

## Chapter 2

# FILING AND REPORTING REQUIREMENTS

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**MASSACHUSETTS NONPROFIT ORGANIZATIONS**

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# FILING AND REPORTING REQUIREMENTS\*

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### Scope Note

This chapter explains the various filings, both federal and Massachusetts, that are necessary in order for a nonprofit entity to acquire and maintain tax exemption under Section 501(c)(3) of the Internal Revenue Code.

## § 2.1 INTRODUCTION

A nonprofit entity intending to operate as an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code must comply with numerous filing and reporting obligations under federal and state law. Some filings and reports are required to obtain and then maintain the organization's tax-exempt status, while others are prerequisites to enjoying the benefits of that status, such as special bulk mailing rates.

This chapter describes the more common requirements, giving a brief description of the report or filing, the time and place of filing, the applicable fee or tax and, in selected cases, the penalty for untimely filing. Whether a particular filing or reporting requirement applies to a given organization will depend on the organization's structure and operations and on whether it is classified as a publicly supported organization or as a private foundation.

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## § 2.2 FEDERAL FILINGS AND REPORTS; PUBLIC DISCLOSURE

### § 2.2.1 Overview

Certain IRS filings, such as the Application for Recognition of Exemption and the Application for Employer Identification Number, are initial filings required at the time of formation. Other filings, such as Form 990 and Form 4720, are required annually. These forms, along with certain employment-related filings, are discussed below.

### § 2.2.2 Public Disclosure Requirements

Charities must make the following documents available for public inspection: Form 1023 and supporting documents filed with it; any correspondence from the IRS regarding the application for exemption; and all annual returns filed by a charity (e.g., Form 990, Form 990-EZ, Form 990-PF). If an organization can demonstrate that public disclosure of information contained in a Form 1023 or submitted with it—such as trade secret, patent or similar material—would adversely affect the organization, it can request that the IRS withhold that information.

Charities are required to make available for inspection their application for exemption and the supporting documents filed with it and their annual information returns for the most recent three years at the organization's office during regular business hours. Copies of these same documents must be provided upon written or in-person request. If a copy is requested, the organization may charge for reasonable copying and mailing costs. An organization is not required to provide copies if it has made its documents "widely available"—for example, by posting them online—but the documents must still be available for inspection at the organization's office.

### § 2.2.3 IRS Form 1023: Application for Recognition of Exemption

With limited exceptions, a nonprofit organization does not automatically acquire tax-exempt status as a charitable organization upon formation. It must apply for recognition of its exempt status through Form 1023, providing the Tax Exempt and Government Entities Unit (TE/GE) of the IRS with sufficient information about its governing documents and operations to enable the IRS to determine whether the organization qualifies for exemption. In addition, the Form 1023 asks organizations about various policies, including how compensation is determined

and whether the organization has adopted a conflict-of-interest policy and, if not, what procedures they use to avoid conflicts.

*Due Date:* Within fifteen months after the end of the month the organization was formed if the exemption is to be retroactive to the date of formation. Relief from the fifteen-month deadline is granted automatically if Form 1023 is filed within twelve months from the end of the fifteen-month period. If the application is filed beyond the twenty-seven-month period (15 + 12), the exemption will generally be effective only from the date of filing.

*Place of Filing:* By U.S. Mail:  
Internal Revenue Service  
P.O. Box 192  
Covington, KY 41012-0192

By Express Mail or a delivery service:  
Internal Revenue Service  
201 West Rivercenter Blvd.  
Attn: Extracting Stop 312  
Covington, KY 41011

*Fees/Tax:* \$850 (reduced fee of \$400 if the organization's annual gross receipts are not expected to exceed an average of \$10,000 over the first four years)

### **§ 2.2.4 IRS Form 8734: Support Schedule for Advance Ruling Period (No Longer Required)**

On September 9, 2008, the IRS eliminated the advance ruling period. In the past, an organization that applied for status as a public charity would submit Form 8734 at the end of the so-called advance ruling period to provide financial information to the IRS supporting its qualification as a publicly-supported organization under Section 509(a). Under the new rules, the IRS automatically grants status as a public charity on an organization applying for that classification for its first five years, provided it can demonstrate on its Form 1023 that it can reasonably be expected to be publicly supported.

After the first five years, the IRS will monitor the organization's public charity status using the public support information reported annually on Schedule A of Form 990, Return of Organization Exempt from Income Tax. The public support test is based on a five-year computation period that consists of the current year and the four years immediately preceding the current year.

An organization that applied for tax-exempt status as a public charity and received a determination letter from the IRS prior to September 9, 2008 will automatically be considered to be a public charity during its advanced ruling period, and will not have to file a Form 8734 at the end of that period. Such an organization, however, must file annual returns, and beginning with its sixth taxable year and all succeeding years, it must meet the public support test on Schedule A of Form 990, if required.

### § 2.2.5 **IRS Form SS-4: Application for Employer Identification Number**

IRS Form SS-4 is used to apply for the nine-digit federal identification number required for all organizations and used on all federal filings and on most state filings. The identification number should be applied for as soon as the organization is formed. The application may be submitted by telephone, fax, or the IRS Web site, depending upon how quickly the organization needs the EIN. *See* IRS Form SS-4: Application for Employer Identification Number, *available at* <http://www.irs.gov/pub/irs-pdf/fss4.pdf>.

