

**May 2026**

**Erie County Cultural Funding Grant Monitoring Program  
Torn Space Theater  
January 1, 2023, through December 31, 2024**



**HON. KEVIN R. HARDWICK  
ERIE COUNTY COMPTROLLER**

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May 29, 2026

Erie County Legislature  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

## **OBJECTIVE**

The objective of the Cultural Funding Grant Monitoring Program is to verify that grant recipients utilize County funds in accordance with the terms and conditions of their grant agreements with the County. To support this objective, the Comptroller's Office selects a sample of organizations annually to review financial records, substantiate the proper use of County grant funds, verify that required IRS Form 990 and New York State Form CHAR500 were completed, and assess board oversight for the fiscal years under review.

## **SCOPE AND METHODOLOGY**

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$10,000 in funding during any of the two prior years. For this round of review, covering fiscal years 2023 and 2024, approximately 15 agencies were identified for examination.

# TORN SPACE THEATER

## BACKGROUND

### Brief History

Founded by Dan Shanahan and Melissa Meola, Torn Space Theater (TST) was established in 2000 and received 501(c)(3) nonprofit status on August 23, 2005. TST creates theater that is original, aesthetically innovative, and deeply collaborative. Drawing inspiration from the leading edge of the global avant-garde, the company produces both original works and new interpretations of existing plays while integrating media, music, visual art, and experimental design into immersive theatrical experiences.

TST is committed to introducing internationally recognized contemporary performances to Western New York while cultivating collaboration among actors, composers, sculptors, video artists, and designers. Through vivid imagery and interdisciplinary performance practices, the company challenges traditional theatrical expectations and creates performances that are both entertaining and thought-provoking.

Programming presented by TST contributes to neighborhood revitalization, supports local artists, and expands access to cultural resources in historically underserved communities. The organization provides a platform for artists experimenting across multiple forms of performance and continually seeks collaborations beyond traditional theater disciplines. Viewing performance as a unique event tailored to its audience and environment, TST develops productions in both conventional and non-traditional spaces to encourage meaningful community engagement and participation.

Dedicated to fostering an inclusive and respectful artistic environment, TST supports artists as they experiment, innovate, and reach their creative potential while presenting high-quality, relevant, avant-garde theater to the Buffalo community and beyond.

### Mission Statement

TST presents original performances, re-interpretations of classic drama, site-specific works and Western New York (WNY) premieres of internationally recognized contemporary drama otherwise absent in our community.

### Community Served

Out of approximately 24 theaters in Western New York, TST is one of only two theaters located on the East Side of Buffalo. With cultural opportunities less available, TST has become a cultural anchor for this neighborhood.

TST's target audience includes those drawn to contemporary and experimental theaters, artists seeking a technologically advanced and flexible venue and residents who benefit from a cultural presence in their neighborhood. The organization meets the audiences' needs by offering free and reduced-price performances, participating in the Arts Access Program, creating opportunities for direct community

involvement in productions and providing artistic residencies and free use of our space to select artists. Their work intentionally blurs the line between artist and audience, inviting shared ownership and participation.

Beyond theatergoers, TST builds meaningful partnerships to expand their impact. A notable example is Camp Everything, created in collaboration with artist Adam Weekley and the Burchfield Penney Art Center, which supports Buffalo Pride and celebrates LGBTQ culture. With over 140,000 participants, it reflects a commitment to inclusive, community-driven programming.

TST’s programming integrates global performance conversations with local relevance and appeals to academics, fans of contemporary art, and those looking for theater outside the normal offerings. From staging work at Silo City to producing series like Intersection and Ladies First, the organization supports diverse voices and contributes to Buffalo’s cultural and economic revitalization.

### CFG Grant Award History

Torn Space Theater received Cultural Funding Grants (CFG) totaling:

- \$ 32,500 in 2023, including \$10,000 over the Executive Recommendation.
- \$ 33,000 in 2024, including \$10,000 over the Executive Recommendation.

In addition, TST received \$500,000 in Erie County capital improvement funding to complete interior renovations that expanded the venue’s performance capacity and transformed the facility into a state-of-the-art black box theater. This capital funding was outside the scope of this review.

## **FINANCIAL ANALYSIS**

### Revenue Sources

During the review period, contributions and grants represented the organization’s primary source of revenue.

