

A One-Hour Compliance Crash Course for Nonprofits

Ed Chaney

Schell Bray

David Heinen

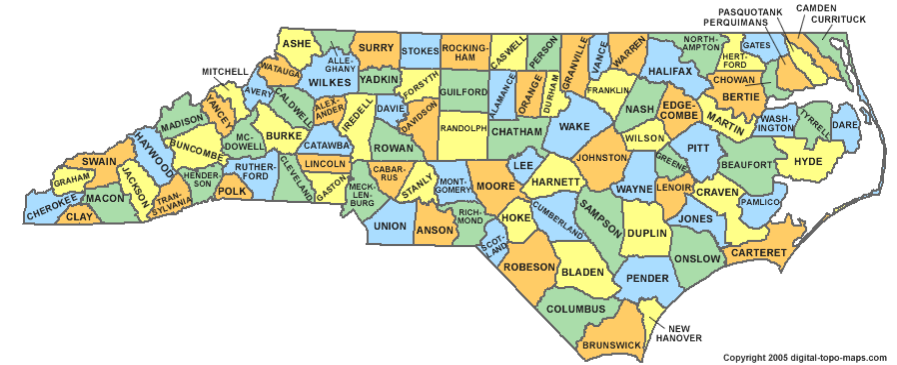
North Carolina Center *for* Nonprofits

Elizabeth Mauch

Blackman & Sloop



Connect Learn Advocate



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To answer your first question . . .

Wifi: DCCCGuest

Password: spectra!

Housekeeping announcements

- Format and schedule for the day
- Questions
- CLE credit



Important Disclaimers

If you can read this fine print, you are sitting too close to your screen!

Basic Terminology

- Nonprofit vs. tax-exempt
- Tax-exempt vs. 501(c)(3)
- Nonprofit vs. not-for-profit



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Nonprofit corporate governance

Hierarchy of rules

- Internal Revenue Code
- N.C. Nonprofit Corporation Act
- Articles of Incorporation
- Bylaws
- Internal policies and procedures

N.C. Nonprofit Corporation Act

- Unusual provisions of N.C. law
 - Only one Board member required
 - No annual report
 - Inspection of financial records by the public
 - Voting members of Board committees must be Board members



Foreign corporations

- Registration in other states where nonprofits conduct business
- Annual reporting requirements



Articles of Incorporation

- Filed with NC Secretary of State
- Members vs. self-perpetuating board of directors
- Limitation of liability



Articles of Incorporation

- 501(c)(3) restrictions:
 - Charitable purposes
 - No private inurement
 - Limited lobbying
 - No political activity
 - Dissolution clause



Bylaws

- Size and composition of board of directors
- Define rights of members
- Selection and term limits for officers and directors
- Quorum
- E-voting provisions
- Amendments
- Indemnification

Recommended policies

- Conflict of interest policy with annual disclosures
- Whistleblower policy
- Document retention and destruction policy
- Compensation review and approval process
- Policies on chapters and affiliates

More recommended policies

- Policy on making organizational information available to the public
- Process for review of Form 990
- Gift acceptance policy
- Investment and spending policy
- Committee charters

A few tips

1. Review your bylaws and articles of incorporation regularly
2. Look for inconsistencies among your governing documents and policies
3. Amend articles of incorporation and bylaws as needed

Board fiduciary duties

- Duty of Care
- Duty of Loyalty
- Duty of Obedience



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Board fiduciary duties



Listening
to a
presentation on
board governance



Listening
to Ed Chaney
talk about
board governance

Charitable solicitation and donor acknowledgment

Charitable solicitation

Filing requirements

- License required for most nonprofits
- Exemption for nonprofits that:
 - Less than \$25,000 in grants and contributions per year; and
 - Do not compensate officers, directors, or professional fundraisers
- File with N.C. Secretary of State

Charitable solicitation

Statutory exemptions

- Religious institutions
- Private schools
- Hospitals
- CCRCs
- YMCAs/YWCAs
- Volunteer fire departments, rescue squads, and EMS



Charitable solicitation

Filing requirements for individuals

- Fund-raising consultants
- Solicitors
- Contracts must be filed with Secretary of State
- Burden is on nonprofit to check that contractors are licensed

Solicitation disclosures

- Name of organization
- Address of organization
- Purposes for which contributions will be used
- Disclosures required on gift acknowledgments, website, and other solicitations

Donor acknowledgement

- Acknowledgement *required** when:
 - for all gifts of \$250+, and
 - receive gifts of \$75+ for which you provide valuable goods or services
- Note: Donors who give certain noncash gifts may be required to file a Form 8283 and get an appraisal

