

**ANNUAL REPORTING REQUIREMENTS FOR  
NONPROFIT CORPORATIONS:  
The Charitable Fundraising Act,  
The Nonprofit Corporation Act,  
and the State Income Tax Code**

**I The Charitable Fundraising Act**

**A. General Requirements**

**1. Registration Statement and Fee  
S. C. Code Ann. §33-56-30 (Supp. 1996)**

If an organization intends to solicit contributions in S.C. :

- A. It must file a registration statement each year with the Secretary of State;
- B. It must pay the registration fee of \$50.00 annually, prior to beginning solicitation.

The duty to file is specifically placed upon the CEO/CFO of the organization.

**B. Requirements after Funds are Solicited**

**1. Reporting Contributions  
S. C. Code Ann. §33-56-50 (Supp. 1996)**

If the contributions raised from the public by a charitable organization

- (1) exceed twenty thousand dollars, or
- (2) are received from more than ten people,

the charitable organization must register with and report to the Secretary of State within thirty days after the date the contributions exceed twenty thousand dollars or the number of contributors is more than ten people.

**2. Reporting Financial Activities**  
**S. C. Code Ann. §33-56-60**

This section states that “(A) Each charitable organization soliciting funds in this State and not exempt under §33-56-50 . . . shall file a report of its financial activities . . . in the office of the Secretary of State.”

“The report must be filed within four and one-half months of the close of the organization’s fiscal year unless a written extension has been granted by the Secretary of State.” (Emphasis added).

This Section requires that the statement cover the previous fiscal year and include the following items:

1. Itemized public support and revenue statements disclosing revenue from solicitation campaigns, grants, or other programs;
2. Expense statements of services, expenditures for public information and fund-raising, salaries, and payment to affiliates;
3. Balance sheets calculating total assets and liabilities.

**NOTE:** The S. C. Code allows for IRS Form 990 to serve as a report to be filed with the Secretary of State.

**3. Reporting Specific Solicitation Professionals and Campaigns**  
**S. C. Code Ann. §33-56-70 (Supp. 1996)**

This Section requires that any contract made between a professional solicitor and a charitable organization be filed with the Secretary of State within ten days of its creation and stipulates those items to be included as elements of the document.

The Section also requires that a charitable organization file an annual financial report with the Secretary of State on a specific solicitation campaign if the campaign lasts for more than one year.

The Section places an affirmative duty on the paid solicitor or an authorized official to submit these documents to the Secretary of State.

**4. Annual Registration of Professional Solicitation Counselor  
S. C. Code Ann. §33-56-110 (Supp. 1996)**

This Section requires that any person serving as a professional solicitor/fundraising counsel be registered with the Secretary of State and renew that registration annually.

**C. Exemptions**

**Organizations Exempt from Registration Requirements  
S. C. Code Ann. §33-56-50**

This Section lists a variety of organizations which are exempt from registration requirements regarding the solicitation of funds. Subsection Three includes any charitable organization which:

- (1) neither intends to solicit nor receive contributions in excess of twenty thousand dollars during a calendar year or does not receive contributions from more than ten persons during a calendar year; and
- (2) has received letters of tax exemption from the IRS; and
- (3) does not employ a professional solicitor to direct its fundraising activities.

An organization claiming to be exempt from registration provisions and which intends to or does solicit charitable contributions must annually submit to the Secretary of State the name, address, purpose of the organization, and a statement of the organization setting forth the reason it claims exemption. The organization is not required to pay a filing fee.

**D. Penalties**

**Failure to File  
S. C. Code Ann. §33-56-140 (Supp. 1996)**

In this Section of the Charitable Fundraising Act, the Secretary of State is authorized to investigate and penalize those organizations failing to file any document required to be filed under the provisions of the Act.

Penalties regarding a violation of a charitable organization may include the Secretary of State bringing an action in court:

- (1) to enjoin that organization from soliciting funds in this State; or
- (2) to assess administrative fines for the maximum amount of \$2,000.

This Section also provides penalties to be imposed against any individual who wilfully and knowingly contributes to an organization's failure to file.