### Grant Revenue

<b>Grant Dependency</b>	<b>2023</b>	<b>2024</b>
Total Grant Revenue as Percentage of Total Revenue	96.89%	96.67%
CFG Funds as Percentage of Total Revenue	3.39%	3.87%

Total grant revenue accounted for 96.89% of TST’s total revenue in 2023, declining slightly to 96.67% in 2024, indicating TST is highly dependent on grant funding to sustain its operations.

Within this, CFG funds represented a comparatively small share, contributing 3.39% in 2023 and 3.87% in 2024.

### Operating Expenses

Total operating expenses remained relatively stable between the two years, decreasing by \$8,297 in 2024. Other operating expenses, which include production expenses, production supplies, other production-related

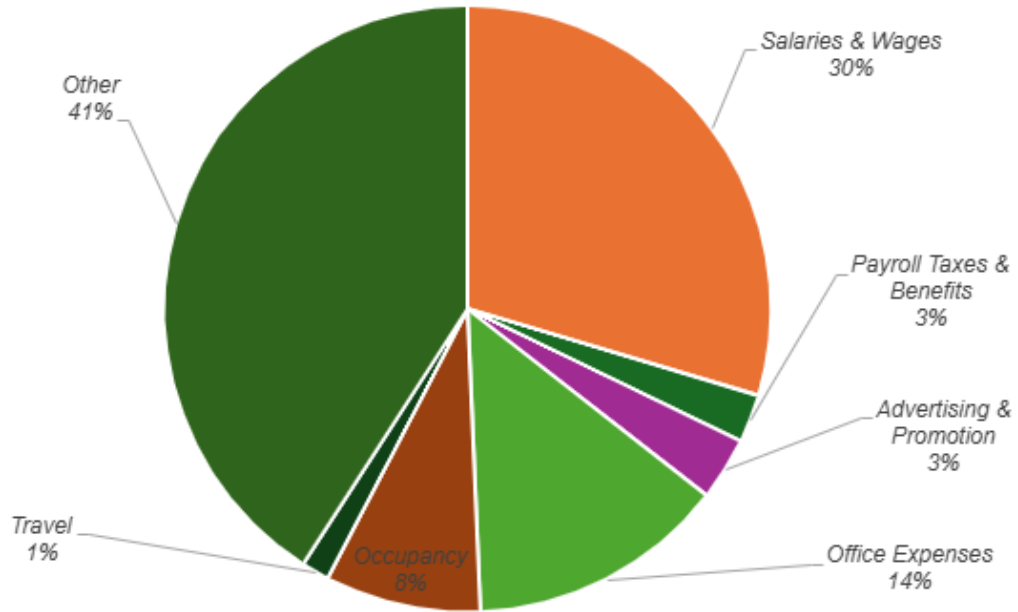
expenses, utilities-in-kind, and equipment rental, represented the largest expense category. While salaries and wages, including payroll taxes, represented the second largest expense category in both years. Expenses related to advertising and promotion, office expenses, occupancy, and travel remained consistent in both years.

The grant funding requests are evaluated against total operating expenses net of depreciation, with funding not to exceed 20% of that amount as recommended by the grant program.

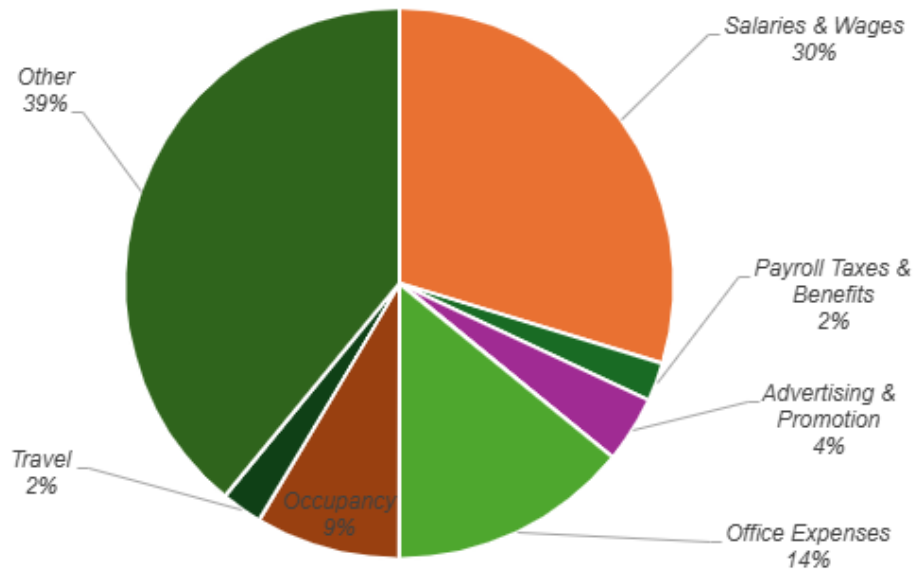
Based on this methodology, CFG funding provided to TST represented the following percentages of net operating expenses:

- 11.23% in 2023 (within the recommended threshold)
- 11.71% in 2024 (within the recommended threshold)

### 2023 Operating Expense



### 2024 Operating Expense



## **OBSERVATIONS & CONCLUSIONS**

### Credit Card & Bank Statements

After reviewing the bank statements, the auditor did not identify any unusual activity or transactions. TST did not utilize credit cards during 2023 and 2024.

### Use of CFG Funds

TST used CFG funds to support its operating and production expenses associated with the creation and presentation of the TST's production season that takes place within the Erie County.

Beginning in 2024, the County instituted a requirement that all CFG funds be either maintained in a separate bank account or the recipient must be able to account for the funds appropriately. TST was able to substantiate the use of CFG funds and no anomalies were identified.

Erie County was appropriately recognized as a sponsor of TST on their website as required by the contract.

### General Ledger Review

After reviewing the General Ledger, the auditor did not identify any unusual activity.

### Payroll & Executive Salary & Form 1099 Analysis

Salary increases were reviewed and were found to be within the benchmark of 3% - 5% per year and approved by the Board of Directors.

Forms 1099 were provided, however, during testing, it was noted that in 2023 and 2024, some independent contractors received payments of at least \$600 for which no corresponding Forms 1099 were issued. In addition, a few independent contractors received Forms 1099-NEC reflecting amounts that did not match the actual payments made during the years. Management acknowledged these findings and indicated that corrective actions will be implemented to address the identified deficiencies.

### Governance & Policy Review

TST is governed by a Board of Directors consisting of 14 members. Directors are generally limited to two consecutive three-year terms and are elected by a plurality of votes cast at the annual meeting. In addition, board members may be appointed by the Artistic Director for a single two-year term, subject to approval by a majority of the board. Founding members may serve an unlimited number of terms.

The Board of Directors provides guidance and oversight and has final approval authority over the annual operating budget, including all compensation arrangements. In addition, the Finance Committee conducts bi-monthly reviews of revenues and expenses. A draft copy of Form 990 is submitted to the Board of Directors for review and approval prior to filing. Each board member is required to annually review and sign the conflict-of-interest policy, and any potential conflicts of interest must be disclosed to the board.

Based on the documentation provided by TST and reviewed by the auditor, governance and financial oversight controls appear to be in place.

During the site visit, it was noted that formal written policies were not maintained during the audit period. However, management has since acknowledged the importance of documented policies and procedures and has taken corrective action. Since the commencement of this review, several formal policies, including a Credit Card Policy, Reimbursement Policy, Purchasing and Payment Policy, and Travel and Meals Policy have been developed and adopted by the board.

Additional Observations (if applicable)

No additional observations.

**CONCLUSION**

Documentation for the review included IRS Form 990, Forms 1099, payroll records, bank and credit card statements, cancelled checks, organizational chart, general ledger reports, and Board of Director meeting minutes.

At the conclusion of the grant monitoring review, the Auditor determined that TST complied with the Erie County Cultural Grant Funding Contract and filed IRS Form 990 and New York State Form CHAR500 for the years 2023 and 2024.

## APPENDIX

### General Governance and Compliance Guidance for Non-Profit Organizations



Strong financial management depends not only on the integrity of staff and board members, but on the existence of clear, board-approved policies that establish expectations, define responsibilities, and provide a framework for accountability.

This appendix contains general reference information compiled from publicly available federal and New York State sources. It is provided for educational purposes only and is not part of the audit criteria applied in this review unless specifically referenced in the report body. It should not be interpreted as legal, tax, or accounting advice.