**The burden is actually on the donor to have this written acknowledgement, so technically a nonprofit is not required to provide it. Having said that, if you want your donors to continue to make contributions, you should strongly consider providing written acknowledgement letters. Furthermore, if you can read this footnote, you are straining your eyes too much!*

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Charitable solicitation



Federal tax laws for 501(c)(3) nonprofits

Form 1023

- Filed to obtain determination of 501(c)(3) & public charity status
- Retroactive exemption if filed with 27 months of incorporation
- Not required of churches, integrated auxiliaries of churches, and organizations with less than \$5,000 in annual revenue



Form 1023-EZ

- Option for some small nonprofits
 - Expenses expected to be under \$50,000 for at least three years AND less than \$250,000 in assets
 - Not available to certain types of complex nonprofits
- Concerns about IRS review of 1023-EZ
 - Recent TIGTA report



Exempt purposes – Section 501(c)(3)

- Religious
- Charitable
- Scientific
- Testing for public safety
- Literary
- Educational
- To foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
- For the prevention of cruelty to children or animals

The top four ways to get in trouble with the IRS

Tip #1

Get most of your support from a single donor!

- Public charities vs. private foundations
- Public support tests



Public charity status

A charity is presumed to be a private foundation unless:

- Certain *per se* public charities (churches, schools)
- Charities that receive wide donative support (509(a)(1))
- Charities that have gross receipts from diverse sources (509(a)(2))
- Supporting organizations (509(a)(3))

Tip #2

Pay your board members!

- Prohibition on private inurement
- Excess benefit transactions
- Private benefit
- (Also may forfeit immunity)



Private inurement and benefit

- Inurement: net earnings flowing to or for the benefit of insiders; no inurement permitted
- Private benefit: operating to benefit private interests more than incidentally
 - benefit can flow to insiders or unrelated third parties;
- No bright lines: All facts and circumstances

Intermediate sanctions

- Alternative to revocation for violations of private inurement.
- Penalizes transactions that convey greater value to a “disqualified person” than the exempt organization receives in return.
- Penalties are imposed on the disqualified persons and potentially on organizational managers who approve a transaction knowing it conveys excess benefit.

Tip #3

Don't bother filing your 990!

Form 990

- Every nonprofit must file a Form 990, 990-EZ, or 990-N with the IRS every year
 - Automatic revocation for non-filing for three consecutive years
 - Due date
 - Available to the public
 - Review by board

Form 990 filing thresholds

Form	Gross Receipts	Total Assets
990	\$200,000+	\$500,000+
990-EZ	<\$200,000	<\$500,000
990-N	<\$50,000	N/A

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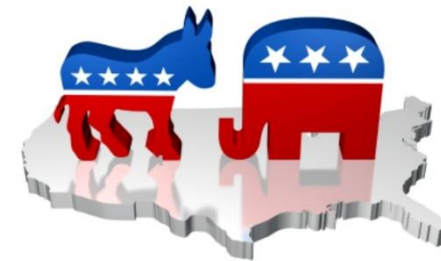
Form 990



Tip #4

Be partisan!

- Lobbying is legal for 501(c)(3) nonprofits
- But partisan political intervention is impermissible
- Nonpartisan election-related activities are allowed



Lobbying synopsis

1. What is lobbying?

Influencing legislation at the federal, state, or local level

2. It's permissible for 501(c)(3) nonprofits!

Lobbying

How much lobbying can you do?

(as a 501(c)(3) nonprofit)

Two answers:

1. An “insubstantial” amount
2. 501(h) election – expenditure test

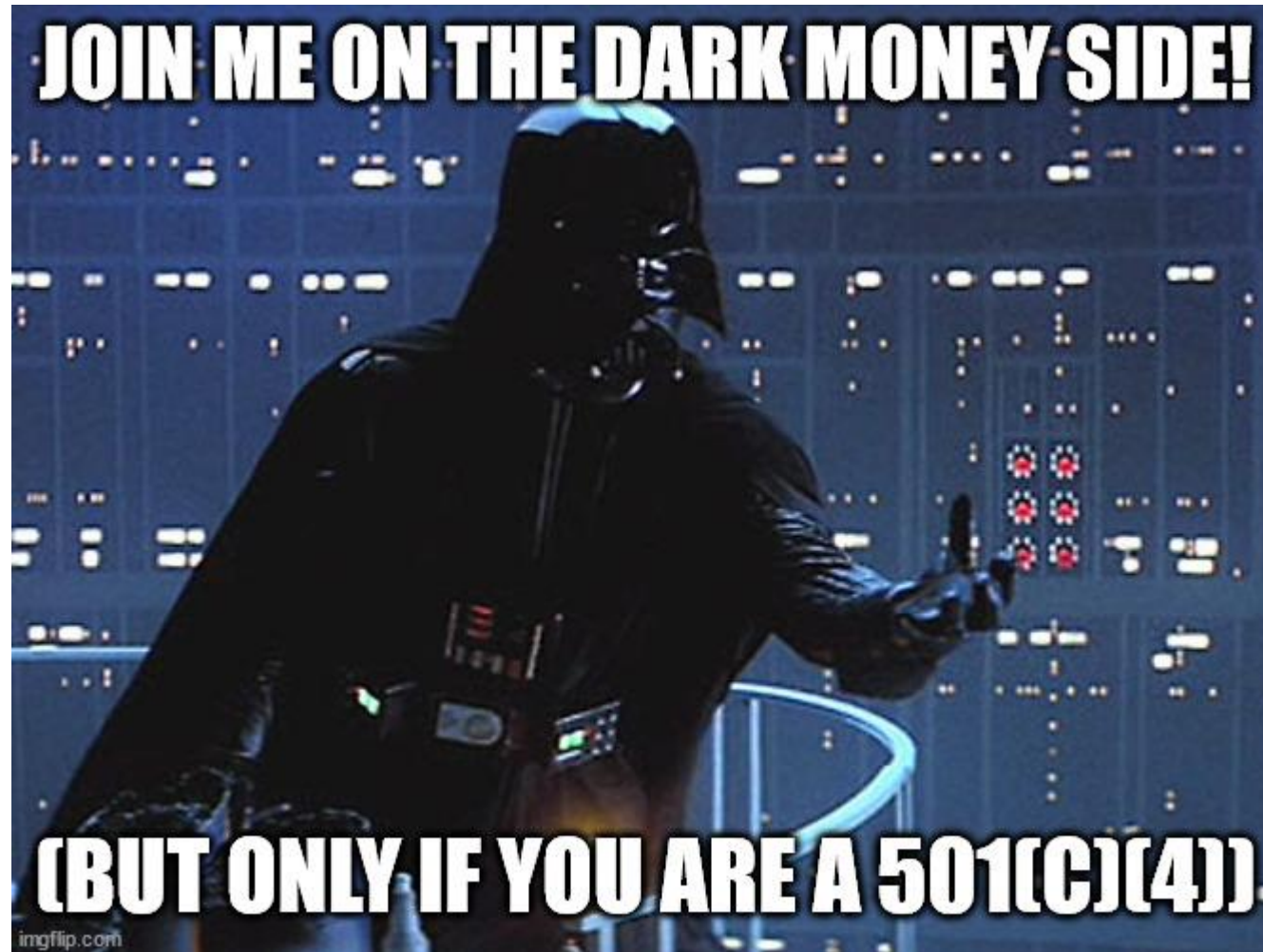
Electioneering

- Provision in Section 501(c)(3)
 - Charitable nonprofits, foundations, and churches can't:
 - Support or oppose candidates for office
 - Make campaign contributions
 - Coordinate activities with political campaigns

Lobbying and political activity

- *Question:* Can a 501(c)(3) nonprofit take a position on a ballot measure?
- *Answer:* Yes. This is direct lobbying.

Lobbying laws



Unrelated business income tax

- What is UBIT?
 1. Trade or business
 2. Regularly carried on by a nonprofit
 3. Unrelated to a nonprofit's mission

Unrelated business income tax

Certain passive investments excluded:

- Dividends, interest, royalties, rents from real property
- Substantially all of the activities conducted by volunteers; also, thrift shops
- Activities conducted for convenience of members, students, patients, and employees

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To Audit or Not to Audit

To Audit or Not to Audit

- No federal requirement for an independent audit unless the NFP expends \$750,000 or more of federal funds during fiscal year
- 26 states have laws requiring NFPs to conduct an independent audit under certain circumstances
 - NC requires non-governmental entities that receives \$500,000 or more annually in direct state funds to receive a “Yellow Book” audit

To Audit or Not to Audit

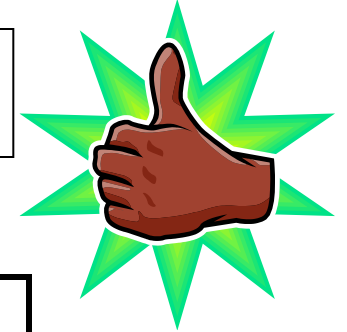
- Bylaws may require an annual audit or an audit every other year
- Some lenders and other funding sources, such as private foundations, may require an independent audit
- Helps fulfill Board's fiduciary responsibility
- Any specific concerns for example, internal controls or fraud, transition in management oversight, etc.

