



STAYING LEGAL

Presented by:
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Maine Association of Nonprofits
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AGENDA

- Scope of presentation
- Federal tax law compliance
- State “nonprofits law” compliance

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DISCLAIMERS

- The information presented in this presentation is for educational purposes only and is not to be relied upon as legal advice. We encourage you to consult a qualified attorney for advice on your organization's particular circumstances.
- In accordance with IRS Circular 230, the tax advice in this presentation was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.

SCOPE OF PRESENTATION

As advertised, this SkillBuilder will describe:

- Common compliance failures that can cost your organization money or jeopardize its mission
- Tips for preserving your organization's status as a public charity
- 12 things you should be doing to keep your organization out of legal trouble

SCOPE OF PRESENTATION	
<ul style="list-style-type: none"> • We will cover the most frequently raised (but not all) compliance issues specific to 501(c)(3) public charities incorporated under the Maine Nonprofit Corporation Act. • We will <u>not</u> cover: <ul style="list-style-type: none"> – Compliance issues specific to other tax-exempt organizations, such as private foundations and 501(c)(4)s. – Requirements and restrictions that apply universally to nonprofits and for-profit entities alike. 	
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SCOPE OF PRESENTATION	
<ul style="list-style-type: none"> • These requirements and restrictions of general applicability include: <ul style="list-style-type: none"> – Employer obligations, such as <ul style="list-style-type: none"> • Employment and income tax withholding and reporting requirements • Unemployment tax • “Wage and hour” law compliance • Employee health and safety obligations. – IRS information reporting obligations (e.g., 1099s) with respect to independent contractors and other payees – Sarbanes-Oxley requirements: <ul style="list-style-type: none"> • Don’t retaliate against whistleblowers. • Don’t alter, destroy, or conceal records. <p style="margin-left: 40px;">– WORKER CLASSIFICATION</p>	
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SCOPE OF PRESENTATION

- We won't cover all "best practices," such as:
 - Processes for ensuring fiscal integrity, e.g., budget and asset monitoring.
 - Strategic planning.
 - Fiduciary duties of directors and officers.
 - Board processes.
 - Meet frequently enough to satisfy board responsibilities.
 - Document board actions in minutes.
- **FOLLOW THE BYLAWS**
 - to avoid director and member disputes
 - to minimize disruptions from such disputes

FEDERAL TAX LAW

- Importance of compliance with federal tax law
 - Retain entity-level tax exemption
 - Federal and state
 - Preserve ability to receive
 - Contributions that are tax deductible by the donor
 - Grants from private foundations
 - Other funding limited to 501(c)(3) public charities
 - Avoid "downgrade" to less favorable tax status, which would bring additional requirements and restrictions
 - Avoid penalties and interest

FEDERAL TAX LAW	
FILE FORM 990 ... or 990-EZ or 990-N	
<ul style="list-style-type: none"> • Which form to file: <ul style="list-style-type: none"> – 990-N (“e-postcard”) if gross receipts normally \leq \$50,000 – 990-EZ if: <ul style="list-style-type: none"> • Gross receipts $>$ \$50,000 and $<$ \$200,000 <u>and</u> • Total assets $<$ \$500,000 – 990 if: <ul style="list-style-type: none"> • Gross receipts \geq \$200,000 or • Total assets \geq \$500,000 • Exemptions, e.g., certain religious institutions 	
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FEDERAL TAX LAW	
FILE FORM 990 ... or 990-EZ or 990-N	
<ul style="list-style-type: none"> • Deadline & extensions <ul style="list-style-type: none"> – Due 15th day of 5th month following end of taxable year – Extensions for 990 and 990-EZ: <ul style="list-style-type: none"> • “Automatic” extension of 3 months upon request, without showing cause. • Additional 3-month extension upon request by showing reasonable cause. – No extensions for 990-N, but no penalty for late filing. 	
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FEDERAL TAX LAW	
FILE FORM 990 ... or 990-EZ or 990-N	
<ul style="list-style-type: none"> • Consequences of noncompliance <ul style="list-style-type: none"> – Penalties for late filing: <ul style="list-style-type: none"> • \$20 per day, up to the lesser of \$10,000 or 5% of gross receipts. • For organization with gross receipts of \$1 million or more, \$100 per day, up to \$50,000. – Failure to file for 3 consecutive years results in <u>loss of exemption</u> as of the due date of the 3rd non-filed return. 	
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FEDERAL TAX LAW	
FILE FORM 990 ... or 990-EZ or 990-N	
<ul style="list-style-type: none"> • Tips <ul style="list-style-type: none"> – Notify IRS of changes in activities or corporate documents – Remember that the 990 will be publicly available. – Use the 990 as a fundraising document. <p style="text-align: center;">CONFIRM PUBLIC CHARITY STATUS</p> <ul style="list-style-type: none"> • Watch public support percentage if your organization qualifies as a public charity under a public support test. 	
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FEDERAL TAX LAW

