$5,000 over 3 preceding years, and no hired fundraisers.	Code of Virginia Sec. 57-48 to 57-69	\$100 plus sliding scale based on contributions
Washington	Contributions of \$25,000 or less, and no hired fundraisers, paid staff, or paid officers/trustees/directors.	RCW Chpt. 19.09	\$60
West Virginia	Contributions of \$25,000 or less, and no hired fundraisers.	Sec. 29-19-5	\$15 or \$50 based on revenue
Wisconsin	Contributions of \$5,000 or less, and no paid staff (including no hired fundraisers).	Wis. Stat. 202.12	\$54
Wyoming	No registration required		



# #1: Charitable Solicitation

## Unified Registration Statement:

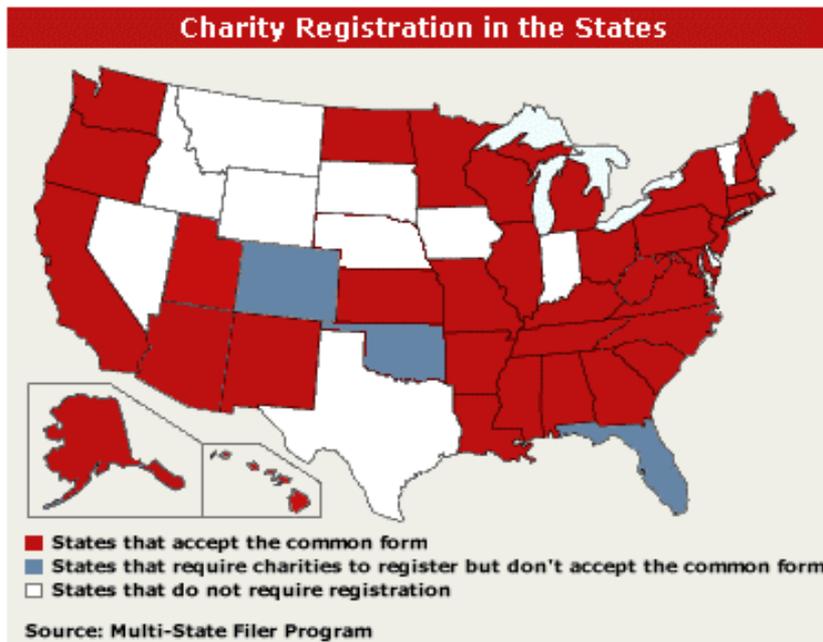
- What is it?: The Unified Registration Statement (URS) represents an effort to consolidate the information and data requirements of all states that require registration of nonprofit organizations performing charitable solicitations within their jurisdictions. The effort is organized by the National Association of State Charities Officials and the National Association of Attorneys General, and is one part of the Standardized Reporting Project, whose aim is to standardize, simplify, and economize compliance under the states' solicitation laws.
- **The URS is an *alternative to filing*** all of the respective registration forms produced by each of the cooperating states. In those states, a registering nonprofit may use *either* the state form *or* the URS. Thus, the URS proves most useful to nonprofits soliciting regionally or nationally and, therefore, subject to the registration laws of *multiple* states. **But the URS may be used by any nonprofit that is registering in a state accepting it.**
- <http://www.multistatefiling.org/>



# #1: Charitable Solicitation

## Unified Registration Statement:

**Which States Require Registration of Charitable Soliciting Organizations and Accept the URS?**





# #1: Charitable Solicitation

## Unified Registration Statement:

<http://www.multistatefiling.org/>

- Required Supplementary Forms
  - Arkansas
  - California
  - District of Columbia
  - Georgia
  - Maine
  - Minnesota
  - Mississippi
  - North Carolina
  - North Dakota
  - Tennessee
  - Utah
  - Washington
  - West Virginia
  - Wisconsin
- Appendix
  - Summary of Regulations for the Cooperating States
  - Other States that Require Registration
  - Annual Financial Reporting



# #1: Charitable Solicitation

## Unified Registration Statement:

- Pros:
  - One form
- Cons:
  - Not all jurisdictions accept it
  - Some of the jurisdictions that accept it still require supplemental forms with additional information
  - Does not provide you with information about whether your organization is specifically exempt from filing in each jurisdiction – and once you register, it’s difficult to “unring the bell”



## Disclosure Statements - State

- In addition to registration requirements, several states also require "disclosure statements" that alert potential donors that the nonprofit is registered in the state. The disclosure statements must be included in solicitation materials, such as annual appeal letters and letters confirming pledges.
- For state-by-state info on disclosure statements:  
<http://www.perlmanandperlman.com/fundraising-compliance/charts-resources/>



# Disclosure Statements - State

Examples:

- Minnesota: Minn. Stat. § 309.556, Subd. 1

The following information must be clearly disclosed in any written charitable solicitation:

- the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- the tax deductibility of the contribution; and
- a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.

