

RIVERKEEPER, INC.

**Financial Statements
for year ended
June 30, 2015**

Independent Auditor's Report

To the Board of Directors
Riverkeeper, Inc.

We have audited the accompanying financial statements of Riverkeeper, Inc. ("Riverkeeper") which comprise the statement of financial position as of June 30, 2015 and the related statements of activities, functional expenses and cash flows for the year then ended and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to in the first paragraph on the previous page present fairly, in all material respects, the financial position of Riverkeeper, Inc. as of June 30, 2015 and the results of its activities and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Summarized Comparative Information

We have previously audited Riverkeeper's fiscal 2014 financial statements, and our report dated November 17, 2014, expressed an unmodified opinion on those audited financial statements. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2014, is consistent, in all material respects, with the audited financial statements from which it has been derived.

Condon O'Meara McGinty + Donnelly LLP

RIVERKEEPER, INC.

Statement of Financial Position

Assets

	<u>June 30</u>	
	<u>2015</u>	<u>2014</u>
Current assets		
Cash	\$ 723,010	\$ 403,622
Current portion of contributions and pledges receivable	1,040,498	728,934
Prepaid expenses	<u>4,776</u>	<u>3,449</u>
Total current assets	<u>1,768,284</u>	<u>1,136,005</u>
Contributions and pledges receivable, net of current portion	<u>1,015,500</u>	<u>425,000</u>
Property and equipment, at cost		
Land	7,500	7,500
Office equipment	170,488	164,603
Boat equipment and improvements	224,582	224,582
Leasehold improvements	<u>66,565</u>	<u>49,765</u>
Total property and equipment	469,135	446,450
Less: accumulated depreciation and amortization	<u>378,227</u>	<u>356,319</u>
Net property and equipment	<u>90,908</u>	<u>90,131</u>
Security deposits	<u>10,600</u>	<u>10,600</u>
Total assets	<u>\$ 2,885,292</u>	<u>\$ 1,661,736</u>

Liabilities and Net Assets

Accounts and grants payable and accrued expenses	<u>\$ 420,532</u>	<u>\$ 128,134</u>
Net assets		
Unrestricted	449,462	908,602
Temporarily restricted	840,298	375,000
Permanently restricted	<u>1,175,000</u>	<u>250,000</u>
Total net assets	<u>2,464,760</u>	<u>1,533,602</u>
Total liabilities and net assets	<u>\$ 2,885,292</u>	<u>\$ 1,661,736</u>

See notes to financial statements.

RIVERKEEPER, INC.

Statement of Activities

	Year Ended June 30							
	2015			2014				
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Support and revenue								
Contributions	\$ 2,161,563	\$ 727,800	\$ 925,000	\$ 3,814,363	\$ 2,270,910	\$ 325,000	\$ 250,000	\$ 2,845,910
Special events, net of direct cost of donor benefits of \$135,097 and \$149,025 in 2015 and 2014, respectively	1,175,978	-	-	1,175,978	1,140,616	-	-	1,140,616
In-kind services	1,071,295	-	-	1,071,295	702,416	-	-	702,416
Investment	151	-	-	151	229	-	-	229
Other	1,021	-	-	1,021	966	-	-	966
Cost reimbursement	90,094	-	-	90,094	81,058	-	-	81,058
Net assets released from restrictions	262,502	(262,502)	-	-	100,000	(100,000)	-	-
Total support and revenue	4,762,604	465,298	925,000	6,152,902	4,296,195	225,000	250,000	4,771,195
Expenses								
Program services	4,689,125	-	-	4,689,125	4,011,301	-	-	4,011,301
Supporting services								
Management and general	146,761	-	-	146,761	101,644	-	-	101,644
Fund-raising	385,858	-	-	385,858	362,443	-	-	362,443
Total supporting services	532,619	-	-	532,619	464,087	-	-	464,087
Total expenses	5,221,744	-	-	5,221,744	4,475,388	-	-	4,475,388
Increase (decrease) in net assets	(459,140)	465,298	925,000	931,158	(179,193)	225,000	250,000	295,807
Net assets, beginning of year	908,602	375,000	250,000	1,533,602	1,087,795	150,000	-	1,237,795
Net assets, end of year	\$ 449,462	\$ 840,298	\$ 1,175,000	\$ 2,464,760	\$ 908,602	\$ 375,000	\$ 250,000	\$ 1,533,602

See notes to financial statements.

