

# Nonprofit Compliance in Arizona

**F P L G**



## Disclaimer

The information in this resource is meant to be helpful.

It is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation.

While contacting us does not create an attorney-client relationship, we're happy to answer your questions.

We invite you to contact us and welcome your calls and electronic mail.

[Contact Us](#)

## Introduction

Many nonprofit organizations in California find themselves in hot water with the IRS or other state regulatory agencies for failure to meet the many annual compliance filing requirements. This E-Book is intended to streamline the annual reporting requirements to ensure that your organization does not lose its previous tax exempt status for failing to meet those requirements.

At For Purpose Law Group, we understand you. Our attorneys have helped nonprofit leaders like you for over twenty years, and have guided hundreds of nonprofit clients through the establishment of their "purpose-driven" enterprises, continuing to serve as their Outside General Counsel.

If you have questions, we're here to assist.

This resource is not meant to be the only resource you will need to complete this process, but we hope it will serve as a useful overview. We have included links to other resources, and encourage you to also print out a copy as a record of your corporate information.

## About the Author

Mary Dowling is a Partner at For Purpose Law Group. Ms. Dowling represents a wide variety of public charities, private foundations, and other nonprofit organizations, including museums, religious and faith-based organizations, social welfare organizations, sports-based organizations, business leagues, educational institutions and social clubs. Using her unique background that couples a strong understanding of business with her legal skills, Ms. Dowling is able to combine her areas of expertise to help her clients create, manage, and maintain successful business pursuits across various sectors.

## ARIZONA CORPORATION COMMISSION

### PURPOSE OF THE REGULATING AGENCY

The Arizona Corporation Commission processes filings, maintains records and provides information to the public relating to business entities.

You may remember dealing with the Arizona Corporation Commission when first incorporating your nonprofit, as this agency is responsible for processing articles of incorporation to recognize charities as distinct legal entities, separate from the incorporators or founders.

### HOW TO STAY COMPLIANT

Newly formed nonprofit corporations must publish its original Articles of Incorporation in a newspaper of general circulation in the county of the known place of business in Arizona for three consecutive publications within 60 days after the incorporation date, if its known place of business is not within Maricopa County or Pima County. Nonprofit corporations that have a known place of business in Maricopa County or Pima County automatically satisfy the publication requirement through the Arizona Corporation Commissioner's posted notice of the approved Articles of Incorporation on its website at <http://ecorp.azcc.gov/publicnotice>.

Following the organization's incorporation, Arizona nonprofit corporations are required to file an Annual Report and Certificate of Disclosure with the Arizona Corporation Commission on the anniversary of its incorporation date each year.

The Annual Report has a \$10.00 filing fee and must be filed online after creating an eCorp account at: <http://ecorp.azcc.gov>. The organization may choose to expedite the Annual Report filing with the Arizona Corporation Commissioner by paying an additional \$35.00 expedite fee. The following information will be reported to the Arizona Corporation Commissioner through the Annual Report filing:

- Principal Business and Mailing Addresses
- Names, Titles and Addresses of Executive Officers
- Name and Address of an Agent for Service of Process

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Changes to the Annual Report must be reported in writing to the Arizona Corporation Commissioner immediately through the filing of Form C016i, Corporation Statement of Change of Known Place of Business Address, Principal Office Address, or Statutory Agent. Any changes made prior to the next Annual Report are free and can be filed in person or by mail at the following address:

Arizona Corporation Commission  
1300 W. Washington Street  
Phoenix, AZ 85007

The Arizona Corporation Commission is obligated by law to provide the Attorney General of Arizona a list of all individuals associated with a business entity that has committed certain felonies or possesses a judgment involving elements of moral turpitude such as fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly. The Certificate of Disclosure must be filed with the Annual Report to disclose certain information about the officers and directors of the organization. As such, the organization must prepare and file Form C003i Certificate of Disclosure for enclosure with the Annual Report. The Certificate of Disclosure does not have an additional filing fee.

If a nonprofit corporation is unable to file its Annual Report and Certificate of Disclosure on or before the due date, it may file for a 6-month extension on or before the original due date. Obtaining an extension will ensure that the nonprofit corporation avoids administration dissolution or revocation for failing to file the Annual Report and Certificate of Disclosure on time.