- Ohio: O.R.C. § 1716.10

Every charitable organization that directly solicits contributions in this state must make the following disclosures at the point of solicitation:

- The name of the charitable organization and the city of the principal place of business of the charitable organization;
- If the charitable organization has not received a determination letter from the Internal Revenue Service that is currently in effect, stating that the organization is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, and the particular charitable purpose or purposes to be advanced with the funds raised.

- Illinois: 225 ILCS 460/15(b)

If a charitable organization engages in any public solicitation and purports to relate the purpose or purposes for which the funds are solicited, such purposes must be fully and accurately identified to the prospective donor. If a charitable organization whose purposes include the rendering of noneducational program services intends to expend or budget more than 50% of its program service expenditures for informing or educating the public, and the funds being solicited will be used for such purpose, the donor at his or her request must be told that a primary use of the program funds will be for public education.



# Disclosure Statements - State

Examples (continued):

- New York: McKinney's Executive Law § 174-b  
Any solicitation, by any means, including oral and written solicitations, by or on behalf of a registered charitable organization, must include:
  1. A statement that upon request, a person may obtain from the organization or from the attorney general, a copy of the last financial report filed by the organization with the attorney general. Such statement shall specify the address of the organization and the address of the attorney general, to which such request should be addressed and in the case of a written solicitation, must be placed conspicuously in the material with print no smaller than ten point bold face type or, alternatively, no smaller than the size print used for the most number of words in the statements.
  2. A clear description of the programs and activities for which it has requested contributions or a statement that, upon request, a person may obtain from the organization such a description.
  3. If any charitable organization makes contributions to another organization which is not its affiliate, the solicitation must include a statement that such contributions have been made and that a list of all organizations which have received contributions during the past twelve months from the soliciting organization may be obtained from that organization provided, however, a united way, federated fund or incorporated community appeal, by or through which a donation is merely transferred to a charity selected by the donor, need not include such donor selected organizations in the list. The term "affiliate" includes any chapter, branch, auxiliary, or other subordinate unit of any registered charitable organization, howsoever designated, whose policies, fund raising activities, and expenditures are supervised or controlled by such parent organization.

The written disclosure must be placed conspicuously in the materials with print no smaller than 10 point bold face type or, alternatively, no smaller than the size print used for the most number of words in the solicitation.

- California: No disclosure requirements for written solicitations by charities not using professional solicitors.



# Disclosure Statements - Federal

- A nonprofit organization should provide a written disclosure (sometimes called a “donation acknowledgement”) to a donor when the nonprofit organization receives contributions of \$250 or more, and **MUST** provide a written disclosure when the donor makes a payment exceeding \$75 partly as a contribution and partly as a compensation for goods and services provided by the organization (this is called a *quid pro quo* contribution). See: I.R.C. § 6115(a)(1)-(2)(2013); See also IRS Pub. 1771 at 11 (2013) (<http://www.irs.gov/pub/irs-pdf/p1771.pdf>).
- The written disclosure should contain the following:
  - Name of organization
  - Amount of cash contribution
  - Description (but not the value) of non-cash contribution)
  - Statement that no goods or services were provided by the organization in return for the contribution, if that was the case
  - Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution
  - If it’s a *quid pro quo* contribution, a notification to the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of money (and the fair market value of property other than money) contributed by the donor over the value of goods or services provided by the organization



## **Disclosure Statements - Federal**

A penalty is imposed on charities that do not meet the written disclosure requirement when receiving *quid pro quo* contributions. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. An organization may avoid the penalty if it can show that failure to meet the requirements was due to reasonable cause.



# Disclosure Statements – Federal Contributions with Special Rules

NOTE: The IRS has separate, specific requirements for vehicles, land, buildings, and stock.

- Vehicles: See IRS Publication 4302 and Form 1098-C
- Land/Buildings: Beware of UBIT, Form 8283, and IRS Publications 526 & 561
- Stock: Beware of Rev. Rul. 78-197 (1978) (<https://www.pgdc.com/pgdc/story/rev-rul-78-197>), 2003 PLR (<https://www.irs.gov/pub/irs-wd/0321010.pdf>), and IRS Publication 526



# Disclosure Statements - Federal

## Beware of in-kind donations:

- An in-kind donation typically comes in the form of goods or services. Examples of in-kind donations include individuals providing school supplies to nonprofit organizations that serve at-risk youth, a gift card for a silent auction, or works of art given to a museum.
- Nonprofit organizations should provide donors who give in-kind donations a receipt similar to one provided to an individual who gives a cash donation. The only difference is that the nonprofit organization is not expected to list the actual value of the in-kind donation. However, it is important to describe what was donated.
- Example: “Thank you for your contribution of 5 gift cards with a face value of \$100. Charity received this donation on [date]. No goods or services were provided in exchange for this contribution.” or “Thank you for your contribution of a used oak baby crib and matching dresser....”
- The donor is responsible for valuing the goods or services provided in non-cash contributions and reporting that amount on their own tax return if they are seeking a charitable deduction.