Types of Financial Statement Engagements

Audit	Review	Compilation
Generally accepted auditing standards (GAAS)	Statements on Standards for Accounting and Review Services (SSARS)	Statements on Standards for Accounting and Review Services (SSARS)
Physical inspections and observations and testing of selected transactions by examining supporting documentation	Inquiry and analytical procedures	CPA prepares financial statements from information provided by management

Types of Financial Statement Engagements

Pros



Audit

Review

Compilation

Highest level of assurance	Limited level of assurance	Least expensive service
Objective assessment of areas of interest to the Board and management	Provides the advantages of a CPA's technical expertise without the work and expense of an audit	Provides help with preparing financial statements
Identify business strengths and opportunities for improvement in daily operations and internal controls	Beneficial for organizations not legally required to file audited financial statements	Beneficial for new or very small organizations

Types of Financial Statement Engagements

Cons



Audit

Review

Compilation

Potential lengthy process	Lesser degree of assurance than an audit	No assurance on financial statements
More costly than review procedures	Does not cover expenditures related to a specific grant	CPA firm not required to perform any specific tests to make specific inquiries
Significant commitment of organization's personnel time and resources	Cannot be relied upon to disclose errors, irregularities or illegal acts that may exist	Provides no information regarding effectiveness and efficiencies of internal controls and daily operations

How to Choose?

What is required by the Organization's by-laws?

What is required according to federal or grant guidelines and regulations?

What are the specific needs and desired results from the procedures to be performed?

Which procedure will provide the best economic benefit for the Organization?

Who will be the users of the financial statements?



Financial statements and internal controls

MMM...



... INTERNAL CONTROLS

State and local taxes

NC income and franchise tax exemption

- 501(c)(3) nonprofits are generally exempt
 - Must request exemption from NC Department of Revenue
- Nonprofits pay corporate income tax on unrelated business income
- Corporate status can be revoked for failure to pay taxes within 90 days of due date

Local property tax exemption

- File for exemption with county assessor
- Denials can be appealed
- Municipalities generally follow county decisions, but are not required to do so

Sales tax refunds

- Nonprofits pay sales and use tax on purchases
- Semiannual refunds
 - File by October 15 and April 15
 - Use Form E-585 to apply for a refund, get an account number, and file for your semi-annual refunds
- \$45 million annual cap on refunds per nonprofit

Sales tax refunds

Nonprofits eligible for refunds

- Most 501(c)(3)s, with the exception of those with the following NTEE classifications:
 - Community improvement and capacity building
 - Public and societal benefit
 - Mutual and membership benefit

NC sales tax: the other side of the transaction

- Nonprofits generally must collect and remit sales tax when selling goods and certain services
- Exemption for annual sales events
 - Annual event (can be more than one per year)
 - Proceeds go towards nonprofit's mission
 - Products delivered within 60 days of beginning of solicitation period
 - Exemption does not apply to admission charges

Sales tax on admission fees

- Admission fees to entertainment and live events are subject to sales tax
- Includes charges for:
 - Live performance or live event the purpose of which is entertainment
 - Movies and films
 - Museums, cultural sites, gardens, shows, and similar attractions
 - Guided tours of any of these venues

Sales tax on admission fees

- Exemptions and exceptions:
 - Tax-deductible contributions to 501(c)(3) nonprofits
 - The tax-deductible portion of an admission fee
 - Fees for participatory events
 - Fees for educational events, regardless of whether some entertainment is included
 - Events sponsored by nonprofits with no staff that pay nobody for any part of the events

Taxability of student loan forgiveness

- Student loan forgiveness is not taxable income for federal tax purposes
 - PSLF: No expiration
 - Other forms of student loan forgiveness: Through 2025
- Is student loan forgiveness subject to state income tax?
 - Yes, for most student loan forgiveness
 - No, for loan forgiveness through PSLF

Employment laws

Employees vs. independent contractors



Fair Labor Standards Act

- Minimum wage
- Overtime pay for non-exempt employees
 - Travel time
 - Compensatory time
- Equal pay for equal work

Fair Labor Standards Act

- Exemptions for executive, professional, and administrative staff
 - Paid on salary basis
 - Must be paid \$684 per week (\$35,568 per year)
 - Must meet duties test
- Exemption for highly-compensated employees

