

**REQUIRED PUBLIC DISCLOSURES
BY NONPROFITS**

JOHNNY REX BUCKLES

Associate Professor of Law
University of Houston Law Center
100 Law Center Drive
Suite TU2
Houston, TX 77204

State Bar of Texas
**GOVERNANCE OF NONPROFIT
ORGANIZATIONS COURSE**
August 19-20, 2010
Austin

CHAPTER 15

JOHNNY REX BUCKLES

Associate Professor of Law
University of Houston Law Center
(713) 743-2348
jbuckles@uh.edu

Johnny Rex Buckles has been a full time faculty member of the University of Houston Law Center since August of 2000, where he is a tenured, associate professor. Professor Buckles has also served as a Visiting Professor of Law at the Washington & Lee University School of Law. Professor Buckles has taught Taxation of Exempt Organizations, Federal Income Tax, Law & Theology Seminar, Estate Planning, Trusts & Wills, and Tax Policy Seminar. Professor Buckles' primary research interests are in the law of tax and charity, and in law and theology. His publications include *Bob Jones University v. United States*, in *LAW AND RELIGION: CASES IN CONTEXT* (Leslie Griffin ed.) (Aspen Publishers, 2010); *Fiduciary Assumptions Underlying the Federal Excise Taxation of Compensation Paid by Charities*, 45 *REAL PROP., TR. & EST. L.J.* 53 (2010); *Do Law Schools Forfeit Federal Income Tax Exemption When They Deny Military Recruiters Full Access to Career Services Programs? The Hypothetical Case of Yale University v. Commissioner*, 41 *ARIZ. STATE L. J.* 1 (2009); *Does the Constitutional Norm of Separation of Church and State Justify the Denial of Tax Exemption to Churches that Engage in Partisan Political Speech?*, 84 *IND. L. J.* 447 (2009); *Is the Ban on Participation in Political Campaigns by Charities Essential to their Vitality and Democracy? A Reply to Professor Tobin*, 42 *U. RICH. L. REV.* 1057 (2008); *Not Even a Peep? The Regulation of Political Campaign Activity by Charities through Federal Tax Law*, 75 *U. CIN. L. REV.* 1071 (2007); *The Constitutionality of the Monkey Wrench: Exploring the Case for Intelligent Design*, 59 *OKLA. L. REV.* 527 (2006); *The Community Income Theory of the Charitable Contributions Deduction*, 80 *IND. L. J.* 947 (2005); *Reforming the Public Policy Doctrine*, 53 *U. KAN. L. REV.* 397 (2005); *When Charitable Gifts Soar above Twin Towers: A Federal Income Tax Solution to the Problem of Publicly Solicited Surplus Donations Raised for a Designated Charitable Purpose*, 71 *FORDHAM L. REV.* 1827 (2003); *The Case for the Taxpaying Good Samaritan: Deducting Earmarked Transfers to Charity under Federal Income Tax Law, Theory and Policy*, 70 *FORDHAM L. REV.* 1243 (2002); *Publicly Traded Partnerships and Unrelated Business Taxable Income*, 53 *TAX LAW.* 129 (Fall 1999); Note, *Tax-Exempt Entities, Notional Principal Contracts, and the Unrelated Business Income Tax*, 105 *HARV. L. REV.* 1265 (1992). Professor Buckles is also a contributing author to the semi-annual supplements to Chapters 1, 4, 11 and 12 in *DAVID WESTFALL AND GEORGE P. MAIR, ESTATE PLANNING LAW AND TAXATION* (4th ed. 2003).

Professor Buckles holds a Juris Doctorate from the Harvard Law School, a Master of Arts in Biblical Studies from Dallas Theological Seminary, and a Bachelor of Science from Oklahoma State University. Prior to becoming a law professor, Professor Buckles practiced law for over seven years in the Dallas office of Thompson & Knight, where he was a member of the tax section and the exempt organizations practice group.

Professor Buckles is married to Tami Buckles, and they are the blessed parents of their eight-year-old daughter, Annie Grace, and their five-year-old son, Johnny Rex, Jr. ("Rex").

