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THE PRIVATE BRIEF · NONPROFIT GOVERNANCE

New York's Charities Registration and Annual Filing for a New Foundation

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IN BRIEF

- A funded New York foundation registers with the Attorney General's Charities Bureau under the Estates, Powers and Trusts Law within six months after it holds property for charitable purposes, and must also register under Article 7-A of the Executive Law before it asks anyone else for money.
- The annual CHAR500 depends on the registration type: a foundation registered only under the Estates, Powers and Trusts Law attaches its Form 990-PF and has until the last day of the sixth month after its fiscal year ends; a charity also registered to solicit files one combined report by the fifteenth day of the fifth month, with an accountant's review or audit once its revenue reaches the statutory tiers.
- The Estates, Powers and Trusts Law filing fee is set by the net worth of the foundation's charitable property, from $25 below $50,000 to $1,500 at $50 million or more, not by its revenue.

The IRS letter has arrived, the champagne has been opened, and the family assumes the paperwork is done. It is not. New York has its own registry of charities, kept by the Attorney General's Charities Bureau, and a new private foundation has to register there and report to it every year, on a schedule that is easy to get wrong because it depends on something most families have never heard of: the foundation's registration type.

This piece explains the two New York laws that reach a foundation, what each one requires, and how the annual report (the CHAR500) changes depending on which of them applies.

Two laws, three registration types

The first law is about holding property. Section 8-1.4 of the Estates, Powers and Trusts Law (EPTL) reaches any "corporation or other legal entity holding and administering property for charitable purposes." A funded foundation is squarely inside it. The deadline runs from the money, not from the IRS: the foundation must file "within six months after any property held by him or her or any income therefrom is required to be applied to charitable purposes."

The second law is about asking for money. Article 7-A of the Executive Law requires a charity that solicits contributions in New York to register "prior to any solicitation," and sets a registration fee of $25. The Charities Bureau reads soliciting broadly: its instructions say Article 7-A reaches organizations that solicit contributions from New York "including residents, foundations, corporations, government agencies and other entities."

From those two laws the Bureau sorts every registered charity into one of three types: registered under Article 7-A only, under the EPTL only, or under both, which it calls dual. A family foundation that is funded by the family and asks no one else for money is ordinarily an EPTL-only registrant. The day it asks others to give, it needs Article 7-A registration too, before the asking starts. A foundation already registered under Article 7-A is treated as having made the initial EPTL filing.

Registration is done online on form CHAR410. The Bureau's checklist asks for all pages of the certificate of incorporation and the bylaws, and a description of the foundation's charitable purposes of at least 100 words. Write that description so it matches the purpose clause and the activities you described to the IRS.

The annual report: what changes with your type

Every registered charity files the CHAR500 each year, online. What goes with it, when it is due and what it costs depend on the registration type. The Attorney General's regulation governing the annual filing, 13 NYCRR 91.5, spells this out.

What to attach. Every filer that is not claiming a small-organization exemption attaches a complete copy of its federal return with schedules; for a foundation that is Form 990-PF, which the IRS requires every private foundation to file every year, regardless of its gross receipts. The accountant's reports are different. The regulation lists the independent accountant's review or audit report as an attachment for "article 7-A and dual registration types." The statute setting the current tiers, Executive Law section 172-b, is likewise written for charities "registered or required to be registered" under Article 7-A. For those charities, gross revenue and support of at least $250,000 but not more than $1 million calls for an accountant's review report, and more than $1 million calls for an audit. An EPTL-only foundation is not on that list.

When it is due. For Article 7-A and dual registrants, the report is due on the fifteenth day of the fifth month after the fiscal year ends. For an EPTL-only registrant, the regulation sets the last day of the sixth month after the fiscal year ends. The Bureau's posted notice grants an automatic 180-day extension, with no written request required.

What it costs. The EPTL fee is set by the net worth of the property the foundation holds for charitable purposes, not by its revenue:

- less than $50,000: $25
- $50,000 or more but less than $250,000: $50
- $250,000 or more but less than $1 million: $100
- $1 million or more but less than $10 million: $250
- $10 million or more but less than $50 million: $750
- $50 million or more: $1,500

A dual registrant pays the EPTL fee plus the Article 7-A fee, and files one combined report that satisfies both laws.

If the foundation is very small. A foundation whose gross receipts were less than $25,000 for the year, and whose assets never exceeded $25,000 at any time during it, can claim an exemption from the EPTL annual report. The filing still has to be made to claim it.

Two different measures, two different schedules, one filing.

A worked example

A composite, not a client. A family foundation is funded at formation with $4,000,000 of marketable securities. Its fiscal year ends December 31. It asks no one outside the family for money, so it registers under the EPTL only.

1. **Deadline.** Its CHAR500 is due by the last day of the sixth month after year end, June 30, with the Bureau's 180-day extension available.
2. **Attachments.** It attaches its complete Form 990-PF with schedules. As an EPTL-only filer it is not on the regulation's list for an accountant's review or audit report, whatever its investment income.
3. **Fee.** Net worth of $4,000,000 sits in the $1 million to $10 million band, so the fee is $250.

In year three, the family decides to host a benefit dinner and invite friends to give. Before the first invitation goes out, the foundation registers under Article 7-A and becomes a dual registrant. From then on it files one combined report, due on the fifteenth day of the fifth month (May 15 for this foundation), and pays both fees. The accountant tiers now apply to it: if its gross revenue and support for the year reaches $250,000, it needs a review report, and above $1 million an audit. A single dinner can move the deadline up about six weeks and add an accountant's report to the file.

Two different measures, two different schedules, one filing. A board that budgets the filing from revenue alone gets the fee wrong, and a board that assumes a large endowment means an audit may pay for one it did not need.

What happens if it slips

The EPTL gives the Attorney General a remedy. After written notice by certified mail, a foundation (a trustee, in the statute's word) that still has not complied once 30 days have passed is liable for a fine of $10 a day, up to $1,000 for each failure. The larger cost is usually practical: the registry is public, and anyone doing diligence on the foundation can look it up.

The online filing asks questions and tells you what to upload based on your answers. If it seems to ask for more than your registration type requires, confirm your type in the Bureau's registry and ask the Bureau before paying for an accountant's report you may not need.

Where to start

Look your foundation up in the Charities Bureau's online registry this week and write down its registration type and registration number. Then put the right CHAR500 date on the same calendar as the Form 990-PF: the fifteenth day of the fifth month if you are 7-A or dual, the last day of the sixth month if you are EPTL-only. If you are not sure of your type, calendar the earlier date.

This is general information about New York charities registration and annual filing, not legal advice about your organization. Filing fees, thresholds and forms change, so confirm them with the Charities Bureau before you file.

WRITTEN BY

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.