
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 838 Session of
1991

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COLAIZZO, CALTAGIRONE, PHILLIPS, HALUSKA, VAN HORNE, PRESTON
AND GRUPPO, MARCH 19, 1991

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, MARCH 19, 1991

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, requiring
3 nonprofit corporations to supply information as to
4 affiliation, activities and tax status to the Commonwealth;
5 providing for powers and duties of the Department of State
6 and the Department of Revenue; and providing for penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 15 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 58

12 ACCOUNTABILITY

13 Sec.

14 5801. Legislative intent.

15 5802. Definitions.

16 5803. Department of Revenue.

17 5804. Reports.

18 5805. Exemption.

- 1 5806. Individual responsibility.
- 2 5807. Assignment of code numbers.
- 3 5808. Audit authorized.
- 4 5809. Duties of Department of State.
- 5 5810. Exchange of information and confidentiality.
- 6 5811. Regulations.
- 7 5812. Sanctions.
- 8 5813. Evidence of violation.
- 9 5814. Annual report.

10 § 5801. Legislative intent.

11 In enacting this chapter, it is the intent of the General
12 Assembly to require the Department of Revenue to:

13 (1) Establish a data base on nonprofit corporations
14 incorporated in this Commonwealth.

15 (2) Determine the extent to which affiliations exist
16 between nonprofit and for-profit entities.

17 (3) Determine the level of commercial activity of
18 nonprofit corporations and their affiliates.

19 (4) Determine the fiscal impact of such activities on
20 Commonwealth revenue.

21 (5) Determine the number of nonprofit corporations and
22 their affiliates operating on a tax-exempt basis in
23 Pennsylvania but not operating on a tax-exempt basis on the
24 Federal level.

25 § 5802. Definitions.

26 The following words and phrases when used in this chapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Affiliation." The relationship between corporations or
30 unincorporated associations, or both, when:

1 (1) a corporation or unincorporated association is
2 controlled by or controls another corporation or
3 unincorporated association;

4 (2) a corporation or unincorporated association, or
5 both, are controlled by the same corporation or
6 unincorporated association; or

7 (3) a corporation or unincorporated association has a
8 contractual relationship with another corporation or
9 unincorporated association where the contract provides for
10 the distribution of profits among the parties to the
11 contract.

12 "Annual return." Annual return as defined by the Internal
13 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)
14 and the regulations issued thereunder.

15 "Commercial activity." Any activity which provides a product
16 or service for a fee which could be obtained from a for-profit
17 business or any unrelated business and retail activities of
18 nonprofit corporations.

19 "Control." A corporation or unincorporated association has
20 control over another corporation or unincorporated association
21 if:

22 (1) the corporation or unincorporated association
23 directly or indirectly or acting through one or more persons
24 owns, controls or has power to vote 25% or more of any class
25 of voting securities of the other corporation or
26 unincorporated association;

27 (2) the corporation or unincorporated association
28 controls in any manner the election of a majority of the
29 directors or trustees of the other corporation or
30 unincorporated association; or

(3) the Department of Revenue determines, after notice and opportunity for hearing, that the corporation or unincorporated association directly or indirectly exercises a controlling influence over the management or policies of the other corporation or unincorporated association.

However, there shall be a presumption that any corporation or unincorporated association which directly or indirectly owns, controls or has power to vote less than 5% of any class of voting securities of a given corporation or unincorporated association does not have control over that corporation or unincorporated association.

"Corporation." A corporation for profit or not-for-profit.

"Organizational structure." The control structure within which a corporation or unincorporated association exists. The term includes the corporation or unincorporated association, its affiliates and, if applicable, its parent, its subsidiaries and all stockholders owning 5% or more of its outstanding stock.

"Parent." A corporation which owns more than 50% of the voting stock of another corporation.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Subsidiary." A corporation of which more than 50% of the voting shares are owned by another corporation.

"Unincorporated association." The act of two or more persons in uniting together for any of the purposes set forth in section 5301 (relating to purposes) which does not contemplate pecuniary gain or profit, incidental or otherwise, and which is not incorporated under the laws of this Commonwealth or any other state.

§ 5803. Department of Revenue.

The Department of Revenue shall receive the reports required

1 by this chapter from nonprofit corporations and shall compile
2 information based on those reports.

3 § 5804. Reports.

4 (a) Initial.--A Pennsylvania nonprofit corporation which
5 files a 1990 annual return with the Internal Revenue Service
6 under the Internal Revenue Code of 1986 (Public Law 99-514, 26
7 U.S.C. § 1 et seq.) shall file with the Department of Revenue,
8 no later than the date it is required to file a 1990 annual
9 return with the Internal Revenue Service, including any
10 extension granted by the Internal Revenue Service, a copy of its
11 1990 annual return as filed with the Internal Revenue Service
12 and the following information if not included in such annual
13 return:

14 (1) The date when it was incorporated and a reference to
15 any determination of its tax-exempt status under the Internal
16 Revenue Code of 1986, including, if applicable, its Internal
17 Revenue tax exemption code number or other documentation
18 certified by the Internal Revenue Service and the tax-exempt
19 purposes as established with the Internal Revenue Service.

20 (2) The names of all corporations, unincorporated
21 associations or other affiliates within its organizational
22 structure, whether each corporation, unincorporated
23 association or other affiliate is organized on a for-profit
24 or not-for-profit basis and whether each corporation,
25 unincorporated association or other affiliate is organized as
26 a corporation or unincorporated association together with the
27 relationship of each corporation, unincorporated association
28 or other affiliate within the organizational structure,
29 including the relationship of the filing nonprofit
30 corporation to the other corporations, unincorporated

1 associations or other affiliates within the organizational
2 structure.

3 (3) Its relationship with any national nonprofit
4 corporation or unincorporated association.