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FEDERAL TAX-RELATED DISCLOSURES	1
	A. In General.....	1
	1. Application for Exemption Must Be Made Available to those who Request in Person	1
	2. Annual Information Returns Must Be Made Available to those who Request in Person	1
	3. Returns Reporting UBIT Must Be Made Available to those who Request in Person	1
	4. Copies in Lieu of in-Person Review of Information.....	1
	B. Organizations Subject to Disclosure Requirement	1
	C. What Must Be Disclosed.....	2
	1. Application for Exemption	2
	2. Annual Information Return.....	2
	D. Compliance through Facilitating On-Site Inspection.....	3
	1. In General.....	3
	2. Organizations without a Permanent Office	3
	E. Compliance through Making Copies	3
	1. In-Person Request for Copies	3
	2. Request for Copies in Writing	4
	F. Exceptions to Copying Requirements.....	5
	1. Making Documents Widely Available.....	5
	2. Requests for Copies that Are Part of a Harassment Campaign.....	6
	3. Multiple Requests from the Same Person or Address.....	6
	G. Special Rules for Subordinate Organizations	6
	1. Applications for exemption.....	6
	2. Annual Information Returns	7
	H. Special Rule for Regional and District Offices.....	7
III.	DISCLOSURES UNDER THE TEXAS BUSINESS ORGANIZATIONS CODE	7
	A. Required Financial Records and Financial Reports	7
	B. Required Public Disclosure of Financial Information	7
	C. Penalty for Noncompliance.....	7
IV.	DISCLOSURES UNDER THE PUBLIC INFORMATION ACT	8

REQUIRED PUBLIC DISCLOSURES BY NONPROFITS

I. INTRODUCTION

Nonprofit organizations, typically funded largely or significantly with private donations and managed by private individuals, are often seen as an alternative to public institutions among entities that promote the public good. Notwithstanding their private nature in many respects, nonprofit organizations are accountable to the general public in certain ways. Perhaps the most recognized public oversight of nonprofits occurs through governmental agents, such as the Internal Revenue Service (the “IRS”) and state attorneys general. However, the general public also is equipped to monitor the activities of nonprofits through public disclosure laws enacted at both the federal and state level. This outline summarizes significant public disclosure laws to which Texas nonprofits are subject.

II. FEDERAL TAX-RELATED DISCLOSURES

A. In General

1. Application for Exemption Must Be Made Available to those who Request in Person

In general, a tax-exempt organization that filed an application for recognition of exemption under section 501 of the Internal Revenue Code (the “Code”) must make it available for public inspection, without charge, at its principal, regional and district offices during regular business hours. *See* I.R.C. § 6104(d)(1)(A)(iii); Treas. Reg. § 301.6104(d)-1(a).

- **Note:** Under the regulations, a regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid full- or part-time employees, whose aggregate number of paid hours a week are normally at least 120. However, a site is not considered a regional or district office if the only services provided at the site further exempt purposes, and if it does not serve as an office for management staff (other than those who manage only the exempt function activities at the site). *See* Treas. Reg. § 301.6104(d)-1(b)(5)(i) & (ii).

2. Annual Information Returns Must Be Made Available to those who Request in Person

Similarly, in general, a tax-exempt organization must make its annual information returns (i.e., Forms 990, 990-EZ, and 990-PF) available for public inspection, without charge, in the same offices during regular business hours. The annual information return must be made available for a period of three years beginning on the date the return is filed or is required to be filed (with actual filing extensions), whichever is

later. *See* I.R.C. § 6104(d)(1)(A)(i); Treas. Reg. § 301.6104(d)-1(a).

3. Returns Reporting UBIT Must Be Made Available to those who Request in Person

Likewise, any organization *described in Code section 501(c)(3)* must make available for public inspection, without charge, in the same offices during regular business hours, any annual return which is filed under Code section 6011 and which relates to any tax imposed by Code section 511 (relating to imposition of tax on unrelated business income of charitable organizations). *See* I.R.C. § 6104(d)(1)(A)(ii); Notice 2008-49, 2008-1 C.B. 979. In other words, the public inspection rules apply to Form 990-T.