#### 1. Board Oversight

##### 1a. Board Oversight Responsibilities

Responsibility	Description	Purpose / Risk Mitigated	Applicable IRC Reference
Monitor Required Filings	Ensure timely submission of all required federal and NYS filings (e.g., Form 990, CHAR500)	Prevents penalties, loss of good standing, and revocation of tax-exempt status	IRC §6033; IRC §6033(j)
Approve Financial Policies	Review and approve key financial and governance policies	Establishes accountability and governance framework	IRC §501(c)(3)
Oversight of Internal Controls	Ensure appropriate financial controls are implemented and functioning	Reduces risk of fraud, waste, and misuse of funds	IRC §501(c)(3); IRC §4958
Compliance Monitoring	Periodically review compliance with regulatory and grant requirements	Ensures ongoing adherence to laws and funding conditions	IRC §6033
Documentation of Oversight	Maintain board minutes documenting financial oversight and decisions	Provides evidence of due diligence and governance	IRC §6001

##### 1b. Key Governance and Financial Policies

Adopting written policies is a necessary first step, but policies are only effective when they are communicated to staff, consistently applied, and reinforced through regular board review. Boards are encouraged to include a policy review as a standing item on their annual meeting agenda.

Policy Area	Purpose and Key Elements
Procurement and Purchasing	Governs purchasing procedures, vendor selection, competitive bidding thresholds, and approval authority. Includes provisions for sole-source and emergency procurements.
Credit Card	Typically defines authorized users, allowable expenses, and documentation requirements. Requires timely submission of receipts and supervisor or board review of reconciliations.
Travel, Meals & Entertainment Expense Reimbursement	Outlines how an organization manages, monitors, and reimburses costs incurred by employees while conducting business away from their usual workplace or entertaining clients. It usually defines what expenses are reimbursable, setting spending limits, and establishing the procedures for reporting and approval
Cash Handling and Bank Accounts	Covers the receipt, deposit, and disbursement of funds. Establishes segregation of duties, authorized signatories, and monthly reconciliation requirements.
Record Retention	Establishes minimum retention periods for financial records, contracts, invoices, and supporting documentation, consistent with IRS, New York State, and applicable grant requirements.
Conflict of Interest and Related-Party Transactions	Requires annual disclosure of potential conflicts by board members and staff. Prohibits participation in decisions where a personal or financial interest may compromise organizational integrity.

Policy Area	Purpose and Key Elements
Whistleblower and Fraud Reporting	Provides a mechanism for reporting suspected fraud, waste, or misuse of funds. Prohibits retaliation against individuals who report concerns in good faith.
Internal Controls and Compliance	Defines roles and responsibilities for financial oversight, budgeting, and reporting. Establishes procedures for reviewing and approving transactions, reconciliations, and financial statements. Establishes a framework to ensure compliance with adopted policies and provides for corrective action when deficiencies are identified.

### 1c. Key Filing Deadlines

Timely filing of required forms is essential to maintaining compliance.

#### Federal Filing Requirements

Form	Purpose	Deadline
Form 990 / 990-EZ / 990-N	Annual informational return	15th day of the 5th month after fiscal year-end
Form 990-T	Reports unrelated business income (UBIT)	Same as Form 990
Form 941	Quarterly payroll reporting	End of month following quarter
Form W-2	Employee wages	January 31
Form 1099-NEC	Independent contractors	January 31

#### New York State Filing Requirements

Form	Agency	Purpose	Deadline
CHAR500	NYS Charities Bureau	Annual financial report	4.5 months after fiscal year-end
CHAR410	NYS Charities Bureau	Registration (if applicable)	As required
CT-13 / CT-13-A	NYS Dept. of Taxation and Finance	State exempt organization filing	4.5 months after fiscal year-end
NYS-45	NYS Dept. of Taxation and Finance	Quarterly payroll reporting	End of month following quarter

Filing extensions may be available depending on filing type.

#### Key New York-Specific Considerations

Organizations registered with the Charities Bureau must file Form CHAR500 annually, even if no financial activity occurred.

The CHAR500 must include:

- A copy of the organization's IRS Form 990
  - Required financial statements (reviewed or audited, depending on revenue thresholds)
- Failure to file may result in:
  - Loss of registration status
  - Financial penalties
  - Restrictions on fundraising activities within New York State
- Organizations should track both federal and state deadlines, as they may differ in requirements and extensions.

