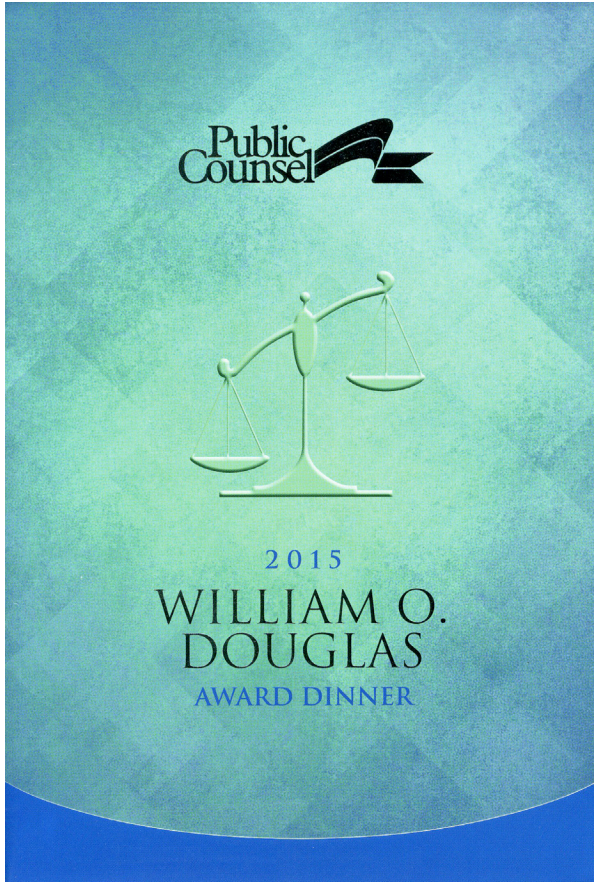


Anatomy of a Fundraiser:

A Legal Guide for Charitable Fundraising In California

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INTRODUCTION

Adventure Together (AT) is a California nonprofit public benefit corporation that provides outdoor adventure and education to children with special needs. It is income tax exempt under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Tax Code.

To support AT's exempt activities, its staff and board members have decided to sponsor a special fundraising event – specifically, a gala with food, music, and a silent auction. They have formed a board subcommittee to plan the event with the administrative support of George, AT's newly hired Director of Development.

At the first subcommittee meeting, all the participants were very excited. The ideas quickly began to flow:

“Can we have the event outdoors?”

“Should we do a raffle for a car?”

“If there has to be gambling, I'd prefer a poker tournament personally.”

“My brother owns a catering company. He can probably give us a huge discount. Could we give him a tax deduction?”

“How much should we charge for tickets?”

“I know a consultant who can help us out. She is a fundraising expert.”

“I think we should have a signature cocktail – An Adventure-tini!”

In the middle of the brainstorming session, Alejandra, a board member, piped up:

“Before we get too far along, aren't there also legal issues we should be thinking about?”

Alejandra is right. Fundraising – whether through an annual campaign, a monthly bake sale, or a black tie gala – raises myriad potential legal concerns. Though most of the rules are easy to satisfy, the financial and public relations consequences for failure to comply can be costly. In a worst case scenario, a nonprofit's lack of awareness or disregard for these legal issues can subject it to enforcement actions from government agencies (including possible monetary penalties or even loss of tax-exempt status) as well as potential lawsuits from vendors, employees, and guests. Failure to comply with laws bearing on gift substantiation can alienate relationships with donors who may be unable to claim a charitable tax deduction for their donations.

This guide identifies and discusses some of the more common legal issues that arise when a nonprofit, tax-exempt organization fundraises.¹ It addresses both California and federal law, specifically the Internal Revenue Code. Occasionally, this guide also addresses local laws applying only in the City of Los Angeles. Nonprofit organizations incorporated and/or operating outside of

California will have to comply with different state laws, and those operating outside of Los Angeles will have to comply with different local ordinances.

Sections I and II of this guide ([Preliminary Compliance Considerations](#) and [Fundraising Professionals](#)) outline the regulatory requirements with which a nonprofit organization must comply in order to legally solicit funds in California. Sections III and IV ([Venue Considerations](#) and [Managing Employees and Volunteers](#)) concern legal issues that are not specific to the activity of fundraising, but often arise in the context of a special fundraising event, such as a gala or charity auction. Section V ([Acknowledging Donations](#)) addresses federal income tax gift substantiation requirements for nonprofit organizations and their donors. Sections VI through IX, ([Unrelated Business Income Tax](#); [Auctions, Sales, and Boutiques](#); [Raffles, Bingo, and Poker Tournaments](#); and [Commercial Co-Ventures](#)) discuss the various legal issues that arise with regard to common nonprofit revenue raising activities.

Table of Contents

I. Preliminary Compliance Considerations	3
II. Fundraising Professionals	6
III. Vendor Contracts and Venue Considerations.....	7
IV. Managing Volunteers and Employees.....	10
V. Acknowledging Donations.....	13
VI. Federal Income Tax Considerations – Unrelated Business Income Tax	18
VII. Auctions, Sales, and Boutiques	21
VIII. Raffles, Bingo, and Poker Tournaments	23
IX. Commercial Co-Ventures.....	26
Conclusion.....	28

I. Preliminary Compliance Considerations

After the subcommittee meeting, the AT board president asked Shawn, its Executive Director, to make sure that the agency is up to date with all of its federal, state, and local registrations. Shawn is not sure why this is necessary, what paperwork is needed, or how to tackle the assignment.

Before a nonprofit organization can legally begin charitable fundraising of any kind, it needs to make sure that it is in good standing with all the agencies that regulate this activity. Specifically, it needs to confirm that it is properly—and currently—qualified and registered as a nonprofit tax exempt organization, and is compliant with all reporting requirements according to federal, state, and local tax, corporate, and charitable solicitation laws.²

Corporate and Tax Exempt Status (Federal and State)

Shawn needs to make sure that **AT** is currently recognized by the Internal Revenue Service (IRS) as an active tax-exempt 501(c)(3) organization eligible to receive tax-deductible contributions from its donors. Though the IRS initially determined that **AT** was entitled to 501(c)(3) status many years earlier, it is possible for **AT** to lose that status by breaching the operational requirements of section 501(c)(3) somewhere along the way. For example, 501(c)(3) organizations must annually submit to the IRS an information return on Form 990, Form 990-EZ, or Form 990-N (the applicable form depends on the value of an organization's assets and that year's gross receipts).³ A common way for a charity to have its federal tax exempt status revoked is by failing to file the appropriate 990 return for three years in a row. By using **AT**'s Employer Identification Number, Shawn can quickly confirm **AT**'s 501(c)(3) status online at <http://apps.irs.gov/app/eos/>.

If Shawn discovers that **AT**'s tax exempt status had been revoked, the board and senior staff of **AT** will then need to take steps immediately to reinstate the organization's tax exempt status. Any funds received from donors during the time **AT** does not have tax-exempt status could be subject to income tax unless 501(c)(3) reinstatement is retroactive. Additionally, donors will not be able to receive a charitable income tax deduction for their donations to **AT** if **AT**'s 501(c)(3) tax-exempt status has been revoked.⁴ If a nonprofit organization has had its tax-exempt status automatically revoked through failure to file a Form 990, Form 990-EZ, or Form 990-N, it must file an application for exemption and pay the appropriate user fee. The effective date of the reinstated exemption will likely be the date the organization's exemption application was submitted to the IRS. However, if certain conditions are met, the reinstated exemption may be retroactive to the effective date of revocation.⁵

In the state of California, the Attorney General also regulates charities⁶ and the professional fundraisers who solicit on their behalf. The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations are not misapplied. Most nonprofit organizations holding assets for charitable purposes in California must register with the California Attorney General's Registry of Charitable Trusts by filing Form CT-1 within 30 days of first receiving any property or assets.⁷ A nonprofit subject to this requirement needs to register before it may legally continue to

hold or raise charitable funds.⁸ For every year after initial registration, such a nonprofit must file a financial and activity update report, Form RRF-1, along with a copy of its federal 990 return and pay the appropriate fee. Nonprofits with annual revenues under \$50,000 that do not file a Form 990 or Form 990-EZ are additionally required to file Form CT-TR-1 along with the RRF-1. All forms are available online at the Attorney General's website, at <http://oag.ca.gov/charities/forms>. Shawn can check the compliance status of **AT** at <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y> – the status should be listed as “Current.” If **AT** has fallen out of compliance with the Attorney General's Registry, the organization's leadership should file the missing RRF-1(s) or 990 return(s) as soon as possible in order to avoid late fees and potential suspension or revocation of Attorney General registration or state tax exempt status.⁹

A nonprofit organization doing business in California, regardless of where incorporated,¹⁰ must also make sure that an up-to-date Statement of Information is on file with the California Secretary of State in order to maintain its corporate good standing. Specifically, nonprofits incorporated or authorized to do business in California must file Form SI-100 every two years, or sooner if the organization needs to change the information on file.¹¹ The Statement of Information form is available at http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf. Online filing is available at <https://bizfileonline.sos.ca.gov/search/busines> (enter the name of your corporation, login, and file the form). To check **AT**'s corporate compliance status, Shawn can search for the corporation at the same site–

the status should be listed as “Active.” If **AT**'s status has been suspended, Shawn or another staff person or board member should contact the Secretary of State to learn what is needed to resolve the matter.

Finally, nonprofits exempt from the California franchise tax must submit an annual information return similar to the federal Form 990 to the Franchise Tax Board (FTB). Every year, such organizations must file Form 199 (or Form 199-N, depending on the organization's gross receipts). Failure to file these returns for three years in a row can result in revocation of state tax-exempt status. Shawn can confirm **AT**'s continued section 23701d tax exemption good standing through an FTB online tool available at <https://www.ftb.ca.gov/help/business/entity-status-letter.asp>

If **AT**'s franchise tax exemption has been revoked, the organization's leadership should resolve this situation as soon as possible to avoid paying state income tax and jeopardizing the tax-deductibility of its donations on donors' state returns.

