

# A Two-Hour<sup>1</sup> Crash Course on Nonprofit Legal Compliance<sup>2</sup>

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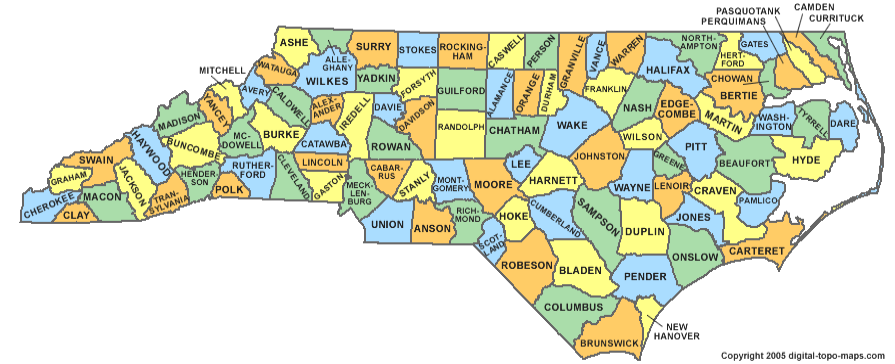
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<sup>1</sup> or perhaps a few minutes longer

<sup>2</sup> with plenty of disclaimers about the session not being legal advice

# Connect Learn Advocate



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# Housekeeping announcements

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



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# Important Disclaimers



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





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# 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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# 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



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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



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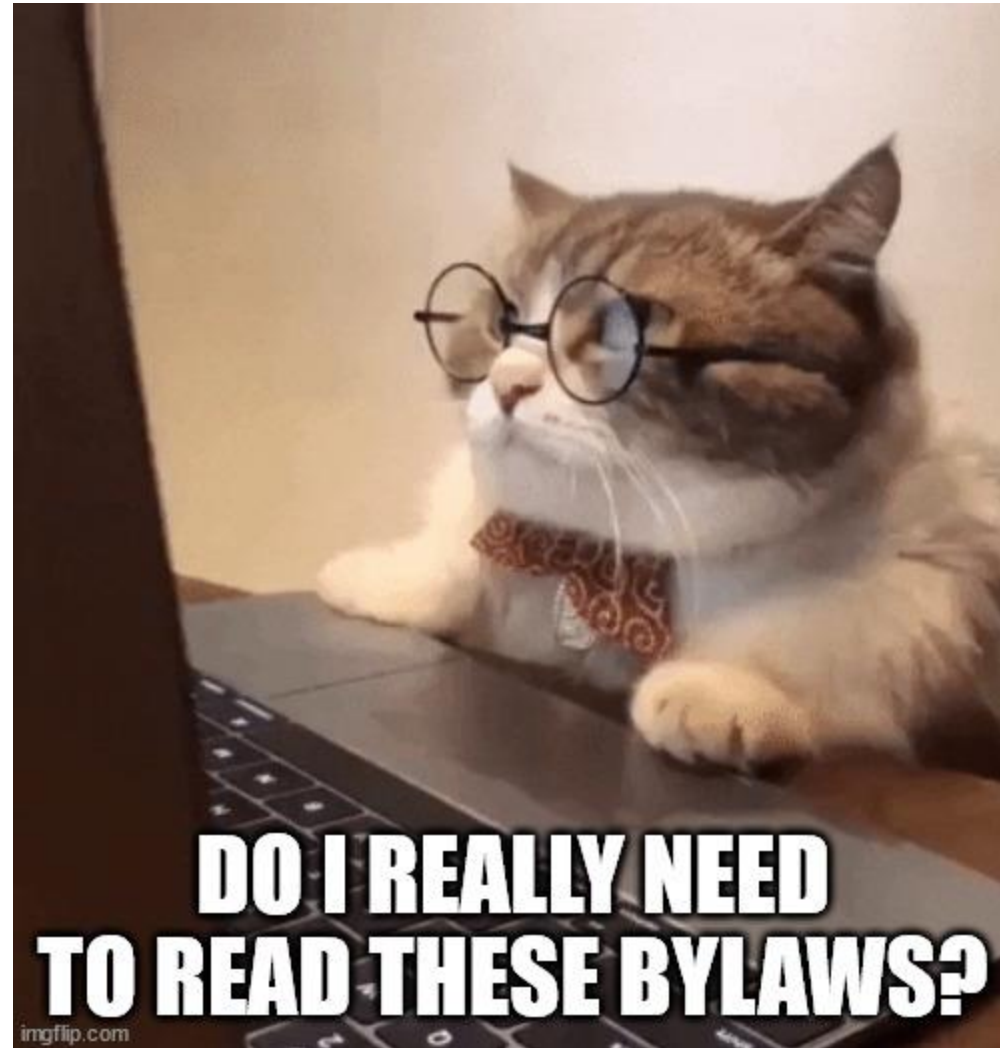
# Bylaws