# Disclosure Statements – Federal Non-501(c)(3)

What if the nonprofit corporation doesn't have 501(c)(3) status??

- If the organization is not eligible to receive tax-deductible donations (i.e., is NOT a 501(c)(3)), solicitations on behalf of that organization must contain an express and easily recognizable statement that donations are not deductible as charitable contributions for federal income tax purposes. While a good faith effort to meet the foregoing will suffice, the IRS has provided safe harbor rules for complying with this requirement. See: IRS Notice 88-120 (1988) (<https://www.irs.gov/charities-non-profits/notice-88-120-1988-2-cb-454>); I.R.C. § 6113(a) (2013).
- To meet the safe harbor in a written solicitation, the statement must:
  - Be in at least the same size type as the primary message and readily visible.
  - Be on the same page, and in close proximity to, the request for donations.
  - Be the first sentence of a paragraph, or constitute the entire paragraph.
  - Be worded as one of the following:
    - ✓ “Contributions or gifts to [name of organization] are not tax deductible as charitable contributions for Federal income tax purposes.”
    - ✓ “Contributions or gifts to [name of organization] are not tax deductible.”
    - ✓ “Contributions or gifts to [name of organization] are not tax deductible as charitable contributions.”
- For oral solicitations, the same statement must be made in close proximity to the request for contributions (i.e., during the same telephone conversation and by the same solicitor).



# Donors' Recordkeeping and Substantiation Requirements



**GENERAL RULE:** Donors are allowed to deduct the difference between the value of the amount contributed and the value of the goods and services received in return from the nonprofit organization.



# Exception 1

## Token Exception:

- Insubstantial goods or services a charitable organization provides in exchange for contributions do not have to be described in the acknowledgment.
- Goods and services are considered to be insubstantial if the payment occurs in the context of a fundraising campaign in which a charitable organization informs the donor of the amount of the contribution that is a deductible contribution, and:
  - the fair market value of the benefits received does not exceed the lesser of 2 percent of the payment or \$106; or
  - the payment is at least \$53, the only items provided bear the organization's name or logo (e.g., calendars, mugs, or posters), and the cost of these items is within the limit for "low-cost articles," which is \$10.60.
  - NOTE: These dollar amounts are for 2016. Guideline amounts are adjusted for inflation. Contact IRS Exempt Organizations Customer Account Services at (877) 829-5500 for annual inflation information.
- Example: If a charity gives a coffee mug bearing its logo and costing the organization \$10.60 or less to a donor who contributes \$53 or more, the organization may state that no goods or services were provided in return for the \$53 contribution. The \$53 is fully deductible.



## Exception 2

### Membership Benefits Exception:

- An annual membership benefit is also considered to be insubstantial if it is provided in exchange for an annual payment of \$75 or less and consists of annual recurring rights or privileges, such as:
  - Free or discounted admissions to the charitable organization’s facilities or events
  - Discounts on purchases from the organization’s gift shop
  - Free or discounted parking
  - Free or discounted admission to member-only events sponsored by an organization, where a per-person cost (not including overhead) is within the “low-cost articles” limits
- Example: If a charity offers a \$75 annual membership that allows free admission to all of its weekly events, plus a \$20 poster, a written acknowledgement need only mention the \$20 value of the poster, since the free admission would be considered insubstantial and, therefore, would be disregarded.



## Exception 3

### Intangible Religious Benefits Exception:

- If a religious organization provides only “intangible religious benefits” to a contributor, the acknowledgment does not need to describe or value those benefits. It can simply state that the organization provided intangible religious benefits to the contributor.
- “Intangible religious benefits” are benefits provided by a tax-exempt organization operated exclusively for religious purposes, and are not usually sold in commercial transactions outside a donative (gift) context.
- Examples include admission to a religious ceremony and a *de minimis* tangible benefit, such as wine used in a religious ceremony. Benefits that are not intangible religious benefits include education leading to a recognized degree, travel services, and consumer goods.



## Donor Substantiation

- A separate acknowledgment may be provided for each single contribution exceeding the threshold, or one acknowledgment, such as an annual summary, may be used to substantiate several single contribution exceeding the threshold. There are no IRS forms for the acknowledgment. Letters, postcards, or computer-generated forms with the above information are acceptable.
- Recipient organizations typically send written acknowledgments to donors no later than January 31 of the year following the donation.



