

Audits and More Audits

06.07.16 | Linda J. Rosenthal, JD



Organization Do-Good, Inc. is a (hypothetical) California Nonprofit Public Benefit Corporation with tax exemptions in good standing from the Internal Revenue Service and the California Franchise Tax Board.

The Do-Good staff and board *know* they're in good standing with the IRS because they were just audited by the federal tax agency. So, that's it ..., right? They're safe, aren't they – at least for a while – from any more knocks on the door by government agents?

Well, no. Not necessarily.

A while back, we wrote some blog posts about the maddeningly complex array of federal, state, and local government agencies that poke their noses into the affairs and operations of 501(c)(3) charities. See [“Say What? We’re Monitored by How Many Government Agencies?”](#) and [“The Charity Oversight Role of the California Attorney General: An Introduction.”](#)

The California Attorney General has both the right *and* the duty to oversee and investigate charitable organizations as well as individuals who hold assets or property for charitable purposes.

The Attorney General's Jurisdiction

To get back to the Do-Good group, here's how and why it may face an audit from the California AG's office.

The Legal and Audits Unit [employs attorneys and investigative auditors](#) in offices in San Francisco, Los Angeles and Sacramento. They perform their oversight duties in several [key ways](#):

- They receive information, questions, and tips from a variety of sources (e.g., (e.g., “[other government agencies](#), directors and employees of charities, reporters, donors, users of services, and from charity financial reports and information returns”) about suspected fraud, mismanagement, fiscal problems, and other irregularities;
- They conduct conduct investigations and initiate formal audits; and

- They review mandatory disclosures by charities of certain types of transactions including, for instance, mergers, conversions, dissolutions, and asset sales as well as loans and other types of self-dealing.

“It is the job of the Attorney General’s Charitable Trusts Section to detect and to correct charity fiscal abuse.”

Audit Authority

“The Attorney General may audit a charity at any time to determine if the directors or trustees are carrying out the charitable trust purposes in a lawful manner.”

Corporations Code

There is express authority for an Attorney General audit in the California Nonprofit Public Benefit Corporation Law.

California Corporations Code section 5250 provides:

A corporation is subject at all times to examination by the Attorney General, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, it fails to comply with trusts which it has assumed or has departed from the purposes for which it is formed. In case of any such failure or departure the Attorney General may institute, in the name of the state, the proceeding necessary to correct the noncompliance or departure.

Government Code

There is authority as well in the Supervision of Trustees and Fundraisers for Charitable Purposes Act, as amended by the Nonprofit Integrity Act of 2004.

California Government Code section 12588 provides:

The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

California Government Code section 12598 provides, in pertinent part:

(a) The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities.

Conclusion

The specific example here is a fictional California nonprofit corporation, but the Attorney General’s jurisdiction is much broader.

It extends as well to unincorporated associations and to trustees holding property for charitable purposes. It also applies to entities that are tax exempt under different sections than 501(c)(3) – or are for-profit entities – that hold assets for charitable purposes. An example would be a fraternal organization holding a fundraising event for college scholarships.

Out-of-state charities that do business or hold property in California for charitable purposes may also be covered under these laws.