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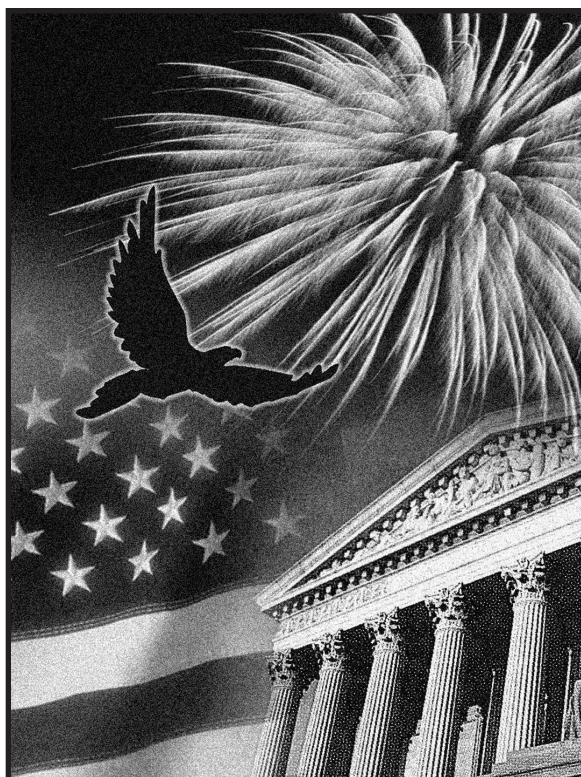
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## Publication 557

(Rev. January 2023)

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# Tax-Exempt Status for Your Organization



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## What's New

**Future developments.** The IRS has created a page on IRS.gov for information about Publication 557, at [IRS.gov/Pub557](https://www.irs.gov/pub/557). Information about any future developments affecting Publication 557 (such as legislation enacted after we release it) will be posted on that page.

## Reminders

**Electronic Form 1024.** As of January 3, 2022, Form 1024, Application for Recognition of Exemption Under Section 501(a) or Section 521, must be submitted for electronic filing on Pay.gov. As part of the revision, applications for recognition of exemption under Sections 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), (29), and 501(d) can no longer be submitted as letter applications. Instead, these requests must be made on the electronic Form 1024.

Also, organizations requesting determinations under Section 521 are now able to use the electronic Form 1024 instead of Form 1028, Application for Recognition of Exemption Under Section 521.

**Update on mandatory e-filing.** The Taxpayer First Act, enacted July 1, 2019, requires tax-exempt organizations to electronically file information returns and related forms. The new law affects tax-exempt organizations in tax years beginning after July 1, 2019.

- **Forms 990-T & 4720 are available for e-filing in 2022.** In 2020, the IRS continued to accept paper Form 990-T, Exempt Organization Business Income Tax Return, and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, pending conversion into electronic format. As described below, in 2021 the IRS announced e-filing is required for these forms.

For Form 990-T, any 2020, and any future year Form 990-T with a due date on or after April 15, 2021, must be filed electronically and not on paper.

For Form 4720, any 2020, and any future year, Form 4720 filed by a private foundation with a due date on or after July 15, 2021, must be filed electronically and not on paper. Organizations other than private foundations that are required to file

Form 4720 are encouraged, but not required, to file Form 4720 electronically.

- **Forms 990, 990-EZ, & 990-PF e-filing.** Form 990, Return of Organization Exempt From Income Tax, and Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, for tax years ending July 31, 2020, and later MUST be filed electronically.

Form 990-EZ, Short Form Return of Organizations Exempt from Income Tax, for tax years ending July 31, 2021, and later MUST be filed electronically. The transitional relief applicable to the Form 990-EZ under which the IRS accepted either paper or electronic filing of Form 990-EZ applied only for tax years ending before July 31, 2021.

More information on software providers is available on the [Exempt Organizations Modernized e-File \(MeF\) Providers](https://www.irs.gov/efile/modernized-e-file) page.

For more information, go to [IRS: Recent legislation requires tax exempt organizations to e-file forms](https://www.irs.gov/efile/modernized-e-file).