Unemployment – 1-minute overview

- Options for nonprofits
 - Pay state unemployment tax (SUTA) – based on experience rating
 - Self-insure instead of paying SUTA – must reimburse UI Trust Fund for UI claims of nonprofit's employees
 - Exempt from SUTA – churches, religious nonprofits, and 501(c)(3)s with fewer than four employees – no UI benefits

Workers' compensation insurance

- Required for nonprofits with three or more employees
 - Full or part-time
- Uncompensated officers no longer count as employees
 - But they count toward counting the number of employees in a nonprofit

Financial statements and internal controls

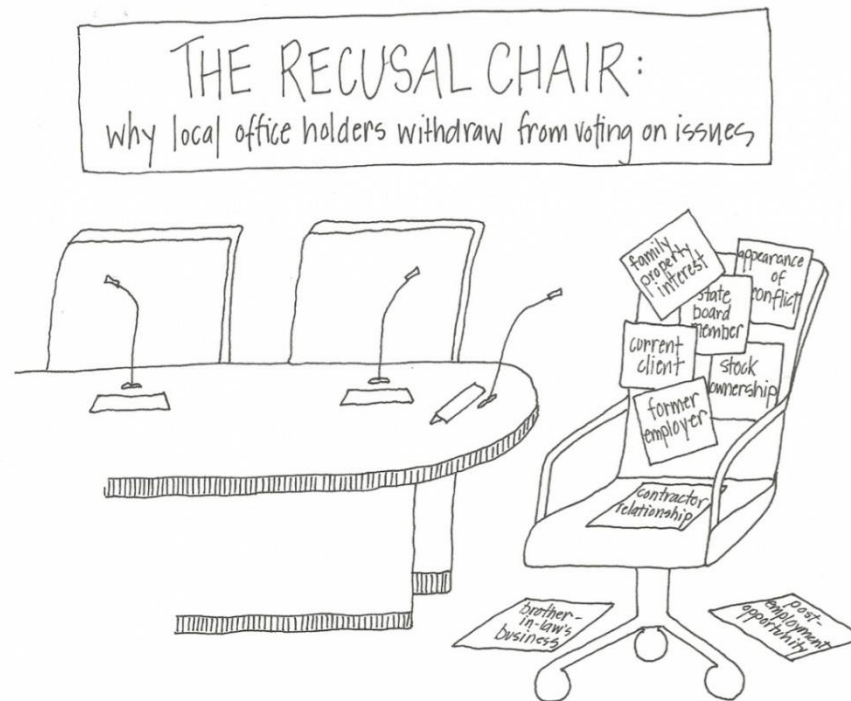


New-ish legal developments affecting nonprofits

Assumed business names

- File with county register of deeds
- Only need to file in one county
- NC Secretary of State maintains statewide registry of assumed business names
- Assumed business name registrations filed prior to December 1, 2017 expire on December 1, 2022

Local government transparency law



Employee Retention Tax Credit



State grant reporting

- Level I reporting – nonprofits receiving less than \$25,000 within their fiscal year
 - Certification that State funds were used for the purposes for which they were awarded
 - Accounting of State financial assistance received, held, used, or expended

State grant reporting

- Level II reporting – nonprofits receiving at least \$25,000 but less than \$500,000 within their fiscal year
 - All requirements for Level I recipients
 - Report on activities and accomplishments undertaken by nonprofit, including performance measures established in the contract

State grant reporting

- Level III reporting – nonprofits receiving at least \$500,000 within their fiscal year
 - All requirements for Level I and Level II recipients
 - Single or program-specific audit prepared in accordance with GAAP (Yellow Book Audit)

State grant reporting

- OSBM maintains Suspension of Funding list of non-compliant nonprofits
- Agency actions against non-compliant nonprofits
 1. Communicate requirements to nonprofit
 2. Require response from nonprofit
 3. Suspend payments to noncompliant nonprofits

State grant reporting

- Agency actions against nonprofits with management deficiencies or criminal activity leading to misuse of funds
 1. Suspend payments to nonprofit
 2. Terminate contract and recovery unexpended funds or unauthorized expenditures
 3. Report criminal activity to State Bureau of Investigation
- Nonprofits typically have 60 days to remedy less serious contract compliance issues

Rights for nonprofits with DHHS grants/contracts

- *De minimis* 10% indirect cost rate
- Multi-year contracts for nonprofits with recurring funds
- Contract extensions for up to three months for continuity of services

For more information

North Carolina Center *for* Nonprofits

www.ncnonprofits.org

919-790-1555

@ncnonprofits