*Place of Filing:* Online (EIN available immediately):  
<http://www.irs.gov/businesses> (click on “Employer ID Numbers”)

By facsimile (EIN available within four business days):  
Internal Revenue Service Center  
(859) 669-5760

By telephone (EIN available immediately):  
(800) 829-4933 for U.S. applicants  
(215) 516-6999 for international applicants  
(available 7:00 a.m. to 10:00 p.m. local time)

By mail (EIN available in four to five weeks or more):  
Internal Revenue Service Center  
Attn: EIN Operation  
Cincinnati, OH 45999

*Fees/Tax:* None

### § 2.2.6 **IRS Form 5768: Election/Revocation by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation**

In general, an organization will lose its tax-exempt status if more than an insubstantial portion of its activities consists of attempting to influence legislation (i.e., lobbying). An organization that intends to do more than insubstantial lobbying may protect its exempt status by completing Form 5768 and electing to have the expenditure tests under I.R.C. § 501(h) govern the permissible extent of the lobbying. Religious organizations, governmental units and private foundations may not make this election.

*Due Date:* Within the first fiscal year for which the election is to apply

*Place of Filing:* Internal Revenue Service Center  
Ogden, UT 84201-0027

*Fees/Tax:* None

### § 2.2.7 **PS Form 3624: Application to Mail at Special Bulk Third-Class Rates**

The U.S. Postal Service offers special reduced rates for mailings by charitable organizations. A copy of the exemption letter issued by the IRS and other documents evidencing eligibility for the special rate must be included with Form 3624. *See* PS Form 3624: Application to Mail at Special Bulk Third-Class Rates, available at [http://www.usps.com/forms/\\_pdf/ps3624.pdf](http://www.usps.com/forms/_pdf/ps3624.pdf); *see also* Postal Service Publication 417, available at <http://pe.usps.gov/text/pub417/welcome.htm>.

*Place of Filing:* Via certified mail:  
Pricing and Clarification Service Center  
P.O. Box 3623  
New York, NY 10008-3623

*Fees/Tax:* No filing fee for the application (but an annual fee for bulk mail will apply)

### § 2.2.8 **IRS Form 990: Return of Organization Exempt from Income Tax**

Form 990 is an annual information return that must be filed by a publicly supported organization (other than the religious or educational organizations listed

below) whose annual gross receipts normally exceed \$200,000 or whose assets are greater than or equal to \$500,000. The return reports receipts, disbursements, and certain operational data for the year. The core form has eleven parts that must be completed by all organizations required to file Form 990. See IRS Form 990: Return of Organization Exempt from Income Tax, available at <http://www.irs.gov/pub/irs-pdf/i990.pdf>.

In addition to a core form, Form 990 has sixteen schedules. The Form 990 provides a checklist of required schedules under Part IV of the core form to help organizations determine which schedules are required. Schedule A, entitled Public Charity Status and Public Support, is an integral part of Form 990 for exempt organizations qualifying under Sections 501(c)(3) and 4947(a)(1), as it contains the public support test required for public charities.

The following publicly supported organizations are not required to file Form 990: a church; an interchurch organization of local units of a church; a convention or association of churches; an integrated auxiliary of a church; an internally supported church-controlled organization; a school below college-level affiliated with a church or operated by a religious order; and a mission society sponsored by or affiliated with one or more churches or church denominations if more than one half of the society's activities are conducted in or directed at persons in foreign countries and an exclusively religious activity of any religious order.

The IRS released a significantly revised Form 990 for 2008 and completed additional, but less substantial, revisions for the 2009 form. The purposes of redesigning the form were to enhance transparency, promote tax compliance and minimize the burden on the filing organization. The major new features of the form include a summary page, a governance section, more extensive reporting of compensation and relationships with other entities for some organizations, and new reporting for tax-exempt bonds, foreign activities, noncash contributions and hospitals. Organizations should note that a new section, entitled "Governance, Management, and Disclosure," asks detailed questions about the organization's governance policies, including its procedures for addressing conflicts of interest, whistle-blowing, and document destruction, and its process for setting compensation. The new form requires the organization to provide comprehensive salary information for certain former and current employees, subject to certain compensation thresholds. If (a) any former officer or key employee received annual compensation of more than \$100,000, (b) any former director or trustee received annual compensation exceeding \$10,000, or (c) any person received compensation of more than \$150,000, Schedule J ("Compensation Information") must be completed for that person. Schedule J asks additional questions about what type of compensation the organization provided and how the person's compensation was determined. For more information, see the revised instructions to Form 990 at <http://www.irs.gov/pub/irs-pdf/i990.pdf>.

The IRS has provided transition relief for smaller organizations by phasing-in the requirement to file the new form. For the 2009 tax year, organizations with gross receipts less than \$500,000 and total assets less than \$1.25 million may file Form 990-EZ in lieu of Form 990. The Form 990-EZ filing thresholds will be adjusted permanently to gross receipts less than \$200,000 and total assets less than \$500,000 beginning with the 2010 tax year.

*Due Date:* On or before the fifteenth day of the fifth month after the close of the annual accounting period

*Place of Filing:* By mail:  
Internal Revenue Service Center  
Ogden, UT 84201-0027

Online:

Required for an organization that files at least 250 returns during the calendar year and has total assets of \$10 million or more, and recommended for all other organizations. Any organization required to file electronically that fails to do so will be subject to penalties for failure to file, even if a paper return was submitted.

*Fees/Tax:* None

*Filing Penalty:* A penalty of \$20 per day, not to exceed the lesser of \$10,000 and 5 percent of the gross receipts of the organization for the year, may be charged when a return is filed late, unless the organization can show that the late filing was due to reasonable cause. Organizations with annual gross receipts exceeding \$1 million are subject to a penalty of \$100 for each day the failure continues (with a maximum penalty with respect to any one return of \$50,000). The penalty begins on the due date for filing Form 990 or Form 990-EZ. Penalties may also be assessed against a “responsible person.” Additional penalties apply for willful failure to file a return or for filing a fraudulent return.