## 2. Meals, Entertainment & Travel Expense Guidance

Non-profit organizations must ensure that all expenditures further the organization's mission and comply with applicable tax rules and internal policies.

General Principles:

- Expenses must be reasonable, necessary, and directly related to the organization's exempt purpose.
- All expenses must be supported by adequate documentation, including itemized receipts and a clear business purpose.
- Policies should clearly distinguish between allowable and non-allowable expenses.

Category	Guidance / Standard
<b>General Principle &amp; Governing Guidance</b>	Expenses must further the organization's exempt purpose, be reasonable, necessary, and properly documented. Must avoid private benefit. Follow standards from the Internal Revenue Service and apply an accountable plan framework.
<b>Travel – Allowable</b>	Conferences, training, program delivery, grant activities, and meetings with funders or stakeholders.
<b>Travel – Reasonableness</b>	Airfare (economy), lodging (moderate), meals (within per diem), transportation (cost-effective). Use General Services Administration per diem as a benchmark.
<b>Travel – Documentation</b>	Dates, location, business purpose, itemized receipts, proof of payment, agendas, mileage logs (if applicable).
<b>Travel – Best Practices</b>	Pre-approval required, written policy, spending limits, consistent reimbursement method (per diem or actual), timely submission (e.g., 30 days).
<b>Meals &amp; Entertainment – General Rule</b>	Meals & Entertainment expenses should be supported by a documented business or program purpose and reviewed for reasonableness.
<b>Meals &amp; Entertainment – Allowable (Limited)</b>	Modest meals with donors/partners, board meetings, or fundraising-related events tied to mission.
<b>Entertainment – Unallowable</b>	Personal celebrations, guest expenses without business purpose, or excessive hospitality expenses may present heightened compliance risk.
<b>Meals &amp; Entertainment – Documentation</b>	Names and affiliations of attendees, business purpose, itemized receipts, date/location, explanation of mission relevance, Agendas, meeting notices, invitations or program materials help substantiate the business purpose and measurable outcomes (if applicable)
<b>No Private Inurement/Excess Benefit</b>	Expenses must not provide disproportionate personal benefit to insiders (officers, directors, key employees). Violations may trigger penalties under Internal Revenue Code.
<b>Accountable Plan Requirements</b>	Must meet: (1) business connection, (2) substantiation, and (3) return of excess reimbursements. Otherwise, it may be treated as taxable wages.
<b>Internal Controls (approval &amp; authorization)</b>	Segregation of duties, independent review (especially executives), board oversight, approval thresholds, periodic audits.
<b>Alcohol (if applicable)</b>	If included in meals or events, consumption must be limited, reasonable, and consistent with policy. Alcohol-related expenditures generally warrant additional documentation and review for allowability under grant terms.
<b>Audit Red Flags</b>	Missing business purpose, no receipts, round-dollar amounts, excessive costs, weekend/holiday expenses without explanation, lack of independent approval.
<b>Policy Requirement</b>	Maintain a formal written T&E policy defining allowable costs, documentation standards, limits, and approval requirements.

Key Notes:

- Meals: Allowable if directly mission-related and properly documented; follow per-meal limits or per diem where possible.
- Entertainment: Generally disallowed unless it directly furthers the mission and is modest; high scrutiny from IRS audits.
- Travel: Must be necessary, reasonable, and supported by receipts and business purpose documentation.

### 3. Unrelated Business Income (UBIT) Considerations

Unrelated Business Income Tax (UBIT) applies when a tax-exempt organization generates income from activities that are not substantially related to its exempt purpose.

Even when an organization is tax-exempt, it may still be required to pay tax on certain types of income.