Internet and Other Fundraising to Donors in Other States

*After having reviewed **AT**'s files and checking the various websites, Shawn has determined that **AT** is up to date on all of the relevant state and federal tax and corporate registration requirements. The subcommittee can continue planning the gala confident that **AT** has a proper legal foundation to fundraise in California. But what about fundraising in other states? While most of **AT**'s donors are from California, occasionally **AT** receives donations from donors in other states through its website. Shawn wonders whether she needs to do*

anything further to solicit donations in those states as well.

Like California, most other states require a charity to preregister with its Attorney General or other state administrator before the charity is permitted to solicit donations in that state.¹² A California nonprofit that actively solicits gifts from donors in other states will need to keep current with the requirements in all of those jurisdictions.

But what about a nonprofit that merely advertises its special event on its website, and passively accepts contributions over the internet from donors across the nation? In order to provide consistency for nonprofits in determining where registration is necessary, many states have adopted shared principles (known as the “Charleston Principles”) regarding registration. Under these rules, a nonprofit needs to register in a state where it is soliciting donations by internet (1) if it is domiciled in the state; (2) if its non-internet activities are sufficient to require registration; or (3) if it solicits donations over the internet and specifically targets those within that state or receives contributions from that state on a repeated and ongoing basis.¹³ If a nonprofit receives a single donation from a state in which it is not registered and then, in subsequent years, sends the donor a solicitation letter, it may then need to register in that state as well.

Local Charitable Solicitation Laws

Nonprofits also need to meet the requirements of local city and county charitable solicitation laws before beginning any fundraising activity or campaign. Organizations operating in the City of Los Angeles, for example, must comply with requirements set by the Los Angeles Police Department’s (LAPD) Charitable Services Section. Before seeking contributions, the Los Angeles organization needs to file a “Notice of Intention” at least 15 business days prior to the solicitation start date and receive from the Police Commission an Information Card, copies of which the organization must make available and which must be displayed conspicuously at fundraising events.¹⁴

Nonprofits operating in the City of Los Angeles must also file a report after the event or campaign is completed detailing costs and proceeds.¹⁵ In addition, organizations operating in Los Angeles should apply for business tax exemption from the City’s Office of Finance.¹⁶ In the County of Los Angeles, organizations must file a solicitation form with the Business License Commission.¹⁷ For information on LAPD requirements and links to forms for charitable solicitation, visit <https://www.lapdonline.org/police-commission/cid/charitable-services-section/>.

Compliance Checklist

- ✓ Federal tax exemption and yearly tax returns (990, 990-N, or 990-EZ)
- ✓ CT-1 and yearly RRF-1 with California Attorney General
- ✓ Statement of Information and Form SI-100 (every two years) with Secretary of State
- ✓ Out of state registration (if necessary)
- ✓ State tax exemption and yearly returns (199 or 199-N)
- ✓ Local filings and business tax exemption

II. Fundraising Professionals

At the next AT board subcommittee meeting to discuss planning for the fundraising gala, board member Hannah suggests, "We should hire my friend Amy as a consultant for us. She's a fundraising expert. Maybe she can help us plan the event or even make phone calls to potential donors to raise money."

Fundraising professionals – commercial fundraisers and fundraising counsel – are regulated under California law. Nonprofits should be aware of potential legal concerns that may arise before hiring a professional fundraiser. (These requirements do not apply to employees of the organization or to fundraising support supplied by unpaid volunteers.)

Commercial Fundraiser vs. Fundraising Counsel

An outside person or entity hired by a charitable organization can work on a fundraising campaign or special event either as a "commercial fundraiser" or as "fundraising counsel." A commercial fundraiser receives compensation from a charitable organization to directly engage in soliciting, receiving, or controlling funds, assets, or property for charitable purposes.¹⁸ Fundraising counsel, on the other hand, does not solicit, receive, or control funds, assets, or property for the charity (whether directly or indirectly). Rather, fundraising counsel receives compensation to advise a charitable organization regarding fundraising efforts.¹⁹ If **AT** were to hire Amy to telephone potential donors and ask for donations, she would be considered a commercial fundraiser, but if she were hired to advise **AT** on planning and executing the gala, she would be considered fundraising counsel. Whether hiring an individual or an organization as a commercial fundraiser or fundraising counsel, charities must comply with similar requirements under California law.²⁰

Eligibility

In California, charitable organizations may only contract with commercial fundraisers or

fundraising counsel that are registered as required with the Attorney General's Registry of Charitable Trusts.²¹ Prior to entering into a contract, a nonprofit should ask potential commercial fundraisers or fundraising counsel for references, as well as proof of current registration with the Attorney General's Registry of Charitable Trusts.

Contract Requirements

For each fundraising campaign, event, or service, nonprofit organizations must enter into a written contract with any commercial fundraisers or fundraising counsel they hire. The written contract must include certain required elements, such as the charitable purpose of the fundraising activity, both parties' obligations, effective and termination dates, and fee arrangements. The contract must allow the charity to cancel the contract within 10 days without cost or penalty.²² In negotiating and preparing the contract, a nonprofit should ensure that the rights and obligations of the nonprofit and commercial fundraiser or counsel are clearly defined.

A nonprofit should also pay particular attention to the details regarding the commercial fundraiser or fundraising counsel's rights to fees (as well as the arrangement of those fees) and payment of expenses. There are two main ways to pay a

commercial fundraiser: (1) through a fixed fee or (2) as a percentage of funds raised. To make sure that the charitable organization maintains control in an arrangement with a commercial fundraiser, the charity should carefully lay out the cash controls and

banking procedures for funds collected by or through a commercial fundraiser. If the charity contracts to pay the commercial fundraiser a percentage of funds raised, it is advisable to cap this fee at a specific dollar amount.

Checklist for Hiring Fundraising Professionals

- ✓ Determine if professional is fundraising counsel or a commercial fundraiser
- ✓ Ensure that fundraising counsel or commercial fundraiser is registered with the AG
- ✓ Prepare and sign legally compliant contract
- ✓ Decide how professional will be paid and how expenses will be covered

III. Vendor Contracts and Venue Considerations

In line with its mission of promoting outdoor activities, AT decides to have its event at an outdoor nature center. The subcommittee has begun to solicit bids from caterers, bartenders, valet services, and other vendors for the gala. It is concerned about property damage and any injuries that may occur during the event – e.g. slip and fall, food poisoning– as well as any other legal risks that may arise in connection with the venue. There are a variety of steps that AT can take beforehand to address these concerns.

Insurance

When planning for any special event, a nonprofit organization should speak with its insurance broker to make sure it has the right insurance to cover any losses resulting from the event. A nonprofit should become familiar with any exclusions under its general liability policy and purchase insurance to cover these exclusions, if possible. For example, if AT's general liability policy excludes liquor liability, it should consider purchasing host liquor liability, which covers bodily injury or property damage arising out of the serving or distribution of alcoholic beverages by a party not engaged in this activity as a business enterprise. A nonprofit should also check to see whether employees and volunteers are

insured under the policy. The owner of the venue may ask to be named as an additional insured under the general liability policy as well.

In addition to its own insurance policy, AT should also make sure that the vendors with which it contracts have liability insurance to cover any potential injuries that occur as a result of their wrongdoing.

Indemnification Clause

A nonprofit should closely read any "indemnification" clause in its contract with vendors. Indemnification means that one person agrees to pay for the losses of another. For example, the nonprofit may ask the caterer to indemnify it from possible injuries

to persons eating its food at the function. Or, the owner of a venue may ask the nonprofit to indemnify it from any accident that occurs to a person in attendance. An indemnification clause is sometimes limited to payment for liability only if caused by the indemnifying party's negligence or misconduct. Other times, an organization may be asked to indemnify the other party for liabilities caused by anyone (including the party requesting indemnification). If a vendor presents the nonprofit with such a clause, the nonprofit should ask to change the provision so that the nonprofit is not responsible for the wrongdoing of persons or entities it does not control. For example, a nonprofit should avoid assuming responsibility for the wrongdoing of its guests over whom it likely has little control. The nonprofit can also ask for a mutual indemnification, under which both parties must pay for the losses caused by their own negligence or misconduct.

Force Majeure

A *force majeure* clause may mitigate some risk in the event a natural disaster or another extraordinary occurrence makes it impossible to perform under the contract. *Force majeure*, which literally means "superior force," is a contractual provision that frees both parties from their obligations under a contract if such an event prevents one or both parties from fulfilling their obligations under the contract.

For example, assume that days before **AT**'s gala, a forest fire blazed through the nature center where the event was to be held. **AT** can no longer hold the gala there – not only were the indoor facilities and parking lot burned down, but it was unsafe to be near the nature reserve due to the possibility of smoke inhalation. Under the contract's *force majeure* clause, **AT** no longer has to pay the nature

center (and the nature center no longer has to provide space to **AT** to hold their event).²³

Head Count Commitments

*The **AT** fundraiser subcommittee has chosen a caterer for the event. The caterer has sent a draft contract to **AT**. The contract requires **AT** to inform the caterer of the final number of attendees 30 days before the event. George, the development director, believes that deadline would be impossible to meet because guests will RSVP for the event as late as a day before. He would like the caterer to change this provision to allow notification of the head count one day before.*

Catering contracts usually require the hiring party to inform the caterer of the final headcount weeks before the event. Exact provisions vary from contract to contract. For example, some caterers may allow the hiring party to adjust the headcount upward (but not downward) closer to the event. Other contracts may additionally require that the final headcount is within a certain percentage (example, 15%) of the original estimated headcount when signing the contract. The individuals planning the event should read these provisions closely and determine whether and how the organization could realistically comply with the final headcount requirements. If necessary, the event planner should attempt to negotiate with the caterer to arrive at a compromise.

Signing Contracts and Obtaining Reimbursements

*Alejandra, the **AT** Secretary and a board member, meets the caterer at her office to sign the contract, which includes an indemnification provision. The contract requires a deposit that Alejandra puts on her personal credit card. After she leaves the*

caterer's office, Alejandra starts getting worried about whether she is now personally responsible for paying the remainder of the bill if AT does not. What if something goes wrong? Can the caterer come after her?

