



SECTION: SEVEN

Reporting and Filing Requirements

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Nonprofit corporations in Texas are required to file a number of reports with state and federal agencies. The following is a list of common requirements. This is not, however, a comprehensive list of all reporting requirements for nonprofits.

IRS Reports

- ◆ **Annual information return: IRS Form 990.** Unless a nonprofit has gross annual receipts of less than \$25,000 or falls within other specific exemptions, a nonprofit must file an annual return with the IRS, either a Form 990 or Form 990-EZ (Form 990-EZ is also called the "Short Form"). If your gross receipts are less than \$25,000 and you receive a Form 990 package in the mail, simply attach the label provided, check the box indicating that you are exempt from filing, sign the return, and mail it to the IRS. A small nonprofit can file the Form 990-EZ if its annual gross receipts for the prior fiscal year were less than \$100,000 and its total assets at the end of the year were less than \$250,000.
 - **When the annual return is due.** The return must be filed by the 15th day of the 5th month after the end of the nonprofit's fiscal year. Depending on when a nonprofit filed for tax exempt status, the nonprofit may be required to file the form before the end of its first year of operation.
 - **Penalty for failure to file.** Most nonprofits that fail to file a return or submit incorrect or incomplete information are subject to a penalty of \$20 a day. Nonprofits with gross receipts of more than \$1,000,000 are subject to a penalty of \$100 a day.

- ◆ **Tax return for unrelated business income: IRS Form 990-T.** A nonprofit that has more than \$1,000 in gross income from an unrelated business must file IRS Form 990-T. If a nonprofit expects the unrelated business income tax to exceed \$500, it must make quarterly payments of the estimated tax. For assistance with this form, call (877) 829-5500. The form must be mailed to the Internal Revenue Service Center, Ogden, Utah 84201-0027.
 - **When the return is due.** The form must be filed by the 15th day of the 5th month after the end of the nonprofit's fiscal year.
 - **Penalty for failure to file.** A nonprofit that fails to pay the proper tax may be charged an underpayment penalty for the period of underpayment.

- ◆ **Federal wage income tax: IRS Forms 941, W-2, W-3, and 1099 MISC.** Each nonprofit that pays wages to employees is responsible for withholding, depositing, paying, and reporting federal income taxes and social security taxes. Organizations must file with the IRS the Employer's Quarterly Federal Tax Return (Form 941), Wage and Tax Statements (Form W-2), and Transmittal of Wage and Tax Statements (Form W-3). Nonprofit organizations are not

subject to federal unemployment tax and are not required to file Form 940. If a nonprofit pays more than \$600 a year to an independent contractor, the nonprofit must also file Form 1099-MISC. For further information, call 1-866-455-7438.

- **When Form 941 is due.** The form must be filed within 30 days after the last day of each calendar quarter.
 - **When Form W-2 and W-3 are due.** Form W-2 must be sent to the employee by January 31st for the income earned the preceding year. In addition, Form W-2 must be filed along with Form W-3 with the Social Security Administration (Data Operations Center, Wilkes-Barre, Pa. 18769-0001) by January 28th and with the IRS by April 1st.
 - **When Form 1099-MISC is due.** Form 1099 MISC must be sent by January 31st to an independent contractor who received payment of more than \$600 for the income earned the preceding year. The form must also be filed with the IRS by February 28th.
 - **Penalty for failure to file.** Nonprofits who fail to file the above forms, file incorrect forms, or fail to deposit withheld taxes on a timely basis are liable for fines that range from \$15 per form to \$300,000. Individuals, including directors, who fail to collect, truthfully account for, or pay any payroll taxes can also be held personally liable.
- ◆ **Special returns.** There are a number of special IRS forms required depending on the types of activities the nonprofit engaged in during the fiscal year, including:
- **Excess Benefits Transactions: IRS Form 4720.**
 - **Election of Expenditure Test of Lobbying: IRS Form 5768.**
 - **Reporting Political Activities: IRS Form 1120-POL.** Nonprofits that spent any resources or time on political activities must file this form.
 - **Donee Information Return: IRS Form 8282.** Nonprofits that sell or dispose of donated property within two years of the contribution date are required to file IRS Form 8282 if a donor of property (other than money or publically-traded securities) presents a nonprofit with an appraisal summary of the property (IRS Form 8283) and the value is over \$500. The nonprofit must file the form with the IRS within 125 days of the nonprofit's sale or disposition of the property. A copy of the completed Form 8282 must also be provided to the donor of the property and, if the property is transferred to another nonprofit, the nonprofit must give a copy to the successor donee. The penalty for failure to file Form 8282 is generally \$50.
 - **Exception for food banks, disaster assistance and other distributors of donated property:** If a nonprofit distributes the donated property for free in furtherance of its tax-exempt purposes, Form 8282 does not have to be filed.
 - **Cash donations over \$10,000: IRS Form 8300.** This form is designed to catch money-laundering activities.

