

Tax issues

Charity registration: Review your new 990 requirements to avoid legal action

New e-book provides first state-by-state instructions for guidance and filing forms

CEOs, board members, and other officers that recently signed their organizations' revised Form 990 should be certain they read the small print. Those who didn't may risk perjury by making false statements about filing at the state level for fundraising and other activities, according to Martignetti Planned Giving Advisors LLC, a New York-based consultancy group that advises nonprofits.

"Charity registration and licensing throughout the 50 states has long been a regulatory morass that most nonprofits avoided or ignored. Enforcement by the states has been nearly non-existent and many states don't have penalties for noncompliance," said Tony Martignetti, Esq., managing director of Martignetti Planned Giving Advisors, and author of the new e-book *Charity Registration: State by State Guidelines for Compliance*. "This year the IRS stepped in and changed the game."

The new Form 990 makes it impossible to legally avoid state registrations because it calls for a list of the states in which a copy of the Form 990 is required to be filed, said Martignetti. "A question on Schedule G asks where 'the organization is registered or licensed to solicit funds or has been notified it is exempt from registration or licensing.'"

And surprisingly, "ninety-percent of nonprofits are not registered in all the states they should be, including their own," said Martignetti. "They may be incorporated in their state, but they neglect to register as a charity, which is a whole different category beyond incorporation, the IRS and tax-exemption. Universities and colleges should be especially alert, since they have alumni all over the country and most solicit in all 50 states."

What happens to officers if their organization fails to register? Punishment for noncompliance comes in two tiers, Martignetti said:

Tier 1: The federal government could charge officers who signed the 990 without their organizations registering with perjury.

Tier 2: States may get involved, threatening steep fines, or jail time — penalties that vary by state. For instance, Florida signatories that do not register may

be charged with a third-degree felony and if convicted, could face a \$5,000 fine and up to five years in jail.

Didn't register — now what?

Nonprofit professionals who may have signed their 990, but are still not registered in the states where they are soliciting funds need to "get right with state authorities" as soon as possible, said Martignetti. He recommends organizations:

- Immediately review which state(s) you solicit funds in the most.
- Investigate the state(s) and determine whether you are exempt from registering.
- If you are exempt, do not immediately assume all is well. In some states, you have to apply for the exemption.
- Start the registration process.

The high percentage of nonprofits that do not register was the inspiration for Martignetti's new e-book, which is the only state-by-state manual available for the entire registration and licensing process, including filing forms.

It provides instructions — which can vary state to state — directions on where to find the law governing charitable registration in each state, the individual state filing forms, and more. "It's clickable and searchable, as well," Martignetti said.

Executives, boards and officers should examine their registration status, Martignetti said. "There's the potential for criminal or civil liability for organizations and officers that don't comply. They have a fiduciary responsibility to know that they are complying with state laws."

For more information

Martignetti Planned Giving Advisors LLC is a New York-based planned giving consultancy that works with educational, cultural, social service, religious, and health care institutions to create donor opportunities by building planned gift programs. To contact Tony Martignetti or for more information about Martignetti Planned Giving Advisors, visit www.mpgadv.com. To order a copy of *Charity Registration: State by State Guidelines for Compliance*, go to www.mpgadv.net/purchase/index.html ■