- **Note:** Under Notice 2008-49, the detailed procedures for making annual returns available for public inspection and copying set forth in the Treasury regulations generally apply to Form 990-T, except that the definition of “annual information return” must be read to include an exact copy of the Form 990-T filed by a charity with the IRS after August 17, 2006, including any schedules, attachments, and supporting documents that relate to the imposition of tax on the unrelated business income of the charitable organization. Further, charities must make Forms 990-T available for public inspection and copying only for the three-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

4. Copies in Lieu of in-Person Review of Information

Except as discussed below, an organization must provide a copy – with no charge other than a reasonable fee for reproduction and actual postage costs – of all or any part of any application or return required to be made available for public inspection to any individual who makes a request for such a copy in person or in writing. *See* I.R.C. § 6104(d)(1)(B); Treas. Reg. § 301.6104(d)-1(a).

B. Organizations Subject to Disclosure Requirement

The federal disclosure rules apply to each “tax-exempt organization.” This term is defined as any organization that is described in Code section 501(c) and exempt from federal income tax under section 501(a). The term also includes any nonexempt charitable trust described in Code section 4947(a)(1) or nonexempt private foundation that must file annual

information returns under Code section 6033(d). *See* Treas. Reg. § 301.6104(d)-1(b)(1).

C. What Must Be Disclosed

1. Application for Exemption

a. In General

Generally, the “application for tax exemption” that must be disclosed includes any official application form (i.e., Form 1023 or Form 1024), all documents and statements required of applicants filing the form, any statement or other supporting document submitted in support of the organization’s application (e.g., a response to the IRS’s questions about the application), and any letter or other document from the IRS concerning the application (e.g., a favorable determination letter, or a list of questions for the applicant). *See* Treas. Reg. § 301.6104(d)-1(b)(3)(i).

b. If No Prescribed Form

If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes the following information:

- The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;
- The organization's bylaws or other code of regulations;
- The organization's latest financial statements showing assets, liabilities, receipts and disbursements;
- Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;
- Statements showing the sources of the organization's income and receipts and their disposition; and
- Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

See Treas. Reg. § 301.6104(d)-1(b)(3)(ii).

c. Exceptions

The Treasury regulations set forth exceptions from the definition of “application for exemption,” such that materials falling within the exceptions are exempt from public disclosure. *See* Treas. Reg. § 301.6104(d)-1(b)(3)(i). Under these rules, an application for exemption does not include the following:

- Any application for tax exemption filed by an organization that the IRS has not yet recognized, on the basis of the application, as exempt from taxation under section 501 for any taxable year;
- Any application for tax exemption filed before July 15, 1987 if the organization filing the application did not have a copy of it on that date;
- The name and address of any contributor to the organization, unless the organization is a private foundation; or
- Any material that is not available for public inspection under section 6104.
 - **Note:** Under Code section 6104(a)(1)(D), upon request of an applicant for tax exemption, the IRS must withhold from public inspection any information contained in its application which the IRS determines to relate to any trade secret, patent, process, style of work, or apparatus of the organization, if the IRS determines that public disclosure of this information would adversely affect the applicant. Further, the IRS must withhold from public inspection any information contained in the application that would adversely affect the national defense.

2. Annual Information Return

a. In General

Generally, the term “annual information return” includes an exact copy of any return filed by a tax-exempt organization pursuant to Code section 6033, together with any subsequently filed amended return. These returns include Form 990, 990-PF, and any other version of Form 990 (e.g., Forms 990-EZ or 990-BL, but not Form 990-T (which is separately required to be disclosed)). The regulations also include in the definition of “annual information return” Form 1065, U.S. Return of Partnership Income. Each copy of a return must include all information furnished to the IRS on the return, as well as all schedules (including those reporting compensation), attachments and supporting documents.

See Treas. Reg. § 301.6104(d)-1(b)(4)(i).

b. Exceptions

The following items are excluded from the definition of annual information return:

- Schedule A of Form 990-BL;

- Form 990-T, Exempt Organization Business Income Tax Return (which is separately required to be disclosed);
 - Schedule K-1 of Form 1065;
 - The name and address of any contributor to the organization, unless the organization is a private foundation; and
 - Any return after the expiration of 3 years from the date it is filed or is required to be filed (including any filing extensions actually granted), whichever is later.
 - **Note:** If an organization has filed an amended return, the amended return must be made available for a period of 3 years beginning on the date it was filed with the IRS.
- At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection.
 - However, the organization may charge the requester for copying and actual postage costs *only if the requester consents to the charge.*
 - An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, must make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

See Treas. Reg. § 301.6104(d)-1(b)(4)(ii) & (iii).