## **#2: Professional Fundraisers**

#2: Fundraising by a Professional



## #2: Professional Fundraisers

### Fundraising by a Professional:

- Nonprofits hiring outside consultants to provide assistance with fundraising should be familiar with state laws that may require the registration with the state charity office prior to any solicitation activity.
- While registration of the consultant may not be the nonprofit's direct obligation, it is prudent to verify that your fundraising consultant is registered, if required by state law.



## #2: Professional Fundraisers

### Fundraising by a Professional:

- Fundraising professionals often go by the following names:
  - Professional Fundraiser
  - Professional Solicitor
  - Fundraising Counsel
  - Grant Professional
- The general rule: If a person is a.) soliciting b.) on behalf of a charity c.) and being paid to do so, he/she is a fundraising professional and must register with the state charity office prior to any solicitation activity. This rule generally applies to independent contractors/consultants, not employees.



## #2: Professional Fundraisers

### Fundraising by a Professional:

- This general rule applies to grant writers as much as it applies to phone solicitors in call-centers.
- What commonly needs to be filed:
  - Registration Statement
  - Solicitation Notice
  - Written authorization from the charity, usually in the form of a contract
  - Surety bond (usually in the amount of \$25,000) – some jurisdictions waive this requirement if the professional is not going to have custody and/or control of the charitable contributions
  - Solicitation Campaign Report Form within 90-days of the close of the fundraising “campaign”
  - Fee



## #2: Professional Fundraisers

Fundraising by a Professional: Be sure you hire a reputable professional

- Federal Trade Commission: <https://www.ftc.gov/tips-advice/business-center/guidance/raising-funds-what-you-should-know-about-hiring-professional>
- Fundraising Fables: Retaining Fund Development Professionals: <http://fundraisinggoodtimes.com/2014/07/21/fundraising-fables-retaining-fund-development-professionals/>
- Check with your state's charity office to get more information about the fundraising professional and to determine if he/she is properly registered. <http://www.nasconet.org/resources/state-government/>



## #2: Professional Fundraisers

### Fundraising by a Professional:

- It is not considered ethical to compensate fundraising professionals with a commission, or a percentage of contributions, or funds raised.
- See:
  - Association of Fundraising Professionals:  
<http://www.afpnet.org/Ethics/EthicsArticleDetail.cfm?ItemNumber=734>
  - Council for Advancement and Support of Education:  
[http://www.case.org/Samples\\_Research\\_and\\_Tools/Principles\\_of\\_Practice/CASE\\_Statements\\_on\\_Compensation\\_for\\_Fundraising\\_Performance.html](http://www.case.org/Samples_Research_and_Tools/Principles_of_Practice/CASE_Statements_on_Compensation_for_Fundraising_Performance.html)

# #2: Professional Fundraisers

## Watch out for “inadvertent” professional fundraising: Cafepress

NARROW BY DEPARTMENT

POPULAR PRODUCTS

- Charity T-Shirts
- Long Sleeve T-Shirts
- Sweatshirts & Hoodies
- Mugs
- Water Bottles
- Tote Bags
- Greeting Cards
- Jewelry
- Bedding

T-SHIRTS & CLOTHING

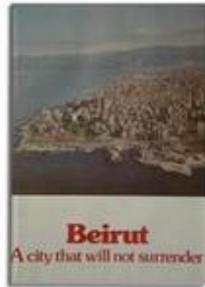
- Charity Men's T-Shirts sale!
- Women's T-Shirts sale!
- Kids Clothing
- Baby Clothing top seller!

SORT RELEVANCE

SHOW 28

GO TO: PAGE 1

NEXT PAGE »



Save Beirut Rectangle Magnet

Refrigerator Magnet

\$5



NCL Zip Hoodie

Men's Zip Hoodie

\$54.50



The American Job For Jack D...

16oz Drinking Glass

\$18



HEARTS Bumper Sticker

Vinyl Sticker

\$5 **\$3.99**



Watch out for  
“bad” professional  
fundraising:  
Savers

## Savers under the scrutiny of Attorney General



*Storefront of the E. Lake St. Savers, one of 330 stores owned by conglomerate Savers LLC. Their operations in Minnesota are under scrutiny by the Minnesota Attorney General. (Photo by Margie O'Loughlin)*

**By MARGIE O'LOUGHLIN**

On Nov. 24, Minnesota Attorney General Lori Swanson issued a compliance report questioning the relationship between Savers retail stores and the local non-profits they partner with. These include Vietnam Veterans of America, Disabled Veterans of America, Epilepsy Foundation of Minnesota, Lupus Foundation of Minnesota, Courage Kenney Foundation and True Friends.



