

# A One-Hour Compliance Crash Course for Nonprofits

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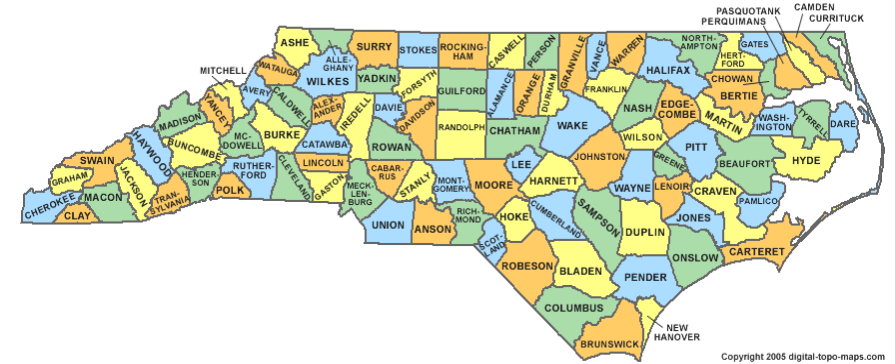
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# Connect Learn Advocate



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



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# Nonprofit corporate governance

# Hierarchy of rules

- Internal Revenue Code
- North Carolina Nonprofit Corporation Act
- Articles of Incorporation
- Bylaws
- Internal policies and procedures

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# NC Nonprofit Corporation Act

- Unusual provisions of North Carolina 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



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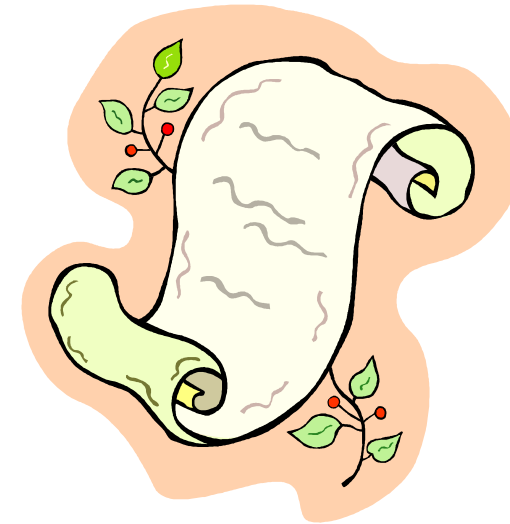
# Foreign corporations

- 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

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# 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

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# 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

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# 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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# Charitable solicitation and donor acknowledgment

# Charitable solicitation

## *Filing requirements*

- License required for most nonprofits
- Exemption for nonprofits that:
  - Less than **\$50,000** 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

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# 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

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# Solicitation disclosures

- Name of organization
- Address of organization
- Purposes for which contributions will be used
- “Financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at [telephone number]. The license is not an endorsement by the State.”
- 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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# Federal tax laws for 501(c)(3) nonprofits

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# 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

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# 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



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# 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))

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# Tip #2

## *Pay your board members!*

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



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# 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

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# 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.

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# Tip #3

*Don't bother filing your 990!*

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# 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

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# 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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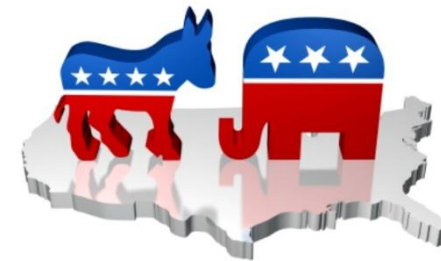
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# Tip #4

## *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!

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# 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

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# 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.

# 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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# 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

# Local property tax exemption

- Article V, Section 2(3) of the North Carolina Constitution
  - Property tax exemptions for nonprofits must be state laws and applicable statewide
  - Only the NC General Assembly can grant property tax exemptions



# Local property tax exemption

- Exempt nonprofit property – wholly and exclusively used for:
  - Religious purposes
  - Educational purposes
  - Charitable purposes (narrow)
  - Qualified retirement facilities
  - Educational, scientific, literary, or charitable purposes
  - Hospital purposes

# 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

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# Property tax exemption considerations

- Segmentation – property tax exemption can be for only part of a nonprofit’s property
- Vacant property
- Leased property
- Commercial activities

# 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

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# 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 up to six 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

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# 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

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# 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

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# 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

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# 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

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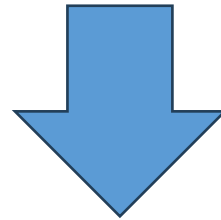


