

Nonprofit Integrity Act of 2004 —

New Regulations Affect California Charities

by Aza Harutyunyan
Staff Accountant

In 2004 California enacted new laws which require greater financial accountability by charities and commercial fund-raisers and impose new protections against fraudulent fundraising practices.

Many of our readers are actively involved in the community, serve on nonprofit boards and will be interested in the summary of the relevant stipulations.

Key provisions

- Independent audit of annual financial statements now required for charities with gross revenues of \$2 million or more.

Charitable corporations with gross revenues of \$2 million or more must prepare annual financial statements audited by an independent certified public accountant (CPA). The statements must use generally accepted accounting principles. The independent CPA must follow the independence standards in the Yellow Book issued by the U.S. Comptroller General.

The audited financial statements must be made available for inspection by the California Attorney General and the public no later than nine months after the close of the fiscal year covered by the financial statement.

The audit requirement applies to charitable corporations, unincorporated associations and trustees. They are

required to register and file reports with the state attorney general whenever such organizations accrue \$2 million or more in gross revenue in any fiscal year.

The \$2 million threshold excludes grants received from governmental entities, if the nonprofit organization must provide an accounting of how it used the grant funds.

- Charities with gross revenues of \$2 million or more must establish and maintain an audit committee.

Requirements for an audit committee apply only to charitable corporations that must register and file reports with the state attorney general whenever such organizations accrue \$2 million or more in gross revenue in any fiscal year.

Governing boards must appoint an audit committee. The audit committee may include persons who are not members of the governing board.

The audit committee cannot include staff members, the president or chief executive officer, the treasurer or chief financial officer of the organization. If an organization has a

finance committee, members of that committee may serve on the audit committee but cannot comprise 50 percent or more of the audit committee.

The audit committee, under the governing board's supervision, is responsible for making recommendations to the board on the hiring and firing of an independent CPA. The audit committee can negotiate the independent CPA's compensation on behalf of the governing board.

The audit committee must do all that follows.

- Confer with the auditor to satisfy committee members that the financial affairs of the nonprofit organization are in order.
- Review the audit and decide whether to accept it.
- Approve non-audit

services by the independent CPA's accounting firm and ensure such services conform to standards in the Yellow Book issued by the U.S. Comptroller General.

The \$2 million threshold excludes grants received from governmental entities, if the nonprofit organization



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Minors' Custodian Accounts— Should You Switch to a 529 Plan?

by **David P. Beringer**
Partner

Many clients ponder whether to transfer assets from their child's custodian account (referred to as CUTMA or UGMA accounts) that they oversee into a 529 college savings plan. They like the idea of avoiding the payment of income taxes on income earned from these funds. Some helpful guidelines follow.

- Contributions to a 529 plan can be made in cash only. Capital gains on appreciated investments will result. Good candidates to liquidate for funding a contribution are stocks selling at a loss or having only a minor appreciation.

- Investing CUTMA assets in a 529 plan technically does not eliminate the CUTMA account. No one, not even the custodian, has the power to cancel the CUTMA. You are not permitted to change the minor beneficiary, change the ownership of the account or name a contingent owner (unlike individual account owners).

- Consider not converting the entire CUTMA account to a 529 plan.

You can retain funds for future needs, such as a car or other costs the minor will incur, without worrying about a penalty.

- For college financial aid guidelines, the U.S. Department of Education has advised that funds in



529 plans may be considered an asset of the "account owner."

- The custodial owners need to inform the 529 plan program manager when a minor beneficiary reaches majority age. Then the beneficiary will become the account owner and will have free rein on whether to use the funds for college or grad school or to incur a penalty and withdraw funds for a "non-qualified" expense (buy a house, take a trip to Europe, place a wager on the ninth race at Santa Anita or some other personal expense).

- Consider opening a second, non-CUTMA 529 plan, as these assets will never become property of the beneficiary, regardless of age, unless you elect as the account owner to transfer ownership.

Overall, the wisdom of making this change depends on your situation. Moving custodial assets to a 529 account creates an "emotional barrier" against using the assets for something other than college. Parents have no guarantees on what the future holds for their child, so it may make sense not to put all the custodial "eggs" into one 529 plan "basket."

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must provide an accounting of how it uses the grant funds.

- *Executive compensation by charitable corporations, unincorporated associations and charitable trusts must be reviewed and approved.*

Charitable corporations and unincorporated associations must have their governing board or authorized board committee review and approve the compensation of the chief executive officer or president and the compensation of the chief financial officer or treasurer to ensure that the pay-

ment is "just and reasonable."