**Section 501(c)(21) trusts.** Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, will be a historical form beginning with tax year 2021. Section 501(c)(21) trusts can no longer file Form 990-BL and will file Form 990 (or submit Form 990-N, if eligible) to meet their annual filing obligations under section 6033. Some section 501(c)(21) trusts may also be required to file Form 6069, Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953.

**Reporting of donor information (Form 990, 990-EZ, and 990-PF).** [Final regulations](https://www.irs.gov/efile/modernized-e-file) provide that the requirement to report contributor names and addresses on annual returns generally applies only to returns filed by Section 501(c)(3) organizations and Section 527 political organizations. All tax-exempt organizations must continue to maintain the names and addresses of their substantial contributors in their books and records.

**IRS not accepting requests for group exemption numbers.** The IRS will not accept any requests for group exemption letters starting on June 17, 2020, until publication of the final revenue procedure or other guidance in the Internal Revenue Bulletin. See Notice 2020-36.

**Automatic revocation.** Regarding automatic revocation for the failure to file a return or notice for 3 consecutive years, as required by section 6033, the Taxpayer First Act of 2019, P.L. 116-25, added a requirement that the IRS notify the organization after the organization has failed to file for 2 consecutive years. See Automatic Revocation, later, for more information, including applicability dates.

**Electronic Form 1023.** Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, is available only as an electronic form filed on Pay.gov. Form 1023-EZ, Streamlined Application, is already on Pay.gov.

**Tax on investment income of private foundations.** The Taxpayer Certainty and Disaster Tax Relief Act of 2019, reduced the 2% excise tax on investment income of private foundations

to 1.39%. At the same time, the legislation repealed the 1% special rate that applied if the private foundation met certain distribution requirements. The change is effective for taxable years beginning after December 20, 2019.

**Increase in UBTI for disallowed fringe repealed.** The Taxpayer Certainty and Disaster Tax Relief Act of 2019 retroactively repealed Internal Revenue Code Section 512(a)(7), which increased unrelated business taxable income by amounts paid or incurred for qualified transportation fringes. Congress had previously enacted this provision for amounts paid or incurred after December 31, 2017.

**Excise tax on executive compensation.** Section 4960, added by P.L. 115-97, effective for tax years beginning after December 17, 2017, imposes an excise tax on an organization that pays to any covered employee more than \$1 million in remuneration or pays an excess parachute payment during the year starting in 2018. See [Excise Tax on Executive Compensation](#), chapter 5. See also section 4960 and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, for more information.

**Excise tax on net investment income of certain colleges and universities.** Section 4968 imposes an excise tax on the net investment income of certain private colleges and universities. See [Excise Tax on Net Investment Income of Certain Colleges and Universities](#), chapter 5. See also section 4968 and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, for more information.

**Separate UBTI calculation for each trade or business.** Organizations with more than one unrelated trade or business must compute unrelated business taxable income (UBTI), including for purposes of determining any net operating loss deduction, separately with respect to each such trade or business. See [Unrelated Business Income Tax Return](#), chapter 2. See also Schedule A (Form 990-T). The UBTI with respect to any such trade or business shall not be less than zero when computing total UBTI.

**Exception from the excise tax on excess business holdings.** Section 4943(g) created an exception from the excise tax on excess business holdings for certain independently operated enterprises whose voting stock is wholly owned by a private foundation. For more details, see [Excess Business Holdings](#), chapter 5.

**Organizational changes.** For tax years beginning on or after January 1, 2018, the IRS will no longer require a new exemption application from a domestic section 501(c) organization that undergoes certain changes of form or place of organization, as described in Rev. Proc. 2018-15, 2018-9 I.R.B. 379.

**Group exemptions.** Beginning January 2019, the IRS will no longer send the List of Parent and Subsidiary Accounts to the central organizations. See [Group Exemption Letter](#), later.

**Form 8976.** Each new section 501(c)(4) organization must notify the IRS of its intent to operate as a section 501(c)(4) organization regardless of whether it will seek recognition of its exempt status under section 501(c)(4). Use Form 8976, Notice of Intent to Operate Under Section 501(c)(4), to provide this notification.