D. Compliance through Facilitating On-Site Inspection

1. In General

An organization should be aware of the conditions that may or must exist in order to ensure compliance with the in-person public inspection rules:

- A tax-exempt organization may have an employee present in the room during an inspection.
- The organization must allow the individual conducting the inspection to take notes freely during the inspection.
- If the individual supplies her own photocopying equipment at the place of inspection, the organization must allow the individual to photocopy the document at no charge.

See Treas. Reg. § 301.6104(d)-1(c)(1).

2. Organizations without a Permanent Office

If a tax-exempt organization does not maintain a permanent office, the organization complies with the public inspection requirements by following special procedures:

- The organization must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice.
- The organization must permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day.

See Treas. Reg. § 301.6104(d)-1(c)(2).

E. Compliance through Making Copies

1. In-Person Request for Copies

a. In General

Generally, a tax-exempt organization must provide copies of the documents that must be disclosed under the rules discussed above in response to a request for copies made in person at its principal, regional and district offices. The copies must be provided during regular business hours to a requester on the day the request is made. *See* Treas. Reg. § 301.6104(d)-1(d)(1)(i).

b. Exception for Unusual Circumstances

When, because of unusual circumstances, fulfilling the in-person request for copies on the same business day places an unreasonable burden on the organization, it must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist or the fifth business day after the date of the request, whichever occurs first. *See* Treas. Reg. § 301.6104(d)-1(d)(1)(ii).

- Under the regulations, unusual circumstances include, but are not limited to, the following:
 - receipt of a volume of requests that exceeds the organization's daily capacity to make copies
 - receipt of requests shortly before the end of regular business hours that require an extensive amount of copying
 - receipt of requests on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student

registration or attending an off-site meeting or convention, rather than its regular administrative duties

See id.

c. **Designation of Local Agents for Processing In-Person Requests for Copies**

A principal, regional or district office of an organization may retain a local agent to process requests made in person for copies of its documents required to be disclosed. *See* Treas. Reg. § 301.6104(d)-1(d)(1)(iii).

- A local agent must be located within “reasonable proximity” of the applicable office of the tax-exempt organization.
- A local agent that receives a request made in person for copies must provide the copies within the time limits and under the conditions that apply to the organization itself.
- When a principal, regional or district office of a tax-exempt organization using a local agent receives a request made in person for a copy, it must immediately provide the name, address and telephone number of the local agent to the requester, but need not respond further to the requester.
- However, if the organization's local agent fails to provide the documents as required, the organization remains subject to the penalty provisions of Code sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685.

See id.

2. **Request for Copies in Writing**

a. **In General**

A tax-exempt organization generally must comply with a written request for a copy of its documents required to be disclosed if the request is addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service to a principal, regional or district office of the organization, as long as the request states the address to which the copy of the documents should be sent. *See* Treas. Reg. § 301.6104(d)-1(d)(2)(i).

- A tax-exempt organization receiving a written request for a copy of a document (or part thereof) must mail the copy within 30 days from the date it receives the request. *See* Treas. Reg. § 301.6104(d)-1(d)(2)(ii)(A).
- However, if a tax-exempt organization requires payment in advance, it is only required to provide the copy within 30 days

from the date it receives payment. If an organization requiring payment in advance receives a written request without payment or with an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. *See id.*

- If an individual requesting the copy consents, a tax-exempt organization may provide the copy exclusively by electronic mail. *See id.*
- An organization must fulfill a request for a copy of its entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or return must specifically identify the requested part or schedule. *See* Treas. Reg. § 301.6104(d)-1(d)(2)(ii)(B).

b. **Designation of Local Agents for Processing In-Person Requests for Copies**

An organization may retain an agent to process written requests for copies of its documents, just as it may do so with respect to in-person requests for copies. *See* Treas. Reg. § 301.6104(d)-1(d)(2)(ii)(C).