## **II. The Nonprofit Corporation Act**

### **A. Annual Meeting Requirements**

#### **1. Annual Meetings and Report Requirements S. C. Code Ann. §33-31-701 (Supp. 1996)**

This Section requires that a corporation with members holds an annual membership meeting that covers a required agenda of reports to be presented. The reports statutorily required to be presented under the Act include:

- 1) The President and Chief Financial Officer's report on the financial activities and condition of the corporation;
- 2) Any other matters raised in compliance with the provisions of the bylaws or articles of incorporation.

In the event that a corporation fails to hold an annual meeting in accordance with its bylaws and as required by this section, this will not affect the validity of corporate action taken during this time. However, failure of the director to conduct this meeting may be a violation of his duties under S. C. Code Ann. §33-31-830, which set for the general standard of conduct with which directors must comply.

**2. Required Voting Procedures for Annual Meetings**  
**S. C. Code Ann. §33-31-720 (Supp. 1996)**

This Section specifies voting requirements of the annual meeting. It imposes a duty upon the corporation to “. . .prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting and shall list the members by classification of membership, if any. The list must show the address and number of votes each member is entitled to vote at the meeting. . . .”

The Section further provides for procedures by which any dispute over member lists or voting may be handled.

**3. Election Requirements for Annual Meetings**  
**S. C. Code Ann. §33-31-804 (Supp. 1996)**

This Section requires that certain directors must be elected at each annual meeting.

It states, “. . .all the directors, except initial directors, must be elected at the first annual meeting of members, and at each annual meeting thereafter,” or in accordance with the election provisions contained in the corporation’s bylaws.

**B. Annual Reporting Requirements**

**Required Production of Financial Statements**  
**S. C. Code Ann. §33-31-1620 (Supp. 1996)**

This Section requires that any corporation produce its latest financial statement, including a balance sheet as of the end of the fiscal year and statement of operations for that year, to any member or to the Attorney General upon the corporation’s receipt of that party’s written request for such a statement.

This Section also creates an exception for religious corporations whose articles or bylaws contain provisions not in compliance with the requirements of the Section.

**C. Penalties**

**1. Failure to Hold Annual Meeting**  
**S. C. Code Ann. §33-31-703 (Supp. 1996)**

This Section authorizes the Secretary of State to take action against a corporation, nonprofit or otherwise, which fails to conduct an annual meeting in accordance with S. C. Code Ann. §33-31-701 (Supp. 1996). It states:

If an annual meeting is not held, the Secretary of State may sue under §33-31-703 to compel the meeting to be held.

**2. Failure to Comply with Statutorily Required Voting Procedures at Annual Meetings**  
**S. C. Code Ann. §33-31-720 (Supp. 1996)**

Where a corporation wrongfully refuses to comply with a member's request to inspect a membership list, a Court may:

- 1) Order the inspection and copying of the list at the corporation's expense;
- 2) Postpone the meeting for the period of time deemed by the court as reasonable for the requesting party to review the list and order the corporation to pay reasonable costs, including attorney fees incurred in the process of obtaining any of the orders made by the court;
- 3) Invalidate the meeting.

### **III. State Income Taxes**

**A. General Requirements**

**1. Filing Annual Tax Returns**  
**S. C. Code Ann. §12-6-4910 (8) (Supp. 1996)**

This Section provides the general requirement that an annual return be filed by every exempt organization subject to tax under S. C. Code Ann. §12-6-540 (Supp. 1996).

Section 12-6-540 imposes income tax at an annual rate of five percent on the South Carolina taxable income of any “organization described in Internal Revenue Code Sections 501 through 528 (Exempt Organizations) and 1381 (Cooperatives)...”

For these types of organizations, “taxable income” is limited to unrelated business income as defined by the Internal Revenue Code.

**2. Filing Annual Information Returns  
S. C. Code Ann. §12-6-4950 (Supp. 1996)**

This Section requires that information returns must be filed with the Department of Revenue.

However, in cases where a nonprofit organization has filed an information return with the Internal Revenue Service, that organization need not file an additional information return with the State, unless that corporation is filing a return listing some form of South Carolina tax withholdings.