Board or staff members are sometimes asked to sign contracts on behalf of the nonprofit. Prior to signing any contract, an individual acting on behalf of the nonprofit should make sure they have authority by board resolution or otherwise to commit the organization to the obligations in the contract. A nonprofit organization should create a mechanism through which staff, officers, and board members are required to seek internal approval before signing a contract. Nonprofits usually have policies allowing reimbursement of board members and staff who spend money on the organization's behalf provided that proper documentation is provided to substantiate the expense. However, for large purchases, it may be prudent for a nonprofit to require board members and staff to obtain a check from the organization to the vendor in order to avoid financially committing the organization to expenses that have not been approved.

In addition, before signing the contract, the volunteer or staff member should be sure that the agreement is between the vendor and the nonprofit organization (and not the individual). Board members and officers should sign contracts using both their names and their positions (e.g., Alejandra Ortiz, Secretary of AT) to make clear they are not signing in their personal capacity.²⁴

Transactions with Board Members

AT board member Samir owns a printing company. He offered to print the gala invitations at a discount. The AT staff and board would like to use Samir's company but

are worried that there may be a conflict of interest.

While planning special events, a nonprofit may consider entering into contract for goods or services with a board member who offers it an attractive discount or other favorable terms. California law requires that certain procedures are followed before the board of a nonprofit organization approves a "self-dealing transaction," i.e., a transaction to which the nonprofit is a party and in which a director (or a family member of a director) has a material financial interest.²⁵ Specifically, self-dealing transactions have to be both for the nonprofit's own benefit, and fair and reasonable to the nonprofit at the time entered into. Further, the transaction must be approved by a majority of the directors in office (rather than the normal standard for board approval: a majority vote of a quorum), without counting the vote of the interested director, and with knowledge of the material facts of the transaction and the director's financial interest. Last, the board must conclude after reasonable investigation prior to approval that the corporation could not with reasonable effort obtain a more advantageous arrangement, or, in fact, the corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances.²⁶ If AT would like to hire Samir's company to print the invitations, the board should ensure that the transaction was lawfully approved. If AT has a conflict of interest policy, the board should additionally make sure that it is followed when approving the contract with Samir's company.²⁷

Licenses and Permits

A nonprofit should determine whether it needs local approval to hold an event in a

particular venue. For example, a nonprofit may need a permit to hold an event in a public space.

If alcohol is being served, additional permits or licenses will apply. Unless a nonprofit has hired a licensed caterer, it needs to obtain a daily license from the California Department of Alcoholic Beverages Control (ABC) if it plans to serve liquor at its event. A nonprofit will also need to obtain a daily license if it

intends to sell donated liquor through a charity auction. In order to obtain a daily license, a nonprofit must submit ABC Form 221 along with its determination letter from the IRS showing its tax-exempt status to the local ABC District Office. More information on Form ABC 221 is available at <https://www.abc.ca.gov/licensing/license-forms/form-abc-221-instructions/>. Of course, a nonprofit should ensure that alcohol is not served to minors at its event.

Checklist for Vendor Contracts and Venue Considerations

- ✓ Contact insurance broker and purchase additional coverage, if necessary
- ✓ Read indemnification clauses carefully – negotiate if unfavorable
- ✓ Consider asking for a *force majeure* clause
- ✓ Negotiate head count commitment timeline, if applicable
- ✓ Implement and train staff and board on reimbursement procedures
- ✓ Follow required procedures for approving contracts with board members
- ✓ Ensure contracts are in name of organization
- ✓ If serving alcohol without a licensed caterer, obtain “daily license”
- ✓ Obtain required permits for venue

IV. Managing Volunteers and Employees

George, AT’s development director, has determined that AT will need volunteers to help set up the auction and take tickets during the event. He asks the executive director, Shawn, if any staff members would be willing to volunteer on the evening of the event. Shawn understands the need for additional help, but she wants to make sure she doesn’t have to pay staff members overtime.

Employees or Volunteers?

Under the Fair Labor Standards Act, an employer, such as AT, is required to pay overtime to all non-exempt employees who work over 40 hours a week, unless they meet certain exemptions.”²⁸ AT must also comply with the California Labor Code, which

requires an employer to pay overtime for work in excess of eight hours in one workday, even if the employee only works 40 hours in the workweek.²⁹ Federal labor regulations make clear that staff work for public or charitable purposes is “working time” and therefore compensable if it is at the employer’s request, under the employer’s

direction or control, or while the employee is required to be on the premises. However, staff work for a nonprofit is not considered compensable working time if it is performed voluntarily outside of the employee's normal working hours and the employee is not performing the same type of services she is normally employed to perform.³⁰ For example, if an AT administrative assistant were to take tickets and check people into an event, he is likely performing administrative work of a type he normally performs and will therefore need to be paid. On the other hand, if an administrative assistant were to volunteer to bake cookies at home for an annual bake sale, time spent in that activity would likely be considered volunteer time.

Despite regulations that allow an employee to volunteer at an event without being paid, **in reality, it is almost always a best practice to pay a non-exempt employee if the provide services at an event, even if the services are not the same as they normally perform.** An employee may claim after the event that he did not truly volunteer, but instead was pressured to volunteer or perceived that volunteers had more good will from management and felt that he did not truly have a choice. In order to avoid a dispute, an organization should pay its hourly employees for time worked at an event. As an alternative, an employer may avoid overtime by changing a non-exempt employee's work hours on the day of the event so that the workday starts and ends later or, under certain circumstances, may offer compensatory time off on the day before or after the event within the same work week. However, an exempt employee has no right to additional compensation, even if she is required to work or simply attend the event.³¹

Shawn has decided that AT cannot afford to pay its staff members overtime on the day of the event. She is considering recruiting AT parents or siblings to volunteer, but is concerned about whether AT can allow people to work for free.

Both California and federal law recognize that an individual who performs hours of service for civic, charitable, or humanitarian reasons without any expectation of pay will be considered a volunteer. These services must be offered without pressure or coercion, without any compensation, and in a non-commercial enterprise.³² If an individual is truly a volunteer, then they do not have to be paid for their services and other employer obligations, e.g., workers' compensation, do not apply.

An organization may decide that in order to avoid any possible claims in the future, it will not use volunteers and instead compensate all individuals who provide services to the organization. Of course, doing so would trigger a host of obligations on the part of the nonprofit organization (i.e., payroll tax, workers' compensation, etc.) which a nonprofit may seek to avoid. If an organization does decide to rely on volunteer help, **it is crucial that it does not compensate its volunteers in any way**, including through money, goods, benefits, or services. Payment of any kind may potentially transform the volunteer into an employee to whom the various employment laws apply. A nonprofit should also consider asking its volunteers to sign a volunteer agreement which makes clear that the individual has no expectation of compensation.³³

If the parents and siblings helping out on the day of the AT gala were to do so freely and without any expectation or receipt of

compensation, **AT** would not have to pay them or meet any other employment law obligations toward them.

Liability for Volunteers

*Shawn is additionally worried about **AT**'s liability if a volunteer were to have an injury or injure another guest. Would **AT** be liable if a volunteer were negligent in their work and a guest were injured? If the volunteer could be found personally liable, how would **AT** ever be able to recruit volunteers again?*

A nonprofit organization may wish to have volunteers help out with the event, e.g., greeting attendees, selling tickets, putting up decorations, transporting VIPs. A nonprofit should be aware of its potential liability in case a volunteer injures a third party or himself in the course of volunteering.

In California, a charitable organization is liable to third persons for the acts of its employees and agents under the usual rules of agency.³⁴ If a volunteer were to commit a tort within the scope of their work for a nonprofit organization, the nonprofit itself may be liable. A nonprofit should refrain from granting volunteers actual authority to act or make decisions on the organization's behalf. Most importantly, a nonprofit should aim to prevent injury to others in the first place through creating a risk management plan, volunteer training, implementing safety precautions, and a establishing a procedure to report concerns.³⁵ Since not all risks can be mitigated, the nonprofit should also make sure that its general liability insurance covers volunteers. See [Section III](#) for a brief discussion about insurance.

*George asks Joseph, a longtime **AT** volunteer who happens to be 6'5" tall, to help with hanging decorations before the event. Joseph*

want to know what his liability will be if a decoration falls on a guest.

The federal Volunteer Protection Act of 1997 ("the Act") limits a volunteer's personal liability when the volunteer acts within the scope of their duties as a volunteer and the harm caused is not the result of willful misconduct or other gross negligence. There are exceptions for activities requiring licenses that are not covered by this protection.³⁶ The Act can provide a defense if a lawsuit is filed, but does not prohibit the filing of lawsuits against volunteers. The Act should provide protection to Joseph in the event a decoration falls and injures someone, assuming that the harm was not a result of Joseph's willful misconduct or gross negligence. The Act does not limit the possible liability of the organization itself³⁷ – a nonprofit should ensure that its risk management plan includes volunteers and that its liability insurance covers volunteers.

In addition to federal protections, California law limits the personal liability of volunteer directors or officers of nonprofit organizations (if the organization maintains a general liability insurance policy). The protection does not apply to self-dealing transactions; intentional, wanton, or reckless acts; gross negligence; or an action based on fraud, oppression, or malice.³⁸ Like the Volunteer Protection Act, California law does not bar lawsuits and so a director or officer may find him or herself in expensive and time-consuming litigation nonetheless.

*Shawn and George are concerned that a volunteer, like Joseph, may injure himself while hanging decorations. They wonder what, if anything, can be done to limit **AT**'s liability.*

In order to limit liability for injuries sustained by volunteers, a nonprofit organization may

wish to require its volunteers to sign waivers and releases of liability. Under such a waiver, the volunteer agrees to release an organization of responsibility for any harm the individual sustains through volunteering and gives up the right to bring a claim based on the organization's negligence. Keep in mind that not all waivers of liability will be honored by a court. For example, California law prohibits contractual exemption from responsibility for fraud, willful injury to person or property, violation of law,³⁹ or gross negligence,⁴⁰ as well as waivers for ordinary negligence that impair the public interest.⁴¹ An organization should obtain

assistance from an attorney to review and draft a waiver agreement.

Further, a nonprofit should explore insuring against volunteer injuries. California Workers' Compensation Law permits individuals who might otherwise qualify as volunteers to be treated as employees for purposes of workers' compensation, without impacting the volunteer status of such individuals for any other purpose.⁴² A nonprofit should also determine the extent to which injuries sustained by volunteers are covered by its general liability policy and purchase additional insurance if necessary.