NEWS AND ANALYSIS

DECEMBER 12, 2014

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## Report Slamming Savers LLC Prompts Pivot in Handling of Donated Goods

By Michael Anft

Several nonprofits that use for-profit companies to collect donated goods say that they will look more closely at such arrangements, following a Minnesota [decision](#) that called for Savers LLC to change its business practices.

Minnesota's Attorney General's Office filed a [compliance report](#) in November stating that "Savers mixes its identity with that of the charities and fails to disclose the amount of a donor's donation that is received by the charity versus the amount that is retained by Savers, a for-profit corporation."

The Seattle-based company earns more than \$1-billion annually from sales of donated

## #2: Professional Fundraisers

Watch out for “bad” professional fundraising: Integral Resources

# Phone solicitor Integral Resources to pay \$105,000 to Ohio over charity calls

A Massachusetts-based professional phone solicitor will pay \$105,000 to settle a suit by Ohio's attorney general that it misled Ohioans about calls it made for nonprofits.

Ohio Attorney General Mike DeWine announced the settlement today with Integral Resources Inc.

DeWine said Integral's employees misled Ohioans into believing they were being called by a volunteer from the charity, rather than a professional solicitor, and misled them about the percentage of collected dollars that would go to the cause.



Ohio Attorney General Mike DeWine

*Plain Dealer file*



# Legislative Developments Affecting Charitable Contributions



## *Tax Cuts and Jobs Act of 2017*

How will the passage of the *Tax Cuts and Jobs Act of 2017* (hereinafter “the Act”) affect American generosity?



# **Tax Reform's Potential Impact on Nonprofits and Charitable Giving: §63**

The Tax Cuts and Jobs Act eliminated many individual income tax deductions. One that was not eliminated, and was actually somewhat enhanced, is the deduction for charitable contributions.



# Tax Reform's Potential Impact on Nonprofits and Charitable Giving: §63

- The reason for the drop is that the Act reduces the tax savings from charitable donations, effectively raising the “price” of giving as people shift to lower tax brackets.
- In general, the charitable tax deduction subsidizes private giving by reducing the out-of-pocket cost of making a contribution. For example, a taxpayer in the 28% tax bracket who gives \$100 to a favorite charity cuts his or her tax bill by \$28 with a charitable tax deduction, in effect reducing the out-of-pocket cost of the donation to \$72. Emerging Issues in Philanthropy, The Urban Institute (<http://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/310256-The-Cost-of-Giving-How-Do-Changes-in-Tax-Deductions-Affect-Charitable-Contributions-.PDF>).
- After the Act, as people fall into new lower tax brackets, the charitable tax deduction subsidy is also reduced.



# Tax Reform's Potential Impact on Nonprofits and Charitable Giving: §63

- High-income households, who effectively donate the most to charities, will see the smallest impact on the charitable tax deduction subsidy under the Act. Michael Hicks, Relax, Tax Reform Won't Hurt Charitable Giving, IndyStar (Jan. 8, 2018) (<https://www.indystar.com/story/opinion/2018/01/08/hicks-relax-tax-reform-wont-hurt-charitable-giving/1013117001/>).
- For this reason, the wealthier taxpayers' use of the charitable deduction is less likely to be affected by the Act than those taxpayers in lower tax brackets.



## **Tax Reform's Potential Impact on Nonprofits and Charitable Giving: §63**

- BUT...it is also important to note that individuals who make donations motivated by their belief in the work done by nonprofits, not the value of the charitable tax deduction subsidy, likely will give regardless of the reduction or loss of a tax deduction.
- Fundraising professionals do not anticipate the reduction in giving will be vast – most believe donors' dedication to the “cause” and “relationships” built over time will mitigate the reduction.



# Tax Reform's Potential Impact on Nonprofits and Charitable Giving: §63

- AND...one of the beneficial provisions in the Act for charitable giving is the increase in total deduction an individual can utilize.
- Previous to the Act, contributions to public charities were deductible up to 50% of the taxpayer's adjusted gross income (computed without regard to net operating loss carrybacks), and contributions to certain private foundations, veteran's organizations, fraternal societies, and cemetery organizations were limited to 30% of the taxpayer's adjusted gross income (computed without regard to net operating loss carrybacks).
- After the Act, contributions to public charities are deductible up to 60% of the taxpayer's adjusted gross income – which is up 10%. The 30% cap remains in effect for certain private foundations, veteran's organizations, fraternal societies, and cemetery organizations. The 60% AGI limitation is effective for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026.