FILE FORM 990-T

- Unrelated Business Income Tax (UBIT)
- In general, includes income from a
 - Trade or business
 - Regularly carried on
 - Not substantially related to exempt purpose.
- Includes passive income generated by debt-financed assets.
- Several useful exceptions.
- UBTI is also subject to state income tax.

FEDERAL TAX LAW

FILE FORM 990-T

- Quarterly estimated tax payments may be required if tax is expected to be \$500 or more.
- Penalties and interest may apply for late filing or late payment.

FEDERAL TAX LAW

- Contribution acknowledgement by charity
 - Quid pro quo contributions: Charity must provide written disclosure to a donor who receives goods or services in exchange for a single payment > \$75.
 - Token exception:
 - Value of benefits ≤ the lesser of 2% of gift or \$96, or
 - The payment is ≥ \$48, the only items provided bear the charity's name or logo, and the cost of the items is ≤ \$9.70 (inflation adjusted).
 - Special rules for motor vehicles, boats, and airplanes with value > \$500.
- Report sales of certain in-kind donations to IRS.

FEDERAL TAX LAW

- Contribution substantiation by donor
 - Cash gifts under \$250: bank record or written communication from charity showing date and amount of the contribution.
 - Gifts of \$250+ and gifts of property: “contemporaneous written acknowledgment” from charity indicating whether the charity provided any goods/services in return and the value of any goods/services provided.
- Qualified appraisal of certain gifted property