Checklist for Managing Employees and Volunteers

- ✓ Determine whether non-exempt employees will work at the event and budget to pay overtime if necessary
- ✓ If using volunteers, make sure they are volunteering freely – do not offer any form of compensation
- ✓ Train volunteers and employees on responsibilities during event and any safety procedures
- ✓ Consider adding volunteers to workers' compensation and/or general liability policy.
- ✓ Ask volunteers to sign a volunteer agreement and liability waiver

V. Acknowledging Donations

AT is charging \$250 per person for the gala, which will include dinner, music, and wine and beer. Each guest will also receive a gift basket with a hiking kit – trail mix, a water bottle, and a deck of playing cards. The development staff needs to send acknowledgments to those who attend the event, thanking them for their contributions and providing information on tax deductibility. George is not sure what legal language to include in the acknowledgement.

Acknowledgments

Donations to a 501(c)(3) organization are normally tax deductible. While it is generally the responsibility of the donor to prove to the

IRS that she has made a tax-deductible donation, a nonprofit organization should provide the documentation necessary for a donor to do so.⁴³

A donor must have a bank record or written communication from a charity for any monetary contribution before the donor can claim a charitable deduction on her federal income taxes.

For any single donation of \$250 or more, a donor needs a specific kind of contemporaneous, written acknowledgment from a charity. The written acknowledgment must include the following information:

- (1) Name of organization;
- (2) Amount of cash contribution;
- (3) Description (but not the value) of non-cash contribution;
- (4) Statement that no goods or services were provided by the organization in return for the contribution, if that was the case; and
- (5) Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution.⁴⁴

An organization can send a separate acknowledgment for each donation or it can send an annual acknowledgment substantiating each separate donation. Although the written acknowledgment is only required for donations of \$250 and above, a nonprofit may also (and often should) send a similar acknowledgment for all donations it receives. Many nonprofits email or mail a computer-generated acknowledgment letter for every donation received over their websites.

The acknowledgment must be contemporaneous. An acknowledgment is considered contemporaneous if the taxpayer obtains it on or before the earlier of the date

the taxpayer files their yearly tax return or the due date for filing the return.⁴⁵ Typically organizations send an acknowledgment no later than **January 31** of the year following the donation.

It is crucial that a donor obtains an acknowledgement that states that no goods and services were provided by the organization in exchange for the contribution and that such acknowledgment is obtained prior to filing the tax return. In a 2012 case before the U.S. Tax Court, *Durden v. Commissioner*,⁴⁶ a couple claimed a charitable deduction for over \$25,000 donated to their church, most of which corresponded to gifts in the amount of \$250 or greater. When the IRS denied their deductions, the couple produced a letter from the church, written in January of the year following the donation, but the acknowledgment did not include the statement that no goods and services were provided in exchange for the gift. When the IRS rejected the acknowledgment, the couple produced another letter, which contained the required language, but was dated a year after they filed their tax return. The Tax Court agreed that the couple was not entitled to a deduction because the original, contemporaneous acknowledgment letter lacked an affirmative statement that no goods and services were given in return. The Tax Court declined to even consider the second acknowledgment because it was not contemporaneous.

Goods and Services Received in Return (Quid Pro Quo)

George, the development director of AT, has calculated that the fair market value of attendance at the AT gala is \$75 for the food, drinks, invitations, venue, DJ, and gift bag. He wants to make sure that AT's acknowledgment

letters properly disclose to donors the extent to which their donation is deductible.

If a donor receives a good or service in return for his donation (known as a “quid pro quo”), only the contribution in excess of the fair market value of what was received is deductible.⁴⁷ **For any contribution in excess of \$75 for which the donor receives something in return, the charitable organization is required to provide a written disclosure to the donor.** The written disclosure must:

(1) inform a donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the money contributed by the donor over the value of the goods or services provided by the donation; and

(2) provide a donor with a good faith estimate of the good or services.⁴⁸

If a nonprofit does not meet the written disclosure requirement, it will be assessed a penalty of \$10 per contribution, not to exceed \$5000 per fundraising event or mailing. A nonprofit can avoid the penalty if it can show its failure was due to reasonable cause.⁴⁹

Since in return for a donation of \$250, each donor received \$75 worth of goods and services at the **AT** gala, a donor may only deduct \$175. **AT** should send an acknowledgment to each donor, thanking them for the contribution and informing the donor that the deductible portion of the contribution is limited to the excess of the contribution amount over the fair market value of the dinner. For example:

Dear Donor,

Thank you for contribution of \$250 to Adventure Together on

September 1, 2019. Your contribution will enable Adventure Together children to experience the wonder of the outdoors in a safe and supportive environment. In exchange for your contribution, you received food, drink, entertainment, and a gift bag at the Adventure Together gala worth an estimated fair market value of \$75. Federal tax law permits you to deduct the excess (if any) of your gift over the value of items you receive in exchange for each gift.

Therefore for federal income tax purposes, your contribution deduction is limited to \$175. Please retain this letter for your records.

Warmly,

Shawn, Executive Director

*The gift bags given to each guest have a fair market value of \$10. Happy Hikers, a local hiking goods store, donated the contents of the bags to **AT**; as such the organization luckily did not have to pay any money for them. Should **AT's** written disclosure of value received by its donors take into account the \$10 gift bag?*

In determining the value of the goods and services received by the donor, **the organization must use its best estimate of the fair market value, rather than the cost to the organization.**⁵⁰ Therefore, if an organization received food, space, or gifts for free, the organization must still inform the donor of the fair market value of that which they received, even if it cost the organization nothing to provide. **AT's** written disclosure to their donors must take into account the \$10

gift bags in its estimate of the goods and services received by the donor in return for their donation.

What if the Gift was Really Small? –
Token Exception

If a charity provides a donor with an insubstantial gift in exchange for a contribution, the gift, i.e., the “token,” does not have to be described in the acknowledgment. Goods and services are considered insubstantial under IRS rules in effect in 2019 if:

(1) The fair market value of the benefits received does not exceed the lesser of 2% of the donation or \$111, or

(2) The donation is at least \$55.50, the only items provided bear the organization’s name or logo, and the cost of these items is under \$11.10.⁵¹

If **AT** were to give away a bandana worth \$2 for every gift over \$100, that would be a token because the value of the bandana is less than 2% of the donation. However if the donation were only \$80, then a \$2 bandana would be more than 2% of the donation and wouldn’t be a token – unless the bandana had the **AT** name or logo, in which case it would be considered a token. **Note that the dollar amounts in the definition of insubstantial are adjusted for inflation every year by the IRS.**

Donor Unable to Use the Gift

*Patricia, a longtime donor to **AT**, will be out of town for her nephew’s wedding on the day of the gala. She would like to support **AT** by making a donation of \$250 in honor of the gala, even though she can’t attend. Bruce, another donor, purchased a ticket for the gala over the website. On the day of the event, he*

comes down with the flu and can no longer attend the event. Should the deductible portion of Patricia or Bruce’s donation be reduced by the value of the ticket?

If a donor receives something of value in return for his donation, the amount of the donation deductible for federal tax purposes is limited by the fair market value of the goods or services received in return. Here, the value received in return for purchasing a \$250 ticket is entitlement to attend a gala calculated to have a fair market value of \$75. If Patricia were to make a donation to **AT** without purchasing a ticket, then her donation of \$250 would be fully deductible. In order to facilitate these types of donations, an organization could give donors the option, e.g., on the website, to make a donation without purchasing a ticket.

Bruce, on the other hand, received a ticket to the gala in return for his \$250 donation but did not attend the gala and did not return the ticket. The IRS has written that “[w]hether you use the tickets or other privileges has no effect on the amount you can deduct. However, if you return the ticket to the qualified organization for resale, you can deduct the entire amount you paid for the ticket.”⁵² Therefore, Bruce’s deduction is reduced by the fair market value of the gala.

Donor Advised Funds

*Claudia, a major donor to **AT**, has decided she would like to purchase ten tickets to the gala for \$2500. She calls George and tells him that she will direct her Donor Advised Fund at the local community foundation to send **AT** a check for \$2500. Can **AT** send Claudia ten tickets to the gala in exchange for this gift?*

George should tell Claudia that **AT** cannot send her tickets if the funds come from her

Donor Advised Fund (DAF). A DAF is a separately identified fund or account maintained by a sponsoring 501(c)(3) organization, composed of contributions made by an individual donor or group of donors. Once a donor makes a contribution to a DAF, the sponsoring organization has legal control over it, although the donor may advise the organization with respect to the distribution of funds from the account.

Under the rules governing DAFs, a donor or other person related to a donor may not receive more than an "incidental benefit" in connection with a gift from a donor advised fund – a distribution resulting in a more than incidental benefit is subject to an excise tax on the sponsoring organization or donor advisor. The IRS has recently issued a notice on DAFs, confirming its view that receiving tickets to an event in return for a distribution from a DAF would be considered a "more than incidental" benefit, resulting in a potential excise tax to the donor advisor or sponsoring organization. The notice further states that an excise tax would apply even if the donor advisor directly paid the non-deductible portion (e.g., the value of the food, drink, and gift bag) and the deductible portion was paid by the DAF.⁵³

Therefore, **AT** should not allow Claudia to purchase a ticket to a fundraiser through a DAF, even if she directly paid the non-deductible portion of \$750 (\$75 x 10). In order to avoid surprised (and potentially angry) donors who expected gala tickets to arrive in the mail, it is very important to communicate with donors ahead of time that tickets cannot be purchased through DAFs. Checks that arrive from a DAF during gala time that seem to be for the purchase of tickets (e.g., the donation amount is the same price as gala tickets) should not be deposited without a phone call to the donor, confirming

that they do not expect tickets in return. Of course, if a donor does not wish to attend the gala and simply wishes to make a donation in connection with the event, a nonprofit is free to accept the donation.