***TIP:*** All annual reports are accessible by the general public. For this reason, organizations are discouraged from listing the addresses of its Director's and Officers' personal residences. Consider utilizing a private mail box service to avoid disclosure of sensitive and personal information.

## **HOW TO CURE NON-COMPLIANCE**

Although there is no monetary penalty for failing to file an Annual Report and Certificate of Disclosure, the nonprofit corporation will be mailed a Notice of Pending Administration Dissolution approximately 90 days after the due date for the Annual Report. If the nonprofit corporation fails to file the Annual Report and Certificate of Disclosure within 60 days after the Notice of Pending Administration Dissolution, the Arizona Corporation Commission will administratively dissolve the nonprofit corporation. A nonprofit corporation can cure its non-compliance and avoid administrative dissolution by filing the outstanding Annual Report and Certificate of Disclosure any time prior to the administrative dissolution.

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A nonprofit corporation that have been administratively dissolved may not conduct any business except that which is necessary to wind up its affairs. To reinstate its corporate charter, the nonprofit corporation may apply for reinstatement for a period of 6 years from the date of administrative dissolution by paying a \$100.00 filing fee.

TIP: The organization may sign up to have Annual Report reminders sent to it via email. The reminders will be sent at 90, 60, 30 and 1 day prior to the Annual Report due date. This will help the organization avoid administrative dissolution for failing to file its annual report.

## ARIZONA DEPARTMENT OF REVENUE

### PURPOSE OF THE REGULATING AGENCY

The Arizona Department of Revenue is the state taxing agency tasked with administering state tax law governing charities, private foundations and other entities exempt from state income tax.

### HOW TO STAY COMPLIANT

For tax periods prior to 2018, most tax exempt Arizona nonprofits were required to file Arizona Form 99, or a copy of the organization's federal tax Form 990 if its gross receipts for the taxable year exceed \$50,000.00.

Effective for taxable year 2018, organizations recognized as exempt from federal taxation under Section 501 of the Internal Revenue Code are automatically exempt from Arizona income tax. As such, tax exempt Arizona nonprofits are no longer required to prepare and file Arizona Form 99 or provide the Arizona Department of Revenue with a copy of its federal tax Form 990.

## INTERNAL REVENUE SERVICE EXEMPT ORGANIZATIONS UNIT

### PURPOSE OF THE REGULATING AGENCY

The Internal Revenue Service ("IRS") maintains an Exempt Organizations Unit which is the federal taxing agency tasked with administering federal tax law governing charities, private foundations and other entities exempt from federal income tax.

As a startup organization, you first dealt with the IRS Exempt Organization Units when applying for recognition of tax-exempt status through the filing of Form 1023 or Form 1024.

In addition to making determinations on whether an organization's proposed operations qualify as exempt from federal taxation, the IRS also imposes annual information reporting obligations to ensure those organizations continue to operate for a tax-exempt purpose.

### HOW TO STAY COMPLIANT

Generally, exempt organizations are required to file annual informational returns each year on or before the 15th day of the fifth month following the close of an organization. An organization may request a 6-month automatic extension of time to file its annual information return by filing IRS Form 8868 with the Internal Revenue Service on or before the original filing deadline.

The specific IRS tax form is dependent upon an organization's financial activity during the reporting period:

<u>Financial Activity</u>	<u>IRS Form to File</u>
Gross Receipts: Normally $\leq$ \$50,000	IRS Form 990-N
Gross Receipts: $<$ \$200,000, and Total Assets: $<$ \$500,000	IRS Form 990-EZ
Gross Receipts: $\geq$ \$200,000, or Total Assets: $\geq$ \$500,000	IRS Form 990
Private Foundation – Regardless of Financial Activity	IRS Form 990-PF
Unrelated Business Income: $\geq$ \$1,000	IRS Form 990-T

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## HOW TO CURE NON-COMPLIANCE

Failure to file an informational return for three consecutive tax periods will result in the Internal Revenue Service revoking the organization's tax-exempt status. If revoked, the Internal Revenue Service could impose steep penalties which are calculated based on the organization's gross receipts. For organizations whose gross receipts are less than \$1,000,000.00, the IRS will impose a penalty of \$20.00 per day for each day the return is late, up to the lesser of \$10,000.00 or 5% of the gross receipts per return. For organizations whose gross receipts are more than (\$1,000,000.00, the IRS will impose a penalty of \$100.00 per day for each day the return is late, up to the lesser of \$50,000.00 per return.