RIVERKEEPER, INC.

Statement of Functional Expenses
 For Year Ended June 30, 2015
 (with Summarized Comparative Information for the Year Ended June 30, 2014)

	2015						2014	
	Hudson River	Boats	Watershed	Program Services	Supporting Services		Total	Total
					Management and General	Fund-raising		
Salaries	\$ 761,070	\$ 570,158	\$ 639,502	\$ 1,970,730	\$ 30,357	\$ 176,849	\$ 2,177,936	\$ 1,997,924
Payroll taxes and employee benefits	143,522	113,570	110,658	367,750	10,816	37,441	416,007	371,338
Professional fees and consulting	410,703	296,903	148,024	855,630	65,739	105,798	1,027,167	908,842
Insurance	3,059	7,106	3,059	13,224	1,402	1,306	15,932	18,083
In-kind services	1,071,295	-	-	1,071,295	-	-	1,071,295	702,416
Conferences and meetings	2,026	1,737	1,382	5,145	422	807	6,374	4,059
Dues and subscriptions	9,381	4,339	8,045	21,765	614	2,502	24,881	21,609
Equipment rental and maintenance	3,905	48,428	3,905	56,238	2,228	4,081	62,547	37,359
Special events	3,781	5,772	2,435	11,988	561	2,594	15,143	7,444
Occupancy and utilities	28,455	34,278	22,455	85,188	23,245	9,568	118,001	115,718
Postage and shipping	2,565	3,032	2,728	8,325	132	677	9,134	6,797
Printing and publications	18,777	23,469	17,598	59,844	164	8,115	68,123	56,983
Public relations and program outreach	2,708	2,708	2,708	8,124	-	3,873	11,997	11,851
Supplies	8,085	46,461	5,133	59,679	1,195	2,809	63,683	44,953
Telephone	3,183	4,930	2,552	10,665	1,311	1,209	13,185	13,551
Travel	14,445	10,226	8,444	33,115	362	2,443	35,920	40,613
Depreciation and amortization	4,747	4,747	4,746	14,240	5,477	2,191	21,908	23,248
Direct mail expense	7,682	7,682	7,682	23,046	-	21,223	44,269	73,171
Miscellaneous	4,378	4,378	4,378	13,134	2,736	2,372	18,242	19,429
Total	\$2,503,767	\$1,189,924	\$ 995,434	\$4,689,125	\$ 146,761	\$ 385,858	\$5,221,744	\$4,475,388

See notes to financial statements.

RIVERKEEPER, INC.

Statement of Cash Flows

	Year Ended	
	June 30	
	2015	2014
Cash flows from operating activities		
Increase in net assets	\$ 931,158	\$ 295,807
Adjustments to reconcile increase in net assets to net cash provided by (used in) operating activities		
Depreciation and amortization	21,908	23,248
(Increase) in assets		
Contributions and pledges receivable	(902,064)	(404,124)
Prepaid expenses	(1,327)	(390)
Increase (decrease) in accounts and grants payable and accrued expenses	292,398	(9,820)
Net cash provided by (used in) operating activities	342,073	(95,279)
Cash flows (used in) investing activities		
Purchase of property and equipment	(22,685)	(8,336)
Net increase (decrease) in cash	319,388	(103,615)
Cash, beginning of year	403,622	507,237
Cash, end of year	\$ 723,010	\$ 403,622

See notes to financial statements.

RIVERKEEPER, INC.**Notes to Financial Statements
June 30, 2015****Note 1 – Nature of organization**

Riverkeeper, Inc (“Riverkeeper”) is a not-for-profit organization whose mission is to safeguard the ecological integrity of the Hudson River watershed by tracking down and stopping polluters who abuse the Hudson River, its tributaries and the New York City watershed. Riverkeeper is currently focused on the following programs: Hudson River stewardship; New York City reservoir protection; prevention of fish kills by electric power plants; Hudson River access improvement; and the cultivation of similar Riverkeeper programs throughout the nation.

Note 2 – Summary of significant accounting policies**Financial Reporting**

Riverkeeper maintains its net assets in the three following categories:

- Unrestricted

Unrestricted net assets are used to account for the general operations of Riverkeeper.

- Temporarily restricted

Temporarily restricted net assets represent contributions and pledges that are restricted by the donor for a specific purpose or relate to future periods. As of June 30, 2015, the temporarily restricted fund balance of \$840,298 consists entirely of amounts relating to future periods.