In addition to the monetary penalty, failure to file for three consecutive years will result in the automatic revocation of the organization’s exempt status on and after the date the IRS has set for filing the third annual return.

### § 2.2.9 **IRS Form 990-EZ and Schedules A and B: Short Form Return of Organization Exempt from Income Tax**

Form 990-EZ may be filed instead of Form 990 (see discussion on IRS Form 990 in § 2.2.8, above) if the organization's annual gross receipts are less than \$200,000 and its total assets at the end of the year are less than \$500,000. Certain schedules for Form 990 must be filed with Form 990-EZ. See IRS Form 990-EZ: Short Form Return of Organization Exempt from Income Tax, *available at* <http://www.irs.gov/pub/irs-pdf/f990ez.pdf>.

### § 2.2.10 **IRS Form 990-PF: Return of Private Foundation**

Form 990-PF is an annual return that must be filed by all private foundations. See IRS Form 990-PF: Return of Private Foundation, *available at* <http://www.irs.gov/pub/irs-pdf/f990pf.pdf>. The return is used to calculate the excise tax due on the organization's net investment income, if any, and to report charitable distributions and activities for the year. Schedule B (Form 990) must be filed with Form 990-PF if a contribution of \$5,000 or more was received from any one person, directly or indirectly, during the year.

*Due Date:* On or before the fifteenth day of the fifth month after the close of the annual accounting period

*Place of Filing:* By mail:  
Internal Revenue Service Center  
Ogden, UT 84201-0027

Online:  
Required for a foundation that files at least 250 returns during the calendar year, and recommended for all other organizations. Any foundation required to file electronically that fails to do so will be subject to penalties for failure to file, even if a paper return was submitted.

*Fees/Tax:* Tax payable computed on return

*Tax Estimates:* Private foundations must make estimated tax payments if the organization expects its excise tax to be \$500 or more. Use IRS Form 990-W: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations to determine the

timing and amount of the payments. *See* IRS Form 990-W: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations, *available at* <http://www.irs.gov/pub/irs-pdf/f990w.pdf>.

*Payment of Tax:* The tax must be paid in full when the return is filed. There are penalties for late payment, which are calculated on the amount of tax that is unpaid, up to a maximum of 25 percent of the tax due. Organizations with a large depository tax liability (over \$200,000 in the prior tax year) must deposit the tax (including estimates) electronically using the Electronic Federal Tax Payment System (EFTPS). If the organization used EFTPS in the prior tax year, it is required to use EFTPS for the current tax year. The IRS encourages other organizations to use EFTPS as well, but they may deposit payments (including estimates) with a prescribed Form 8109-B: Federal Tax Deposit Coupon at a financial institution qualified as a depository for federal taxes.

*Filing Penalty:* A penalty of \$20 per day, not to exceed the lesser of \$10,000 and 5 percent of the gross receipts of the organization for the year, may be charged when a return is filed late, unless the organization can show that the late filing was due to reasonable cause. Organizations with annual gross receipts exceeding \$1 million are subject to a penalty of \$100 for each day the failure continues (with a maximum penalty with respect to any one return of \$50,000). The penalty begins on the due date for filing Form 990-PF. Penalties may also be assessed against a “responsible person.” Additional penalties apply for willful failure to file a return or for filing a fraudulent return.

In addition to the monetary penalty, failure to file for three consecutive years will result in the automatic revocation of the organization’s exempt status on and after the date the IRS has set for filing the third annual return.

### **§ 2.2.11 IRS Form 990-N (E-Postcard): Annual Electronic Filing Requirement for Small Exempt Organizations**

Charities with less than \$25,000 of gross receipts must file an electronic information return annually. The filing must include the following information:

- the organization's legal name;
- any name under which it operates or does business;
- its mailing address (and Web site address, if any);
- its taxpayer identification number;
- the name and address of a principal officer;
- the organization's tax year;
- confirmation that the organization's annual gross receipts are normally \$25,000 or less, and
- if applicable, a statement that the organization has terminated or is terminating.

For more information, see Publication 4752, The New e-Postcard (Form 990-N), What Smaller Organizations Need to Know to Stay Tax-Exempt, available at <http://www.irs.gov/pub/irs-pdf/p4752.pdf>.

Exceptions to this filing requirement include organizations that are included in a group return, churches, their integrated auxiliaries, and conventions or associations of churches, private foundations required to file Form 990-PF, and section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ.

*Due Date:* On or before the fifteenth day of the fifth month after the close of the annual accounting period

*Place of Filing:* Online required:  
<http://epostcard.form990.org>

*Fees/Tax:* None

*Filing Penalty:* Failure to file for three consecutive years will result in the automatic revocation of the organization's exempt organization status on and after the date IRS has set for filing the third annual return.

### § 2.2.12 IRS Form 990-T: Exempt Organization Business Income Tax Return

Form 990-T is an annual return that must be filed by any organization that has \$1,000 or more of gross income from a business activity that is not substantially related to the organization's exempt purposes. This return is used to report the unrelated business income and to calculate the tax due on that income. See IRS Publication 598, available at <http://www.irs.gov/pub/irs-pdf/p598.pdf>.

*Due Date:* On or before the fifteenth day of the fifth month after the close of the annual accounting period

*Place of Filing:* Internal Revenue Service Center  
Ogden, UT 84201-0027

*Fees/Tax:* Tax payable computed on return

*Tax Estimates:* The organization must pay tax estimates if it expects its income tax to be \$500 or more. Use IRS Form 990-W: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations) to determine the timing and amount of payments.