Activity	Guidance	Compliance Risk	IRC Reference
Fundraising Events	Occasional events generally not subject to UBIT	Low risk if not regularly carried on	IRC §513(a)
Ongoing Commercial Activity	Regular business activity may generate taxable income	Subject to UBIT and reporting on Form 990-T	IRC §511-514
Alcohol Sales	Regular sales may be considered unrelated business activity	May trigger UBIT and licensing requirements	IRC §513

#### 3a. Key Criteria (All Three Must Apply)

Income is generally subject to UBIT if the activity is:

1. A trade or business - Conducted to generate income from selling goods or services
2. Regularly carried on - Occurs frequently or continuously (similar to a for-profit business)
3. Not substantially related to the organization's mission - Does not directly support the organization's exempt purpose

#### Generally Subject to UBIT

- Operating a gift shop or café not related to the mission
- Running a bar or regular alcohol sales operation
- Renting out space with services provided (e.g., catering, staffing)
- Selling advertising in newsletters or websites
- Providing paid services unrelated to programs

#### Generally, NOT Subject to UBIT

- Occasional fundraising events (e.g., annual gala, festival)
- Activities conducted primarily by volunteers
- Sale of donated goods (e.g., thrift stores)
- Income directly related to the mission (e.g., museum admissions, program fees)

#### 3b. Key Compliance Requirements

- Report UBIT on Form 990-T
- Pay applicable federal (and possibly state) taxes
- Track unrelated income and expenses separately

#### 3c. Important Considerations

- Generating some UBIT does not automatically jeopardize tax-exempt status
- However, excessive unrelated activity may raise concerns with the IRS
- Proper classification and documentation are essential

#### Simple Rule of Thumb

If the activity looks like a regular business and is not tied to your mission, it may be subject to UBIT

#### 4. Alcohol Sales by Non-Profit Organizations: IRC §513

Non-profit organizations may sell alcohol at events provided they obtain appropriate state permits, ensure the activity is occasional and fundraising-related, maintain adequate documentation, and implement appropriate internal controls. Ongoing or unrelated alcohol sales may trigger tax liabilities and additional regulatory requirements. Organizations should also review grant agreements, as some funding sources prohibit alcohol-related expenditures regardless of tax treatment.

Category	Requirement / Guidance	Reference / Notes
<b>Licensing &amp; Permits</b>	Obtain appropriate NYS permit prior to event: Temporary Beer, Wine & Cider Permit for short-term events; Catering Permit or On-Premises License for regular sales	New York State Liquor Authority; local municipality approvals may also be required
<b>Eligible Activities</b>	Occasional fundraising events are generally exempt from UBIT; recurring or regular sales may trigger UBIT	IRC §511–514 (UBIT); §513 (unrelated trade/business)
<b>Purchasing &amp; Vendor Compliance</b>	Alcohol must be purchased from licensed distributors; age restrictions (21+) enforced	NYSLA regulations
<b>Internal Controls</b>	Board-approved policy, pre-approval of events, segregation of duties, controlled sales or cashless systems, inventory tracking	Best practices for audit and compliance
<b>Documentation</b>	Maintain permits, invoices, contracts, event purpose, attendee list, and revenue/expense records	Supports compliance and audit trail
<b>Risks of Non-Compliance</b>	Fines, permit revocation, UBIT exposure, reputational risk, grant compliance issues	NYSLA and IRS enforcement

##### 4a. State and Local Licensing (New York State)

In New York, alcohol sales are regulated by the New York State Liquor Authority.

Non-profits must obtain appropriate permits before selling alcohol:

- Temporary Beer, Wine & Cider Permit
- For one-day or short-term events
- Most common for fundraisers, festivals, and galas
- Catering Permit or On-Premises License (if applicable)
- Required if alcohol is sold regularly or through a contracted vendor
- Permit must be obtained in advance of the event
- Alcohol must be purchased from licensed distributors

Must comply with:

- Age restrictions (21+)
- Responsible service requirements
- Local municipality approvals may also be required

##### 4b. Federal Tax Considerations (IRS / UBIT)

Alcohol sales may trigger Unrelated Business Income Tax (UBIT) depending on how the activity is conducted.

Generally, NOT subject to UBIT:

- Occasional fundraising events (e.g., annual gala, festival)
- Activities not “regularly carried on”

May be subject to UBIT:

- Ongoing or recurring alcohol sales (e.g., operating a bar)
- Activities not substantially related to the organization’s exempt purpose

##### 4c. Financial Controls and Governance

Even when permitted, alcohol sales require strong internal controls to ensure compliance and accountability.

