



Exempt Organizations Update

July 24, 2014

This memorandum summarizes (i) newly issued guidance from the New York State Attorney General's Office on some of the recent changes to the New York Not-for-Profit Corporation Law (the "N-PCL") and (ii) recent federal legislative activity of particular interest to exempt organizations.

I. NEW YORK ATTORNEY GENERAL RELEASES NEW AND UPDATED GUIDANCE ON FUNDAMENTAL TRANSACTIONS BY NEW YORK NOT-FOR-PROFIT ORGANIZATIONS

On June 23, 2014, the New York State Attorney General's Charities Bureau released the following four publications setting forth the Attorney General's interpretation of and guidance on various provisions of the N-PCL:

- "A Guide to Mergers and Consolidations of Not-for-Profit Corporations Under Article 9 of the New York Not-for-Profit Corporation Law"
- "A Guide to Sales and Other Dispositions of Assets Pursuant to Not-for-Profit Corporation Law §§ 510-511 and Religious Corporations Law § 12"
- "Voluntary Dissolution of Not-for-Profit Corporations With Assets to Distribute"
- "Procedures for the Dissolution of a Not-for-Profit Corporation Without Assets"

These four guides (the "Guides") update and supersede prior guidance from the Attorney General for dispositions of all or substantially all assets, merger and consolidation transactions, and dissolutions by New York not-for-profit corporations which are charitable corporations (collectively, "Fundamental Transactions").¹ In particular, the Guides reflect changes to the N-PCL made by the New York Non-Profit Revitalization Act of 2013 (the "Act"). Under previous law, a charitable corporation was required to seek court approval of all Fundamental

¹ The Guide to Mergers and Consolidations also applies to the merger or consolidation of a New York religious corporation with a New York not-for-profit corporation formed for religious purposes. The Guide to Sales and Other Dispositions of Assets applies (i) to leases for a period exceeding five years and the sale or mortgage of any real property of a New York religious corporation and (ii) to a sale or other disposition of assets by a New York education corporation. Throughout the remainder of this memorandum, requirements noted as applicable to a "charitable corporation" also apply to New York religious corporations and education corporations as the context requires.

Transactions upon notice to the Attorney General.² As amended by the Act, the N-PCL now permits a charitable corporation to engage in a Fundamental Transaction with the approval of *either* a justice of the New York Supreme Court *or* the Attorney General.

The most significant change in the Guides from prior guidance is the inclusion of procedures by which a charitable corporation may seek approval from the Attorney General alone. The Guides also include models of the various documents required for different types of Fundamental Transactions. In addition, the Guides identify the following circumstances in which the Attorney General will typically require a charitable corporation to seek court approval of a Fundamental Transaction:

- The Attorney General has received complaints or objections from members or creditors of an involved charitable corporation, from other interested persons who are entitled to notice of the Fundamental Transaction pursuant to the N-PCL, or from members of the public.
- In the case of an asset disposition, the charitable corporation is insolvent and must proceed on notice to creditors pursuant to N-PCL § 511(c).
- The Attorney General does not object to the transaction but, in his or her discretion, determines that court review is appropriate because, for example, the transaction is unusually complex, will have a significant impact on the public, raises conflicts of interests, or is a merger involving assets restricted to a specific charitable purpose that may require exercise of the court's statutory discretion pursuant to N-PCL § 907-a(c).³
- The Attorney General has objections to the transaction that have not been resolved after discussion.

In addition to the Guides, the Attorney General released "Guidance on Provisions of the Nonprofit Revitalization Act of 2013: Revised CPA Review and Audit Thresholds and Annual Filing Fees for 7A or DUAL Filers" on April 15, 2014. This publication summarizes the financial reporting requirements and filing fees that are imposed on charitable corporations incorporated in New York or registered to solicit contributions in New York by Article 7-A of the New York Executive Law, as amended by the Act.

We anticipate that the Charities Bureau will issue guidance on other provisions of the Act in the coming months, and we will provide an update when further guidance is released.

² Dissolution of a charitable corporation without assets required only the consent of the Attorney General under prior law, and this requirement is unchanged by the Act.

³ We understand this to mean that the Attorney General will require court approval where a merging corporation holds assets for a restricted purpose and (i) the merged corporation's proposed use of those assets would deviate from that purpose and/or (ii) that purpose would be best accomplished by transferring the assets to an entity other than the merged corporation.

The Attorney General's guidance discussed in this memorandum is available at http://www.charitiesnys.com/nonprofit_rev_act_guidance.jsp.

For a discussion of the Act, please see our previously issued client memorandum, which is available at <http://www.stblaw.com/about-us/news/details?id=93708c0a-8f00-4284-8de7-9cc7a7480638>.

II. RECENT HOUSE BILL WOULD EXTEND AND EXPAND CHARITABLE GIVING INCENTIVES AND REFORM EXCISE TAX ON PRIVATE FOUNDATION NET INVESTMENT INCOME

On July 17, 2014, the House of Representatives passed H.R. 4719, the America Gives More Act of 2014 (the "Bill").

If enacted into law, the Bill would reinstate and make permanent several charitable giving incentives that expired at the beginning of 2014. These include tax-free distributions from Individual Retirement Accounts for charitable purposes, enhanced deductions for contributions of conservation easements, and enhanced deductions for contributions of food inventory.⁴

The Bill would also allow individual taxpayers to claim a deduction for charitable contributions made after the end of the year but before April 15 or, if earlier, the filing of the taxpayer's return.

Finally, in addition to the provisions affecting the charitable contribution deduction, the Bill would reform the excise tax imposed on the net investment income of private foundations by applying a flat 1% rate in place of the current alternative 1% and 2% rates.

We will continue to monitor and provide updates on legislative developments relevant to exempt organizations and their donors.

The text of the Bill is available at <https://beta.congress.gov/bill/113th-congress/house-bill/4719>.

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⁴ The incentives in the Bill would actually expand on the incentives that expired in 2014 by (i) allowing deductions for charitable contributions of food inventory up to 15% of the taxpayer's taxable income (previously 10%); (ii) providing donor-favorable valuation rules for contributions of food inventory; and (iii) permitting deductions for contributions of conservation easements by Alaska Native Corporations.

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