1. Does my organization need to have 501(c)(3) status to begin fundraising?

No, your organization can begin soliciting and accepting donations once your organization is incorporated as a nonprofit corporation and registered for charitable solicitation in the appropriate state(s). In fact, it is often advisable to solicit funding sources before making the decision to seek 501(c)(3) status to get a sense of whether your organization will be sustainable.

However, without 501(c)(3) status, contributions made directly to your organization are not immediately tax-deductible for the donor. That said, donors may be able to take tax deductions for their contributions under the following circumstances.

If your organization’s application for tax exemption is pending before the IRS, it is possible that a donor’s contribution will be deemed tax-deductible eventually. For an organization that files its application for tax exemption with the IRS within 27 months from the end of the month in which it was formed, tax exemption once received will be retroactive to the date of formation. If the application is filed after 27 months, tax exemption once received will be retroactive to the date that the application was filed. In other words, donors may be able to take deductions once your organization is granted 501(c)(3) status for contributions made during the interim period.

Solicitations during the interim period should say that tax exemption is pending and donations may be deductible if 501(c)(3) status is granted by the IRS — solicitations must say “if” because you cannot presume or represent that tax exemption is guaranteed.

Another way in which donors may take tax deductions before your organization has obtained tax-exempt status is if your organization is fiscally sponsored by another 501(c)(3) organization such that donors make their contribution to the fiscal sponsor for the benefit of your organization. For more on fiscal sponsorship, please see our materials on Incorporation and Tax Exemption.

2. We've applied for 501(c)(3) status but have not yet received formal recognition from the IRS. Are donations deductible? What type of acknowledgment should we provide our donors?

If a donor chooses to donate directly to your organization while your exemption application is pending, you can acknowledge the gift with the following language: "The Organization has applied for federal tax exemption as a 501(c)(3) public charity and if this designation is granted, then the full amount of your contribution will be deductible for federal income tax purposes.” In this way, the organization is not representing that a gift will be deductible; rather, it’s stating that the gift will be deductible only if 501(c)(3) status is granted.

3. When do we need to register with the state charities bureau?

Generally, an organization must register as soon as it begins fundraising activities in a state, and/or, in some states, doing business or having some kind of presence there (e.g., being incorporated in the state).

Some states have a minimum annual dollar threshold that must be crossed before registration is required. For example, in New Jersey, registration is not required if a charity does not receive gross contributions in excess of $10,000 and does not use a paid professional fundraiser.
Some states, including Connecticut and New York, provide for exemptions from the full filing if an organization is below a certain size. In Connecticut, an exemption applies if an organization normally receives less than $50,000 per year in contributions and does not compensate any person primarily to conduct solicitations. The exemption must be claimed by making a short form filing. Exemption need be claimed only once and does not have to be renewed. However, if the circumstances of the organization change so that the exemption no longer applies, the organization is required to register at that time.

In New York, an exemption applies if the organization has less than $25,000 in annual gross receipts and does not use a professional fundraiser. The organization may make a short-form filing to claim the exemption, but is not required to do so. If the circumstances of the organization change so that the exemption no longer applies, the organization is required to register at that time.

Many states, including Connecticut, New Jersey, and New York have annual filing requirements for organizations registered to solicit charitable funds.

The requirements vary by state, so it is important to check the rules in any state where your organization plans to fundraise or otherwise be present. To see which states have charitable registration laws, go to www.multistatefiling.org.

4. If a person is owed money by a charity and s/he subsequently forgives the debt, can the amount forgiven be claimed as a charitable contribution?

The answer depends upon the circumstances. Assume that a person makes a loan to a nonprofit, in good faith and with the expectation of being repaid, but then later decides that the organization does not have to repay the loan. This lender would be entitled to claim a charitable contribution because s/he originally expected to be repaid, but then forgave the loan out of generosity. The IRS calls this “charitable intent”. In essence, the lender changed his/her mind and decided to make a donation to the organization. As a matter of good practice, both the loan and the subsequent forgiveness should be documented appropriately in writing.

In contrast, assume that a person makes a loan to a nonprofit, in good faith and with the expectation of being repaid, and then the charity becomes insolvent and cannot repay the loan. In these circumstances, the lender is not entitled to take a charitable deduction because s/he does not have the charitable intent to make a donation to the organization – s/he simply can’t collect on the loan. Here, the lender might be better served deducting the loan as a bad debt for taxation purposes.

This question also arises when a charity owes money to someone for services rendered and that person subsequently forgives the debt. No charitable deduction is permissible for the contribution of services to a tax-exempt organization.