- 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

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# Board fiduciary duties



# Minimizing Exposure to Personal Liability

- Legal entity
- Statutory immunity
- Limitation of liability
- Indemnification
- Directors and officers insurance
- General liability insurance



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# Corporate Transparency Act

- Beneficial ownership interest reporting with FinCEN
  - Effective January 1, 2024
  - Most tax-exempt nonprofits are exempt from BOI reporting
  - Nonprofits that lose their tax-exempt status may be required to file CTA annual reports if their status isn't reinstated within 180 days
  - Newly-formed nonprofits may need to file initial CTA report unless they receive a tax-exemption determination letter within 90 days of incorporating

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# Charitable solicitation

# 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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**TIME FOR A HAPPY DANCE!**



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# Charitable solicitation

## *Due dates and extensions of filing deadline*

- Due date – Generally the same as Form 990
- Form 990 – Six month automatic extension
- Old law – Charitable solicitation license extension of 60 days
- ***New law – Charitable solicitation license deadline can be extended to be the same as the IRS extended deadline for 990***

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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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**REMINDER: IT'S OKAY TO TAKE A STRETCH BREAK!**



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# 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

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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
- Concerns about IRS review of 1023-EZ

# 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*

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# 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



# 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!*



Marked Safe From

**REVOCATION OF  
TAX-EXEMPTION BY IRS**

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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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# Tip #4

*Be partisan!*





# Lobbying by 501(c)(3)s

- Excerpt from Internal Revenue Code § 501(c)(3)
  - “. . . no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))”

# Translation



# 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 by 501(c)(3)s

- Excerpt from Internal Revenue Code § 501(c)(3)
  - “. . . which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

# Translation



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# Common question

- Will n  
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- *Proba*
- *But yo*  
*becau*



status if

*ay,*  
*stake!*



# Lobbying and political activity

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

# 501(c)(3)s vs. 501(c)(4)s

- 501(c)(3) charitable nonprofits
  - Limited lobbying is allowed
  - No partisan political intervention
- 501(c)(4) social welfare organizations
  - Unlimited lobbying is allowed
  - Some partisan political intervention – but no clear limits



# 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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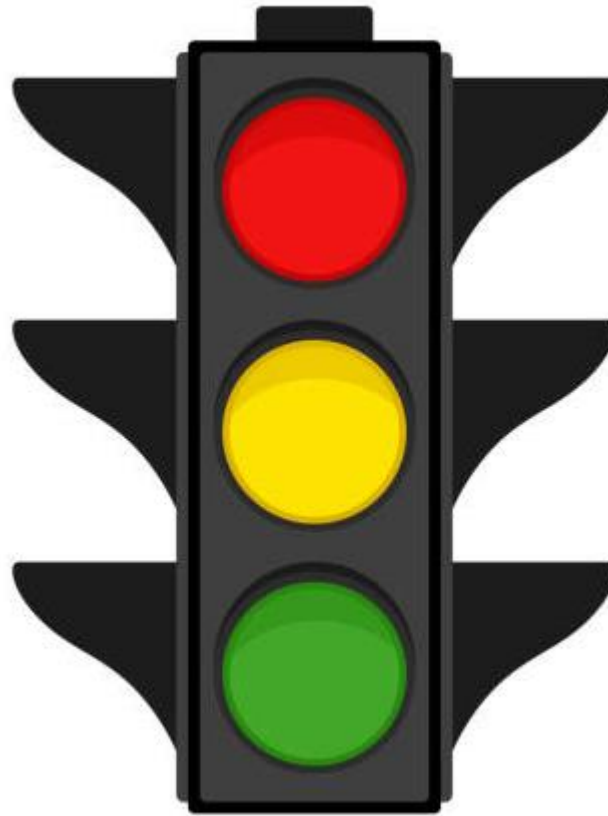
# Common election-year questions for 501(c)(3) nonprofits