If revoked, the Internal Revenue Service sets forth four procedures an organization may use to apply for reinstatement. The chart below overviews the eligibility and reinstatement process for each of the four procedures:

<u>Reinstatement Process</u>	<u>Eligibility</u>	<u>Filings</u>
Streamlined Retroactive Reinstatement	<ul style="list-style-type: none"> <li>• Eligible to file Form 990N or 990EZ for past 3 tax periods</li> <li>• No prior history of revocation</li> <li>• Reinstatement within 15 months of revocation or posting date on IRS website</li> </ul>	<ul style="list-style-type: none"> <li>• Form 1023 / Form 1023EZ / Form 1024/ Form 1024-A</li> <li>• Exempt from filing past 3 years of annual returns</li> <li>• Exempt from Section 6652(c) penalty for failure to file</li> </ul>
Retroactive Reinstatement (within 15 months)	<ul style="list-style-type: none"> <li>• Eligible to file Form 990 or 990-PF for past 3 tax periods</li> <li>• Reinstatement within 15 months of revocation or posting date on IRs website</li> </ul>	<ul style="list-style-type: none"> <li>• Form 1023 / Form 1023EZ / Form 1024/ Form 1024-A</li> <li>• Reasonable Cause Statement for <b>at least one of three</b> consecutive periods that organization failed to file</li> <li>• File any outstanding annual returns</li> <li>• Exempt from Section 6652(c) penalty for failure to file</li> </ul>
Retroactive Reinstatement (after 15 months)	<ul style="list-style-type: none"> <li>• Reinstatement is more than 15 months after revocation date or posting date of revocation on IRS website</li> </ul>	<ul style="list-style-type: none"> <li>• Form 1023 / Form 1023EZ / Form 1024/ Form 1024-A</li> <li>• Reasonable Cause Statement for <b>all three</b> consecutive periods that organization failed to file</li> <li>• File any outstanding annual returns</li> <li>• Exempt from Section 6652(c) penalty for failure to file</li> </ul>
Post-Marked Date Reinstatement	<ul style="list-style-type: none"> <li>• No eligibility under other three procedures listed above</li> <li>• No reasonable cause for failure to file past informational returns</li> </ul>	<ul style="list-style-type: none"> <li>• Form 1023 / Form 1023EZ / Form 1024/ Form 1024-A</li> <li>• May be Subject to Section 6652(c) penalty for failure to file</li> </ul>

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If required to prove reasonable cause for failing to file a past informational tax return, the organization must establish that an organization exercised ordinary business care and prudence in determining and attempting to comply with its annual reporting requirement. This statement must be enclosed with the application for retroactive reinstatement and set forth a detailed description of all facts and circumstances about why and how the organization failed to file, as well as how such failures will be prevented in the future.

Form 1023 or Form 1024 Applications for retroactive reinstatement should have written on the top of each page of the application "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement," prior to submission of the application (including the six hundred dollar (\$600.00) user fee) to Pay.gov.

**TIP:** The Internal Revenue Service maintains an online portal called the "Tax-exempt Organization Search," (formerly "Select Check") which can be accessed by the general public to find information about a tax-exempt organization's federal tax status and past filings with the Internal Revenue Service. Use this portal to check your organization's status with the Internal Revenue Service frequently to ensure all informational returns have been accepted and that your organization's tax-exemption has not been revoked!

## RESOURCES

All of the agencies with authority over nonprofit organizations in the state of California have a wealth of information available to those who manage these types of entities. Here are several that are applicable:

- [IRS Publication 4221](#)
- [AZ DOR Exempt Organization Tax Highlights](#)
- [Arizona Corporation Commission FAQ](#)

## Need Guidance?

For Purpose Law Group is a firm dedicated to providing guidance to nonprofit, tax exempt organizations.

We have a team of dedicated attorneys, paralegals and support staff with years of experience tackling the obstacles you will inevitably face as you establish your organization, and then in keeping it compliant.

We're here to help you change our world.

[Learn more about FPLG](#)