

California Charity Auctions

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Raffles. Bingo. Poker Nights. Auctions. These are fundraising favorites; donors enjoy them, and charities love the results.

There are tough rules and restrictions under California law for special events in the first three of these four categories. Charity auctions are a different story, though. It's relatively smooth-sailing for the sponsoring organization.

What's the reason? In a single word: "gambling."

Fundraisers as Gambling – or Not

California had little regulation of gambling activities until about 2000 when, under an amendment to the state constitution, oversight was greatly increased and new rules were imposed. Article IV, Section 19 of the California Constitution now prohibits many types of gambling. Swept up in that new, expansive definition of gambling are charity raffles, bingo games, and poker nights.

Of course, it's recognized that charities need latitude to fundraise for their important work in the community. So charity "gambling" is generally allowed, but each special-event category has its own particular set of hoops that organizers must jump through in order to get a "green light" from state regulators.

We've already posted about [raffle rules](#) and [restrictions on "Night in Monte Carlo" galas](#). Coming up soon: the bingo regulations.

Since charity auctions are considered "[sales of goods](#)" – not "gambling" – there are no new compliance obligations under Article IV, Section 19. And there's no other law in California that specifically prohibits live or silent auctions.

Are Charity Auctions Hassle-Free?

No. (Is anything really hassle-free?) There are the usual details and headaches of planning a major special-event. But at least there are no gambling regulators or agencies poking around.

There *are*, however, some additional issues that the charities sponsoring auctions should know about and consider.

General Fundraising Oversight Rules

The California Attorney General has oversight responsibility for all charitable fundraising in this state. There are registration requirements and other laws and regulations that apply to all fundraising activities, including all four of these popular special events.

The AG's website includes helpful explanations and information, and we've published posts on the subject, too.

Sales Tax

There is no broad-based exemption from California's sales tax laws for charities that are exempt from federal and state *income* taxes.

The sales tax is imposed for the privilege of selling tangible personal property. It's an important part of the state's revenue stream, so exceptions and exclusions are limited. Included in this revenue sweep are many fundraising activities, even if the events are one-time only and not part of regularly carried-on sales activities.

Both live and silent auctions involve bidding and purchasing donated items. Organizations operating in California that intend "to sell tangible personal property that would ordinarily be subject to sales tax if sold at retail" may be required to apply for, and obtain, a seller's permit. In some cases, sponsoring groups may be required to register with the California Board of Equalization – even if there is no duty to collect and pay over any statutory sales tax amounts.

Of course, charities that conduct auctions on a regular or ongoing basis – on eBay, for instance – may be liable for more substantial sales tax obligations than groups that hold single or once-a-year events.

The State Board of Equalization's Publication 18, Tax Tips for Nonprofit Organizations, and Publication 73, Your California Seller's Permit, are helpful resources. Here, we explained the basics of the sales tax laws as applied to nonprofits.

Unrelated Business Income Tax

Whenever nonprofits sell goods or services, the possibility of liability for the unrelated business income tax (UBIT) always lurks in the shadows. Generally, UBIT applies to charitable organizations that regularly carry a trade or business not substantially related to the stated exempt purposes.

Single-event auctions are generally not considered "regularly carried on" for purposes of this test, but ongoing auction activities could meet that definition.

Even if an activity is “regularly carried on,” though, there are exceptions to UBIT liability for charities that (1) use a volunteer workforce or (2) sell donated merchandise. But there’s a caveat to these exceptions – when organizations devote a substantial part of their time or resources to the conduct of “unrelated activities.” [IRS Publication 598](#) is a helpful guide to the UBIT rules.

Charitable Contributions

Charity auctions are fundraisers, of course, so there are special rules about whether, and to what extent, two different groups of donors (i.e., the people who donate the goods to be auctioned, and the purchasers who buy these items) may take charitable deductions.

Generally, donors who provide goods for the charities to sell may take charitable contribution deductions, but these will be limited to the donated items’ cost. Donors of appreciated property will *not* be allowed full deductions for fair market value on the donation dates. It’s good practice for charities to issue acknowledgment letters to the auction donors. IRS Publication 561, Determining the Value of Donated Property, is a useful resource on this topic.

Purchasers of items at charity auctions may generally claim charitable deductions for the excess of purchase price paid over fair market value. Many charities publish catalogs with good faith estimates of items up for bid. It’s up to each donor to show that he or she knew the value of a particular item was less than the amount bid and paid.