- Permanently restricted

Permanently restricted net assets consist of contributions that are restricted by the donors in that the principal must remain in perpetuity, investment return earned on such funds may be spent in accordance with the donors terms.

Cash equivalents

Riverkeeper considers any highly liquid assets with original maturities of 90 days or less to be cash equivalents. At June 30, 2015 and 2014, Riverkeeper did not have any cash equivalents.

Property and equipment

Property and equipment above a nominal amount with an estimated life of one year or longer are recorded at cost. Depreciation is provided on the straight-line basis over the estimated useful lives of the assets, which range from 3 to 15 years. Leasehold improvements are amortized over the life of the lease or the estimated useful life of the improvement, which ever is shorter.

RIVERKEEPER, INC.

Notes to Financial Statements (continued)
June 30, 2015Note 2 – Summary of significant accounting policies (continued)Contributions and pledges receivable

As of June 30, 2015 and 2014, contributions and pledges receivable, include unconditional promises to give, are due to be collected as follows:

	<u>2015</u>	<u>2014</u>
Less than one year	\$ 1,040,498	\$ 728,934
One to five years	<u>1,015,500</u>	<u>425,000</u>
Net contribution receivable	<u>\$ 2,055,998</u>	<u>\$ 1,153,934</u>

Contributions, pledges and net assets released from restrictions

Riverkeeper reports contributions as temporarily restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor stipulation expires, that is, when a stipulated time restriction ends or the purpose for the restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Riverkeeper's policy is to show contributions as unrestricted, if donor restrictions are satisfied in the same fiscal year as received. At June 30, 2015, the net assets released from restrictions, totaling \$262,502, were used to fund the programs described in note 1 to the financial statements.

Functional expenses

The costs of providing the various programs and other activities have been summarized on a functional basis. Accordingly, certain costs have been allocated between program and supporting services.

Allowance for doubtful accounts

Riverkeeper has not provided for an allowance for doubtful accounts. This is based on management's experience, the aging of the contributions and pledges receivable, subsequent receipts and current economic conditions.

Legal settlement and cost reimbursements

In connection with cases decided and settled in Riverkeeper's favor, legal settlements and cost reimbursements may be received. Due to the uncertainty as to the amount, until it is verified revenue is not recognized.

RIVERKEEPER, INC.

Notes to Financial Statements (continued)
June 30, 2015**Note 2 – Summary of significant accounting policies (continued)**Concentrations of credit risk

Riverkeeper's financial instruments that are potentially exposed to concentrations of credit risk consist primarily of cash and receivables. Riverkeeper places its cash with what it believes to be quality financial institutions and Riverkeeper has not incurred any loss on such accounts to date. Receivables consist of amounts due from donors, which are monitored by management as to collections. Accordingly, Riverkeeper believes no significant concentrations of credit risk exist with respect to its cash and receivables.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements. Actual results could differ from these estimates.

Comparative financial information

The financial statements include certain prior-year summarized comparative information in total but not by functional classification. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with Riverkeeper's financial statements for the year ended June 30, 2014, from which the summarized information was derived.

Subsequent events

Riverkeeper has evaluated events and transactions for potential recognition or disclosure through October 19, 2015, which is the date the financial statements were available to be issued.

Note 3 – In-kind services

Riverkeeper receives certain legal services without charge or on a reduced fee basis, to support its programs and to enforce environmental laws. During the years ended June 30, 2015 and 2014, Riverkeeper recorded in-kind legal services of \$1,060,175 and \$688,610, respectively. In addition, during the 2015 and 2014 fiscal years, respectively, Riverkeeper received professional services from citizen scientists for water testing with an estimated fair market value of \$11,120 and \$13,806, respectively. These amounts have been included as both revenue and corresponding program expenses in the accompanying financial statements.

In addition, Riverkeeper relies extensively upon the utilization of volunteers to carry out its programs and supporting services. Management estimates that volunteers contributed approximately 11,500 and 10,800 hours during the 2015 and 2014 fiscal years, respectively. Since these services received do not require specialized skills, the value of such services is not reflected in the financial statements, although they constituted a significant factor in the operations of Riverkeeper.

RIVERKEEPER, INC.