Non-Cash Donations

*Happy Hikers, a local hiking goods store, has donated the contents of the gift bags to **AT**. George is not sure what information to include in the acknowledgment from **AT**.*

When a nonprofit organization receives a non-cash contribution, it should send an acknowledgment to the donor describing the contribution, but not providing a value. It is the responsibility of the donor to determine the value of their contribution for tax deductibility purposes. If the donation is of significant value, the donor may ask the organization to acknowledge the donation on IRS Form 8283.⁵⁴ In this case, **AT** should send an acknowledgment to Happy Hikers, thanking it for the gift of trail mix, water bottles, and playing card decks, and stating that no goods or services were provided by **AT** in return for the contribution (if that was the case). The local store is responsible for determining the value of the goods provided and the corresponding amount of charitable deduction it can take, if any.

*The DJ's nephew participates in **AT** outings, and because of this relationship has decided to charge **AT** \$750 for the event, rather than her usual charge of \$1250. She asks George for an acknowledgment for her donation.*

A charitable deduction is not available for all donations to a 501(c)(3) organization. Notably, donations of services are not deductible.⁵⁵ Although generous, the DJ cannot take a charitable deduction for the amount of the discount. However, if the DJ

charges the full amount to **AT**, receives payment that she recognizes as income, and then makes a cash donation, the cash donation is deductible. Further, while a nonprofit such as **AT** should not give tax advice to its vendors and donors, on request it may inform a vendor that a business expense deduction might be available for its donation and that the vendor should consult

with its own attorney, accountant, or other tax adviser for more information.

For more discussion on acknowledging donations of cash, goods, and services from vendors, see [Section VII](#).

Checklist for Acknowledging Donations

- ✓ Send contemporaneous acknowledgments with explicit statement that no goods and services were provided in return for donation, if that was the case
- ✓ If goods or services were provided in return, disclose fair market value and inform donor that tax deduction is limited to amount of contribution in excess of fair market value
- ✓ Do not need to include “token” gifts in disclosure
- ✓ For non-cash gifts, describe gift without providing value
- ✓ Include donated gifts and services in determining fair market value of special event fundraiser
- ✓ Create mechanism for donor to make contribution without purchasing ticket to fundraiser
- ✓ Consider automating acknowledgment letters for gifts received on website

VI. Federal Income Tax Considerations – Unrelated Business Income Tax

*At the gala, **AT** sells scarves at a booth. The sales are so phenomenal that **AT** decides to continue selling scarves on its website. The organization hires several new employees to oversee the project – managers, web designers, and a bookkeeper. The income generated from the scarf sales is substantial. Board members have started to wonder whether **AT** will need to pay income tax on the sale proceeds.*

What is Unrelated Business Income Tax

Nonprofit organizations tax exempt under section 501(c)(3) of the Internal Revenue Code generally are not required to pay income tax. However, 501(c)(3) organizations may be required to pay tax on income derived from a regularly carried on trade or business if the activity is not substantially related to the organization’s

exempt purpose (an “unrelated business activity”). This tax is called Unrelated Business Income Tax, or UBIT. A nonprofit will have to pay UBIT even if the money raised from the unrelated business is used to fund the nonprofit’s tax exempt activities. Moreover, if the unrelated business activity becomes a substantial activity of the organization such that the organization is no longer operated primarily for an exempt

purpose, the nonprofit may lose its tax-exempt status. A nonprofit should monitor its unrelated business activity and, if necessary, consult with a lawyer to ensure that its tax-exempt status is not threatened.

AT will likely have to pay UBIT on the income derived from the sale of scarves because the sales are regularly carried on and not substantially related to the organization's exempt purpose. However, if the scarves were made by **AT** participants as part of an outdoor education program to learn about proper dress while in the woods, **AT** may be able to avoid paying UBIT because the activity furthers the organization's exempt purpose and is therefore not an unrelated business activity.⁵⁶ As these examples illustrate, whether or not a business activity is subject to UBIT is very fact specific and should be evaluated by an attorney on a case by case basis.

Organizations that owe UBIT will be taxed at the corporate rate and may take advantage of business deductions that are directly connected with the carrying on of the taxable trade or business. Previously, a nonprofit with multiple lines of business could aggregate profits and losses on the various businesses and pay tax on the resulting income. Starting in 2018, losses of one business activity cannot be used to offset profits from another, which may result in more unrelated business taxable income for an organization than in previous years.⁵⁷

Exceptions to UBIT

There are many exceptions to the UBIT rules. Below are a few of the exceptions most likely to arise.⁵⁸ Be aware that there are also many exceptions to the exceptions.

- Volunteer-led activities. A trade or

business in which substantially all the work is performed by volunteers without compensation is not subject to UBIT. If the scarves in the example above were made and sold by volunteers, then their sales would not be subject to UBIT.

- Sale of donated merchandise. The income derived from the sale of goods donated to the nonprofit, e.g. a thrift store or an auction where the goods are donated by local businesses, would not be subject to UBIT. If **AT** sold scarves that were donated to the organization, the proceeds of the sale would not be subject to UBIT.
- Business activities not regularly carried on. An occasional business, such as an annual bake sale, would not be considered regularly conducted and would not be subject to UBIT. Likewise, if **AT** were to sell specially commissioned scarves at the gala, the sale proceeds would not be subject to UBIT because it is not a regularly carried on activity.
- Royalties. Payments for trademarks, trade names, or copyrights are considered royalties and are excluded from UBIT. If **AT** were to license the right to its logo to a scarf-making company, royalty payments from the sale of the scarves would not be subject to UBIT.
- Bingo. Income from bingo games may not be subject to UBIT if carried out in accordance with IRS rules. However, there may be state and/or local regulation of bingo as a fundraising activity. See [Section VIII](#) for more information on regulation of bingo.

Advertising and Corporate Sponsorships

A local supermarket wants to donate \$2000 to underwrite the AT gala. Thankful for the gift, the AT gala subcommittee agrees to include the supermarket's name and logo on the gala invitation. In addition, the supermarket's name and logo will appear on a large banner which will be placed behind the DJ at the gala itself. The supermarket owner has also asked AT if, in return for the payment, AT agrees for one year to purchase food exclusively from the supermarket for its excursions and office needs. Shawn, the AT Executive Director, is concerned that one or both of these arrangements will subject AT to UBIT.

A nonprofit may wish to raise money through the use of corporate sponsorships. Income from sponsorships is not subject to UBIT when certain conditions are met.

Specifically, the IRS has excluded “qualified sponsorship payments” from UBIT. A “qualified sponsorship payment” is a payment with no expectation or arrangement that the payor will receive a substantial benefit in return, other than the use/acknowledgment of the business name, logo, or product lines in connection with the organization.⁵⁹ However, if the payor receives something in return, such as advertising or an exclusive provider agreement, then the payment is not a qualified sponsorship payment and may be subject to UBIT unless another exception applies.

If AT simply includes the supermarket's name and logo on the gala invitation and banner, the supermarket's payment would be a qualified sponsorship payment and would not be subject to UBIT. If AT were to agree to the exclusive vendor arrangement with the supermarket, the payment would likely not be a qualified sponsorship payment and would be subject to UBIT (unless another exception applies).

Often, 501(c)(3) organizations will give each guest at a fundraiser an “ad book,” in which the charity will sell space to advertisers and/or donors. If a business pays to have its name, logo, and contact information in the ad book, the payment would likely be a qualified sponsorship payment. On the other hand, if a business purchased an advertisement which described the business's products and prices and had comparative or qualitative information, rather than simply including its name, logo, or contact info, that arrangement would likely not be a qualified sponsorship payment arrangement.⁶⁰ However, the 501(c)(3) organization may still not have to pay UBIT on the proceeds from the sale of the advertisements because the ad book is not a regularly carried on activity.

Given the fact-sensitive nature of the rules governing qualified sponsorship payments and unrelated business income, a nonprofit should consult an attorney before formalizing such arrangements.

Checklist for UBIT

- ✓ Is the trade or business regularly carried on?
- ✓ Is it related to the exempt purpose?
- ✓ Does the trade or business fall into a UBIT exception?
- ✓ For corporate sponsorships, will the sponsoring business receive something in return for its contribution other than use of business name, logo, or product line?

VII. Auctions, Sales, and Boutiques

Nonprofit organizations often raise money through the sale of goods and services – e.g., silent auctions, holiday boutiques, bake sales, carwashes, or selling logo items. This section discusses some of the common legal issues that may arise with regard to fundraising through sales.

Sales and Use Tax

Sales and use tax applies to the sale or use of tangible personal property in California. Nonprofit organizations are not exempt from the taxes and may be subject to either tax depending on the nature of a particular fundraising activity.

AT plans to hold a silent auction at its gala. A local tackle shop has donated a fishing rod and a free fishing trip to be sold at the auction. Will AT be required to pay sales tax when these lots are sold at the auction?

A nonprofit is required to pay sales tax on the sale of physical merchandise – therefore, **AT** will likely owe sales tax on the sale of the fishing rod, which would be based on its fair market value. However, **AT** would not have to pay sales tax on the auction sale of the fishing trip because it is not physical merchandise.⁶¹ Keep in mind that the sale of food is also generally subject to sales or use tax.⁶²

A nonprofit can add the tax to the purchase price or can include the tax in the sales price, so long as it displays a sign stating: “All prices of taxable items include sales tax computed to the nearest mill.”⁶³

Organizations must obtain a seller’s permit if they are engaged in business in California and intend to sell or lease tangible personal property that would ordinarily be subject to sales or use tax if sold at retail, unless certain limited exceptions apply to the particular sales activity.⁶⁴ A nonprofit can obtain a seller’s permit at the California Department of Tax and Fee Administration (CDTFA) website

or at a CDTFA field office.⁶⁵ A nonprofit will need to file its sales and use tax return by the last day of the month following the sales event or, if issued a regular permit, on a monthly, quarterly, or annual basis (depending on estimated sales).⁶⁶

Income Tax

As discussed in [Section VI](#), a nonprofit may be required to pay UBIT on income derived from a regularly carried on trade or business not substantially related to its exempt purpose. Many popular fundraising activities involving the sale of goods or services will fall under an exemption to UBIT – e.g., sale of donated goods, activities not regularly carried on, volunteer-led activities. However, if an organization plans to fundraise through the sale of goods and services, it should consult an attorney or accountant to make sure that it will not have to pay UBIT on the income generated from the sales activities.