Recommended Controls:

- Board-approved policy addressing alcohol sales and use
- Pre-approval of events involving alcohol
- Segregation of duties (sales, cash handling, reconciliation)
- Use of cashless or controlled sales systems where possible
- Inventory tracking (to prevent loss or misuse)

4d. **Documentation Requirements**

Organizations should maintain:

- Copies of permits and licenses
- Vendor invoices (proof alcohol was purchased legally)
- Event records (date, purpose, attendees)
- Revenue and expense tracking specific to the event
- Contracts with caterers or third-party vendors

4e. **Risk Considerations**

Failure to comply may result in:

- Fines or penalties from the New York State Liquor Authority
- Loss of ability to hold future events
- Exposure to UBIT and IRS scrutiny
- Reputational risk and grant compliance issues

## 5. Payroll vs. Independent Contractor Guidance for Non-Profit Organizations

Non-profit organizations should classify workers based on the level of control and the nature of the working relationship.

Category	Guidance / Standard
Classification Principle	Based on control, financial dependence, and relationship (IRS common law test, IRC §3121(d)).
Employee (W-2)	Ongoing, supervised, integral to operations; regular hours; organization provides tools, training; paid wages with taxes withheld.
Independent Contractor (1099)	Project-based or specialized service; independent business; controls work method; multiple clients; paid per contract.
Compliance – Employees	Withhold/pay federal income, FICA; file Form W-2, Form 941; comply with wage and hour laws, unemployment insurance.
Compliance – Contractors	Obtain Form W-9; issue Form 1099-NEC for payments ≥ \$600; maintain contracts; avoid treating like employees.
Best Practices	Written classification policy; pre-approval of contractors; maintain W-9, contracts, invoices, payments; annual review.
Risks of Misclassification	IRS penalties, back taxes, interest/fines, state labor violations.

### **5a. Core Principle: Classification Is Based on Control (Not Preference)**

The IRS determines whether a worker is an employee or independent contractor based on the degree of control and independence, not what the organization chooses to call them.

Three Key IRS Factors:

- Behavioral Control – Does the organization control how the work is done?
- Financial Control – Are expenses reimbursed? Is payment hourly vs. per project?
- Relationship – Is the work ongoing? Are benefits provided?

### **5b. When a Worker Should Be on Payroll (W-2 Employee)**

A worker should generally be classified as an employee if:

- The organization controls how, when, and where work is performed
- The role is ongoing or integral to operations
- The individual works regular hours or under supervision
- The organization provides tools, equipment or training
- The worker is part of day-to-day operations

Examples:

- Administrative staff
- Program coordinators
- Site managers
- Regular event staff

Best Practice:

If the role looks like a job, functions like a job, and is ongoing → likely should be on payroll

### **5c. When Independent Contractor (1099) Is Appropriate**

A worker may be classified as an independent contractor if:

- They operate an independent business
- They control how the work is performed
- They are hired for a specific project or short-term service
- They use their own tools/equipment
- They work with multiple clients

Examples:

- Guest performers
- Grant writers (project-based)
- Marketing consultants
- IT specialists (contract work)

#### **5d. High-Risk Misclassification Areas (Common Audit Findings)**

Non-profits frequently misclassify:

- Workers performing ongoing roles but paid via 1099
- Individuals working set schedules under supervision
- Board members or officers receiving compensation improperly
- “Consultants” who function as staff

Red Flag:

If someone is paid regularly (weekly/monthly) and acts like staff → likely should be W-2

#### **5e. Payroll Compliance Requirements (Employees)**

If classified as an employee, the organization must:

Withhold and remit:

- Federal income tax
- Social Security and Medicare (FICA)

Filing requirements:

- Form W-2
- Form 941 (quarterly payroll tax)

Comply with:

- Wage and hour laws
- Unemployment insurance (state)

#### **5f. Independent Contractor Compliance (1099)**

For contractors, organizations must:

- Obtain Form W-9 before payment
- Issue Form 1099-NEC for payments ≥ \$600
- Maintain contracts defining scope of work
- Avoid treating contractors like employees

#### **5g. Best Practices for Non-Profits**

- Governance & Controls
- Adopt a written worker classification policy
- Common to document pre-approval for contractor engagements
- Maintain written contracts for all contractors

Documentation

- W-9 forms
- Contracts
- Invoices
- Payment records
- Periodic Review
  - Review worker classifications annually
  - Reclassify if roles evolve into employee-type positions

When in doubt, seek professional advice or IRS determination through Form SS-8.