Form 8976 may only be completed and submitted electronically at: [Electronically Submit Your Form 8976, Notice of Intent to Operate Under Section 501\(c\)\(4\)](#).

**Forms, instructions, and publications.** All IRS forms, instructions and publications mentioned in this publication can be accessed on [IRS.gov](#) from the Forms and Instructions page.

## Introduction

This publication discusses the rules and procedures for organizations that seek recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the Code). It explains the procedures you must follow to obtain an appropriate determination letter recognizing your organization's exemption, as well as certain other information that applies generally to all exempt organizations. To qualify for exemption under the Code, your organization must be organized for one or more of the purposes specifically designated in the Code. Organizations that are exempt under section 501(a) include those organizations described in section 501(c). Section 501(c) organizations are covered in this publication.

Chapter 1, [Application, Approval, and Appeal Procedures](#), provides general information about the procedures for obtaining recognition of tax-exempt status.

Chapter 2, [Filing Requirements and Required Disclosures](#), contains information about annual filing requirements and other matters that may affect your organization's tax-exempt status.

Chapter 3, [Section 501\(c\)\(3\) Organizations](#), contains detailed information on various matters affecting section 501(c)(3) organizations, including a section on the determination of private foundation status.

Chapter 4, [Other Section 501\(c\) Organizations](#), includes separate sections for specific types of organizations described in section 501(c).

Chapter 5, [Excise Taxes](#), provides information on when excise taxes may be imposed.

Chapter 6, [How to Get Tax Help](#), provides tips and resources on where to find answers to tax questions or other assistance.

**Organizations not discussed in this publication.** Certain organizations that may qualify for exemption aren't discussed in detail in this publication, although they are included in the [Organization Reference Chart](#) and the application procedures discussed in Chapter 1. These organizations (and the Code sections that apply to them) are as follows:

Corporations organized under Acts of Congress	501(c)(1)
Teachers' retirement fund associations	501(c)(11)
Mutual insurance companies	501(c)(15)
Corporations organized to finance crop operations	501(c)(16)
Employee funded pension trusts (created before June 25, 1959)	501(c)(18)
Withdrawal liability payment fund	501(c)(22)
Veterans' organizations (created before 1880)	501(c)(23)
National Railroad Retirement Investment Trust	501(c)(28)
Religious and apostolic associations	501(d)
Cooperative hospital service organizations	501(e)
Cooperative service organizations of operating educational organizations	501(f)

Section 501(c)(24) organizations (section 4049 ERISA trusts) are neither discussed in the text nor listed in the [Organization Reference Chart](#).

Similarly, farmers' cooperative associations that qualify for exemption under section 521, qualified state tuition programs described in section 529, qualified ABLE programs described in section 529A, and pension, profit-sharing, and stock bonus plans described in section 401(a) aren't discussed in this publication. Visit [IRS.gov](#) for more information on these types of organizations. For telephone assistance, call 1-877-829-5500.

Check the [Table of Contents](#) at the beginning of this publication to determine whether your organization is described in this publication. If it is, read the chapter (or section) that applies to your type of organization for the specific information you must give when applying for recognition of exemption.

**Organization Reference Chart.** The [Organization Reference Chart](#) enables you to locate at a glance the section of the Code under which your organization might qualify for exemption. It also shows the required application form and, if your organization meets the exemption requirements, the annual return to be filed (if any), and whether or not a contribution to your organization will be deductible by a donor. It also describes each type of qualifying organization and the general nature of its activities.

You may use the [Organization Reference Chart](#) to identify the Code section that you think applies to your organization. Any correspondence with the IRS (in requesting forms or otherwise) can be responded to faster if you indicate in your correspondence the appropriate Code section. Check the IRS website, [IRS.gov](#), for the latest updates, [Tax Information for Charities & Other Non-Profits](#).

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](#). Or, you can write to Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as



we revise our tax forms, instructions, and publications. **Don't** send tax questions, tax returns, or payments to the above address.

**Getting answers to your tax questions.** If you have a tax question not answered by this publication or [How to Get Tax Help](#) section at the end of this publication, go to the IRS Interactive Tax Assistant page at [IRS.gov/Help/ITA](https://www.irs.gov/Help/ITA) where you can find topics using the search feature or by viewing the categories listed.