Acknowledging Donations of Goods and Services to an Auction

When a nonprofit raises money through a charity auction, it often solicits donations of goods and services from individuals and businesses and then auctions these items off either at the event, or, as becoming more popular, through an internet auction. While both the donor and the purchaser of the item may qualify for a charitable deduction, a nonprofit must make sure that it does not “oversell” the potential of a deduction arising from an auction to its donors.

Generally, if a business were to donate a gift from its inventory, the amount of the deduction will be limited to the donor's cost of the item, even if the item sells for a higher price.⁶⁷ A nonprofit organization should send a proper acknowledgment to the donor, providing a description of the good, without offering a value. Donations of services or of rent-free use of property are not deductible. Please see [Section V](#) of this Guide for more information on sending acknowledgments for non-cash donations. A nonprofit should ensure that its employees and volunteers do not provide inaccurate information on deductibility of gifts to auction donors – one person at the organization should be responsible for providing these acknowledgments.

The purchaser of an item at an auction would also be able to take a charitable deduction so long as the purchase price exceeds the fair market value of the good or service that was purchased – only the portion of the payment exceeding the fair market value will be deductible. As with any quid pro quo donation, the nonprofit needs to determine the fair market value of the item purchased and provide the purchaser with the proper disclosures. A best practice would be to include the fair market value (i.e., the nonprofit's good faith estimate of the value) for each good or service offered for sale at the auction alongside the item itself (or alongside the web listing if the auction is held online) so that the purchaser knows whether and to

what extent his payment exceeds the fair market value.⁶⁸ For more information on acknowledging donations with a quid pro quo element, see [Section V](#).

AT plans to hold an auction at its gala. The nonprofit has organized a group of volunteers to solicit donations from local businesses. A guitar shop is willing to offer a free music lesson, worth \$50. Sabrina, an attendee at the auction, purchased the lesson for \$50. Is anyone entitled to a deduction?

The guitar shop may not take a charitable deduction for this donation because it is a service. Sabrina may also not take a charitable deduction because the purchase price does not exceed the fair market value of the lesson.

Instead of \$50, Sabrina purchased the guitar lesson for \$100.

AT must send an acknowledgment to Sabrina, informing her that her donation is limited to the excess of the purchase price over the fair market value and provide an estimate of the fair market value of the guitar lesson.

A local boutique has donated a handbag to the auction. The handbag normally sells for \$500. The boutique purchased the purse for \$300.

AT should send an acknowledgment to the store describing the gift, without providing a value.

Checklist for Sales Fundraisers

- ✓ Obtain a sellers permit if necessary
- ✓ Send proper donation acknowledgments to donors of goods – services are not deductible
- ✓ Determine fair market value of items for sale and publicize to guests
- ✓ Send acknowledgments to purchasers when payment exceeds fair market value of item bought.
- ✓ Pay sales tax if necessary
- ✓ Consider whether sales activity subjects organization to UBIT

VIII. Raffles, Bingo, and Poker Tournaments

Gambling activities and other games of chance are fun and popular ways to raise money for nonprofit organizations. Nonprofits should be aware of the various federal, state, and local rules that govern the use of raffles, bingo, and poker tournaments as fundraisers.

Raffles

AT's fundraising committee wants to host a raffle during the gala. Several hiking and sporting goods stores have generously donated items for the raffle. The AT staff is not sure what steps it must take to lawfully conduct a raffle.

- State Rules

To be eligible to conduct raffles in California, a nonprofit organization must be tax exempt under Internal Revenue Code section 501(c)(3) and the California Revenue and Taxation Code and have been qualified to conduct business in California for at least one year prior to the raffle.⁶⁹ If these preliminary eligibility requirements are met, the organization must register with the Attorney General's Registry of Charitable Trusts by completing Form CT-NRP-1 before September 1 of each year (i.e. September 1 through August 31) during which the raffle is expected to take place, or, if the registration is not made by September, the organization must submit the registration form and fee at least 60 days before the raffle is held.⁷⁰ The organization must also file a nonprofit raffle report each year on or before October 1 on

Form CT-NPR-2, which tracks the proceeds and expenses of the raffle.⁷¹

A raffle must comply with the following requirements:

(1) Each ticket is sold with a detachable coupon or stub, and both the ticket and the coupon associated with it are marked with a unique and matching identifier.

(2) Winners of prizes are determined by draw from among the coupons or stubs.

(3) The draw must be conducted in California, under the supervision of a natural person who is 18 years of age or older.

(4) **90% of the gross receipts generated from the sale of raffle tickets for any given draw are used by the organization to benefit or provide support for beneficial or charitable purposes;** alternatively, the organization may use those revenues to benefit another private, nonprofit organization that is also eligible under the statute.⁷² Therefore, 50/50 raffles, where half the money goes to the organization and the

other half goes to the raffle winner are not permitted in California outside a specific exception for major league sports home games.⁷³

A raffle may not be conducted by any machine, and may not be operated or conducted over the internet, although an organization may advertise a raffle on the internet or permit others to do so.⁷⁴ There is no maximum limit on the value of prizes that can be distributed during a raffle.

A raffle is exempt from the above requirements if: (1) the raffle does not require any of the participants to pay for a chance to win; (2) it involves a general and indiscriminate distribution of the tickets; and (3) the tickets are offered on the same terms and conditions as the tickets for which a donation is given.⁷⁵

If **AT** wants to conduct a traditional raffle, it must comply with the above-described requirements in the penal code. Since many states have similar rules, it is difficult (and in some cases impossible) to conduct a raffle that extends outside of California.

If **AT** wants to avoid the burden of registration and reporting with the Attorney General and the requirement that 90% of the proceeds be used for charitable purposes, it can host a drawing where tickets are given to anyone who asks for one, hopefully in exchange for a suggested donation, but no payment is required to receive a ticket. (And in this situation, any amount donated will not be for payment of a ticket, and will therefore be eligible for a charitable deduction.)

- Income Tax Considerations

*The **AT** staff has secured extravagant raffle prizes from local outdoor hiking and specialty*

*stores – notably, a \$750 sleeping bag. They plan to sell the raffle tickets at \$15 each. Can the ticket purchasers take a charitable deduction for the price of the ticket? Will the prizewinners have to pay income tax and if so, what is **AT's** responsibility with reporting the prize earnings to the income tax authorities?*

No matter how high the ticket price or how many tickets are purchased, any mandatory amount paid to a charity for a raffle ticket does not qualify as a charitable deduction from income.⁷⁶ With respect to federal income tax, the charity may have to file a Form W2-G to report a prizewinner's earnings to the IRS and give a copy of the form to the winner if certain conditions are met. Specifically, a W2-G is required if the amount or value of the prize less the amount paid for participating is over \$600 and the value of the prize is over 300 times the amount that the winner paid to participate.⁷⁷

If **AT** were to raffle off a \$750 sleeping bag, **AT** would be required to report the earnings of the winner to the IRS if the raffle tickets were less than \$2.50 each ($\$750 = \2.50×300). At \$15 per ticket, **AT** would not have to file a Form W2-G.

*A store has also offered **AT** the choice for a raffle prize between two state of the art mountain bikes – one which retails for \$5500 and another model which sells for \$4600.*

For raffle prize winnings over \$5000, a nonprofit organization must also deduct and withhold tax from the winnings and report this amount to the IRS on Form W-2G or else be liable for the withholding tax, no matter the cost of the ticket. The withheld tax amount is a percentage of the value of the prize which is based on marginal tax rates. Nonprofits should consult an account or tax advisor for information on how much to

withhold from a raffle prize. For a noncash prize, an organization may either collect the tax directly from the winner or may pay the withholding tax on behalf of the winner. However, if the nonprofit were to pay the withholding tax on behalf of the winner, the amount of the tax would increase because the withholding itself would now be part of the prize.⁷⁸

If **AT** were to raffle off the mountain bike worth \$5500 with raffle tickets at \$15 each, either the prize winner or **AT** would have to pay withholding tax. If **AT** were to raffle off the \$4600 mountain bike instead, it would not have to pay the withholding tax because the value is less than \$5000. It would, however, have to file a Form W-2G and forward the form to the prizewinner if the raffle tickets were less than \$15.33 ($\$4600 = \15.33×300). In order to avoid filing a Form W-2G, **AT** could choose to increase the cost of a ticket.

Bingo

Although games of chance are generally prohibited by California state law, narrow exceptions are made for gaming activities conducted for charitable purposes, subject to certain requirements. Bingo games must be operated by volunteer members of the organization. No legal entity, except for the nonprofit hosting the bingo game, may hold a financial interest in the bingo game. The profits derived from a bingo game must be held by the organization in a special fund or account, cannot be combined with any other fund or account, and may only be used for charitable purposes. The bingo game must be open to the public, with the caveat that only individuals physically present at the time and place where the bingo game is being

conducted may be permitted to participate. Lastly, minors may not participate in bingo.⁷⁹

A nonprofit organization will also have to comply with local bingo licensing rules. For example, in the City of Los Angeles, the organization must obtain a bingo license from the Los Angeles Police Department for a \$50 fee. A licensee will also have to pay a monthly law enforcement and public services fee based on the amount the organization paid in bingo prizes that month.⁸⁰ Once the organization receives a license, several restrictions apply to the conduct of the bingo game. Prizes for bingo are limited to \$500 per game, and no more than 40 games may occur during any single bingo session. No alcohol is to be consumed or served in the room where bingo is being played.⁸¹

Proceeds from bingo games are excluded from Unrelated Business Income Tax if the bingo game (1) meets the legal definition of bingo; (2) is legal where it is played; and (3) is played in a jurisdiction where bingo games are not regularly conducted by for-profit organizations.⁸²

If a nonprofit organization pays a bingo winner \$1200 or more, it must report the winnings to the IRS on a form W-2G.⁸³

Poker Tournament

AT's gala was so successful that the fundraising committee wants to host another fundraising event – a Casino Night! The event would consist of a poker tournament and slot machines, awarding a \$200 cash prize to each individual winner throughout the night.