*Payment of Tax:* The tax must be paid in full when the return is filed. There are penalties for late payment, calculated on the amount of tax that is unpaid, up to a maximum of 25 percent of the tax due. See § 2.2.10 above, for the two ways the tax may be paid (i.e., electronically using EFTPS or by deposit with Form 8109-B).

*Filing Penalty:* A penalty of 5 percent of the unpaid tax for each month or part of a month that the return is late to a maximum of 25 percent of the unpaid tax may be charged when a return is filed late, unless the organization can show that the late filing was due to reasonable cause. A minimum penalty for a return that is more than sixty days late is the smaller of the tax due or \$135. Additional penalties apply for willful failure to file a return or for filing a fraudulent return.

### § 2.2.13 IRS Form 4720: Return of Certain Excise Taxes on Charities and Other Persons

Under Chapters 41 and 42 of the Internal Revenue Code, certain actions by private foundations (i.e., failure to make sufficient distributions, making ineligible distributions, holding prohibited assets and entering into prohibited transactions

with disqualified persons) and the making of excess lobbying expenditures or any “political expenditures” by any organization subject the organization and, in some cases, individuals who are classified as an organization manager, foundation manager or self-dealer to excise taxes. Form 4720 is used to report such activities and to calculate the taxes due. *See* IRS Form 4720: Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code, *available at* <http://www.irs.gov/pub/irs-pdf/f4720.pdf>.

*Due Date:* Form 4720 of the organization and of a manager or self-dealer with the same tax year as the organization is due on or before the date for filing Form 990 or 990-PF. Form 4720 of a manager or self-dealer with a tax year different from the organization’s is due on or before the fifteenth day of the fifth month after the close of the person’s tax year.

*Place of Filing:* Internal Revenue Service Center  
Ogden, UT 84201-0027

*Fees/Tax:* Tax payable computed on return

*Penalty:* Penalties for late filing or failure to file and for late payment vary according to the impugned activity and increase if corrective action is not taken in a timely manner.

### § 2.2.14 **IRS Form 941: Employer’s Quarterly Federal Tax Return**

An organization generally must withhold federal and state income taxes and Social Security and Medicare taxes for each employee. Form 941 reports total wages paid and amounts withheld. *See* IRS Form 941: Employer’s Quarterly Federal Tax Return, *available at* <http://www.irs.gov/pub/irs-pdf/f941.pdf>. (See also discussion at § 2.2.18, Social Security (FICA) and Medicare Taxes, below.)

*Due Date:* Quarterly on or before the last day of April, July, October and January for taxes withheld in the prior calendar quarter

*Place of Filing:* If no payment required, Massachusetts organizations file at:  
Internal Revenue Service Center  
Ogden, UT 84201-0005

If a payment is required:  
Internal Revenue Service Center  
P.O. Box 105083  
Atlanta, GA 30348-5083

*Fees/Tax:* Tax computed on return

*Deposit Requirements:* If the total tax liability at the end of a quarter is less than \$2,500 and the organization did not incur a \$100,000 next-day deposit obligation in the current quarter, the taxes may be paid with Form 941; otherwise, deposit requirements apply. Depending on the amount of tax due, taxpayers must deposit on a monthly or semiweekly basis throughout the tax year. Use the Electronic Federal Tax Payment System (EFTPS) or, if permitted, preprinted Form 8109-B: Federal Tax Deposit Coupon when making deposits. *See* IRS Circular E.

### **§ 2.2.15 IRS Form W-2: Wage and Tax Statement**

An organization must complete a Form W-2 (see IRS Form W-2: Wage and Tax Statement at <http://www.irs.gov/pub/irs-pdf/fw2.pdf>) for each employee reporting federal and state wages, amounts of income tax withheld and amounts of Social Security and Medicare taxes withheld (if applicable).

*Due Date:* Copies B, C, and 2 must be given to the employee on or before the end of January of the following year. Copies A and 1 must be filed with the Social Security Administration and the Commonwealth of Massachusetts, respectively. The due date for Copies A and 1 is on or before the beginning of March if filing by mail and the end of March if filing online. The organization keeps Copy D.

*Places of Filing:* Copy A (via first class mail):  
Social Security Administration  
Data Operations Center  
Wilkes-Barre, PA 18769-0001

Copy A (via private delivery service):  
Social Security Administration  
ATTN: W-2 Process  
1150 E. Mountain Drive  
Data Operations Center  
Wilkes-Barre, PA 18702-7997

Note that a penalty of \$50 per return may be imposed for filing forms with the SSA that cannot be scanned.

**Copy A (online):**

Required for an employer that files 250 or more W-2s during the calendar year. The IRS urges all other employers to file online as well. *See* <http://www.socialsecurity.gov/bsowelcome.htm>.

**Copy 1:** Any employer filing fifty or more W-2s must submit the file in a “machine-readable form.” The term “machine-readable form” includes file uploads through WebFile for Business and electronic data transfer. WebFile for Business is strongly encouraged for all other employers as well. *See* W-2 Handbook, *available at* [http://www.mass.gov/Ador/docs/dor/Forms/Wage\\_Rpt/PDFs/w2hdbk2009.pdf](http://www.mass.gov/Ador/docs/dor/Forms/Wage_Rpt/PDFs/w2hdbk2009.pdf).