**Getting tax forms, instructions, and publications.** Visit [IRS.gov/Forms](https://www.irs.gov/Forms) to download current and prior-year forms, instructions, and publications.

**Ordering tax forms, instructions, and publications.** Go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to order current forms, instructions, and publications; call 800-829-3676 to order prior-year forms and instructions. The IRS will process your order for forms and publications as soon as possible. **Don't** resubmit requests you've already sent us. You can get forms and publications faster online.

# 1.

## Application, Approval, and Appeal Procedures

### Introduction

If your organization is one of the organizations described in this publication and is seeking recognition of tax-exempt status from the IRS, you should follow the procedures described in this chapter and the instructions that accompany the appropriate application forms.

For information on section 501(c)(3) organizations, go to [Section 501\(c\)\(3\) Organizations, chapter 3](#). If your organization is seeking exemption under one of the other paragraphs of section 501(c), see [chapter 4](#).

### Topics

This chapter discusses:

- Application procedures that generally apply to all organizations discussed in this publication, including the application forms;
- Determination letters (approvals/disapprovals);
- Appeal procedures available if an adverse determination letter is proposed; and
- Group exemption letters.

## Application Procedures

Oral requests for recognition of exemption won't be considered by the IRS. Your application for recognition of tax-exempt status must be in writing using the appropriate forms, as discussed below.

## Forms Required

If your organization is seeking recognition of exemption from federal income tax, it must use a specific application prescribed by the IRS in [Rev. Proc. 2023-5, I.R.B. 256](#), as amended by [Rev. Proc. 2023-8](#). If your organization is a central organization with exempt status, see [Group Exemption Letter](#), later. All applications must be signed by an authorized individual.

**Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.** File Form 1023 if you are seeking recognition of exemption under section:

- 501(c)(3) Corporations, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports, or prevention of cruelty for children or animals, including the following types of organizations to which the specified subsections are applicable;
- 501(e) Cooperative hospital service organization;
- 501(f) Cooperative service organization of operating educational organizations;
- 501(k) Certain organizations providing child care;
- 501(n) Charitable risk pools;
- 501(q) Credit counseling organizations, and
- 501(r) Hospital organizations.

Applications for exempt status on a Form 1023 must be electronically submitted through [Pay.gov](https://www.pay.gov). See [Rev. Proc. 2023-5](#).

**Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.** You may be eligible to file Form 1023-EZ if you are a smaller organization (assets of \$250,000 or less and annual gross receipts of \$50,000 or less) seeking recognition of exemption under section 501(c)(3). See [Rev. Proc. 2023-5](#).

Applications for exempt status on a Form 1023-EZ must be electronically submitted through [Pay.gov](https://www.pay.gov).

**Form 1024, Application for Recognition of Exemptions Under Section 501(a) or Section 521 of the Internal Revenue Code.** File Form 1024 if you are seeking recognition of exemption under section:

- 501(c)(2) Title holding corporations;
- 501(c)(5) Labor, agricultural, or horticultural organizations;
- 501(c)(6) Business leagues, chambers of commerce, etc.;
- 501(c)(7) Social clubs;

- 501(c)(8) Fraternal beneficiary societies, orders, or associations;
- 501(c)(9) Voluntary employees' beneficiary associations;
- 501(c)(10) Domestic fraternal societies, orders, etc.;
- 501(c)(11) Teachers' Retirement Fund Associations;
- 501(c)(12) Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies;
- 501(c)(13) Cemetery companies;
- 501(c)(14) State-Chartered Credit Unions, Mutual Reserve Funds;
- 501(c)(15) Mutual insurance companies or associations;
- 501(c)(16) Cooperative Organizations to Finance Crop Operations;
- 501(c)(17) Trusts providing for the payment of supplemental unemployment compensation benefits;
- 501(c)(18) Employee Funded Pension Trust (created before June 25, 1959);
- 501(c)(19) A post, organization, auxiliary unit, etc. of past or present members of the Armed Forces of the United States;
- 501(c)(21) Black Lung Benefit Trusts;
- 501(c)(22) Withdrawal Liability Payment Fund;
- 501(c)(23) Veterans' Organization (created before 1880);
- 501(c)(25) Title holding corporations or trusts;
- 501(c)(26) State-Sponsored Organization Providing Health Coverage for High-Risk Individuals;
- 501(c)(27) State-Sponsored Workers' Compensation Reinsurance Organization;
- 501(c)(28) National Railroad Retirement Investment Trust;
- 501(c)(29) CO-OP health insurance issuers, and
- 501(d) Religious and Apostolic Associations.