- Unlike the case of in-person requests for copies, there is no requirement that the agent be “local.”
- The agent must provide the copies within the time limits and under the conditions that apply to the organization itself (e.g., if the organization initially received the request, the deadline for providing the copy is determined by reference to when the organization – rather than the agent – received the request). *See id.*
- Although an organization that transfers a request for a copy to its agent is not required to respond further to the request, if the agent fails to provide the documents as required, the penalty provisions of Code sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization. *See id.*

c. **Fees for Copies**

1) **In General**

A tax-exempt organization may charge a reasonable fee for providing copies. *See* Treas. Reg. § 301.6104(d)-1(d)(3)(i).

- A fee is reasonable only if it is no more than the total of the applicable per-page copying

charge prescribed by the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner of Internal Revenue from time to time, and the actual postage costs incurred by the organization to send the copies. *See id.*

- The applicable per-page copying charge is determined without regard to any applicable fee exclusion provided in the fee schedule for an initial or de minimis number of pages (e.g. the first 100 pages). *See id.*

2) Prepayment

Before the organization provides the documents, it may require that the individual requesting copies pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization may disregard the request. *See id.*

3) Form of Payment

- In responding to requests for copies made in person, if the organization charges a copying fee, it must accept payment by cash and money order, and may accept other forms of payment, such as credit cards and personal checks. *See* Treas. Reg. § 301.6104(d)-1(d)(3)(ii)(A).
- In responding to requests for copies made in writing, if the organization charges a fee for copying and postage, it must accept payment by certified check, money order, and either personal check or credit card, and may accept other forms of payment. *See* Treas. Reg. § 301.6104(d)-1(d)(3)(ii)(B).

b. Other Rules

- Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds \$ 20. *See* Treas. Reg. § 301.6104(d)-1(d)(3)(iii).
- In order to facilitate a requester's ability to receive copies promptly, an organization must respond to any questions from potential requesters concerning its fees for copying

and postage. *See* Treas. Reg. § 301.6104(d)-1(d)(3)(iv).

F. Exceptions to Copying Requirements

1. Making Documents Widely Available

An organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return if it has made the requested document “widely available.” *See* Treas. Reg. § 301.6104(d)-2(a).

- An organization that makes its application for tax exemption and/or annual information return widely available must still make the document available for public inspection, however. *See id.*
- An organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the organization itself establishes and maintains, or by having the document posted in a database of similar documents of other tax-exempt organizations on a World Wide Web page established and maintained by another entity. *See* Treas. Reg. § 301.6104(d)-2(b)(2)(i).
- In order for the document to be considered widely available through Internet posting, the following must also be true:
 - The World Wide Web page through which the document is available must clearly inform readers that it is available and must provide instructions for downloading it. *See id.*
 - The document must be posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the IRS (except that information permitted by Code section 6104(d)(3) to be withheld from public disclosure may be omitted). *See id.*
 - Any person with access to the Internet can, without charge, access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee). *See id.*
 - The entity maintaining the Web page must have procedures for ensuring the reliability and accuracy of the document

that it posts and must take reasonable precautions to prevent alteration, destruction or accidental loss of the posted document. Further, if a posted document is altered, destroyed or lost, the entity must correct or replace the document. *See* Treas. Reg. § 301.6104(d)-2(b)(2)(iii).

- An organization that has made its application for tax exemption and/or an annual information return widely available must notify anyone requesting a copy where the documents are available (including the Web address, if applicable). If the request is made in person, the organization must provide this notice immediately. If the request is made in writing, the notice must be provided within 7 days of receiving the request. *See* Treas. Reg. § 301.6104(d)-2(d).

2. Requests for Copies that Are Part of a Harassment Campaign

If the district director for the key district in which the organization's principal office is located determines that the organization is the target of a harassment campaign and that complying with the requests that are part of the harassment campaign would not be in the public interest, the organization need not fulfill a request for a copy that it reasonably believes is part of the campaign. *See* Treas. Reg. § 301.6104(d)-3(a), (b), (d), (e) & (f). The Treasury regulations provide further guidance concerning the factors that the IRS will consider in determining whether the organization is the target of a harassment campaign. The determination process requires an application from the organization that believes it is the target of a harassment campaign.

3. Multiple Requests from the Same Person or Address

An organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period, or the first four received within any one-year-period, from the same individual or the same address, regardless of whether the request is part of a harassment campaign. *See* Treas. Reg. § 301.6104(d)-3(c).