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# Common election-year questions

- Can a nonprofit identify candidates who are generally supportive of its mission?
  - *For example, can you say a candidate is “for kids”, “anti-environment”, “a friend of the arts”, “pro charter school”, or “an early childhood champion”?*



# Common election-year questions

- Can a 501(c)(3) nonprofit take positions on legislative issues during an election year?

# Common election-year questions

- What about “wedge issues” where positions align closely with partisan affiliation?



# Common election-year questions

- Can our staff run for office? Or volunteer for political campaigns? Or make campaign contributions? Or endorse candidates?

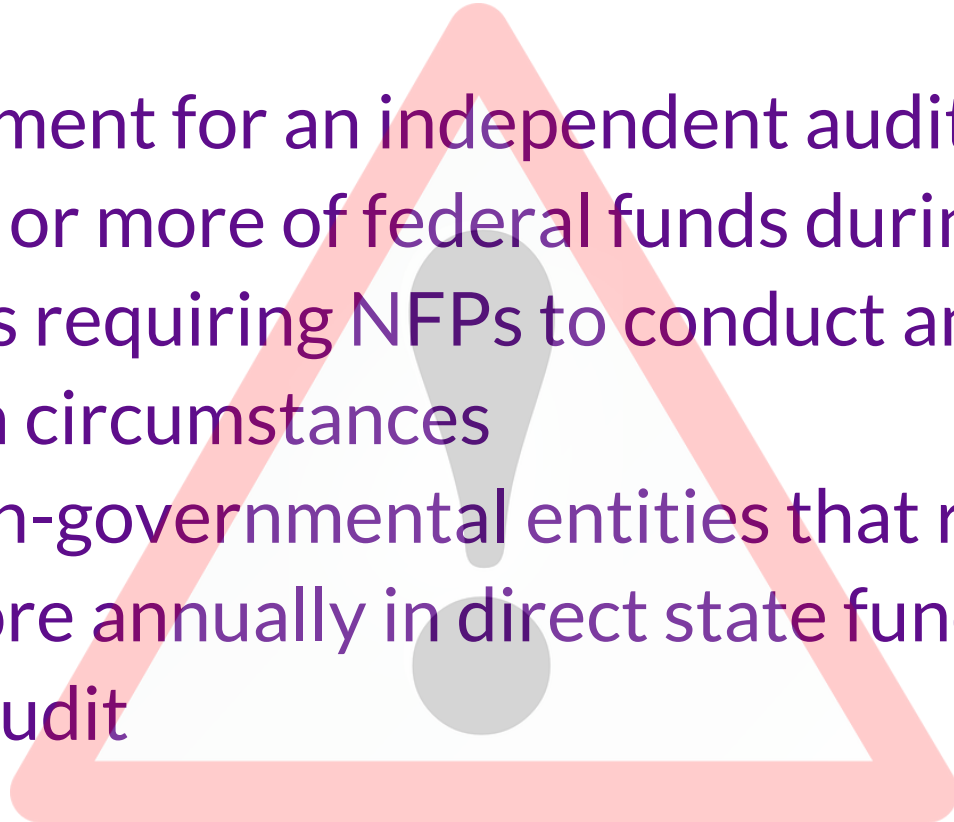


# To Audit or Not to Audit



# 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



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# 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 Attestation Engagements

## Audits



Performed to obtain reasonable assurance about whether the financial statement are free of material misstatement, whether caused by error or fraud.

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## Reviews



Performed to provided limited assurance that material changes to the financial statements are not necessary in order for the financial statements to be in conformity with a specific accounting basis.