Also, organizations requesting determinations under Section 521 are now able to use the electronic Form 1024 instead of Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code

As of January 3, 2022, applications for exempt status on a Form 1024 must be electronically submitted through [Pay.gov](https://www.pay.gov).

**Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.** File Form 1024-A if you are seeking recognition of exemption under section 501(c)(4).

Submitting Form 1024-A does not satisfy an organization's requirement to notify the Commissioner that it is operating under section 501(c)(4), as required by section 506. See [IRS.gov](#) for information on satisfying the notification requirement using Form 8976, Notice of Intent to Operate Under Section 501(c)(4).

Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4), must be filed electronically on [Pay.gov](https://www.pay.gov).

**Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.** Use Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code, if your organization is a farmers' cooperative seeking recognition of exemption under section 521. You must also submit Form 8718.

Alternatively, organizations requesting determinations under Section 521 are now able to use the electronic Form 1024 instead of Form 1028.

**Form 8871, Political Organization Notice of Section 527 Status.** Use Form 8871, Political Organization Notice of Section 527 Status, if you are a political organization seeking to be treated as tax-exempt under section 527 unless an exception applies. See [Political Organization Income Tax Return](#), later.

Some organizations don't have to use specific application forms. The application your organization must use is specified in the chapter in this publication dealing with your kind of organization. It is also shown in the [Organization Reference Chart](#), later.

Form 8871 must be filed at the [IRS Political Organizations Filing and Disclosure](#) site.

**Power of attorney.** If your organization expects to be represented by an individual such as an attorney, CPA, officer or other person authorized to practice before the IRS, whether in person or by correspondence, you must file a Form 2848, Power of Attorney and Declaration of Representative, with your exemption application. The power of attorney must specifically authorize an individual to represent your organization. You can't name an organization, firm, etc. as your representative. Form 2848 can be used for this purpose. The categories of individuals who can represent you before the IRS are listed on the form.

**Form 8940, Request for Miscellaneous Determination.** You can request miscellaneous determinations under sections 507, 509(a), 4940, 4942, 4945, and 6033 using Form 8940. Nonexempt charitable trusts also file Form 8940 for an initial determination of section 509(a)(3) status or change to their type. See Form 8940 and instructions for more information.



#### **Requests other than applications.**

Requests other than applications for recognition of exemption or Form 8940 (for example, requests for letter rulings involving feeder organizations, application of excise taxes to activities of private foundations, taxation of unrelated business income, etc.) should be sent to the appropriate address listed in Rev. Proc. 2023-1, 2023-1 I.R.B. 1.

These requests, similar to applications for recognition of exemption previously discussed, must be accompanied by the appropriate user fee. The schedule for user fees, including those for requests other than applications, can be found in Rev. Proc. 2023-1.

Exempt Organization (EO) Determinations can request technical advice from the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) on any question that can't be resolved

on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent. See section 3, Rev. Proc. 2023-5.

**Reminder.** The law requires payment of a user fee for determination letter requests. Go to [Rev. Proc. 2023-1](#), Appendix A, to find the required payment. Payment must accompany each request.

**Non-exemption for terrorist organizations.** An organization that is identified or designated as a terrorist organization within the meaning of section 501(p)(2) isn't eligible to apply for recognition of exemption.

**User fee.** The law requires the payment of a user fee for determination letter requests such as your application for recognition of tax-exempt status. User fees are listed in Rev. Proc. 2023-1, Appendix A. If you are filing Form 1023, Form 1023-EZ, Form 1024 or 1024-A, the user fee must be submitted through [Pay.gov](#).