### **5h. Risks of Misclassification**

Failure to properly classify workers may result in:

- IRS penalties and back taxes
- Liability for unpaid payroll taxes
- Interest and fines
- Exposure to state labor law violations

#### *Disclaimer*

*The guidance presented in this appendix reflects generally accepted governance practices and applicable federal and New York State requirements for tax-exempt organizations, including those required to file Form 990. While certain references are derived from provisions of the Internal Revenue Code, this appendix is not intended to represent a comprehensive statement of legal requirements. Not all provisions apply uniformly to every organization. Accordingly, this information is provided for general guidance only, and organizations should consult qualified legal or tax professionals regarding their specific circumstances.*

# Non-Profit Quick Reference: Tax, Filing, and T&E Guidance (501(c)(3))

## 1. Board Oversight & Governance

Responsibility	Purpose / Risk Mitigated	IRC Ref.
Monitor Filings	Ensure timely federal/NYS submissions	§6033; §6033(j)
Approve Policies	Establish financial accountability	§501(c)(3)
Oversight of Controls	Prevents fraud, misuse, errors	§501(c)(3); §4958
Compliance Monitoring	Adherence to laws and grants	§6033
Document Oversight	Board minutes as evidence	§6001

## 2. Filing Deadlines (FY End)

### Federal

Form	Purpose	Deadline
990 / 990-EZ / 990-N	Annual return	15th day of 5th month
990-T	Unrelated Business Income (UBIT)	Same as 990
941	Payroll	End of month post quarter
W-2 / 1099-NEC	Employee / Contractor	Jan 31

### New York

Form	Agency	Purpose	Deadline
CHAR500	NYS Charities Bureau	Annual financial report	4.5 months after fiscal year-end
CHAR410	NYS Charities Bureau	Registration (if applicable)	As required
CT-13 / CT-13-A	NYS Dept. of Taxation and Finance	State exempt organization filing	4.5 months after fiscal year-end
NYS-45	NYS Dept. of Taxation and Finance	Quarterly payroll reporting	End of month following quarter

## 3. Alcohol Sales (Events / Fundraisers)

Category	Guidance	Ref / Notes
Licensing	Temporary or catering permit required	NYSLA
Eligible Activities	Occasional fundraising exempt; regular sales may trigger UBIT	§511–514; §513
Controls & Documentation	Board approval, segregation of duties, invoices, attendee list, event purpose	Audit best practice
Risks	Fines, UBIT, permit revocation, reputational risk	NYSLA / IRS enforcement

## 4. Meals, Entertainment & Travel (T&E)

Category	Guidance / Standard	IRC Ref.
General	Must support exempt purpose; reasonable, necessary; documented	§501(c)(3); §62(a)(2)(A)
Travel	Conferences, training, stakeholder meetings; moderate lodging/transport	GSA per diem benchmark
Meals	Modest, mission-related, board/donor meetings; avoid excess	§274(d)
Entertainment	Generally disallowed unless modest, mission-related	§274; §4958
Documentation	Receipts, date/location, purpose, attendees, agendas, measurable outcomes	§274; §4958
Internal Controls	Pre-approval, segregation of duties, board oversight, periodic audits	§501(c)(3); §4958

## 5. Unrelated Business Income (UBIT)

Activity	Guidance	IRC Ref.
Occasional Fundraising	Generally, not subject	§513(a)
Regular Commercial Activity	Reportable; may trigger UBIT	§511–514
Alcohol Sales	Regular sales may be taxable	§513

**Rule of Thumb:** Subject to UBIT if 1) trade/business, 2) regularly carried on, 3) not substantially related to mission.

## 6. Payroll vs. Independent Contractor

Category	Guidance	IRC Ref.
Employee (W-2)	Ongoing, supervised, integral to operations; taxes withheld	§3121(d); IRS Common Law Test
Contractor (1099)	Project-based, independent, multiple clients; control own work	§3121(d)
Compliance	Employees: W-2, 941, wage laws; Contractors: W-9, 1099-NEC, contract	IRS Publications 15-A, 15-B
Best Practices	Written classification policy, contracts, pre-approval, annual review	IRS guidance
Risk	Misclassification → penalties, back taxes, interest, state labor violations	§3121(d); IRS enforcement