# Capital Gain on Real Property

- Contributions of capital gain property to public charities are deductible up to 30% of the taxpayer's adjusted gross income. It's important to note that the 30% limit applies when the taxpayer deducts the fair market value of capital gain property contributed. If the taxpayer elects to reduce the fair market value by the long-term capital gain the taxpayer would have recognized had they sold the capital asset (thus reducing to cost basis), then the contribution would be subject to the 50% limitation instead.
- Contributions of capital gain property to certain private foundations, veteran's organizations, fraternal societies, and cemetery organizations are deductible up to 20% of the taxpayer's adjusted gross income.



## **Estate and Gift Tax: § 2010**

- The estate and gift tax creates a strong incentive for the super-wealthy to donate their wealth to charity and form charitable trusts, rather than to pay tax.
- Doubling the estate and gift tax exemption (from \$5.5 million to \$11 million) under the Act will mean that far fewer wealthy taxpayers will incur estate and gift tax when leaving or gifting money to their heirs. And, those who still are required to pay estate and gift taxes will have more of their transferred wealth exempted from taxation.



## Estate and Gift Tax: § 2010

- The higher exemption is expected to reduce charitable contributions by about \$4 billion per year. The New Tax Law and Its Impact on Nonprofits-Part 1, NEO Law Group, ((Jan. 7, 2018), (<http://www.nonprofitlawblog.com/tax-cuts-and-jobs-act-new-tax-law-impact-on-nonprofits-fundraising/>)).
- When the estate tax was repealed in 2010, charitable bequests dropped by 37% from 2009 numbers, and then rose by 92% in the following year (2011) when the estate tax was reinstated. Keep the Estate Tax, The New York Times, (Oct. 25, 2017), (<https://www.nytimes.com/2017/10/25/opinion/estate-tax.html?mtrref=www.google.com&gwh=96D91C08E66DDA A2691ADF0C19ABBE05&gwt=pay&assetType=opinion>)).



# Distributions from IRAs

## What is a Qualified Charitable Distributions (“QCD”)?

- A QCD is a direct transfer of funds from your IRA, payable to a qualified charity. QCDs can be counted toward satisfying your required minimum distributions for the year, as long as certain rules are met.
- In addition to the benefits of giving to charity, a QCD excludes the amount donated from taxable income, which is unlike regular withdrawals from an IRA. Keeping your taxable income lower may reduce the impact to certain tax credits and deductions, including Social Security and Medicare.
- Also, QCDs don't require that you itemize, which due to the recent tax law changes, means you may decide to take advantage of the higher standard deduction, but still use a QCD for charitable giving.
- See: <https://www.fidelity.com/building-savings/learn-about-iras/required-minimum-distributions/qcds>



# Distributions from IRAs

## Can I Make a QCD?

- While many IRAs are eligible for QCDs—Traditional, Rollover, Inherited, SEP (inactive plans only), and SIMPLE (inactive plans only)—there are requirements:
  - You must be 70½ or older to be eligible to make a QCD.
  - QCDs are limited to the amount that would otherwise be taxed as ordinary income. This excludes non-deductible contributions.
  - The maximum annual amount that can qualify for a QCD is \$100,000. This applies to the sum of QCDs made to one or more charities in a calendar year. (If, however, you file taxes jointly, your spouse can also make a QCD from his or her own IRA within the same tax year for up to \$100,000.)
  - For a QCD to count towards your current year's RMD, the funds must come out of your IRA by your RMD deadline, generally December 31.
- Any amount donated above your RMD does not count toward satisfying a future year's RMD.
- Funds distributed directly to you, the IRA owner, and which you then give to charity do not qualify as a QCD.
- Under certain circumstances, a QCD may be made from a Roth IRA. Roth IRAs are not subject to RMDs during your lifetime, and distributions are generally tax-free. Consult a tax advisor to determine if making a QCD from a Roth is appropriate for your situation.
- See: <https://www.fidelity.com/building-savings/learn-about-iras/required-minimum-distributions/qcds>



# Distributions from IRAs

## What Kind of Charities Qualify?

- The charity must be a 501(c)(3) organization, eligible to receive tax-deductible contributions. Generally, this means “garden variety” public charities (509(a)(1)s and 509(a)(2)s).
- Some charities do not qualify for QCDs:
  - Private foundations
  - Supporting organizations: i.e., charities carrying out exempt purposes by supporting other exempt organizations, usually other public charities
  - Donor-advised funds, which public charities manage on behalf of organizations, families, or individuals
- See: <https://www.fidelity.com/building-savings/learn-about-iras/required-minimum-distributions/qcds>