Notes to Financial Statements (continued)
June 30, 2015**Note 4 – Allocation of joint costs**

During the 2015 fiscal year, Riverkeeper incurred joint costs of \$44,269 for informational materials and activities that included fund-raising appeals; such costs were allocated as follows:

Programs	\$ 22,135
Fund-raising	<u>22,134</u>
Total	<u>\$ 44,269</u>

Note 5 – Line-of-credit

Riverkeeper has a \$250,000 line of credit, which renews annually. Amounts borrowed under this line are due on demand and bear interest at the bank's prime rate less 0.25%. During the 2015 fiscal year, Riverkeeper did not borrow any funds under this line of credit.

Note 6 – Lease agreement

Riverkeeper has a ten-year lease agreement for office space expiring July 2020 with an option to extend the lease for two additional five year periods. Annual rental payments in the first year of the agreement were \$62,000 increasing to \$80,000 in the final year of the agreement. Rent expense is recognized on a straight-line basis, including future rent escalation, over the life of the lease rather than in accordance with the actual lease payments. The deferred lease liability, which is included in liabilities represents the adjustment to future year's rents as a result of using the straight-line method. In connection with the agreement, Riverkeeper has deposited \$10,000 as security with the landlord.

For the fiscal years ended June 30, 2015 and 2014, office rent expense totaled \$67,800 for both fiscal years and is part of occupancy and utilities on the statement of functional expenses.

At June 30, 2015 future minimum lease payments are as follows:

<u>Fiscal year</u>	<u>Amount</u>
2016	\$ 72,000
2017	74,000
2018	76,000
2019	78,000
2020	80,000
2021	<u>6,000</u>
Total	<u>\$ 386,000</u>

RIVERKEEPER, INC.**Notes to Financial Statements (continued)**
June 30, 2015**Note 7 – Tax status**

Riverkeeper is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code (the “Code”). In addition, Riverkeeper has been determined by the Internal Revenue Service to be a publicly supported organization as described in Section 509(a)(1) and 170(b)(1)(A)(vi) of the Code and not a private foundation. Riverkeeper qualifies for the maximum charitable contribution deduction for donors. As of June 30, 2015, no amounts have been recognized for uncertain income tax positions. In addition, Riverkeeper’s tax returns for 2012 fiscal year and forward are subject to the usual review by the appropriate authorities.

**CONDON
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October 19, 2015

Mr. Joseph Boren
Chair
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562

Dear Mr. Boren:

In planning and performing our audit of the financial statements of Riverkeeper, Inc. ("Riverkeeper") as of and for the year ended June 30, 2015, in accordance with auditing standards generally accepted in the United States of America, we considered Riverkeeper's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Riverkeeper's internal control. Accordingly, we do not express an opinion on the effectiveness of Riverkeeper's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses.

Although our consideration would not necessarily disclose all matters that concern the internal control, we submit, for your consideration, certain comments and recommendations, which we believe are opportunities for strengthening the internal control.

This report is intended solely for the information and use of management of Riverkeeper and is not intended to be used and should not be used by anyone other than these specified parties.

We wish to express our appreciation for the cooperation and courtesies extended to our representatives during the audit. We would be pleased to discuss our comments with you further, should you so desire.

Very truly yours,

Cordon O'Meara McGinty + Donnelly LLP

cc: Mr. Paul Gallay, President
Mr. Jon Spanier, Treasurer

Cash

We are pleased to note that the President periodically reviews the bank reconciliations. For improved control, we recommend that the President initial the reconciliations as a positive indication of the review.

General

1. We were informed that Riverkeeper has a conflict-of-interest disclosure statement for Board members to sign annually. However, as far as we can ascertain, all Board Members did not have signed conflict-of-interest statements on file at the time of our audit. We again recommend that Riverkeeper have all Board members sign and return the completed conflict-of-interest disclosure statements on an annual basis.
2. On December 18, 2013, the Nonprofit Revitalization Act (the “Act”) was signed into law in New York State. The Act modernizes the laws applicable to nonprofits and enhances nonprofit governance and oversight. Most provisions of the Act took effect on July 1, 2014. We again recommend that Riverkeeper familiarize themselves with the Act in order to be in compliance with the required guidelines of the Act. Attached, as Exhibits A and B, are our TaxViews relating to the Act called “The New York State Nonprofit Revitalization Act – 1st in a Series” and “The New York State Nonprofit Revitalization Act – 2nd in Series”.

Payroll

For improved control, we recommend that the President initial the payroll register as a positive indication of the procedure.