*For the current user fee amount and other information about applying for tax-exempt status, go to [IRS.gov](#) and select "Charities and Non-Profits" from the buttons near the top. Next, select "Applying for Tax-Exempt Status" for more information. You can also call 1-877-829-5500.*

## **Required Information and Documents**

**Employer identification number (EIN).** Every exempt organization must have its own EIN, whether or not it has any employees. An EIN is required before an exemption application is submitted. Information on how to apply for an EIN can be found online at [Employer ID Numbers \(EIN\)](#). The EIN is issued immediately once the application information is validated.

If you previously applied for an EIN and haven't yet received it, or you are unsure whether you have an EIN, please call our toll-free customer account services number, 1-877-829-5500, for assistance.

**Organizing documents.** If you are submitting an application other than Form 1023-EZ, your application should include a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or meets the requirements of a conformed copy in Rev. Proc. 2011-9, sec. 3.08(5). If you are submitting a Form 1023-EZ, you don't need to include a copy of your organizing documents with the application. However, you may be asked to provide it during the application review process.

If your organizing or enabling document are articles of incorporation, include evidence that it was filed and approved by a state official. (For example, a stamped "Filed" copy dated by the Secretary of State is *prima facie* evidence that it was filed and approved by a state official.) A copy of the articles of incorporation can also be submitted with a written declaration signed by an authorized individual indicating the copy is

complete and was filed and approved by the state, including the date filed.

If you are formed as a limited liability company and have adopted an operating agreement, submit the operating agreement along with your state-approved articles of organization.

If your organization's name has been officially changed by an amendment to your organizing instruments, you should also attach a conformed copy of that amendment to your application.

**Conformed copy.** A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy should either be signed by a principal officer or, if not signed, be accompanied by a written declaration signed by an authorized officer of the organization. With either option, the officer must certify that the document is a complete and accurate copy of the original. A certificate of incorporation should be approved and dated by an appropriate state official.

**Bylaws.** Bylaws alone aren't organizing documents. However, if your organization has adopted bylaws, include a current copy. The bylaws need not be signed if submitted as an attachment.



*Bylaws may be considered an organizing document only if they are properly structured (includes name, purpose, signatures, and intent to form an organization).*

**Attachments.** When submitting attachments, every attachment should show your organization's name and EIN. It should also state that it is an attachment to your application form and identify the part and line item number to which it applies.

**Original documents.** Don't submit original documents because they become part of the IRS file and can't be returned.

**Description of activities.** Your application must include a full description of the proposed activities of your organization, including each of the fundraising activities of a section 501(c)(3) organization and a narrative description of anticipated receipts and contemplated expenditures. When describing the activities in which your organization expects to engage, you must include the standards, criteria, procedures, or other means that your organization adopted or planned for carrying out those activities.

To determine the information you need to provide, you should study the part of this publication that applies to your organization. The appropriate chapter will describe the purposes and activities that your organization must pursue, engage in, and include in your application in order to achieve exempt status.

Often, your organization's articles of organization (or other organizing instruments) contain descriptions of your organization's purposes and activities.

Your application should describe completely and in detail your past, present, and planned activities.

If you are filing Form 1023-EZ, also review the [Instructions for Form 1023-EZ](#) for more

information about what to include in your description.

**Financial data.** Unless you are filing Form 1023-EZ, you must include in your application a statement of revenues and expenses for the number of years specified in the applicable form instructions. For each accounting period, you must describe the sources of your receipts and the nature of your expenditures. You must also include a balance sheet for your most recently completed tax year or if you haven't completed a full tax year, the most current information available.

If you haven't yet begun operations, or have operated for less than 1 year, a proposed budget for 2 full accounting periods and a current statement of assets and liabilities will be acceptable.

**Exempt status established in application.** If your application and its supporting documents show that your organization meets the requirements for tax-exempt status under the Code section you applied, the IRS will issue a favorable determination letter.

## Miscellaneous Procedures

To help in processing your application, be sure to attach all schedules, statements, and other documents required by the application form. If you don't attach them, you may have to resubmit your application or you may otherwise encounter a delay in processing your application.