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## Compilations



Performed to simply present the client's financial data in proper financial statement format. No assurance is provided on the conformity of the statements in accordance with a specific accounting basis.

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## Agreed Upon Procedures



Performed to present a report of findings based on specific procedures agreed upon beforehand.



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# Agreed Upon Procedures



## Pros

- Findings are independently derived with no bias
- Flexibility in the nature, timing, and extent of procedures and can be tailor made to fit the needs of the client
- Offers more cost flexibility, yet rely on techniques similar to those used during an audit



## Cons

- Accountant does not perform an examination or review and does not provide an opinion or negative assurance
- Entity's management responsibility to draw conclusions based on AUP findings

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# Compilations



## Pros

- Provides the client with a second set of eyes and advice on presentation matters
- Can be useful for smaller entities whose financial statement users do not require an audit or review
- Can be with or without footnote disclosures
- Can be the least costly of attestation engagements



## Cons

- No opinion is issued as to whether the financial statements are fairly presented or require material modifications to be in conformity with a specified accounting basis

# Reviews



## Pros

- Because much narrower in scope than an audit, it is typically a less costly option than an audit
- Can be useful for smaller entities whose financial statement users do not require an audit
- Can be less costly than an audit



## Cons

- Level of assurance provided is much lower than that of an audit
- Management and those charged with governance typically do not receive a formal communication of deficiencies
- Third parties may not be willing to accept a review report as a substitution for an audit report

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# Audits



## Pros

- Provides the highest level of assurance
- Management and those charged with governance receive formal communication of deficiencies
- Auditors may offer additional input based on evaluations of operations and controls that can help management to understand risks and make improvements in their processes



## Cons

- Places significant preparatory burden on client's accounting staff
- Can take significantly longer to perform an audit engagement than a review or compilation
- Generally most expensive of the assurance engagements

# 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?



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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\*

