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Nonprofit Transparency Requirements

For many nonprofits, the fiscal year ends this month. With the end of the fiscal year, organizations start thinking about preparing their annual filing and forms that are due to the Internal Revenue Service (IRS), California Franchise Tax Board (FTB), and other entities. This is a good time to remember that, in return for being tax-exempt, California and federal law require nonprofits to disclose certain information to the public on request.

What documents must be provided on request? When requested, organizations generally must provide the following:

- Annual returns for three years after the due date. This includes returns like your Form 990, 990-EZ, 990-PF, and any Forms 990-T filed after August 17, 2006, including your extensions.
 - The due dates of annual returns for a tax-exempt organization depends on when the organization's tax year ends, whether the organization uses the calendar or fiscal tax year. The IRS provides a helpful table of the due dates for annual returns depending on when your organization's tax year ends:
<https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>
- All Form 990 schedules (except portions of Schedule B), attachments and supporting documents.
- Your state and federal applications for exemption and all supporting documents, like IRS Form 1023, if you filed it on or after July 15, 1987, and FTB Form 3500 or 3500A.
- The determination letters from the IRS and FTB that shows your organization has tax-exempt status.
- Audited financial statements (not including the management letter) for fiscal years ending after January 1, 2005 for organizations required to report them to the California Attorney General. This is generally required for nonprofits with annual gross revenues of \$2 million dollars or more, under California's Nonprofit Integrity Act. This requirement does not apply to certain entities, including schools.

When you respond to a request for information, confirm that the documents requested are those that must be disclosed. You may not be required, and in some cases may be precluded from, providing all documents requested. For example, under the IRS and FTB rules you do not have to provide unfavorable rulings, such as an earlier denial of tax-exempt status, or certain types of information for which the IRS allows withholding, such as trade secrets, patents, processes, styles of work and national defense material, or Portions of Schedule B of Form 990/990-EZ. **Generally**, you do not have to identify your contributors by name or address (except those listed on the exemption application), only the amounts and nature of the contributions (although tax-exempt political organizations have different requirements for public disclosure). Information requested may additionally be protected by an individual employee, donor, or service recipient's right to privacy, speech, or other laws shielding private individuals from public scrutiny. Specific types of organizations may have additional reporting requirements and others may be exempt. (For example, commercial fundraisers for charitable purposes have additional disclosures, such as the percentage of total fundraising expenses, while organizations subject to harassment campaigns may be exempted.) Confirm which requirements apply to your organization and to the information being requested. If you are not sure, or if you have questions, please feel free to reach out to us for assistance.

When do the documents need to be provided? Normally, if an individual makes a request in person, you must provide the documents the day they were requested. If an individual requests the documents in writing, you must provide a copy within 30 days. You may charge a reasonable fee to cover the cost of the copies and mailing. If your organization makes the requested documents "widely available," such as by posting the requested information online, you can refer the requester to the website location.

What happens if the documents are not provided? Penalties for not complying with a request for documents can be severe; the IRS can fine the organization or its employees \$20 for each day of noncompliance, up to a maximum of \$10,000. If the IRS finds failure to comply is willful, there could be an additional penalty of \$5,000 per return or application.

For more information, see <https://www.stayexempt.irs.gov/home/existing-organizations/required-disclosures> and <https://oag.ca.gov/system/files/media/Guide%20for%20Charities.pdf>

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