G. Special Rules for Subordinate Organizations

1. Applications for exemption

Generally, if a tax-exempt organization did not file its own application for exemption because it is a local or subordinate organization covered by a group exemption letter, it must, upon request, make available for public inspection, or provide copies of, the application submitted to the IRS by the central

organization to obtain the group exemption letter and those documents which were submitted by the central organization to include the local or subordinate organization in the group exemption letter. *See* Treas. Reg. § 301.6104(d)-1(f)(1).

- However, if the central organization submits to the IRS a list of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization must provide only the application for the group exemption ruling and the pages of the list that specifically refer to it.
- The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.
- If the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection, but it may charge the requester for copying and actual postage costs only if the requester consents to the charge.
- If the local or subordinate organization receives a written request for a copy of its application for tax exemption, it must fulfill the request in the time and manner specified above for all tax-exempt organizations.
- A requester may also request from the central organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the IRS a list of local or subordinate organizations covered by the group exemption letter, it must make the list available for public inspection, but it is required to provide copies only of those pages of the list that refer to particular local or subordinate organizations specified by the requester.

See id.

2. Annual Information Returns

A local or subordinate organization that does not file its own annual information return because it is affiliated with a central organization filing a group return must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central organization. *See* Treas. Reg. § 301.6104(d)-1(f)(2).

- However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return.
- The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.
- When the requester wants to inspect the document, the local or subordinate organization may mail a copy of it to the requester within the same time period in lieu of allowing an inspection, but may charge the requester for copying and actual postage costs only if the requester consents.
- If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified above for all tax-exempt organizations.
- A requester may also request from the central organization, at its principal office, inspection or copies of group returns filed by the central organization.

See id.

H. Special Rule for Regional and District Offices

In general, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to allowing public inspection and providing copies of documents required to be disclosed. A regional or district office is not required, however, to make its annual information return available for inspection, or to provide copies, until 30 days after the date the return is filed or required to be filed (taking into account any filing extension granted), whichever is later. *See* Treas. Reg. § 301.6104(d)-1(e).

III. DISCLOSURES UNDER THE TEXAS BUSINESS ORGANIZATIONS CODE

A. Required Financial Records and Financial Reports

The Texas Business Organizations Code requires a Texas nonprofit corporation to maintain current and accurate financial records with complete entries as to each of the corporation's financial transactions, including income and expenditures, in accordance with generally accepted accounting principles (GAAP). *See* Tex. Bus. Orgs. Code § 22.352(a). In addition, based on these records, the corporation's board of directors of the corporation must annually prepare or approve a financial report conforming to GAAP for the corporation for the preceding year. *See* Tex. Bus. Orgs. Code § 22.352(b). The report must include the following:

- a statement of support, revenue, and expenses
- a statement of changes in fund balances
- a statement of functional expenses
- a balance sheet for each fund.

See id.

B. Required Public Disclosure of Financial Information

A Texas nonprofit corporation must keep the records, books, and annual reports of its financial activity at its registered or principal office for at least three years after the close of the fiscal year. *See* Tex. Bus. Orgs. Code § 22.353(a). Further, the corporation must make these records, books, and reports available to the public for inspection and copying at its registered or principal office during regular business hours. *See* Tex. Bus. Orgs. Code § 22.353(b). The corporation may charge a reasonable fee for preparing a copy of a record or report. *See id.*

Note: The Texas Supreme Court has held that the predecessor to this statutory provision does not require public disclosure of the names of a nonprofit corporation's contributors and members. *See In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381-82 (Tex. 1998) (construing the statute so as to avoid constitutional infirmities).

C. Penalty for Noncompliance

A corporation commits a Class B misdemeanor if it does not maintain a financial record, prepare an annual report, or make the record or report available to the public in the manner required by these statutory rules. *See* Tex. Bus. Orgs. Code § 22.354(a) & (b).

IV. DISCLOSURES UNDER THE PUBLIC INFORMATION ACT

The Texas Public Information Act requires that a governmental body make public information available to the public. *See generally* Tex. Gov. Code §§ 552.001 *et seq.* A “governmental body” includes “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” *Id.*, § 552.003(1)(A)(xii). “Public funds” are funds of the State of Texas or one of its governmental subdivisions. *See id.*, § 552.003(5). Numerous statutory exceptions to the definition of public information exist.