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**Redundant Requirement to File Annual Financials with NY Department of State is Repealed;
Large In-Kind Donations to, and Speech by, Certain 501(c)(4)'s May Still Trigger Reporting Obligation**

The legislature has repealed a law that would have required many charities that file a CHAR 500 with the NY Charities Bureau to also file the same document with the NY Department of State. Remaining in place are new filing requirements for 501(c)(3) charities that make large in-kind donations to certain 501(c)(4) organizations, and for 501(c)(4) organizations that engage in certain types of speech.

I. Good news! New Law REPEALS the Executive Law 172-b Double-Reporting Requirement for Charities

What was the double reporting requirement?

Longstanding law requires many charities that solicit charitable contributions in NY to register and file annual financial reports (called the CHAR 500) with the Charities Bureau of the NY Attorney General's Office.¹ The Charities Bureau posts those reports on its website, where they are publicly available at no cost. A 2020 law added a requirement that charities with revenues over \$250,000 per year had to file those same annual financial reports with the Department of State.² On Friday, November 12, 2021 the Governor signed a law repealing this double-reporting requirement effective immediately.³

Why was it repealed?

The double-reporting requirement was entirely redundant. The government and the public would not have gained any new information from the double filing. By repealing the law, the governor and legislature lifted an unnecessary administrative burden from tens of thousands of nonprofit organizations.

What should charities do now?

Charities required to file a CHAR 500 with the Charities Bureau should continue to do so but they do not have to file those reports with the Department of State.

¹ Exec. Law 172-b.

² Part UU of Ch. 55 of 2020, amending Exec. Law 172-b.

³ Ch. 612 of 2021.

In 2019, a federal court ruled that prior versions of Executive Law 172-e and 172-f violate the First Amendment. The court issued a permanent injunction against their enforcement. It is possible that this injunction will prohibit the state from enforcing the new versions of these laws, too.

II. The Executive Law 172-e Filing Obligation for 501(c)(3) Organizations That Make Large In-Kind Contributions to Certain 501(c)(4) Organizations Remains in Place

a) *Which 501(c)(3) organizations may still have to file with the Department of State under the 2020 law?*

The 2020 law imposes a filing requirement on a small number of 501(c)(3) organizations – those that make an in-kind donation worth \$10,000 or more to certain 501(c)(4) organizations. The in-kind donations will trigger this disclosure requirement only if:

- the recipient is a 501(c)(4) organization,
- the recipient spends \$15,000 or more in a 12-month period on lobbying New York State or county or local governments within the state, and
- the recipient's NY lobbying expenditures constitute at least 3% of the recipient's total revenues.⁴

b) *What will those 501(c)(3) organizations need to file?*

Covered 501(c)(3) organizations will file a Funding Disclosure Report with the Department of State disclosing the identity of the recipient 501(c)(4), the people who exert managerial control over the 501(c)(3), the date and amount of contributions to the 501(c)(4), and any restrictions that the 501(c)(3) has placed on the contributions.⁵ The Department of State has proposed regulations, which are not yet final, that would also require the filing to include certain information regarding the 501(c)(3)'s tax exempt mission and activities.⁶

In addition, if the 501(c)(3) organization files a CHAR 500 with the Charities Bureau, the Charities Bureau filing must include an IRS 990 Schedule B, containing information regarding major donors, even if the organization does not file a Schedule B with the Internal Revenue Service.

III. The Executive Law 172-f Filing Obligation for 501(c)(4) Organizations Remains in Place

a) *Which 501(c)(4) organizations may still have to file with the Department of State?*

A 501(c)(4) organization must file a report with the Department of State if it spends more than \$10,000 in a calendar year on one or more written communications, conveyed to 500 or more people, that:

refers to and advocates for or against a clearly identified elected official, executive or administrative body or legislative body relating to the sponsorship, support, opposition or outcome of any proposed legislation, pending legislation, rule, regulation, hearing or decision,

⁴ Exec. Law 172-e.

⁵ Exec. Law 172-e.

⁶ Proposed 19 NYCRR 146.4 (published in NY State Register Sep. 1, 2021), available at <https://dos.ny.gov/financial-reports-be-filed-certain-charitable-organizations>

or advocates for or against action by any elected official, executive or administrative body or legislative body.⁷

There are exceptions for lobbying communications covered by New York State lobbying or elections laws; communications with professional journalists, or with certain of the 501(c)(4)'s members or donors; and communications in connection with certain candidate forums.

b) What do those 501(c)(4) organizations have to file?

Those 501(c)(4)'s will have to report the names of everyone exerting operational control over the organization, a description of the covered communications, the amount of money paid for the communication and who received the payment, and the identity of people or entities contributing funding to support the covered communication. The Department of State has proposed regulations, which are not yet final, that would also require the filing to include certain information regarding the organization's tax exempt mission and activities.⁸

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⁷ Exec. Law 172-f.

⁸ Proposed 19 NYCRR 146.5 (published in NY State Register Sep. 1, 2021), available at <https://dos.ny.gov/financial-reports-be-filed-certain-charitable-organizations>