\* Until the state corporate income tax goes away after 2028

# 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



# 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

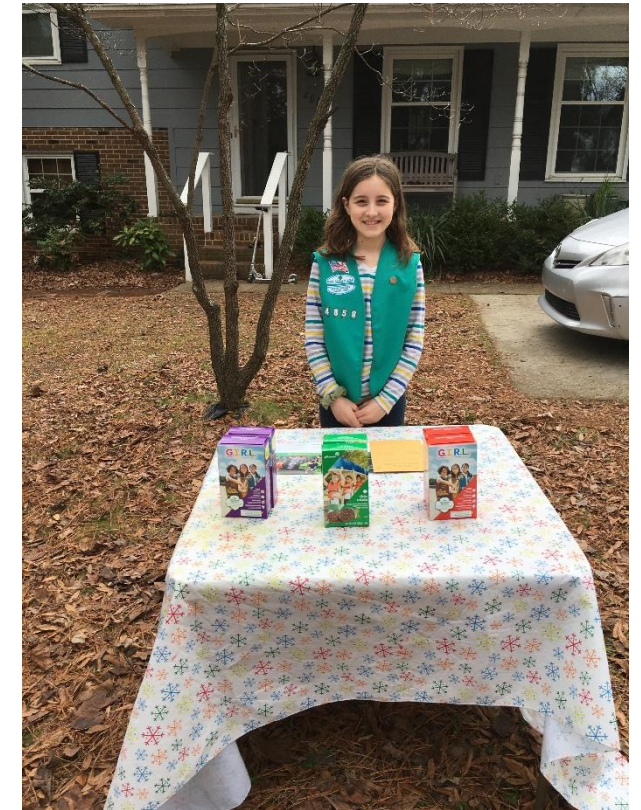
# Sales tax refunds

## *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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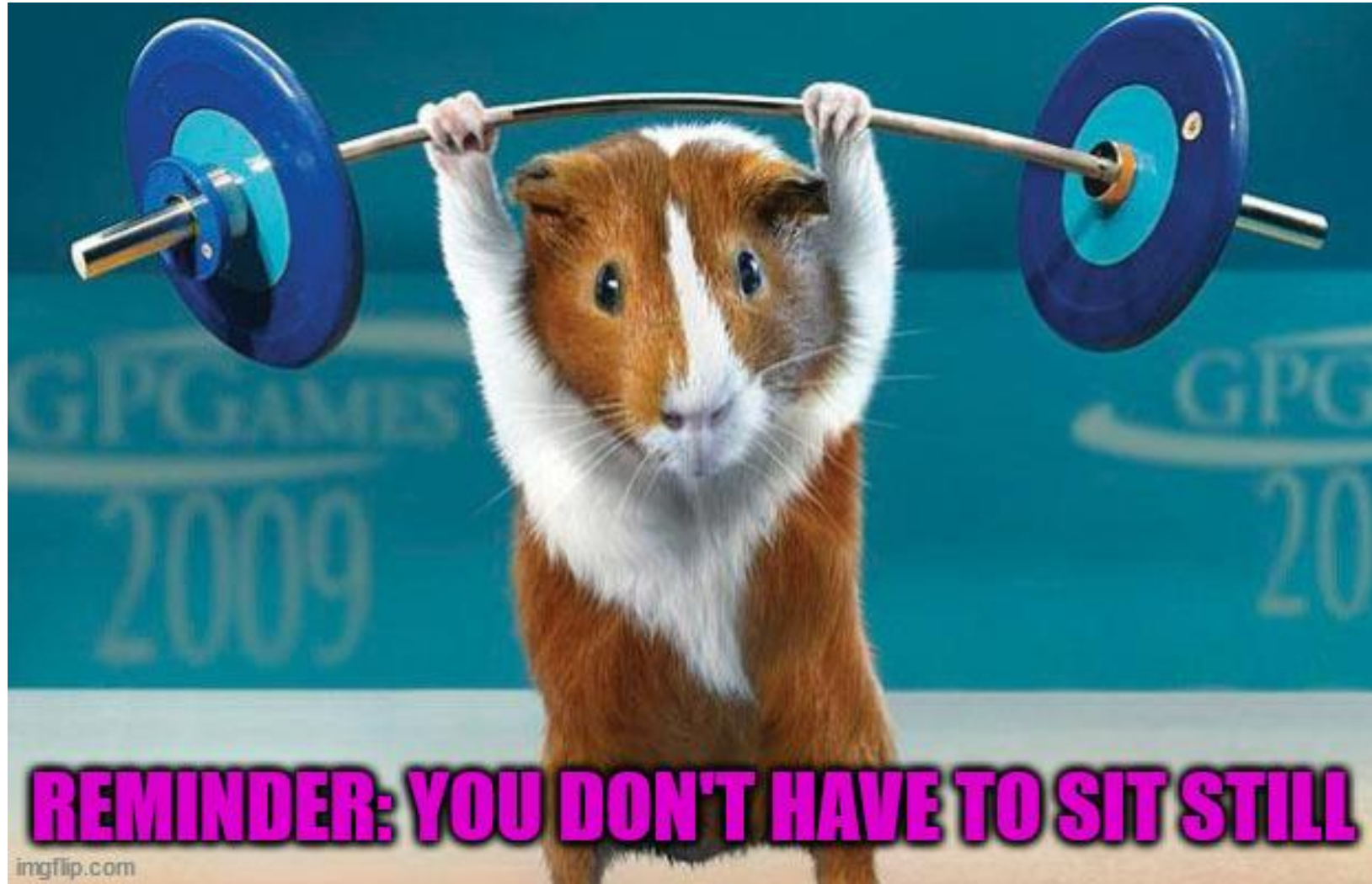


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# Sales tax on admission fees





# Employment laws

# *Initial question:*

**Are your nonprofit's  
workers employees or  
independent contractors?**

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# Worker Misclassification

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# Employees vs. independent contractors



# Fair Labor Standards Act

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# Fair Labor Standards Act

- Minimum wage
- Overtime pay for non-exempt employees
- 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 \$844 per week (\$43,888 per year)
  - Must meet duties test
- Exemption for highly-compensated employees

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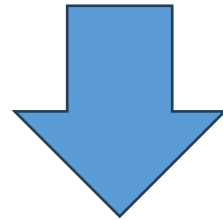