# Distributions from IRAs

## Tax Reporting Requirements:

- A QCD is reported as a normal distribution on IRS Form 1099-R for any non-Inherited IRAs. For Inherited IRAs or Inherited Roth IRAs, the QCD will be reported as a death distribution. Itemization is not required to make a QCD. While the QCD amount is not taxed, you may not then claim the distribution as a charitable tax deduction.
- A QCD is not subject to withholding. State tax rules may vary, so for guidance, consult a tax advisor.
- When making a QCD, you must receive the same type of acknowledgement of the donation that you would need to claim a deduction for a charitable contribution.
- A tax advisor can help you determine if both your IRA and charity qualify for QCDs.
- See: <https://www.fidelity.com/building-savings/learn-about-iras/required-minimum-distributions/qcds>



## Food Inventory

An often-missed tax incentive is an increased deduction for qualified donations of food inventory, which was created to encourage taxpayers that hold food as part of their regular inventory to contribute excess or unsaleable wholesome food to people in need. 2016 changes to the tax law created by the Protecting Americans from Tax Hikes (PATH) Act have enhanced this deduction and removed the sunset provisions, effectively making the incentive permanent until or unless it is modified by future legislation.

See: <https://www.bonadio.com/news-events/articles/charitable-contributions-food-inventory%E2%80%93tax-incentive-holiday-spirit>.



# Food Inventory

## Special rules for contributions of food inventory:

The IRC Sec. 170(e)(3)(C) enhanced deduction is available for certain qualified contributions of food inventory, as follows:

- The property will be used for the care of the ill, needy, or infants
- The donation is of food that is apparently wholesome food
- The donee must be a tax-exempt IRC Sec. 501(c)(3) organization (other than a private foundation)
- Donee's use of the property must be related to the organization's tax-exempt purpose or function
- Donee may not require or receive money, property, or services for the transfer of the property to the ultimate needy recipients
- Donee must furnish to the taxpayer a written statement certifying that the property will be used in the care of the ill, needy, or infants, and that it will not be transferred for money, property, or services
- If the property is regulated by the Federal Food, Drug and Cosmetic Act, it must meet all standards under that act as of the date of transfer and for the 180 days prior
- The deduction is limited to 15% of the donating entities' taxable income in the year of the contribution, calculated without regard to certain items.

Importantly, the enhanced deduction for food inventory is not limited to corporate donors, but rather is available to all types of entities. The entity must hold the food as part of its trade or business inventory; for example, farms, cooperatives, grocery stores, or restaurants (Sec. 170(e)(3)(A)).

See: <https://www.bonadio.com/news-events/articles/charitable-contributions-food-inventory%E2%80%93tax-incentive-holiday-spirit>.



# Food Inventory

## Timing of deduction:

Charitable contributions are generally deductible in the year actually paid. However, in the case of a corporation using an accrual method of accounting, a deduction is also allowed if the Board of Directors authorizes the contribution during the taxable year, and payment is made within 3.5 months of year-end (Internal Revenue Code (IRC) Sec. 170(a)(2)).

See: <https://www.bonadio.com/news-events/articles/charitable-contributions-food-inventory%E2%80%93tax-incentive-holiday-spirit>.



## **Contemporaneous Written Acknowledgement of Contributions:**

A donor wishing to deduct a charitable contribution of \$250 or more must obtain a contemporaneous written acknowledgement from the organization receiving the donation. Previously, if the donor failed to retain a copy of the acknowledgement, the donor could attempt to substantiate his/her donation by using the charity's Form 990, Schedule B, or a bank statement.



# UBIT: When Contributions Create Taxable Income for the Organization

## Unrelated Business Income and Taxing it:

**Definition.** There are three pillars to identifying a business activity as generating unrelated business income. An “unrelated trade or business” is any activity that:

- (i) constitutes a trade or business or a facet of a trade or business,
- (ii) is regularly carried on, and
- (iii) is not substantially related to an organization’s exempt purposes.

UBI can result in income tax payable to the IRS by the charity.

## Unrelated Business Income and Taxing it:

### **What is a “Trade or Business?”:**

- Under Section 513, a “trade or business” includes any activity that is carried on for the production of income from the sale of goods or the performance of services.
- A trade or business activity must be operated for profit or at least have a profit motive.
- A trade or business activity does not lose that characterization simply because it is carried on as part of a larger activity or complex of activities that may be related to the EO’s exempt purpose.
- Policy of preventing unfair competition between exempt and non-exempt organizations carrying on the same business.

## Unrelated Business Income and Taxing it:

### **What is a “Regularly Carried On?”:**

- Not surprisingly, this term refers to the frequency and continuity of an activity. Treas. Reg. § 1.513-1(c).
- If the activity is carried on with the frequency and continuity of a commercial enterprise, it will be considered “regularly carried on.” Again, the policy of preventing unfair competition is cited.
- The regulations also examine the time span in which activities are carried out. Treas. Reg. § 1.513-1(c)(1).
  - Year round?
  - Sporadic?
  - Compared to commercial business – is it also seasonal/intermittent?