All trustees of a charitable trust must review and approve any executive compensation to ensure that it is "just and reasonable."

The review and approval must occur at the time of initial hiring, when the employment term is renewed or extended and when the compensation is modified. Compensation includes benefits.

In addition to heightened financial accountability, the law also clamps down on commercial fund-raisers

who contract with charities.

Commercial fund-raisers must now notify the California Attorney General's office before starting a solicitation campaign and must have written cancelable contracts with the charities for which they are working.

More information and answers to frequently asked questions can be found on the California Attorney General's Web site. The Internet address is www.ag.ca.gov/charities or feel free to contact us for further guidance.

California's Unclaimed Property Database— Use This Site to Search for Long-Lost Treasure

by Peter Hidas, Partner

The State of California currently is in possession of more than \$4.1 billion in unclaimed property belonging to approximately 5.8 million individuals and organizations.

The state acquires unclaimed property through California's Unclaimed Property Law, which requires "holders," such as corporations, business associations, financial institutions and insurance companies, to report and deliver property annually to the controller's office after there has been no customer contact for three years.

Often the owner forgets that the account exists or moves and does not leave a forwarding address or the forwarding order expires. In some cases, the owner dies and the heirs have no knowledge of the property.

The most common types of unclaimed property include those that follow.

- Bank accounts and safe deposit box contents
- Stocks, mutual funds, bonds and dividends
- Uncashed cashier's checks or money orders
- Certificates of deposit
- Matured or terminated insurance policies
- Estates
- Mineral interests and royalty payments, trust funds and escrow accounts

California Unclaimed Property Law does not include real estate property.

To find out if any of this money belongs to you, search the unclaimed property database at <http://scoweb.sco.ca.gov/ucp>.

The Unclaimed Property Law was enacted to prevent holders of unclaimed property from using your money and taking it into their busi-



ness income. This law gives the state an opportunity to return your money and provides California citizens with a single source, the state controller's office, to check for unclaimed property that may be reported by holders from around the nation.

Businesses and financial institutions (holders) are required to send a notice to your last known address, informing you that your account will be transferred to the state controller for safekeeping if you do not notify the institution of your intent to maintain your account.

If the institution is unable to contact you, or if you fail to contact the institution, your account is remitted to the state. The state controller's office will send a notice informing you of your unclaimed property, provided it is able to find a more current address by matching your reported Social Security number with the Franchise Tax Board's records.

The state controller publishes a notice in newspapers of general circulation in each county annually to inform California residents that they

may have unclaimed property.

Owners or heirs may claim their property directly from the state controller without any service charges or fees. However, if you are represented by an heir finder (also known as an investigator or asset locator), he or she may charge you a fee not to exceed 10 percent of the value of the property.

You may receive mailings from the asset locator services. You can avoid the 10 percent charge by simply accessing the database and submitting forms yourself.

If you locate property, simply print a claim form from the Web site and follow the instructions provided. These filing instructions include a checklist of documentation you will need to provide the office when you file your claim.

All claim types generally require documentation such as that which follows.

- A copy of current photo identification for each claimant
- A copy of a Social Security card or a tax identification number for each claimant
- Verification of reported address if different from current address
- Specific documentation relating to the type of property, such as original passbook, cashier's check, stock certificate, and so on

If the evidence is not adequate to prove your ownership, the state will contact you, or return all documents submitted, with a letter stating why the claim is incomplete.

The office is required by law to make a payment determination of all claims within 180 days from the date a package with all supporting documents is received.

Give the database a try; you may be surprised.



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Interesting fact: Berkshire Hathaway paid \$3.3 billion in corporate taxes in 2003, which equaled 2.5 percent of the total income tax paid by all U.S. corporations.

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In mid-December last year Martin Werbelow staff members made a holiday outing to Hollywood Park, where the second race was named for the firm. That race was won by Loucamania, and the firm members had their photo taken with the winning jockey, Corey Nakatani.

Seen in the photo are: (back row, left to right) Houry Guluzian, Eric Scott, Michelle McKinely, Erich Rail, Steve Boyer, Don Westenhaver, Vince Davi and David Beringer; (front row) Jaclyn Chng, Sheeny Bang, Noriko Nakanishi, Carol McElwain, Corey Nakatani, Sue Applegate, Aza Harutyunyan, Kathy Palmer and Patti Hayes.

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