**Fees:** None

**Penalties:** Fifteen dollars per return if the return is correctly filed within thirty days of the filing due date, with a maximum penalty of \$75,000; \$30 per return if the return is correctly filed by the first business day of August, with a maximum penalty of \$150,000; and \$50 per return if the return is not filed or is filed after the first business day of August, with a maximum penalty of \$250,000. For organizations with gross receipts of \$5 million or less for the three most recent tax years ending before the year the returns are due, the maximum penalties are reduced to \$25,000, \$50,000, and \$100,000, respectively.

### § 2.2.16 **IRS Form W-3: Transmittal of Wage and Tax Statements**

Form W-3 (see IRS Form W-3: Transmittal of Wage and Tax Statements at <http://www.irs.gov/pub/irs-pdf/fw3.pdf>) is used to transmit Copy A of Form W-2 for each employee.

**Due Date:** On or before the beginning of March if filing by mail and the end of March if filing online

**Place of Filing:** Social Security Administration (see filing information in § 2.2.15, IRS Form W-2: Wage and Tax Statement, above)

### **§ 2.2.17 IRS Form W-4: Employee's Withholding Allowance Certificate**

Each employee must complete and file with the organization a Form W-4 (see IRS Form W-4: Employee's Withholding Allowance Certificate at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>) indicating the number of withholding exemptions the employee is claiming.

### **§ 2.2.18 Social Security (FICA) and Medicare Taxes**

Generally, Social Security and Medicare taxes apply if the organization paid wages to an employee during the year. Certain religious organizations may elect exemption from the Social Security and Medicare taxes by filing IRS Form 8274: Certificate by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employer Social Security and Medicare Taxes (see Form 8274: Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employer Social Security and Medicare Taxes at <http://www.irs.gov/pub/irs-pdf/f8274.pdf>) with the Internal Revenue Service Center at Ogden, UT.

For wages paid in 2010, the tax rate and wage base for each tax is as follows:

- Social Security—6.2 percent for both the employer and employee (12.4 percent total) on a wage base of \$102,000.
- Medicare—1.45 percent for both the employer and employee (2.9 percent total) on an unlimited wage base.

See § 2.2.14, IRS Form 941: Employer's Quarterly Federal Tax Return, above, for discussion of remittance of taxes to the IRS.

### **§ 2.2.19 IRS Form 940 (or 940-EZ): Employer's Annual Federal Unemployment (FUTA) Tax Return**

Most charitable organizations are exempt from federal unemployment taxes. If not, Form 940, or in limited cases Form 940-EZ must be filed by the end of January of the following year. Currently the tax is 6.2 percent, less credit for contributions to state funds up to 5.4 percent. The organization pays the entire tax, and none is withheld from wages. For deposit requirements, see the instructions to Form 940, available at <http://www.irs.gov/pub/irs-pdf/i940.pdf>.

*Place of Filing:* If no payment is required:  
Internal Revenue Service Center  
Ogden, UT 84201-0046

If payment is required:  
Internal Revenue Service Center  
P.O. Box 105078  
Atlanta, GA 30348-5078

### § 2.2.20 Termination or Substantial Contraction

The termination or substantial contraction of an organization is reported on Form 990 or 990-PF for the relevant year. For information about the documentation that should be submitted to the IRS upon termination, visit <http://www.irs.gov/charities/article/0,,id=156422,00.html>.

*Due Date:* On or before the fifteenth day of the fifth month following complete liquidation, dissolution or termination of a private foundation; otherwise, on the regular due date of Form 990 or 990-PF.

## § 2.3 MASSACHUSETTS FILINGS AND REPORTS

Massachusetts requires certain filings, including articles of organization and registration with the Department of Revenue (DOR) and the Division of Public Charities, at the time of formation. These documents, along with annual and employment-related filings, are discussed below.

Reporting forms are available on-line at the following state agencies:

- Office of Attorney General, Division of Public Charities (<http://www.ago.state.ma.us/charity>)
- Department of Revenue (<http://www.dor.state.ma.us>)
- Secretary of the Commonwealth, Corporations Division (<http://www.state.ma.us/sec/cor/coridx.htm>)
- Executive Office of Labor and Workforce Development (EOLWD) (<http://www.mass.gov/eolwd>)

### § 2.3.1 Articles of Organization (Domestic Corporations)

New organizations wishing to operate in corporate form must file articles of organization under G.L. c. 180 (see Secretary of the Commonwealth Articles of Organization at <http://www.sec.state.ma.us/cor/corpdf/180art.pdf>). The corporation comes into existence when the articles are signed by the secretary of the Commonwealth (generally as of the date the articles are submitted to that office to be filed).

The following must be filed with the secretary of the Commonwealth and are effective when signed by the secretary: amendments to the articles of organization and changes in the organization's principal office (see the Secretary of the Commonwealth Certificate of Change of Principal Office at <http://www.sec.state.ma.us/cor/corpdf/180ccpo.pdf>). The following must also be filed with the secretary of the Commonwealth but do not depend on filing for their effectiveness: changes in fiscal year (see the Secretary of the Commonwealth Certificate of Change of Fiscal Year End at <http://www.sec.state.ma.us/cor/corpdf/180ccfy.pdf>); and appointments of or changes in resident agent (see the Secretary of the Commonwealth Certificate of Appointment of Resident Agent at <http://www.sec.state.ma.us/cor/corpdf/180cara.pdf>). The organization may, but is not required to, file with the secretary a certificate setting forth any change in the board of directors or in the president, treasurer and clerk.

