

NEW YORK STATE – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NOT-FOR PROFIT ENTITIES

In the midst of other legislation for fiscal year 2020-2021, New York State quietly amended Sections 172-B, 172-E and 172F of the Executive Law, which governs many reporting requirements for charitable tax-exempt organizations.

These new reporting requirements are an attempt by NYS to obtain donor disclosures for groups involved in New York advocacy that were deemed unconstitutional in 2019. Interestingly, the constitutionality of donor disclosure for charities is currently under question at the U.S. Supreme Court. The current case involves hearing a challenge to the California Attorney General's requirement that charities disclose their donors to the state. The outcome of that case could have an impact on ultimately what will happen in New York State.

At this juncture, here is what we do know. The proposed Regulations under 19 NYCRR, Chapter IV, Part 146, were issued in February 2021 and at this writing have not been finalized. The regulations created new requirements for certain exempt organizations, which are effective January 1, 2021.

First, the **Annual Financial Reports (CHAR 500)** which is required to be filed with the Attorney General's office for organizations that are already registered with the Attorney General, solicit in the state and are registered under Article 7A, or are DUAL files and receive total revenue and support of over \$250,000, will also require that the Annual Financial Report (CHAR 500) be filed with the New York Department of State.

Second, certain IRC Section 501(c)(3) organizations that make certain in-kind donations over \$10,000 within a six-month period to IRC Section 501(c)(4) social welfare organizations that engage in NYS-specific lobbying activities, will be required to file a **Funding Disclosure Report**. The Department of State will publish these reports subject to certain restrictions whenever the in kind donation is inconsistent with the filer's charitable purposes.

Third, any IRC Section 501 (c) (4) organization that has issue-based advocacy spending (also known as covered communications) in an aggregate amount or fair market value exceeding \$10,000 in a calendar year are required to file a **Financial Disclosure Report** with New York State Department of State. The Department of State will publish these reports subject to certain restrictions whenever the in kind donation is inconsistent with the filer's charitable purposes. The names and addresses of the donors will not be published.

Due Dates, Filing Fees and How to File

Annual Financial Reports (CHAR 500) are due to the Department of State at the same time they are due to the NYS Charities Bureau, on the 15th day of the 5th month after the close of the filing organization's fiscal year. At this juncture, it is unclear whether an extension will be granted or to what extent there may be coordination between the two NYS Offices.

Funding Disclosure Reports must be submitted within 30 days of the close of the reporting period depending on when the transaction occurs. The reporting periods are: January 1 through June 30 (July 31st due date) and July 1 through December 31 (January 31st due date).

Financial Disclosure Reports must be submitted within 30 days of the close of the reporting period depending on when the transaction occurs. The reporting periods are: January 1 through June 30 (July 31st due date) and July 1 through December 31 (January 31st due date). Further, the proposed regulations require that IRC 501 (c) (4) filers must submit a full Schedule B, with donor information, along with Form 990 (whether or not they were required to prepare Schedule B for federal purposes).

All three reports must be filed by the taxpayer, via the Department of State website, by creating or utilizing an existing NY.gov account. In addition, each report carries a \$25 filing fee. At this juncture however, the website does not support electronic payment of each filing fee and payments must be remitted via check to the Department of State.

Organizations impacted by these proposed regulations should take the steps necessary to create a NY.gov account.

As always we will continue to monitor these developments and provide you with updates as they become available. In the meantime, please contact your Fust Charles Chambers LLP engagement team for additional information.