5. Is the cost of a raffle ticket a deductible contribution?

No, because the person buying the ticket has an expectation that he or she may win a prize and receive something of value for the ticket.

6. Can a person take a tax deduction for donating his/her time or services to a charity?

No, the value of someone’s time or services is not deductible as a charitable contribution. However, certain out-of-pocket expenses incurred while volunteering services to a qualified organization may be deductible. The expenses must be unreimbursed, directly connected with the services the volunteer provided to the organization, and incurred only because of the services the volunteer provided. They cannot be personal, family, or living expenses. For example, a
taxpayer can deduct the costs of gas and oil and any parking fees and tolls that are directly related to the use of his/her car in giving services to a charitable organization. But s/he cannot deduct general repair and maintenance expenses, depreciation, registration fees, or the costs of tires or insurance.

For more information on substantiating charitable contributions, see IRS Publication 1771.

7. Can a person take a tax deduction for donating space in a building to a charity?

No, generally you cannot deduct a charitable contribution of less than your total interest in property. For example, if you own a multi-story building and you let a charity use an entire floor for free or at a below market rate rental fee, you are not allow to take a charitable deduction for the value of the rent not charged.

Similarly, you cannot claim a charitable deduction for donating a week at your vacation home, to be auctioned off at a fundraiser.

For more information on this topic, see IRS Publication 526.

8. How much can be deducted for something purchased at a charity auction, and whose responsibility is it to determine the amount that can be deducted?

The ultimate responsibility to prove the accuracy of the donation amount lies with the donor (the person who purchased the auction item). However, the charity must provide the donor with a good faith estimate of the item’s fair market value and inform the donor that “the contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than the money contributed by the donor over the value of the goods or services provided by the organization.” (IRC §6115 and 26 CFR 1.170A-1(h).) For example, assume that a charity auctions a trip. Prior to the auction, the charity makes a good-faith estimate that the trip’s fair market value is $2,000. At the auction, a donor bids and pays $3,000 for the trip. The charity provides the donor with its estimate of the trip’s fair market value of $2,000. The donor may only claim a charitable deduction for the excess $1,000 that s/he paid for the trip.

9. If an individual purchases items that s/he plans to donate for a tax-exempt organization’s fundraising event, may s/he use the organization’s state sales tax exemption certificate to avoid paying sales tax on the items?

No. The state sales tax exemption certificate is issued in the name of the tax-exempt organization and the organization must be the direct purchaser and payor of record. Thus, an individual who purchases items that s/he intends to donate to a tax-exempt organization may not use the organization’s state sales tax exemption certificate. However, the donor could claim a tax deduction for the items as in-kind donations, assuming the organization provides a proper acknowledgement and the donor keeps records of the purchases and values them appropriately.

10. Must a public charity spend a minimum amount of the funds it raises in a particular year?

No. There is no requirement that a public charity spend a specific minimum amount of funds in the year in which the funds were raised, so long as the public charity made no representations that it would do so.

However, a public charity must use its funds for the purposes for which they were solicited. For example, a public charity that raises funds to support relief efforts after a particular natural event...
disaster should not then divert those funds to other purposes, no matter how charitable.

11. Do you recommend that we use written pledge agreements in connection with all pledges made to our organization?

Yes. Although the enforceability of such a pledge agreement will depend on a variety of factors, a written agreement helps to ensure that there is a “meeting of the minds” between the donor and the organization regarding the terms of a pledged gift.

12. What records should we retain in connection with fundraising activities?

Many states have laws that require nonprofits to retain records of fundraising activities.

In Connecticut, the Connecticut Solicitation of Charitable Funds Act, C.G.S. §§21a-175 et seq., requires charitable organizations to file annual financial reports with the Public Charities Unit and keep “true fiscal records” for at least three years. Additionally, the Act requires paid solicitors and commercial co-venturers to maintain certain financial records.

In New Jersey, Section 14 of the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-31, requires charities to maintain all records related to contributions for at least three years. Consequently, charities must retain records that document the names and addresses of each contributor, and the date and amount of donations (including the fair market value of donated goods).

In New York, all charities required to register with the Attorney General must keep and maintain records, books, and reports pertaining to their registrations for at least three years after the end of the period of registration. See Article 7-A of the Executive Law, §172-b(6).

13. Do we have to disclose the names of donors in response to a request by a member of the public for our Form 990 tax return?

All exempt organizations must make their annual tax return available for public inspection and copying, but IRS regulations specifically provide that public charities are not required to disclose the names and addresses of any contributors to the organization. In contrast, private foundations must disclose the names and addresses of their donors on Schedule B of the 990-PF.