5 (4) Whether any contracts exist, on the date of filing
6 the report, between members of the organizational structure
7 and, if so, a description of the nature of each contract and
8 the members which are parties to it.

9 (b) Annual.--A Pennsylvania nonprofit corporation which
10 files an annual return with the Internal Revenue Service under
11 the Internal Revenue Code of 1986 shall file, with the
12 Department of Revenue on an annual basis, a copy of its annual
13 return for the given tax year as filed with the Internal Revenue
14 Service, any change in its tax status with the Internal Revenue
15 Service and, if not included in the annual return, the
16 information required in subsection (a). The information required
17 by this subsection shall be filed with the Department of Revenue
18 no later than the date the nonprofit corporation is required to
19 file its annual return with the Internal Revenue Service,
20 including any extension granted in accordance with the Internal
21 Revenue Code of 1986.

22 (c) Amendment.--Any nonprofit corporation filing an annual
23 return under this chapter which, thereafter, files an amended
24 return with the Internal Revenue Service shall file a copy of
25 the amended return with the Department of Revenue within ten
26 days of its filing with the Internal Revenue Service.

27 (d) Unincorporated associations.--An unincorporated
28 association which is a member of the organizational structure of
29 or affiliated with a nonprofit corporation shall not be required
30 to file any report required by this section.

1 § 5805. Exemption.

2 A Pennsylvania nonprofit corporation which is related to a
3 national nonprofit corporation or unincorporated association and
4 which does not file a separate annual return with the Internal
5 Revenue Service but is included in a consolidated return filed
6 by the national nonprofit corporation or unincorporated
7 association shall be exempted from the reporting requirements of
8 this chapter for any year in which the consolidated return is
9 filed upon the filing of a notarized statement to such effect
10 with the Department of Revenue, including the name of the
11 national nonprofit corporation or unincorporated association
12 with which it is affiliated.

13 § 5806. Individual responsibility.

14 If more than one nonprofit corporation subject to the
15 reporting requirements of this chapter exists within the same
16 organizational structure, each nonprofit corporation shall be
17 individually responsible for complying with the reporting
18 requirements of this chapter.

19 § 5807. Assignment of code numbers.

20 The Department of Revenue shall assign a common code number
21 to the filing nonprofit corporation and to each member of its
22 organizational structure, together with alphabetical identifiers
23 to differentiate each member of the organizational structure.

24 § 5808. Audit authorized.

25 The secretary shall conduct a random annual audit of 1% of
26 the filing nonprofit corporations and the members of each of
27 their organizational structures to verify the information
28 contained in their annual reports. The secretary is further
29 empowered to conduct an audit of any filing nonprofit
30 corporation and the members of its organizational structure

1 whenever he considers it necessary to carry out the purposes of
2 this chapter.

3 § 5809. Duties of Department of State.

4 (a) Notification of existing nonprofit corporations.--Within
5 90 days of the effective date of this chapter, the Department of
6 State shall notify each Pennsylvania nonprofit corporation of
7 the requirements of this chapter by certified mail, return
8 receipt requested, and include therein any forms necessary to
9 comply with the reporting requirements of this chapter.

10 (b) Notification of newly incorporated nonprofit
11 corporations.--The Department of State shall notify each
12 Pennsylvania nonprofit corporation incorporated after the
13 effective date of this chapter of the requirements of this
14 chapter at the time of its incorporation and provide the
15 nonprofit corporations any forms necessary to comply with the
16 reporting requirements of this chapter at that time.

17 (c) Providing of list.--The Department of State shall
18 provide a list to the Department of Revenue of all Pennsylvania
19 nonprofit corporations for which verification of notification
20 has been received under subsection (a) and shall thereafter
21 provide, on an annual basis, a list of all newly incorporated
22 Pennsylvania nonprofit corporations.

23 § 5810. Exchange of information and confidentiality.

24 The Department of State and the Department of Revenue are
25 authorized to enter into cooperative agreements for the exchange
26 of information with Federal and State agencies for the purpose
27 of implementation of this chapter. Any information obtained
28 under this chapter or as a result of any exchange of information
29 authorized by this section shall be subject to the same
30 requirements of confidentiality as exist for annual returns

1 filed under the Internal Revenue Code of 1986 (Public Law 99-
2 514, 26 U.S.C. § 1 et seq.) and tax returns filed under the act
3 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
4 1971.

5 § 5811. Regulations.

6 The Department of State and the Department of Revenue may
7 promulgate either joint or separate regulations necessary and
8 appropriate to carry out the purposes of this chapter.

9 § 5812. Sanctions.

10 A nonprofit corporation which fails to comply with the
11 provisions of section 5804 (relating to reports) shall be
12 subject to a fine of \$10 a day for each day the report is late
13 up to a maximum of \$5,000 unless reasonable cause can be shown
14 for the late filing. Levying of the penalty shall be in
15 accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A
16 (relating to practice and procedure of Commonwealth agencies).

17 § 5813. Evidence of violation.

18 If, in the course of performing its duties under this
19 chapter, the Department of Revenue believes a violation
20 enumerated in section 503 (relating to actions to revoke
21 corporate franchises) has occurred, it shall so inform the
22 Attorney General, who shall determine whether to institute
23 proceedings under that section.

24 § 5814. Annual report.

25 Within 90 days after the end of the calendar year, the
26 secretary shall submit to the General Assembly a summary of the
27 annual reports filed under this chapter during the prior year,
28 which shall contain information on the subjects set forth in
29 section 5801 (relating to legislative intent) and on the number
30 of referrals under section 5813 (relating to evidence of

1 violation).

2 Section 2. The provisions of 15 Pa.C.S. Ch. 58 shall expire
3 five years from the effective date of this act.

4 Section 3. This act shall take effect in 90 days.