Cyber-crime

We recommend that Riverkeeper consider a network vulnerability assessment to ensure its security from data breach. The study is very comprehensive in nature and touches on areas such as antivirus software and firewall programs and keeping these software up-to-date, educating employees how to stay safe while using Riverkeeper’s computer network and making sure employees aren’t accessing the wrong kind of websites, implementing formal software security policies (password protection) and action plans in case of a data breach.

April 2014

**The New York State Nonprofit
Revitalization Act – 1st in a Series**

The Nonprofit Revitalization Act of 2013 (the "Act") makes significant changes to New York State nonprofit law. Among other things, the Act's goal is to strengthen nonprofit governance and oversight. In our initial *TaxViews* with respect to the Act, we will address Audit Oversight Provisions and Annual Reporting Requirements of the Act.

Audit Oversight Provisions

The Act imposes new oversight requirements on the board of directors of a charitable organization that is required to file an independent auditor's report with the New York State Attorney General.

- For a charitable corporation, or charitable trust, with annual revenue of less than \$10 million in its last fiscal year ending prior to January 1, 2014, the audit oversight requirements of the Act take effect January 1, 2015.
- For a charitable corporation, or charitable trust, with annual revenue of \$10 million or more in its last fiscal year ending prior to January 1, 2014, the audit oversight requirements of the Act take effect July 1, 2014.

Audit, Accounting and Financial Reporting Processes

The Act provides that the audit of the organization's financial statements, as well as the organization's accounting and financial reporting processes, are overseen by either the organization's board of directors (excluding any directors who are not independent directors) or an audit committee comprised solely of independent directors. The requirement that the audit committee be comprised exclusively of independent directors is set forth in the Act. The definition of independent director is set forth below.

The board, or audit committee, shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, shall review the results of the audit and any related management letter with the independent auditor.

Oversight Duties

For organizations with annual revenue in excess of \$1 million (either in the prior or current fiscal year), the oversight duties include:

1. reviewing with the independent auditor the scope and planning of the audit prior to its commencement;
2. upon completion of the audit, review and discuss any material risks and weakness in internal controls identified by the auditor, any restrictions on the scope of the auditor's activities or access to requested information, any significant disagreements between the auditor and management, and the adequacy of the organization's accounting and financial reporting processes;
3. annually consider the performance and independence of the auditor; and
4. if the preceding duties are performed by an audit committee, the audit committee must report on the committee's activities to the board.

Independent Director

The Act defines the terms "independent director" as a director who:

- I. is not, and has not been within the last three years, an employee of the nonprofit corporation or an affiliate thereof, and does not have a relative who is, or who has been within the last three years, a key employee of the nonprofit corporation or an affiliate thereof;
- II. has not received, and does not have a relative who has received, in any of the last three fiscal years, more than \$10,000 in direct compensation from the nonprofit corporation or an affiliate thereof (other than reimbursement for expenses reasonably incurred as a director or trustee or reasonable compensation for service as a director or trustee); and
- III. is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments (other than charitable contributions) to, or received payments (other than charitable contributions) from, the nonprofit corporation or an affiliate thereof, for property or services in an amount that exceeds the lesser of \$25,000 or 2% of such entity's consolidated gross revenue in any of the last three fiscal years.

Annual Reporting Requirements

Independent CPA's Audit Report

Generally, a charitable organization is required to file an independent CPA's audit report with the New York State Attorney General if it solicits funds from the general public and meets the following revenue thresholds:

Current Law:	Independent CPA Audit Report required if gross revenues exceed \$250,000.
Effective July 1, 2014:	Independent CPA Audit Report required if gross revenues exceed \$500,000.
Effective July 1, 2017:	Independent CPA Audit Report required if gross revenues exceed \$750,000.
Effective July 1, 2021:	Independent CPA Audit Report required if gross revenues exceed \$1,000,000.

Independent CPA's Review Report

Generally, a charitable organization is required to file an independent CPA's review report with the New York State Attorney General if it solicits funds from the general public and meets the following revenue thresholds:

Current Law:	Independent CPA Review Report required if gross revenues exceed \$100,000 but not more than \$250,000.
Effective July 1, 2014:	Independent CPA Review Report required if gross revenues exceed \$250,000 but not more than \$500,000.
Effective July 1, 2017:	Independent CPA Review Report required if gross revenues exceed \$250,000 but not more than \$750,000.
Effective July 1, 2021:	Independent CPA Review Report required if gross revenues exceed \$250,000 but not more than \$1,000,000.