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# Proposed overtime rule

*Salary threshold*

\$684/week (\$35,568 per year)



\$1,059/week (\$55,068 per year)

# 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

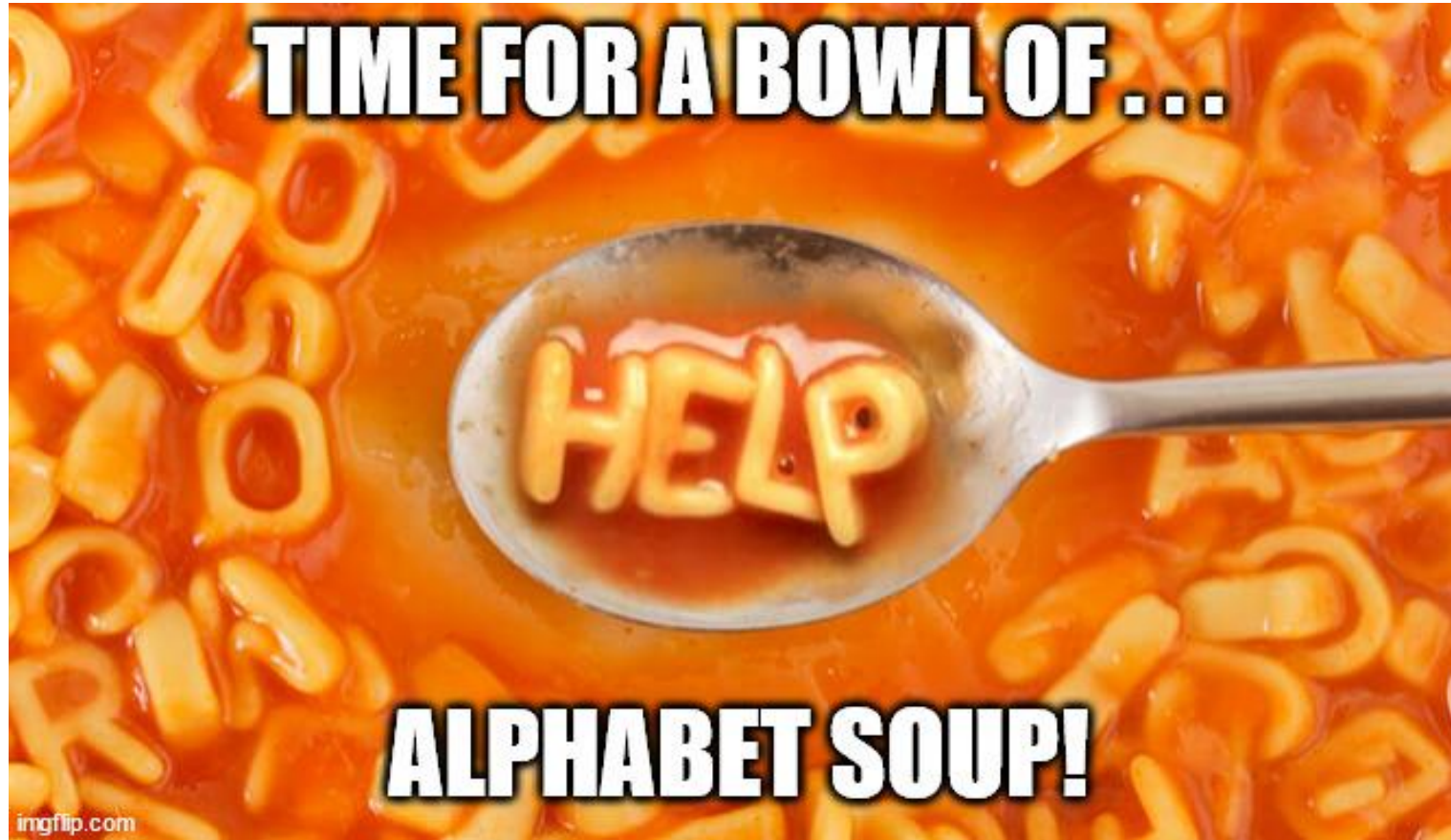
# Employer-provided health care



PPO

EPO

PEO



\$\$\$

DN\*

AHP

QSEHRA/ICHRA

ACA SHOP

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# For more information

## North Carolina Center *for* Nonprofits

[www.ncnonprofits.org](http://www.ncnonprofits.org)

919-790-1555

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