- ◆ **Status Report: Secretary of State Form 802 (Report 9.01).** Every four years, a nonprofit must provide Report 9.01 to the Secretary of State, which includes the names and addresses of the nonprofit's officers, the address of the nonprofit's principal office, and the name and address of the agent for service of process. The Secretary of State should send Form 802 for this report approximately every four years to the address of the nonprofit's registered agent.
 - **When the report is due.** The report must be filed along with a \$5 fee within 30 days after the Secretary of State mails the notice stating the report is due.
 - **Penalty for failure to file.** Nonprofits who fail to file the report forfeit their right to conduct business in Texas. If the report is not filed within 120 days after the notice is mailed, the nonprofit will be involuntarily dissolved. (Because the penalty is severe, the nonprofit should appoint someone to monitor the four-year period in case the nonprofit does not receive the notice.)

- ◆ **Texas Taxpayer Questionnaire.** The Texas Comptroller sends this questionnaire to new organizations. Fill it out and return it.

- ◆ **Texas New Hire Report.** Nonprofits must file a Texas New Hire Report with the name, address, date of birth, salary, and social security number of each new employee to the Texas Employer New Hire Reporting Program. For more information, see www.newhire.org/tx.
 - **When the report is due.** The report is due within 20 days after a new employee is hired. For nonprofits that report electronically, new hires must be reported at least twice a month.
 - **Penalty for failure to file.** A nonprofit that fails to file a new hire report is subject to a civil penalty of \$25 for each unreported employee, or \$500 if the failure is the result of a conspiracy between the employer and the employee not to file the report or to supply false or incomplete information.

- ◆ **Employer's Status Report: TWC Form C-1.** Nonprofits with employees must file Form C-1, Employer's Status Report, with the Texas Workforce Commission. Nonprofits should also notify the Commission if and when the nonprofit no longer has employees. Forms are available at www.twc.state.tx.us.
 - **When the report is due.** A nonprofit must file Form C-1 within ten days after an employee begins work.
 - **Penalty for failure to file.** The failure to file a report is a Class A misdemeanor.

- ◆ **Employer's Quarterly Report: TWC Form C-3.** Nonprofits with more than 4 employees for 20 weeks in a year are required to file Form C-3, Employer's Quarterly Report, with the Texas Workforce Commission and pay the applicable state unemployment insurance tax.
 - **When the report is due.** The report must be filed before the last day of the month following the end of January, April, July, and October. Approximately six weeks prior