The Act provides that the NYS Attorney General may require the charitable corporation, or charitable trust, to obtain and file an independent CPA's Audit Report and audited financial statements following the NYS Attorney General's review of the independent CPA's Review Report.

Unaudited Financial Report on Form Provided by NYS Attorney General

Generally, a charitable organization is required to file an unaudited financial report with the New York State Attorney General if it solicits funds from the general public and meets the following revenue thresholds:

Current Law:	Unaudited Financial Report if gross revenues are \$100,000 or less.
Effective July 1, 2014:	Unaudited Financial Report if gross revenues are \$250,000 or less.

The Nonprofit Revitalization Act of 2013 is a change to the New York State nonprofit law, and as such, it would be prudent to discuss such changes, and any impact on your charitable organization, with legal counsel.

This Tax Views is provided to our clients for informational purposes only and may not be used or cited as precedent.

July 2014

Whistleblower Policy
New York State Nonprofit Revitalization Act – 2nd in a Series

Whistleblower Policy - Introduction

A whistleblower policy is not a new concept in the nonprofit world, especially for filers of the Internal Revenue Service ("IRS") Form 990. In Section B of Part VI of the Form 990, although the IRS states that Section B requests information about policies not required by the Internal Revenue Code ("IRC"), the IRS asks if “the organization [has] a written whistleblower policy.” The IRS does so because it believes that a whistleblower policy encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation, and identifies those staff or board members or outside parties to whom such information can be reported.

The New York State Nonprofit Revitalization Act (the “Act”) has taken a different approach and requires that New York non-profit organizations, charitable and non-charitable (as discussed on the next page), *with twenty or more employees and annual revenue in the prior fiscal year in excess of \$1 million adopt a whistleblower policy to protect from retaliation persons who report suspected improper conduct.*

Whistleblower Policy - Requirements

The Act, as a general matter, requires that the whistleblower policy provide that no director, trustee, officer, employee, or volunteer who in good faith reports any action or suspected action taken by or within the non-profit organization that is illegal, fraudulent, or in violation of any adopted policy of the non-profit organization shall suffer intimidation, harassment, discrimination, or other retaliation, or, in the case of employees, adverse employment consequences.

The whistleblower policy shall include the following provisions:

1. procedures for reporting violations or suspected violations of laws or policies, including procedures for preserving the confidentiality of reported information;
2. a requirement that a director, trustee, officer, or employee of the non-profit organization be designated to administer the policy and report to the audit or other committee consisting of independent directors or trustees, or, if no such committees, the board; and
3. a requirement that a copy of the policy be distributed to all directors, trustees, officers, employees, and to volunteers who provide substantial services to the non-profit organization.

A non-profit organization that has adopted a whistleblower policy pursuant to federal, state, or local laws that is substantially consistent with the requirements of the Act will be deemed to be in compliance with the Act.

Charitable and Non-Charitable Organizations

It should be understood that the Act creates two categories of non-profit corporations (charitable and non-charitable) rather than the historic four types (Type A, B, C and D).

New York non-profit corporations formed prior to July 1, 2014 are not required to amend their formation documents to conform to the new categories (charitable and non-charitable) because:

- Type A corporations (including, among others, membership organizations formed for social and fraternal purposes) will be deemed to be non-charitable corporations;
- Type B and Type C corporations will be deemed to be charitable corporations;
- Type D corporations formed for charitable purposes will be deemed to be charitable corporations; and
- Type D corporations formed for non-charitable purposes will be deemed to be non-charitable corporations.

In short, the Act defines a charitable corporation as a non-profit corporation formed for charitable purposes. Charitable purposes, such as charitable, educational, religious, scientific, literary, cultural, or for the prevention of cruelty to children or animals, are generally set forth in the organization's certificate of incorporation. The Act defines a non-charitable corporation as any non-profit formed under New York State Not-for-Profit Corporation law, except a charitable corporation, including, but not limited to, one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association.

In the unlikely event that your organization is deemed to be a non-charitable corporation under the Act but is functioning as a charitable organization under IRC Section 501(c)(3), the organization should discuss such lack of synchronicity with legal counsel with a view to a possible amendment to the organization's formation documents.

Plan of Action

As we are not licensed to practice law, we recommend that New York non-profit organizations speak to their legal counsel regarding the adoption of a suitable whistleblower policy under the Act.

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