*Place of Filing:* By mail:  
Corporations Division  
Office of the Secretary of the Commonwealth  
One Ashburton Place  
Boston, MA 02108-1512

Online:  
<http://www.state.ma.us/sec/cor/coridx.htm>

*Fees:* Articles of Organization—\$35  
Articles of Amendment—\$15  
Change of Principal Office—\$10  
Appointment of Resident Agent—\$10  
Change of Resident Agent—\$10

### § 2.3.2 Registration with Division of Public Charities

All domestic or foreign organizations that are public charities under Massachusetts law must register with the Division of Public Charities of the Office of the

Attorney General. For Massachusetts purposes, the term “public charity” means all charitable organizations, including private foundations. Organizations that are primarily religious in purpose are not required to register with the Division.

To register, a public charity must file the following:

- a copy of the articles of organization, charter, agreement of association, instrument of trust or constitution;
- a list of the current officers and directors, and their addresses;
- bylaws; and
- a copy of the federal determination letter of exemption.

The Division of Public Charities will notify the organization whether it is obligated to file annual reports with the Division. (See § 2.3.8, Attorney General’s Form PC: Annual Report and Schedules A-1 and A-2: Information Regarding Solicitation Activities, below.)

Copies of amendments to the articles of organization, bylaws, charter, agreement of association, instrument of trust or constitution must be filed with the Division within thirty days of adoption.

*Due Date:* Before engaging in charitable work or raising funds

*Place of Filing:* Division of Public Charities  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108-1512

*Fees:* None

### § 2.3.3 Foreign Corporation Certificate of Registration

Under G.L. c. 156D, § 15.03, corporations incorporated in another jurisdiction must, within ten days after commencing operations in Massachusetts, file with the secretary of the Commonwealth a certificate in prescribed form setting forth information similar to that set forth in articles of organization filed by new domestic corporations (see the Secretary of the Commonwealth Foreign Corporation Certificate of Registration at <http://www.sec.state.ma.us/cor/corpdf/c156ds1503950c11348.pdf>). This certificate must be accompanied by a certificate of legal existence issued by the jurisdiction of incorporation.

Any change in the corporation's name, principal office or activities must be set forth in an amended certificate filed with the secretary of the Commonwealth under G.L. c. 156D, § 15.04.

*Place of Filing:* Corporations Division  
Office of the Secretary of the Commonwealth  
One Ashburton Place  
Boston, MA 02108-1512

*Fees:* Initial Certificate: \$400  
Amended Certificate: \$100

### **§ 2.3.4 Unified Registration Statement (URS)**

The URS is a reporting form designed for charities registered in numerous states. Massachusetts accepts the URS from organizations based in other states for an initial registration. Organizations based in Massachusetts may not use the URS at all. Out-of-state organizations are required to submit Form PC for all subsequent filings. It is not necessary to send a copy of the organization's most recent Form 990 or financial statement with the URS.

*Fees:* \$50

### **§ 2.3.5 Short-Form PC (Solicitation Certificate)**

If the organization has not yet completed its first fiscal year and it would like to solicit funds, it must file Short-Form PC. When registering with the Division of Public Charities, the charity should submit the four required items listed in § 2.3.2, above, with a Short Form PC. There is an exemption from filing Short-Form PC for religious organizations and for organizations that do not raise more than \$5,000 during a calendar year or do not receive contributions from more than ten persons and, in either case, whose activities (including fundraising) are done entirely by unpaid volunteers. Once obtained, the certificate is renewed annually (see § 2.3.8, Attorney General's Form PC: Annual Report and Schedules A-1 and A-2: Information Regarding Solicitation Activities, below).

*Fees:* \$50

### **§ 2.3.6 Registration with Department of Revenue**

All domestic and foreign corporations should register with the DOR to document the exemption from the state corporate excise tax accorded under G.L. c. 63, § 30.

*Place of Filing:* Online through WebFile for Business (required)

*Fees:* None

### **§ 2.3.7 DOR Application for Original Registration as an Exempt Purchaser**

Charitable organizations are entitled to exemption from the Massachusetts sales and use taxes on the purchase of items used for the organization's charitable purposes. G.L. c. 64H, § 6(e). To qualify for the exemption, the organization must present a Certificate of Exemption (Form ST-2) at the time of purchase. The certificate is issued for a minimum of three years and a maximum of five years. The Department of Revenue will inform the organization of its requirement to reregister.

Under TIR 96-9, a charitable organization may obtain a temporary certificate of exemption while the organization's application for recognition of exempt status is pending with the IRS by submitting an application for certification (online), a copy of IRS Form 1023 as submitted to the IRS, and a copy of its articles of organization and bylaws. The organization must also execute an agreement to extend the statute of limitations on assessments for a period equal to the period that the temporary certificate is in force, plus one year.

*Place of Filing:* Online through WebFile for Business. The federal identification number and organization name must be entered on the application exactly as they appear on the IRS Determination Letter of Exemption. If the information submitted is insufficient, DOR may request additional information. Organizations must respond within the time limit specified by DOR.

### **§ 2.3.8 Attorney General's Form PC: Annual Report and Schedules A-1 and A-2: Information Regarding Solicitation Activities**

Form PC is an annual information return that must be filed by all public charities (including private foundations) other than those that are primarily religious in purpose. If the organization has already passed its first fiscal year-end, it may not file Short Form PC even if it did not have any financial activity (see § 2.3.5, above).

Form PC reports receipts, disbursements and certain operational data for the year. The return must be accompanied by the organization’s Form 990, Form 990-EZ or Form 990-PF filed with the IRS or, if applicable, its accounts filed with the Probate Court. Organizations completing Form 990-N for the IRS must continue to file Form 990-EZ with their annual Form PC. If the organization’s gross revenue for the year exceeds \$200,000 but does not exceed \$500,000, it must also submit a financial statement accompanied by an independent certified public accountant’s review report. If the organization’s gross revenue for the year exceeds \$500,000 it must submit an audited financial statement prepared by an independent CPA in accordance with generally accepted accounting principles (GAAP) and the accompanying independent auditor’s report. Organizations exempt from the audit requirement by regulation are: private foundations that file Form 990-PF with the IRS; trusts filing probate accounts; and trusts audited by certain state and federal agencies. *See* 940 C.M.R. § 2.02.