Organizations eligible to host a poker event must have been in existence for at least three years.⁸⁴ An organization is required to submit an annual registration form to the Bureau of

Gambling Control (along with a \$100 fee) as well as obtain approval for the event itself (which can be done on the same form).⁸⁵ Eligible organizations may only host one poker event per year, and the event may not exceed five consecutive hours. Only “approved” poker games may be played during the event and machine-operated events are prohibited. Cash prizes, of any value, are prohibited at poker charity events. All prizes must be donated, and no single prize can be worth more than \$500, with total prizes not exceeding \$5000.⁸⁶ Cash prizes are prohibited. **At least 90% of the total revenue must go directly to the charity.** No individual under the age of 21 may participate in a poker event.⁸⁷

AT’s proposal contains several prohibited activities. First, it may not offer cash prizes. Furthermore, any machine operated gambling device is prohibited at a poker event, meaning no slot machines are permitted to be at the event. If **AT** wishes to host a poker fundraiser, the organization must host a tournament operated by people, not machines, where the prizes are donated. For example, **AT** could host a Texas Hold’em tournament with prizes donated from a local hiking store, so long as the donated prizes are less than \$500 each and \$5000 in total.

Checklist for Raffles, Bingo, and Poker

- ✓ Register raffle with Attorney General
- ✓ Ensure raffle, bingo, or poker complies with state law requirements
- ✓ Comply with local requirements
- ✓ Report prize winnings to the IRS, if required

IX. Commercial Co-Ventures

*Happy Hikers has approached **AT** to partner on a sales promotion through which 10% of the profits from goods sold during the month of July will benefit **AT**. The **AT** board and staff is excited about this potential partnership and the potential revenue it may bring. Happy Hikers has presented **AT** with a contract to govern the relationship. **AT** staff wants to know if the contract is sufficient and whether there are additional regulatory requirements with which it must comply.*

A commercial co-venture exists when a for-profit business announces to the general public that a portion of the purchase price of a product or service it sells or provides will be paid to a charitable corporation. A commercial co-venturer, i.e., the for-profit business, is normally required to register and file periodic reports to the Attorney General.

However, a commercial co-venturer can avoid registering and filing periodic reports if the co-venturer (1) has a written contract with the charitable corporation; (2) transfers all funds, assets, or property received as a result of representing to the public that the goods will benefit the charitable corporation within 90 days after commencement of these

representations; and (3) provides a written accounting to the charitable corporation of all funds received such that the charitable corporation can determine that all representations made to the public were accurate and can prepare its periodic report filed with the Attorney General.⁸⁸

If no written contract is signed, the for-profit commercial co-venturer is required to register annually with the Attorney General by filing Form CT-5CF and pay an annual registration fee of \$350. The co-venturer is also required to file an annual financial report, Form CT-6CF, on or before January 30 of each year.⁸⁹ A nonprofit organization should confirm that its co-venturer has completed the required filings and registrations.

Regardless of whether or not the nonprofit and the co-venturer choose to have a contract in lieu of registration, if a nonprofit enters into a commercial co-venture prior to its initial registration with the AG, it must include the co-venturer's name, address, telephone number, and e-mail address on the

Form CT-1.⁹⁰ For more information on Form CT-1, please see [Section I](#).

Although a nonprofit organization should ensure that its co-venturer is properly registered and is conducting itself lawfully, it should also maintain a passive role in order to avoid being characterized as an active participant in a for-profit venture. If a nonprofit organization plays a more active role through, for example, providing marketing services to the co-venturer, the commercial co-venture may be viewed as a for-profit venture and the funds it generates may be subject to Unrelated Business Income Tax (UBIT). Involvement necessary to protect the nonprofit's brand – for example, monitoring how the co-venture describes the nonprofit in its marketing material – would not subject the nonprofit to UBIT.

Checklist for Commercial Co-Ventures

- ✓ Confirm that co-venturer is registered and filing reports or has avoided registration through written contract, transfer of assets to nonprofit within 90 days, and written accounting to nonprofit
- ✓ Ensure co-venturer is conducting itself lawfully
- ✓ Avoid UBIT

CONCLUSION

Fundraising is a critical element of operating and sustaining a healthy and thriving nonprofit organization. This publication presents the myriad of local, state and federal regulations that nonprofit organizations must comply with in order to fundraise in California. Learning how to navigate fundraising rules can be very fact specific and in many instances, will require consulting with an attorney. If you have legal questions related to your nonprofit's fundraising activities, please contact Public Counsel at:

Public Counsel
Community Development Project
610 S. Ardmore Ave.
Los Angeles, CA 90005
(213) 385-2977

Endnotes

¹ The term “nonprofit” generally refers to an organization’s corporate classification under the laws of its state of incorporation. **AT** is described as a “nonprofit public benefit corporation,” which is its specific corporate classification as defined under California nonprofit corporation law in section 5111 of the California Corporations Code. The term “tax-exempt” refers to an organization’s income tax status under federal and state tax codes. Although not all nonprofit corporations are tax-exempt, this guide is written for nonprofit corporations operating in California that have obtained tax-exempt status under section 501(c)(3) of the

Internal Revenue Code and section 23701d of the California Revenue and Tax Code. This guide sometimes refers to such organizations generally as “nonprofit organizations” and “nonprofits.” When specifically discussing laws related to federal tax-exempt status, this guide may also use the term “501(c)(3) organization.”

² For information on how to get back into compliance with federal and state regulatory agencies, please see Public Counsel, *Guide for Reinstatement of Good Standing with Corporate and Tax Regulatory Agencies for California Nonprofit Public Benefit Corporations* (2021), at <https://publiccounsel.org/publications/guide-for-reinstatement-of-good-standing-with-corporate-and-tax-regulatory-agencies-for-california-nonprofit-public-benefit-corporations/>.

³ Annual tax filings are due the 15th day of the fifth month after the end of an organization’s tax year. 26 C.F.R. § 1.6033-2T(e).

⁴ A donor may rely on the online Tax Exemption Organization Search to determine whether an organization is eligible to receive tax-deductible donations. Internal Revenue Service (IRS), “Tax Exempt Organization Search: Frequently Asked Questions,” (Updated April 26, 2019) at <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search-frequently-asked-questions>.

⁵ For additional information on how to apply for reinstatement of tax exempt status after an automatic revocation, please consult IRS, “Automatic Revocation - How to Have Your Tax-Exempt Status Retroactively Reinstated,” (last reviewed or updated October 1, 2014), available at <http://www.irs.gov/Charities-&Non-Profits/Charitable-Organizations/Automatic-Revocation-How-to-Have-Your-Tax-Exempt-Status-Retroactively-Reinstated>. This fact sheet is based on information in Rev. Proc. 2014-11, 2014-1 C.B. 411.

⁶ If an organization is classified as a California nonprofit public benefit corporation or has received federal tax exemption under Internal Revenue Code section 501(c)(3), it is considered a charity by the California Attorney General. *California Attorney General’s Guide for Charities*, 2 available at https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf? [hereinafter, *AG Guide for Charities*].

⁷ Cal. Gov. Code § 12585. Religious organizations, educational institutions, hospitals, and health care service plans are exempt from the requirement to register with the Registry of Charitable Trusts. Cal. Gov. Code § 12583.

⁸ Cal. Gov. Code § 12599.6(d).

⁹ The Attorney General may assess late fees for late filing of registration and financial reports. Cal. Gov. Code § 12586.1. It may also revoke or suspend registration. Cal. Gov. Code §12598(e)(1). Failure to file with the Attorney General may also lead to revocation of state tax exempt status. Cal. Rev. & Tax. Code § 23703(b).

¹⁰ A charitable corporation organized outside California that is doing business or holding property in California for charitable purposes must register with the Attorney General – the same exceptions that apply to California nonprofit organizations apply to out-of-state nonprofits as well. An out-of-state nonprofit organization also must comply with the California Secretary of State’s requirements for qualifying to transact business in California, which includes designating an agent for service of process here. *AG Guide for Charities*, *supra* note 6, at 98-100.

¹¹ Cal. Corp. Code § 6210.

¹² Typical entities exempt from registration in other states include religious organizations, hospitals, and organizations soliciting only within their membership.

¹³ “The Charleston Principles Guidelines on Charitable Solicitations Using the Internet,” approved by National Association of State Charity Officials, March 14, 2001, available at <http://www.nasconet.org/wp-content/uploads/2018/04/Charleston-Principles.pdf>.

¹⁴ Los Angeles Police Department, “Procedures, Ordinance and Standards for Charitable Solicitations in the City of Los Angeles, available at <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/12/CSS-ProceduresStandards3.pdf> [hereinafter LAPD, “Charitable Solicitations Procedures”]. For more information on rules in the City of Los Angeles, see the Los Angeles Police Department’s Charitable Services Section website at <https://www.lapdonline.org/police-commission/cid/charitable-services-section/>

¹⁵ LAPD, “Charitable Solicitations Procedures,” *supra* note 14.

¹⁶ Nonprofit organizations are exempt from the Los Angeles City Business Tax under Los Angeles Municipal Code section 21.22. For information on how to apply for the exemption, visit the City of Los Angeles Office of Finance website at <https://finance.lacity.org/non-profit-charitable-or-religious-organization-exemptions>.

¹⁷ For more information, visit the Los Angeles County Business License Commission website at <http://blc.lacounty.gov/Charitable-Solicitation>.

¹⁸ Cal. Gov. Code § 12599 (a).

¹⁹ Cal. Gov. Code § 12599.1.

²⁰ California Government Code provides that the Attorney General may “revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, [or] fundraising counsel” if the Attorney General has found that such a person or organization “has violated or is operating in violation of any provision of” the article of the Government Code concerning, among other things, registration and contracting with commercial fundraisers or fundraising counsel. Cal. Gov. Code § 12598(e).

²¹ Cal. Gov. Code § 12599.6(c).

²² For a full listing of contract requirements, see Cal. Gov. Code §§ 12599(i) (for commercial fundraiser) and 12599.1(f) (for fundraising counsel).

²³ In addition to a *force majeure* clause, which would only cover extraordinary events that render the venue unusable, a nonprofit could also ask for a “warranty of condition” clause, under which nonprofit could cancel the event without penalty should the venue suffer a substantial deterioration in the quality of its facilities and services and the venue is unable to correct the deficiencies.