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# 2024 final overtime rule

*Salary threshold – July 1, 2024*

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

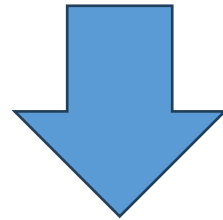


\$844/week (\$43,888 per year)

# 2024 final overtime rule

*Salary threshold – January 1, 2025*

\$844/week (\$43,888 per year)



\$1,128/week (\$58,656 per year)

# 2024 overtime rule - current status





# Typical nonprofit reaction



# 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

# Unemployment and Hurricane Helene

- SUTA – 12 weeks with maximum weekly benefits of \$600 per week (normally \$600 per week)
  - \$250 per week in additional temporary benefits through March 1, 2025
  - Benefits NOT charged to the accounts of nonprofits that pay SUTA or reimburse through March 1, 2025
  - No benefits for employees of nonprofits exempt from SUTA
  - Waiver of work search requirements through March 1, 2025

# Unemployment and Hurricane Helene

- Disaster Unemployment Assistance (DUA)
  - Federal program in area of disaster declaration
  - Must apply by December 2 in 25 counties originally declared disaster or December 9 in Mecklenburg and Swain counties
  - Coverage starts after SUTA ends for employees of covered employers at same weekly benefit rate as SUTA
  - Coverage starts immediately for employees of non-covered employers with benefits of \$152 per week