Schedules A-1 and A-2 to Form PC are used to obtain or renew the solicitation certificate that may be required by the organization if it solicits funds in Massachusetts. (See discussion in § 2.3.5, Massachusetts Filings and Reports, above.) Schedule RO of Form PC must be completed if the organization is related to any other organization.

*Due Date:* Four and one-half months after the close of the fiscal year. An extension may be obtained by submitting a written request or a copy of the organization’s request for a federal extension (IRS Form 8868); in either case indicate the organization’s six-digit attorney general’s account number at the top.

*Place of Filing:* Division of Public Charities (see address in § 2.3.2, Registration with Division of Public Charities, above).

*Fees:* Sliding scale based on gross support and revenue:

Gross Support and Revenue	Fee
less than \$100,000	\$35
\$100,001–\$250,000	\$70
\$250,001–\$500,000	\$125
more than \$500,000	\$250

### § 2.3.9 **DOR Form 1B-3: Application for Statutory Exemption and Form 3ABC: Return of Property Held for Charitable Purposes**

Certain charitable organizations are entitled to exemption from local property taxes on real and personal property used for the organization's charitable purposes. To be eligible for the exemption, the organization must timely file both Form 1B-3 and Form 3ABC, describing the property and the organization. Form 1B-3 is filed only once for each property. Form 3ABC is filed each year and must include a copy of the prior year's Form PC filed with the Division of Public Charities. The exemption will be lost if the forms are not filed on time.

*Due Date:* Form 3ABC: March 1  
Form 1 B-3: October 1

*Place of Filing:* Applicable board of assessors

*Fees:* None

### § 2.3.10 **Secretary of the Commonwealth: Annual Report (Domestic Corporations)**

An annual report (see the Secretary of the Commonwealth Annual Report at <http://www.sec.state.ma.us/cor/corpdf/180npcar.pdf>) must be filed by all corporations organized under G.L. c. 180 other than those exempted from the filing requirement, such as religious organizations, schools and hospitals. The report lists the organization's officers and directors and gives the date of the most recent annual meeting. Trusts do not file this annual report with the Corporations Division.

*Due Date:* November 1

*Place of Filing:* Secretary of the Commonwealth  
Attn: Annual Report—AR180  
One Ashburton Place, Room 1717  
Boston, MA 02108

*Fees:* \$15

### § 2.3.11 Secretary of the Commonwealth: Annual Report (Foreign Corporations)

An annual report (see the Massachusetts Foreign Corporation Annual Report at <http://www.sec.state.ma.us/cor/corpdf/c156ds1622950c11357.pdf>) must be filed by all foreign corporations registered with the secretary of the Commonwealth under G.L. c. 156D, § 16.22. This report lists the organization's officers and directors and gives other information concerning the organization.

*Due Date:* Within two and a half months of the close of the organization's fiscal year

*Place of Filing:* Secretary of the Commonwealth  
One Ashburton Place  
Boston, MA 02108

*Fees:* \$125

### § 2.3.12 DOR Form 2: Fiduciary Income Tax Return (Trusts Only)

Form 2 (see Form 2: Fiduciary Income Tax Return at [http://www.mass.gov/Ador/docs/dor/Forms/IncTax09/2\\_3/2.pdf](http://www.mass.gov/Ador/docs/dor/Forms/IncTax09/2_3/2.pdf)) must be filed by all trusts that receive income that would be taxable but for the exemption granted to charitable trusts under G.L. c. 62, § 3. The return must be accompanied by a copy of the organization's most recently filed federal return.

*Due Date:* April 15

*Place of Filing:* Department of Revenue  
P.O. Box 7018  
Boston, MA 02204

*Fees/Tax:* None

### § 2.3.13 Massachusetts Income Tax Withholding

An organization generally must withhold state income taxes for each employee of the organization. The following returns are used to transmit withheld taxes to the DOR. The returns are provided to the organization by the DOR in advance of their due dates. See Circular M, available at <http://www.mass.gov/Ador/docs/>

dor/Forms/Wage\_Rpt/PDFs/circ\_m08.pdf, for instructions on the computation of withholding.

*Place of Filing:* Massachusetts Department of Revenue  
P.O. Box 7042 (for DOR Form M-941)  
P.O. Box 7038 (for DOR Form M-942)  
P.O. Box 7034 (for DOR Form M-941D)  
Boston, MA 02204

*Place of Filing:* For instructions for online filing of DOR Forms M-941, M-942, M-941W, M-941D:  
[http://www.mass.gov/Ador/docs/dor/Forms/Wage\\_Rpt/PDFs/electma941\\_inst.pdf](http://www.mass.gov/Ador/docs/dor/Forms/Wage_Rpt/PDFs/electma941_inst.pdf).

**(a) *DOR Form M-941A (or WebFile for Business)***

Organizations withholding \$100 or less of tax per year must file Form M-941A.

*Due Date:* Annually on or before January 31 of the following year

**(b) *DOR Form M-941 (or WebFile for Business)***

Organizations withholding from \$101 to \$1,200 of tax per year must file Form M-941.

*Due Date:* Quarterly on or before April 30, July 31, October 31, and January 31

**(c) *DOR Form M-942 (or WebFile for Business)***

Organizations withholding from \$1,201 to \$25,000 of tax per year must file Form M-942.