²⁴ The IRS requires that an entity file a 1099-MISC for every vendor from whom it purchases \$600 in labor and services or \$5000 in direct sales. For more information, see IRS, “Instructions for Form 1099-MISC,” available at <http://www.irs.gov/pub/irs-pdf/i1099misc.pdf>. An entity hiring a vendor should use Form W-9 to request the taxpayer identification number of a U.S. person and to request certain certifications and claims for exemption. For information on the W-9, see IRS, “Instructions for the Requester of Form W-9,” Rev. October 2018, available at <https://www.irs.gov/pub/irs-pdf/i1099mec.pdf>.

²⁵ Cal. Corp. Code § 5233(a).

²⁶ Cal. Corp. Code § 5233(d)(2).

²⁷ In addition to required procedures under California law, nonprofits should also be aware of potential repercussions from the IRS if a board member unreasonably benefits from a contract with the nonprofit. Specifically, a nonprofit will face sanctions from the IRS if it engages in an excess benefit transaction, i.e. a transaction in which an economic benefit is provided by the nonprofit to an insider and the value of the economic benefit provided exceeds the value of what was received by the nonprofit organization. 26 U.S.C. § 4958.

²⁸ 29 U.S.C. § 207. Exceptions include employees who work in a bona fide executive, administrative, or professional capacity. 29 U.S.C. § 213 (a).

²⁹ Cal. Labor Code § 510(a). California Labor Code provides an exemption for executive, administrative, and professional employees who earn a monthly salary equivalent to no less than twice the minimum wage. See Cal. Labor Code § 515(a).

³⁰ See 29 CFR § 785.44; DOL Field Ops Handbook § 10b03(c); see e.g., DOL Opinion Letter, FLSA 2005-33. See also California Division of Labor Standards Enforcement Opinion Letter 1988.10.27 (stating that an employee of a charitable organization may donate his services as a volunteer if not the usual services of his job).

³¹ See 29 U.S.C. § 213; Cal. Labor Code § 515.

³² Cal. Labor Code § 1720.4(a)(1); DOL, Wage and Hour Division, Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act (August 2015); see also *Walling v. Portland Terminal Co.*, 330 U.S.148 (1947).

³³ An organization may provide reimbursement for meals, lodging, and transportation, so long as these benefits are not a substitution for payment. Cal. Labor Code § 1720.4(a)(1)(B). For a discussion of best practices in using volunteers, see Public Counsel, *Running a Successful Volunteer and Internship Program: Best Practices and Avoidable Pitfalls* (October 2017) at <https://publiccounsel.org/publications/running-a-successful-volunteer-and-internship-program/> and Ofer Lion, “Four Rules for Tax-Exempt Organizations with Volunteers – Part 2,” *Employment Law Strategist* (March 2012).

³⁴ *Phoenix Assur Co. of London v. Salvation Army*, 83 Cal. App. 455, 461 (1927); *Malloy v. Fong*, 37 Cal.2d 356 (1951); *Jeffrey v. Cent. Baptist Church*, 197 Cal. App. 3d 718, fn. 6 (noting in dicta that respondeat superior applies to unpaid volunteers and paid employees).

³⁵ For more information on risk management for nonprofits, see Public Counsel & DC Bar Pro Bono Program, *A Nonprofit's Guide to Risk Management and Insurance* (2013), available at <https://publiccounsel.org/publications/risk-management-insurance-guide-for-nonprofits-2013-2/>.

³⁶ 42 U.S.C. § 14503(a). A volunteer will not be covered if the harm is a result of the operation of a vehicle by the volunteer and such operation requires licensure or insurance. Further, if the volunteer is required to be licensed or otherwise certified to perform the duties at issue, the Act will not bar personal liability without appropriate licensure. *Ibid.*

³⁷ 42 U.S.C. § 14503(c).

³⁸ Cal. Corp. Code §§ 5047.5 and 5239.

³⁹ Cal. Civil Code § 1668.

⁴⁰ *City of Santa Barbara v. Superior Court*, 41 Cal. 4th 747, 750-51 (Cal. 2011).

⁴¹ *Gavin W. v. YMCA*, 106 Cal. App. 4th 662, 670-671 (Cal. App. 2d Dist. 2003).

⁴² Cal. Lab. Code §§ 3363.6 and 3369.

⁴³ For a thorough discussion of the rules regarding substantiating donations, see IRS Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*, available at <http://www.irs.gov/pub/irs-pdf/p1771.pdf>.

⁴⁴ 26 U.S.C. § 170(f)(8)(B).

⁴⁵ 26 U.S.C. § 170(f)(8)(C).

⁴⁶ *Durden v. Comm'r, T.C.* Memo 2012-140 (T.C. 2012).

⁴⁷ 26 C.F.R. § 1.170A-1(h).

⁴⁸ 26 U.S.C. § 6115.

⁴⁹ 26 U.S.C. § 6714.

⁵⁰ The IRS provides examples on estimating fair market value at <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Contributions-Quid-Pro-Quo-Contributions>.

⁵¹ Rev. Proc. 90-12, 1990-1 C.B. 471; Rev. Proc. 2018-57. These are the dollar amounts for 2019. The guidelines adjust for inflation.

⁵² IRS Publication 526, *Charitable Contributions* (2018), 3, available at <http://www.irs.gov/pub/irs-pdf/p526.pdf>.

⁵³ IRS Notice 2017-73, Request for Comments on Application of Excise Taxes With Respect to Donor Advised Funds in Certain Situations.

⁵⁴ For information on donations of vehicles, look at IRS Publication 4302, *A Charity's Guide to Car Donations*, available at <http://www.irs.gov/pub/irs-pdf/p4302.pdf>.

⁵⁵ 26 C.F.R. § 1.170A-1(g).

⁵⁶ Simply placing an organization's logo on an item for sale does not allow an organization to avoid UBIT.

⁵⁷ 26 U.S.C. § 512(a)(6).

⁵⁸ See IRS Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*, available at <http://www.irs.gov/pub/irs-pdf/p598.pdf> [hereinafter IRS UBIT Publication].

⁵⁹ *Id.* at 8.

⁶⁰ *Ibid.*

⁶¹ For discussion on selling donated merchandise and services, see California Department of Tax and Fee Administration Publication 18, *Nonprofit Organizations*, 5-6; 42-43, available at <https://www.cdtfa.ca.gov/formspubs/pub18.pdf> (July 2022) [hereinafter CDTFA, *Nonprofit Organizations*].

⁶² See *id.* at 26-30 for discussion of sales tax and food.

⁶³ *Id.* at 378.

⁶⁴ For additional information, please see and California Department of Tax and Fee Administration Publication 73, *Your California Seller's Permit: Your Rights and Responsibilities Under the Sales and Use Tax Law* (October 2017), available at www.cdtfa.ca.gov/formspubs/pub73.pdf.

⁶⁵ For instructions on obtaining a permit, see CDTFA, *Nonprofit Organizations*, *supra* note 61, at 37.

⁶⁶ *Id.* at 40.

⁶⁷ 26 U.S.C. § 170(e)(1)(A).

⁶⁸ In order for a taxpayer to claim a deduction for a donation in which they received something in return, the taxpayer needs to both *intend* to make a payment in an amount that exceeds the fair market value of the goods or services, and *make* a payment in an amount that exceeds the fair market value of the goods or services. 26 C.F.R. § 1.170A-1(h)(1). Including the fair market value of the item alongside each item ensures that the taxpayer has intended to make a payment in excess of fair market value.

⁶⁹ Cal. Penal Code § 320.5(c).

⁷⁰ Cal. Penal Code § 320.5(h). For more information, see the California Attorney General's website on raffles at <http://oag.ca.gov/charities/raffles>. Nonprofit religious organizations, schools and hospitals are exempt from the registration and reporting requirements. Cal. Penal Code § 320.5(h)(8).

⁷¹ An organization need only submit a single aggregate report for all raffles held during the reporting year. Forms CT-NPR-1 and CT-NPR-2 can be found at <http://oag.ca.gov/charities/forms>.

⁷² Cal. Penal Code. § 320.5(b)(1)-(4).

⁷³ For more information on the exception, see Cal. Penal Code § 320.6

⁷⁴ Cal. Penal Code. § 320.5(e), (f)(2).

⁷⁵ Cal. Penal Code § 320.5(m)(1)-(3).

⁷⁶ IRS Publication 526, *Charitable Contributions: For use in preparing 2018 Returns*, 6, available at <http://www.irs.gov/pub/irs-pdf/p526.pdf>.

⁷⁷ IRS Publication 3079, *Tax-Exempt Organizations and Gaming* (Rev. October 2018), 18-19 available at <https://www.irs.gov/pub/irs-pdf/p3079.pdf>.

⁷⁸ Id. at 18-21.

⁷⁹ Cal. Penal Code § 326.5.

⁸⁰ Los Angeles, CA., Mun. Code §§ 44.51 & 44.55.

⁸¹ City of Los Angeles Bingo Rules and Regulations, available at https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-131259.

⁸² IRS UBIT Publication, *supra* note 58, at 7.

⁸³ IRS Publication 3079, *Tax-Exempt Organizations and Gaming*, 18.

⁸⁴ Cal. Bus. & Prof. Code § 19986(e).

⁸⁵ Cal. Bus. & Prof. Code §§ 19986 (b), (e), and (j). The registration and preapproval form is available at https://ems.doj.ca.gov/fundraiserReg.action;jsessionid=rzuvztM0aqi6_VGukqxUUWpCCnDPqheUNfuV6VXC.ems_worker04. Nonprofit organizations should submit the form at least 30 days prior to the fundraiser to ensure that it is processed in time. For additional information on registering poker tournaments, please visit the Attorney General's website on gambling fundraisers at <http://oag.ca.gov/gambling/charitable>.

⁸⁶ The IRS requires reporting of poker winnings of over \$5,000. IRS Publication 3079, *Tax-Exempt Organizations and Gaming*, 18. Since California limits winnings to \$500 per person and \$5000 total, this federal reporting issue should not arise in California.

⁸⁷ Cal. Bus. & Prof. Code § 19986 (b), (c), (d), (k) (n). A list of approved poker games may be found at <http://oag.ca.gov/gambling/standard>.

⁸⁸ Cal. Gov. Code § 12599.2 (a)-(c)

⁸⁹ Cal. Gov. Code § 12599.2(c); 11 Cal. Code of Regs. §308(c).

⁹⁰ The form can be found at <http://oag.ca.gov/charities/forms>.