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State Registration Requirements for Nonprofit Fundraising

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The following discussion is provided for informational purposes only and is not intended to serve as legal advice. For advice on how state fundraising registration requirements apply to your organization, consult your attorney.

Question: Fundraising in all 50 states via (1) the Internet and (2) mailed solicitations. What do we need to know? Do we need solicitation permits in each state? What are the current laws regarding this type of fundraising?

Currently 40 states in the United States require charitable organizations to register when engaged in solicitations within the state. Charitable solicitations are broadly defined, to include almost all methods of oral, written, or online requests for contributions. The entity does not have to be physically present in a state to be soliciting (e.g., sending a letter or e-mail into the state is usually enough).

Most of the charitable solicitation statutes were written prior to the Internet age and contemplate more traditional forms of solicitation, such as calling a person in a state, holding a fundraising event, or sending a written request for a donation. With the growth of prevalence of online activities, the line of when a solicitation in a state occurred became blurred. Although adopted into law by a few states, the "Charleston Principles" serve as helpful guidelines for determining when charitable solicitations on the Internet trigger charitable registration requirements in a state.

Generally, registration is required under the Charleston Principles in a particular state in the following scenarios: (1) the charity specifically targets a person in a particular state, such as sending an e-mail to a person that the sender knew or should have known resided in a state or specifically requesting "people in X state should donate to this cause," or (2) the charity engages in passive solicitation (for example, uses a "donate now" button), but receives "substantial" or "repeated and ongoing" contributions from residents of a particular state. Therefore, if using a "donate now" button, or other passive Internet solicitation, it is generally recommended under the Charleston Principles that the organization register in states in which the organization has a physical presence—such as where the principal office is located, and then after the donate now button is active, to the extent possible, the organization access whether a substantial number of donations are being received from certain other states.

Although the Charleston Principles provide useful guidance, we have found that practically, once an organization uses an online functionality for donation, it is likely that it will trigger registration requirements in all 40 states. This is because even if the organization receives only one donation in a state, there is almost always some form of follow-up via e-mail or letter. The follow-up action will be deemed to target a resident of that state and require registration.

Therefore, large charities often find it most efficient when increasing fundraising efforts to register in all 40 states as opposed to having to constantly re-evaluate income received from various states and the solicitations taking place in those states. In addition to law firms, there are a number of third-party companies that can perform nationwide registrations and annual renewals on a cost-efficient basis if the organization does not want to take on the registration in-house.

Of course, in addition to the specific state charitable solicitation registration requirements, states also have requirements for the charity when working with professional fundraisers or engaging in a commercial co-venture promotion. Charities also should consider federal tax laws and regulations, such as those regarding quid pro quo contribution disclosures.

For more information on charitable solicitations and promotions, please see the following webinar recording (and streaming PowerPoint presentation): **How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk.**

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