- to the due date, TWC mails reporting forms to the employer. Failure to receive the forms does not relieve the nonprofit from responsibility for filing the reports.
- **Penalty for failure to file.** Nonprofits who fail to file their quarterly reports are subject to penalties which can result in a higher computed tax rate.
- ◆ **Workers' compensation notice.** Nonprofits that obtain workers' compensation insurance must file notice of coverage with the Texas Workers' Compensation Commission ("TWCC"). For more information, see www.twcc.state.tx.us.
 - **When the notice is due.** A nonprofit must file notice of coverage in person or by certified mail within 30 days of the effective date of the policy.
 - **Penalty for failure to file.** Nonprofits who fail to file are subject to administrative penalties of \$500.
 - ◆ **Election to pay reimbursements.** Nonprofits with more than four employees have an option to pay reimbursements instead of contributions for unemployment insurance. A nonprofit must file an election with the Texas Workforce Commission ("TWC") in order to take advantage of this option.
 - **When the election is due.** A nonprofit must make an election between paying contributions and paying reimbursements within 45 days after TWC mails a notice to the nonprofit stating that the nonprofit must participate in the unemployment compensation program.
 - **Penalty for failure to file.** Nonprofits who elect to not pay reimbursements must pay contributions into the unemployment compensation system.
 - ◆ **Workplace injuries.** Nonprofits with workers' compensation insurance coverage must report to the insurance carrier each death, occupational disease, and injury that results in more than one day's absence from work for the injured employee. If a nonprofit does not carry workers' compensation insurance ("a non-subscriber"), it must report work-related injuries to the Workers' Compensation Commission. If a nonprofit has more than 10 employees, the nonprofit must also report work-related injuries to the Occupational Safety and Health Administration ("OSHA"). All fatalities or hospitalization of three or more employees must also be reported to OSHA.
 - **When the reports are due.** A nonprofit must report employee injuries within eight days to the carrier.
 - A non-subscriber must report to TWCC all injuries that have occurred during a calendar month not later than the seventh day of the following month.
 - Fatalities must be reported to OSHA within eight hours of learning of the death. The toll-free number is 1-800-321-6742.
 - **Penalty for failure to file.** Nonprofits who fail to file reports are subject to fines imposed by the state of up to \$500 per occurrence. OSHA penalties are higher.

- ◆ **Drug abuse policy.** A nonprofit must adopt a drug abuse policy within 45 days after a nonprofit hires at least 15 employees and obtains workers' compensation insurance.
 - **When the policy is due.** A nonprofit must provide a copy of the drug abuse policy to the Texas Workers' Compensation Commission within 30 days after receiving a written request from the Commission for a copy.
 - **Penalty for failure to file.** The TWCC can impose an administrative penalty of up to \$500 against a nonprofit that does not have a policy.

- ◆ **Changes to the nonprofit's name, address, registered agent, and articles of incorporation.** A nonprofit that changes its name, address, or registered agent, or adopts amendments to the articles of incorporation is required to file notice of the changes with the Secretary of State and pay the applicable fees. Forms for change of name and registered agent are available on www.sos.state.tx.us
 - **When the filing is due.** A nonprofit should file changes and amendments as soon as possible after their adoption by the board of directors or members.
 - **Penalty for failure to file.** The above changes do not take effect until they are filed with the Secretary of State. The Secretary of State can involuntarily dissolve the nonprofit and the Attorney General can sue the nonprofit for dissolution for transacting business outside the scope of its articles of incorporation. A nonprofit might also not receive copies of important correspondence for notice of lawsuits if it does not have a current address or registered agent on file with the Secretary of State.

- ◆ **Changes that affect a nonprofit's tax exempt status.** A nonprofit must provide written notification to the Comptroller of any change that may affect its tax exempt status for purposes of the State's franchise tax exemption.

- ◆ **Sale of taxable items.** A nonprofit must obtain sales tax permits, collect and pay sales taxes on items it sells, and file reports with the Texas Comptroller. There are some exemptions. For more information, see www.cpa.state.tx.us.
 - **When the report is due.** Reporting periods vary, depending on the volume of sales. However, all reports are due by the 20th day of the month following the applicable reporting period. Reports are due even if no sales are made. Payment of the applicable sales taxes is due at the same time the report is due.
 - **Penalty for failure to file.** Failure to file the reports timely can result in a five percent penalty on taxes due, an additional \$50 penalty for two or more late reports, suspension of sales permits, and involuntary dissolution.

- ◆ **Articles of Dissolution: Secretary of State Form 603.** A nonprofit that voluntarily dissolves must file two copies of the Articles of Dissolution on Form 603 with the Secretary of State, along with a \$5 filing fee. The Secretary of State will then issue a certificate of dissolution.
 - **When the articles are due.** The Articles of Dissolution should be filed as soon as

- possible after their adoption by the board of directors or members.
- **Penalty for failure to file.** The corporation only ceases to exist after the Secretary of State receives the Articles of Dissolution and issues a certificate of dissolution.