FEDERAL TAX LAW	
<ul style="list-style-type: none">• Public disclosure:<ul style="list-style-type: none">– Must Provide copies of Forms 990, 990-T, and 1023.– Can redact names and addresses of donors, but not donation amounts.	
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FEDERAL TAX LAW	
<p>KEEP RECORDS TO PROVE COMPLIANCE</p> <ul style="list-style-type: none">• to show accurate reporting on returns<ul style="list-style-type: none">– Back-up documentation for expenditures and all receipts (money and property)• to show satisfaction of public support test (if applicable)<ul style="list-style-type: none">– List of donors and donations received from each (cash and property).• Be sure to retain these records through changes in staff or responsible volunteers.	
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FEDERAL TAX LAW	
<p>501(c)(3) prohibitions</p> <ul style="list-style-type: none">• Private benefit• Inurement• Excess benefit transactions<ul style="list-style-type: none">– Penalties on insider and managers who knowingly approve the transaction. <p>USE SAFE HARBOR PROCEDURE</p> <ul style="list-style-type: none">• Tax shelter transactions	
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FEDERAL TAX LAW	
<p>501(c)(3) prohibitions</p> <ul style="list-style-type: none">• Electioneering: Participating in, or intervening in, any <i>political campaign</i> on behalf of (or in opposition to) any candidate for public office. <p><i>PROHIBITED!</i></p>	
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FEDERAL TAX LAW	
<p>501(c)(3) prohibitions</p> <ul style="list-style-type: none">• Lobbying: Carrying on propaganda, or otherwise attempting, to <i>influence legislation</i> <p style="text-align: center;"><i>PERMITTED! (within limits)</i></p> <ul style="list-style-type: none">• “Substantial part” test• 501(h) election	
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STATE “NONPROFITS LAW”	
<ul style="list-style-type: none">• Corporate law<ul style="list-style-type: none">– File annual reports with Maine Secretary of State– AG oversight– Director or member conflicts• Stewardship of charitable assets<ul style="list-style-type: none">– AG oversight & investigate authority• Conversion transaction statute	
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STATE “NONPROFITS LAW”	
OBTAIN CHARITABLE SOLICITATION LICENSE (OR FILE NOTICE OF EXEMPTION)	
<ul style="list-style-type: none"> • License is required before: <ul style="list-style-type: none"> – soliciting or accepting donations – commencing a charitable sales promotion (where “commercial co-venturer” advertises with claims to support a charity) <ul style="list-style-type: none"> • Several requirements apply to commercial co-venturers • There are exemptions (including a \$10,000 <i>de minimis</i> exemption), but you must file a notice of exemption. • Must have a written contract with commercial co-venturer, professional solicitor, or professional fund-raising counsel. 	
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STATE “NONPROFITS LAW”	
OBTAIN CHARITABLE SOLICITATION LICENSE (OR FILE NOTICE OF EXEMPTION)	
<ul style="list-style-type: none"> • It is a violation to contract with an unlicensed commercial co-venturer, professional solicitor, or professional fund-raising counsel. • Annual reports must be filed. • License must be renewed annually. <p style="text-align: center;">MOST OTHER STATES HAVE A SIMILAR CHARITABLE SOLICITATIONS ACT, GENERALLY TRIGGERED BY SOLICITING WITHIN THAT STATE (e.g., BY MAIL).</p>	
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STATE “NONPROFITS LAW”	
COMPLY WITH DONOR RESTRICTIONS AND UPMIFA	
Donor restrictions:	
<ul style="list-style-type: none">• Types:<ul style="list-style-type: none">– Purpose– Spending (“endowment”)– Investment• Sources: “gift instruments”<ul style="list-style-type: none">– Includes the organization’s solicitation materials	
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STATE “NONPROFITS LAW”	
COMPLY WITH DONOR RESTRICTIONS AND UPMIFA	
UPMIFA:	
<ul style="list-style-type: none">• Uniform Prudent Management of Institutional Funds Act• Governs the management, investment, and expenditure of a charity’s investment assets.<ul style="list-style-type: none">– Explicit donor instructions trump UPMIFA provisions.	
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STATE “NONPROFITS LAW”	
COMPLY WITH DONOR RESTRICTIONS AND UPMIFA	
UPMIFA:	
<ul style="list-style-type: none"> • A few highlights: <ul style="list-style-type: none"> – Must track “historic dollar value” and current value fund by fund. – Generally, must diversify the investments of each fund. <ul style="list-style-type: none"> • Must evaluate property within a reasonable time after it’s received. – Must consider enumerated factors in making management, investment, and spending decisions. – Presumption of imprudence if spending > 7% of endowment funds’ fair market value, as determined under UPMIFA. 	
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STATE “NONPROFITS LAW”	
COMPLY WITH DONOR RESTRICTIONS AND UPMIFA	
UPMIFA:	
<ul style="list-style-type: none"> • A few highlights: <ul style="list-style-type: none"> – If endowment funds have a total value < \$2,000,000, must notify the AG 60 days before appropriating an amount for expenditure that would cause the endowment funds’ value to fall below their aggregate historic dollar value. During the 60-day period, the AG may require the institution to obtain court approval for the proposed expenditure. – Courts and the AG can provide relief from donor restrictions. 	
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STATE "NONPROFITS LAW"	
COMPLY WITH GAMING LAWS	
<ul style="list-style-type: none">• Recently amended	
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STATE "NONPROFITS LAW"	
USE REAL ESTATE THAT IS EXEMPT FROM PROPERTY TAX ONLY FOR CHARITABLE ACTIVITIES	
<ul style="list-style-type: none">• No UBIT use.• No leasing to non-501(c)(3) entity, e.g., a for-profit business.	
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