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ANNUAL FILING REQUIREMENTS FOR CALIFORNIA'S TAX EXEMPT ORGANIZATIONS

(Tax Advisory No. 10)

Tax-exempt organizations are generally exempt from income taxes. However, like other businesses and individuals, tax-exempt organizations may be required to file federal and state tax returns in each state in which they conduct their business. This Advisory pertains to filing requirements with the Internal Revenue Service (IRS), California Franchise Tax Board (FTB) and the California Attorney General's Registry of Charitable Trusts, for organizations that have current federal and/or California tax exemptions. California non-profits must file all three returns each year. Generally, there are two types of returns a tax-exempt organization may be required to file: (i) informational returns; and (ii) unrelated business taxable income returns.

Buynak, Fauver, Archbald & Spray represents many non-profit organizations, corporations, foundations and associations. Based on that experience, we provide this Advisory as general guidance on filing requirements for tax-exempt organizations (other than private foundations and homeowner associations). We recommend that your organization retain the services of an accountant to file tax returns who has significant experience with tax-exempt nonprofit organizations, for which we maintain a referral list. We look forward to assisting your organization and its directors/trustees with their legal and tax needs.

This Advisory is neither exhaustive nor tailored to your specific situation. For example, this Advisory does not cover property taxes on real or personal property owned or leased by your organization, if properly reported. You should discuss your personal situation with us or with your own attorney. Our representation is only undertaken through a written engagement letter and not by the mere distribution of this Advisory.

Internal Revenue Service. The IRS requires the filing of certain tax returns, based on the size of the income/receipts of a non-profit organization. If a non-profit organization fails to file a tax return with the IRS for 3 years, its non-profit status will be automatically revoked.

1. *Non-profit Organizations with Gross Receipts equal to or less than $50,000/year – IRS Form 990N.* Organizations whose annual gross receipts are normally $50,000 or less (see "Determining Gross Receipts" below) must file a Form 990N. The 990N is completed and filed electronically through the website www.epostcard.form990.org; there is no paper form.

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2. *Nonprofit Organizations with Gross Receipts of less than $200,000 or assets of less than $500,000 – IRS Form 990EZ.* Larger nonprofit organizations, with gross receipts of less than $200,000 (but more than $50,000) *or* assets of under $500,000 are required to file either a Form 990EZ (or they may choose to file a full Form 990). The 990EZ is a short form tax return.

3. Nonprofit Organizations with Gross Receipts of more than or equal to $200,000 or assets of more than or equal to $500,000 – IRS Form 990. For the larger nonprofit organizations, a full Form 990 must be filed.

California's Franchise Tax Board. Again, the type of form which must be filed with the Franchise Tax Board depends on the income/receipts of a non-profit entity; however there are only two types of forms to be filed with the FTB, specifically,

1. *Nonprofit Organizations with Gross Receipts of less than $50,000 – FTB Form 199N.* The FTB requires small tax exempt organizations (those with normal gross receipts of $50,000 or less – see paragraph below: "Determining Gross Receipts") to file an informational Form 199N return through their website (www.ftb.ca.gov).

2. *Nonprofit Organizations with Gross Receipts of equal to or greater than $50,000 – FTB Form 199.* Larger exempt organizations must file a Form 199 with the FTB.

Attorney General's Registry of Charitable Trusts. Besides the returns to the IRS and FTB, the following forms are required to be filed with the Attorney General for the State of California under all circumstances:

1. *Form CT1 (Initial Registration Form)* must be filed within 30 days after an organization receives assets for the charitable purposes for which it was organized. This applies to every charitable (public benefit) corporation holding assets for charitable purposes within California.

2. *Form RRF1 (Registration/Renewal Fee Report).* Form RRF1 must be filed annually, no later than 4 months and 15 days after the close of each of your tax years.

Secretary of State. All nonprofit entities must file a Statement of Information (Form SI-100) every *two* years, by the anniversary of the month of formation of the entity. Statement of Information forms can be downloaded and printed from the Secretary of State's website; alternatively they can be filed online using the "e-file" system.

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Unrelated Business Taxable Income Tax Returns. Even if you are a smaller nonprofit and are only required to submit a Form 990N with the IRS or a Form 199N with the FTB, your organization may be required to file an income tax return if your organization has "unrelated business taxable income" of $1,000 or more.

"Unrelated business taxable income" is defined as income that is not substantially related to the organization's tax-exempt purposes or the performance of its exempt activities. Please consult us or your attorney for more details, but this means back store revenue, summer camps, etc.