# UBIT

## Unrelated Business Income and Taxing it:

### **What is “Substantially Related?”:**

- A trade or business is related to an exempt purpose if it has a causal relationship with the accomplishment of the EO’s exempt purpose. To avoid UBIT treatment, the causal relationship must be substantial and “important.” Whether this relationship exists depends on the facts and circumstances of each case.
- If activities are inherently non-charitable, or if they are activities normally carried on by for-profit businesses, the activity may be considered as related if it is carried on at below-market costs and or is provided to other charities or individuals who are proper objects of charity.
- The scale of the activity can also matter. Assume that an EO carries out an activity that is seemingly related to the EO’s purpose. If the activity is conducted on a significantly larger scale than is necessary to accomplish the EO’s exempt purposes, then the portion the activity that is not necessary for accomplish those exempt purposes will generate UBTI. Treas. Reg. § 1.513-1(d)(3).



# UBIT

## Unrelated Business Income and Taxing it:

**Statutory Exceptions.** Some activities are statutorily excepted from the definition of an unrelated trade or business. Treas. Reg. § 1.513-1(e). A sample of these activities are (see IRS Publication 598 for a more detailed description):

- Volunteer workforce: A trade or business in which substantially all the work is performed for the organization without compensation.
- Convenience of members: As to 501(c)(3) organizations and state colleges and universities, an activity that is carried on primarily for the convenience of the organization's members.
- Selling donated merchandise: The selling of merchandise, substantially all of which was received by the EO as contributions or gifts.
- Certain bingo games.
- Qualified trade show activity.
- Qualified public entertainment activity (i.e., a fair or exposition promoting agriculture and education)
- Qualified sponsorship activities



# UBIT

## Unrelated Business Income and Taxing it:

### **Other Important Rules and Exceptions:**

- S Corporation Income. All income from ownership of S corporation stock is UBIT, regardless if the S corporation business is related or unrelated. Code § 512(e).
- Section 512(b)(1): UBIT does not include dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued under a loan agreement, annuities, and deductions with respect to all such amounts.
- Section 512(b)(2): UBIT does not include royalties, however measured, and all deductions with respect to royalties.



# UBIT

## Unrelated Business Income and Taxing it:

### **Other Important Rules and Exceptions:**

- Section 512(b)(3): UBIT does not include rents from real property or rents from personal property leased in connection with the real property if the rents attributable to the personal property are incidental to the total rents under the lease.
- Note: there are exceptions, and exceptions to the exceptions.
- Example: Debt Financed Income is NOT UBIT even though, by definition, debt financed income is a passive investment held to produce income. See materials, IRC Section 514, and IRS Publication 598.



# UBIT

## Unrelated Business Income and Taxing it: Why do we even care?

- Too much UBIT can jeopardize an EO's tax-exempt status.
- It can require tax-exempt organizations to pay tax. But, incurring UBIT liability isn't inherently bad:
  - If you generate "unrelated business income" per the IRS rules, you should report this income and directly connected expenses on IRS Form 990-T. Subsequently, you may owe some taxes on that income.
  - However, since you only pay taxes on the activity's net income after you subtract allowed expenses ("directly connected expenses") from the gross reported income, in many cases, generating unrelated business income results in no tax liability.
  - Many nonprofits that have been at this for a long time simply consider the tax liability on their UBI as a cost of doing business. If your nonprofit incurs unrelated business income, you're in good company. In 1995, more than 36,000 exempt organizations reported gross unrelated business income. This number has no doubt risen in the past five years.
- A nonprofit that expects to incur \$500 or more in UBIT liability must make estimated tax payments on a quarterly basis. Large nonprofits that generate substantial unrelated business income may be subject to the Electronic Federal Tax Payment System (EFTPS).



# Unrelated Business Income: § 511

- The calculation of UBI has changed under the Act.
- The Act disallows exempt organizations from using business losses from one economic activity and deducting them from the gains of another economic activity. In essence, losses from one unrelated trade or business will only be available to offset income from that activity.
- Organizations can, however, use one year's losses on the same unrelated business to reduce taxes on another year's operation of the same unrelated business.
- This change will likely result in many exempt organizations paying more tax on UBI.



## **Unrelated Business Income: § 511**

- Changes in the corporate tax rate will apply to taxation of UBI.
- Previously, the tax rate was 15% on the first \$50,000 of taxable income, gradually increasing to 35%.
- Under the Act, UBI is subject to a flat rate 21% in tax. Exempt organizations with net taxable UBI below approximately \$91,000 will experience a tax increase rather than a decrease.

# Thank you!!!



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