**3. Deadline for Filing Annual Returns and Information Returns  
S. C. Code Ann. §12-6-4970 (Supp. 1996)**

This Section requires that information returns be filed annually on or before the fifteenth day of the third month following the taxable year.

However, returns of organizations exempt under Internal Revenue Code Section 501 reporting unrelated business income pursuant to §12-6-4910 (8) must be filed on or before the fifteenth day of the fifth month following the taxable year.

**4. Signature Requirement  
S. C. Code Ann. §12-2-75 (Supp. 1996)**

The 1997 Legislative Session provided an amendment to this Section. The signature requirement for income tax returns now applies to any tax return filed with the State. If a corporation is filing, then the return must be signed by an authorized officer of the corporation.

**B. Exemptions**

**1. Corporate License Fees**

**S. C. Code Ann. §12-20-110 (Supp. 1996)**

This Section states that certain nonprofit corporations are exempt from paying corporate license fees imposed by Chapter 20 of the Code.

Under Chapter 20, corporate license fees are imposed at a rate of \$15 plus one dollar for each thousand dollars or fraction of a thousand dollars or capital stock and paid-in or capital surplus of the corporation as shown by the records of the corporation on the first day of the taxable year in which the report is filed. . . . The license fee must be paid on or before the original due date for filing the annual report.” (Emphasis added).

Section 12-20-110 states that the provisions of Chapter 20 do not apply to any:

- (1) nonprofit corporation organized under Article 1 of Chapter 31 or 33 of Title 33 exempt from income taxes pursuant to Section 501 of the IRS Code of 1986;
- (2) volunteer fire department and rescue squad;
- (3) cooperative organized under Chapter 45 or 47 of Title 33;
- (4) building and loan association or credit union doing a strictly mutual business;
- (5) insurance company or association including any fraternal, beneficial, or mutual protection insurance company; or
- (6) foreign corporation whose entire income is not included in gross income for federal income tax purposes due to any treaty obligation of the United States.”

**C. Penalties**

**Failure to comply with Statutory Filing Requirements Under Title 12 Income Tax Provisions**

**S. C. Code Ann. §12-6-5520 (Supp. 1996)**

Step 1:

Notification of its failure to file is given to a corporation as defined

by §12-20-10(3), from which time the corporation has sixty days in which to comply by filing an annual return.

Step 2:

Department may provide taxpayer's name to the Secretary of State for possible administrative dissolution or revocation of the business' authority to do business in the State.

### **III. Charitable Trusts**

#### **A. General Requirements**

With respect to charitable trusts, it is generally the duty of the trustee to comply with requirements under the South Carolina Probate Code provisions.

**1. Initial Filing Requirements**  
**S. C. Code Ann. § 62-7-501 (1986)**

The trustee of any charitable trusts created on or after July 1, 1953 is required to file with the Secretary of State a certified copy of the trust instrument. This requirement must be met with in ninety days after (July 1, 1953) or within sixty days after the creation of the trust.

**2. Annual Reports**  
**S. C. Code Ann. § 62-7-502 (1986)**

Trustees of charitable trusts are required to submit an annual report to the Secretary of State. This report must include the following:

1. A complete financial statement relating to the trust property during the preceding year;
2. A summary of the acts of the trustees in their capacity;
3. The name and address of each trustee or the name and address of each director and officer of any corporation which is a trustee;

The first report must include an itemized statement of any property which passed into the hands of the trustees upon the trust's creation. Each annual report must include a statement of the trust property in the hands of the trustee both at

the beginning and the end of the year for which the report is made.

**B. Compliance Provisions**

**1. Secretary of State's Power  
S. C. Code Ann. § 62-7-503 (1986)**

If a trustee fails to meet these requirements, the Secretary of State may bring action to compel compliance or to compel them to discharge the duties imposed on them by the trust.

**C. Exemptions**

**1. Exemptions to Section  
S. C. Code Ann. § 62-7-505 (1986)**

This section regarding charitable trusts does not include: churches, cemeteries, orphanages (operated in conjunction with churches,) colleges, universities, hospitals or school districts, or banking institutions.