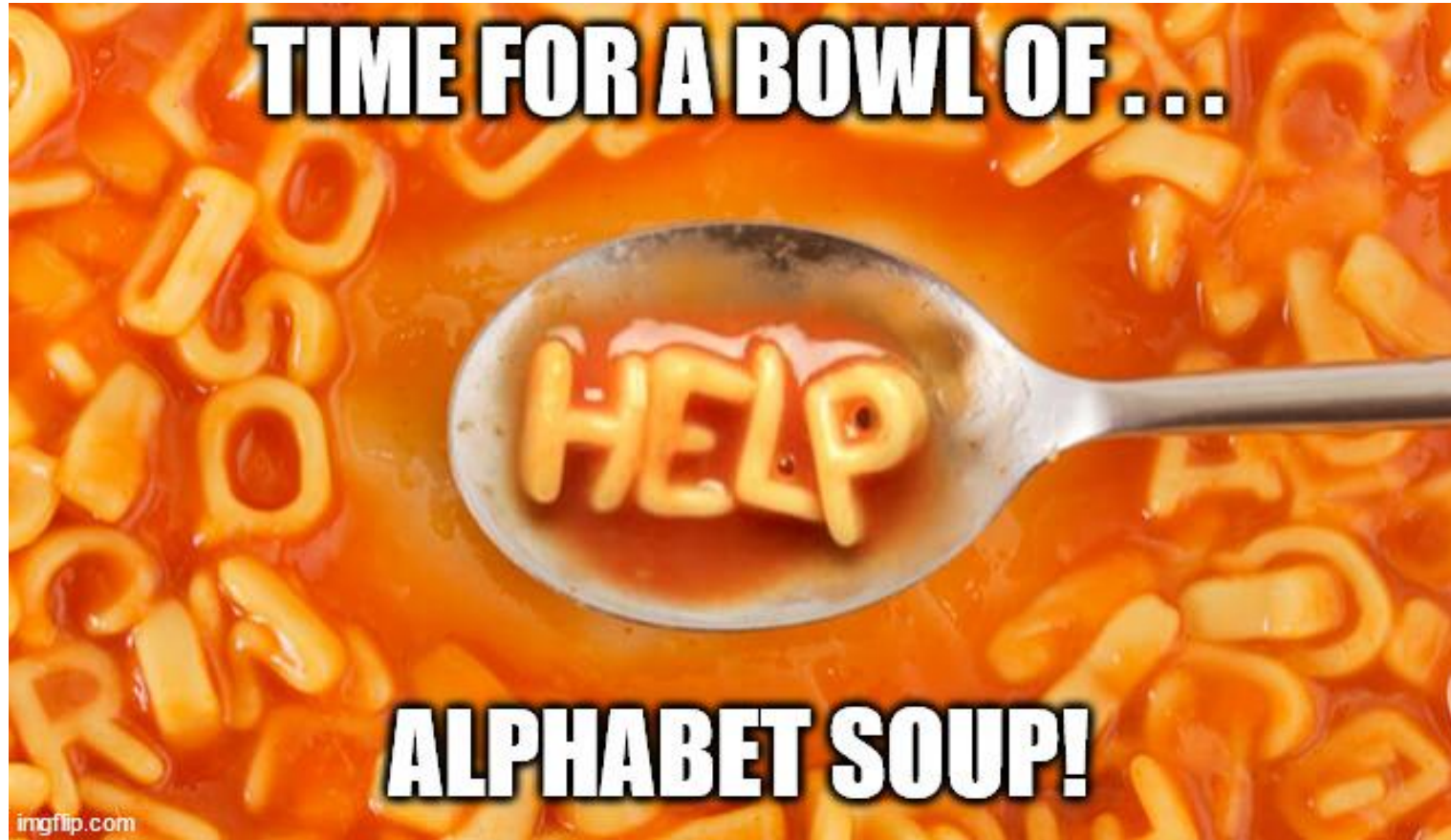
# Workers' compensation insurance

- 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

PPO

EPO

PEO



\$\$\$

DN\*

AHP

QSEHRA/ICHRA

ACA SHOP

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# Legal landscape for racial equity initiatives

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# What's Going On?

## SCOTUS rules against affirmative action in college admissions

Colleges and universities can no longer consider race in their admissions processes after the US Supreme Court ruled against affirmative action, overturning decades of precedent that has benefitted Black and Latino students.

The infographic displays the Supreme Court justices in two groups. On the left, under the heading 'Majority', are six portraits: Roberts, Thomas, Alito, Gorsuch, Kavanaugh, and Barrett. On the right, under the heading 'Dissenting', are three portraits: Sotomayor, Kagan, and Jackson. To the left of the portraits is a navigation menu with a hamburger icon and a 'Best Deal!' button.

Source: US Supreme Court, Students for Fair Admissions, Inc. v. President and  
Graphic: Annette Choi, CNN

Dangerous Dw

## BREAKING | Appeals court pauses Atlanta VC fund grant for Black women

Conservative group sued the Fearless Fund, alleging racial discrimination for helping Black female founders

BUSINESS

## Progressive insurance sued for 'patently unlawful' racism for offering \$25K grants only to black-owned businesses

Hello Alice named in lawsuit claiming grant program racially discriminates against non-Black business owners



# Federal grants and contracts



# Rights for nonprofits with federal grants

- *New rule, effective October 1, 2024*
  - *De minimis indirect cost rate of 15% of modified total direct costs (up from 10%)*
  - *Federal rule prevents agencies from forcing nonprofits to accept lower rates*
  - *Rule clarifies that state and local governments need to apply federal indirect cost rates on pass-through grants*

# Rights for nonprofits with federal grants

- Federal single audit threshold
- *As of October 1, 2024...*



# Rights for nonprofits with federal grants

- *Other new changes, effective October 1, 2024*
  - *Require federal agencies to eliminate program reports that are not necessary for effecting monitoring of grants*
  - *Improvements to Notice of Funding Opportunities*

# Laws and rules related to state funding of nonprofits

# Basic requirements for nonprofits with state funding

- Certification that funds were used for purposes for which they were awarded
- Accounting of how funds were used
- Copy of conflict-of-interest policy
- Certification of no overdue federal, state, or local taxes

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# And for nonprofits receiving ~~\$25,000+~~ **in any amount of** state funding ...

- Report to granting agency on activities and accomplishment



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And for nonprofits receiving ~~\$500,000+~~  
~~\$750,000~~ **\$1 million** in state funding ...

- Yellow Book Audit





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# The future of federal regulations . . .



# Some future regulations that could be impacted by *Loper Bright*...

- DAF regulations
- Other Treasury regulations affecting nonprofits
- FTC oversight over 501(c)(3) nonprofits
- DOL regulations under FLSA
- Other federal rules related to health care, environmental protections, safety regulations, etc.

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