If your organization has "unrelated business taxable income" of $1,000 or more, you must file the following types of returns by the 15th day of the fifth month (May 15), after the close of the tax year:

- IRS Form 990T (and associated worksheet – Form 990W to assist in calculations)

- FTB Form 109

Determining Gross Receipts. Commonly referred to as the "gross receipts test", an organization's "gross receipts" is the total amount received from all sources during its annual accounting period, without any reductions for costs or expenses. A tax exempt organization with gross receipts of $50,000 or under will be able to file a simple IRS 990N and a tax exempt organization with gross receipts of under $50,000 will be able to file a simple FTB 199N.

Gross receipts are *"normally $50,000 or less"* under the IRS test if any one of the following conditions is satisfied:

(a) The organization is one-year old or less, and has received (or has been pledged) $75,000 or less during its first tax year; OR

(b) The organization is between 1 and 3 years old, and averaged $60,000 or less in gross receipts during each of its first 2 tax years; OR

(c) The organization is 3 years old or more, and averaged $50,000 or less in gross receipts for the immediately preceding 3 tax years.

Gross receipts are *"normally $50,000 or less"* under the FTB test if any one of the following conditions is satisfied:

(a) The organization is one-year old or less, and has received (or has been pledged) $37,500 or less during its first tax year; OR

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(b) The organization is between 1 and 3 years old, and averaged $30,000 or less in gross receipts during each of its first 2 tax years; OR

(c) The organization is 3 years old or more, and averaged $20,000 or less in gross receipts for the immediately preceding 3 tax years.

If you believe that your organization's annual gross receipts are $50,000 or less under the IRS test and $50,000 or less under the FTB test, **and you receive:**

(a) An IRS Form 990 package with a preaddressed mailing label – you may attach the label to the return, check box K to indicate that gross receipts do not normally exceed $50,000, sign the return and remit to the IRS. You do *not* have to complete Parts I through X.

(b) An FTB Form 199 package with a preaddressed mailing label – you may disregard it; organizations with gross receipts normally $50,000 or less are *not* required to file FTB Form 199.

When to File Returns. Annual returns, whether informational or income tax-related, whether from the FTB or the IRS are generally to be filed by the **15th day of the fifth month after the close of the tax year** (usually May 15th).

This includes:

(a) IRS Form 990N , 990EZ or 990,

(b) FTB Returns 199N or 199.

If a tax exemption application is pending at the time a return must be filed, ensure that you check the "application pending" box on the return and complete the return as applicable. Various extensions are available if required.

The first registration (CT1) with the Attorney General's Registry of Charitable Trusts must be filed within 30 days after the organization receives assets; thereafter, annual renewals (RRF1) are due on the 15th day of the fourth month after the end of the tax year (usually April 15).

Compliance Testing. Information returns are reviewed by the IRS and FTB to ensure that your organization maintains its "public charity" status which underlies your tax exemption. Should you not meet the public charity test or tests[1], then your organization may be audited and

[1] See Buynak, Fauver, Archbald & Spray's Tax Advisory No. 3 for details on "public charity" tests.

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lose its tax-exempt status as a public charity.

We examine the financials of nonprofit organizations for such compliance through our annual Business Compliance Program. Please call our office to enroll in the program and we will evaluate your organization's financials to determine compliance.

Penalties and Extensions. There are various extensions available if a return is not able to filed in time, some automatic, some which must be applied for. If you are unable to complete a return by the due date, please make sure you apply for an extension. If you do not obtain an extension and do not file on time, penalties are likely to be assessed, usually by reference to a fixed amount per day,

The failure to file a timely RRF-1 with the Attorney General may result in the disallowance of your tax exemption and the assessment of a minimum tax of $800 plus interest, fines and penalties.

In summary, your tax exempt status is important. Please ensure that the appropriate minimum returns and reports are filed with the appropriate governmental agency. The failure to do this may automatically result in the loss of your tax exempt status, requiring a complete new application and subsequent evaluation by the IRS or FTB. An unnecessary expense and a lot of additional effort, as tax exemption applicants are more highly scrutinized than an organization's initial application that may go back a substantial number of years.

As always, you should be sure that additional legislation has not been enacted or court decisions rendered, that would change the above advisements. This Advisory is neither exhaustive nor is it tailored to your specific situation. You should discuss your individual situation with us or your own attorney. We look forward to being of service to you.

S. Timothy Buynak,
Business and Tax Attorney

This Advisory is one of a series of business and tax advisories prepared by the attorneys at Buynak, Fauver, Archbald & Spray, LLP. Should you have further questions regarding the information provided in this Advisory, please contact the author listed above.

Buynak, Fauver, Archbald & Spray, LLP, provides business legal services to individuals, business entities and non-profit organizations from entity formation and start up, through day-to-day operations and exit strategies.

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