*Due Date:* Monthly on or before the fifteenth day of the following month except for March, June, September, and December, in which case it is due the last day of the following month, respectively

**(d) *Previously DOR Form M-941W, Now Only WebFile for Business***

Organizations withholding over \$25,000 of tax per year must file online using WebFile for Business.

*Due Date:* Quarterly due on or before last day of month following close of calendar quarter

**(e) *DOR Form M-941D***

Organizations that file Form M-941W must file Form M-941D.

*Due Date:* Quarterly

**(f) *DOR Form M-3: Reconciliation of Massachusetts Income Taxes Withheld for Employers Filing Quarterly (or DOR Form M-3M for Monthly Filers)***

Form M-3 is filed by organizations that file Form M-941, M-941W or M-941D. Form M-3M is filed by organizations that file Form M-492. Copy 1 of Form W-2 completed for each employee must be included with Forms M-3 and M-3M.

*Due Date:* February 28

*Place of Filing:* Massachusetts Department of Revenue  
P.O. Box 7015  
Boston, MA 02204

**(g) *DOR Form WR-1: Employer's Quarterly Report of Wages Paid***

For 2009 and prior years, Form WR-1 (see DOR Form WR-1: Employer's Quarterly Report of Wages Paid at [http://www.mass.gov/Ador/docs/dor/Forms/Wage\\_Rpt/PDFs/wr\\_1\\_fm.pdf](http://www.mass.gov/Ador/docs/dor/Forms/Wage_Rpt/PDFs/wr_1_fm.pdf)) was used by all organizations required to withhold taxes on wages. During the fourth quarter of 2009, responsibility for collecting wage reporting data was transferred to the Division of Unemployment Assistance (DUA). Employers, including employers who do not have unemployment tax obligations, must file their quarterly wage reports via DUA's QUEST system beginning in January 2010. For more information, see <http://www.mass.gov/dua/quest>.

**(h) *DOR Form M-4: Massachusetts Employee’s Withholding Exemption Certificate***

Each employee must complete and file with the organization a Form M-4 (see DOR Form M-4: Massachusetts Employer’s Withholding Exemption Certificate at [http://www.mass.gov/Ador/docs/dor/Forms/Wage\\_Rpt/PDFs/m\\_4.pdf](http://www.mass.gov/Ador/docs/dor/Forms/Wage_Rpt/PDFs/m_4.pdf)) or federal Form W-4, indicating the number of withholding exemptions the employee is claiming.

**(i) *DUA Form 1110A: Employer Status Report***

An organization must participate in the state unemployment security system if it employs at least one person on one or more days in each of thirteen weeks in a calendar year or has a payroll of \$1,500 or more in a calendar quarter. A few charitable organizations, such as churches, are entirely exempt from the unemployment tax, and others are exempt with respect to certain kinds of employment.

All organizations that have one or more employees, regardless of whether they meet the threshold for making unemployment insurance contributions, must file Form 1110A with the Division of Unemployment Assistance, together with copies of the federal determination letter of exemption and the organization’s purpose clause—or register online at <http://www.mass.gov/eolwd>.

*Place of Filing:* Division of Unemployment Assistance  
Status Department, 5th Floor  
19 Staniford Street  
Boston, MA 02114-2589

*Fees:* None

**(j) *DUA Form 1: Employer’s Quarterly Contribution Report***

Form 1 is used to transmit the organization’s contributions to the unemployment insurance fund. This form is provided directly to the organization by the DUA in advance of its due date.

*Due Date:* At the end of the month following each calendar quarter

*Place of Filing:* Division of Unemployment Assistance  
Status Department, 5th Floor  
19 Staniford Street  
Boston, MA 02114-2589

*Fees/Tax:* The contribution is a percentage of the first \$14,000 of wages paid to each employee during the calendar year, and the rate is adjusted based on the experience rating of the organization.

**(k) *DUA Form 1700-HI: Employer’s Quarterly Health Insurance Report***

An organization must contribute to the Medical Security Trust Fund (established to provide health care coverage to the uninsured) for each calendar quarter in which it has an average of six or more employees.

*Due Date:* At the end of the month following each calendar quarter

*Place of Filing:* Online through WebFile for Business:  
<https://wfb.dor.state.ma.us/WebFile>

By mail:  
 Division of Unemployment Assistance  
 Status Department, 5th Floor  
 19 Staniford Street  
 Boston, MA 02114-2589

*Fees/Tax:* The tax is applied to the first \$14,000 of wages paid to each employee during the calendar year at the employer’s contribution rate. To obtain your contribution rate, call (617) 626-6895 or visit UI Online Services for Business. New organizations have a two-year exemption and pay a reduced tax rate for the next two years.

**§ 2.3.14 Dissolution, Withdrawal, or Termination**

Domestic corporations that are public charities under Massachusetts law and that desire to dissolve must file a petition for dissolution with the Supreme Judicial Court pursuant to G.L. c. 180, § 11A. Foreign corporations no longer having operations in Massachusetts must file a certificate of withdrawal with the Corporations Division pursuant to G.L. c. 156D, § 15.20. Trusts wishing to terminate (other than by full distribution of the trust property pursuant to the terms of the trust) must petition the Supreme Judicial Court or the Probate Court for an order authorizing the termination and directing the cy pres distribution of the trust property for similar charitable purposes. The Division of Public Charities has developed sample materials for use by charities that are dissolving, which may be found on the Attorney General’s website.

**MASSACHUSETTS NONPROFIT ORGANIZATIONS**