**Incomplete application.** If an application isn't complete and doesn't contain all the required attachments found under [Required Inclusions](#), the IRS will return it to you for completion. The IRS will no longer request the missing information if the application is incomplete. However, the IRS may, but is not required to, request additional information to validate information presented or to clarify an inconsistency on a Form 1023-EZ. See [Rev. Proc. 2023-5, 2023-1 I.R.B. 256](#).

If the IRS returns the application or requests additional information from you, that application will be considered filed on the date the substantially completed application is postmarked, or if no postmark, received at the IRS.

For applications that are returned to the applicant because they aren't complete, the user fee will be returned or refunded.

Additional information may be requested if necessary to clarify the nature of your organization.

**IRS responses.** Organizations that successfully submit Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A on Pay.gov will receive an email from Pay.gov confirming payment of the user fee. Organizations that submit a complete Form 1024 application will receive an acknowledgment from the IRS. In addition, any applicant may receive a letter requesting additional information the IRS needs to make its determination. These letters will be sent out as soon as possible after receipt of the organization's application.

**Withdrawal of application.** An organization may withdraw an application at any time before the issuance of a determination letter upon the written request of a principal officer or authorized representative of your organization. However, the withdrawal won't prevent the information contained in the application from being used by the IRS in any subsequent examination of your organization's returns. The information forwarded with an application won't be returned to your organization and, generally, when an application is withdrawn, the user fee paid won't be refunded.

**Requests for withholding of information from the public.** The law requires many exempt organizations and private foundations to make their application forms and annual information returns available for public inspection. The law also requires the IRS to make available for public inspection, in accordance with section 6104 and the related regulations, your approved application for recognition of exemption (including any papers submitted in support of the application) and the determination letter (discussed later, under [Determination Letters](#)).

Any information submitted in the application or in support of it that relates to any trade secret, patent, process, style of work, or apparatus, upon request, can be withheld from public inspection if the IRS determines that the disclosure of such information would adversely affect the organization. Your request must:

1. Identify the material to be withheld (the document, page, paragraph, and line) by clearly marking it **"Not Subject to Public Inspection."**
2. Explain why the information is of the type that can be withheld from public inspection.
3. Be filed with the office where your organization files the documents in which the material to be withheld is contained.

**Where to file.** Submit Form 1023, 1023-EZ, 1024, or 1024-A through Pay.gov.

EO Determinations will consider your complete application and will issue you a favorable determination letter, an adverse letter denying the exempt status requested in your application or, if you are asked to provide supplemental information and fail to respond, may close your case without making a determination if you don't respond to a request for additional information. EO Determinations will also close your case without a determination if you withdraw your request.

## Determination Letters

**Public charity status.** A new section 501(c)(3) organization will be classified as a publicly supported organization and not a private foundation if it can show when it applies for tax-exempt status that it reasonably can be expected to be publicly supported.

An organization must describe fully the activities in which it expects to engage. This includes standards, procedures, or other means

adopted or planned by the organization for carrying out its activities, expected sources of funds, and the nature of its contemplated expenses.

**Adverse determination.** A proposed adverse determination letter will be issued to an organization that has not provided sufficiently detailed information to establish that it qualifies for exemption or if the information provided establishes that it doesn't qualify for exemption. An organization can appeal a proposed adverse determination letter. See [Appeal Procedures](#), later.

**Expedited handling.** Exempt organization determination letter requests may be eligible for expedited handling under section 4.09 of Rev. Proc. 2023-5, as modified by section 3.02 of Rev. Proc. 2023-8.

## Effective Date of Exemption

A determination letter recognizing exemption is usually **effective as of the date of formation of an organization** if, the organization submitted the application for recognition of exemption within 27 months from the end of the month in which it was organized and during the period before the date of the determination letter, its purposes and activities are consistent with the requirements for exempt status under the applicable section of 501(c). Upon obtaining recognition of exemption, the organization can file a claim for a refund of income taxes paid for the period for which its exempt status is recognized.

An organization that does not submit its application for exemption within that 27-month period but otherwise meets the requirements for tax-exempt status will be recognized as exempt from the postmark date of application or the submission date of its Form 1023, Form 1024, Form 1023-EZ, or Form 1024-A, if applicable. See Rev. Proc. 2023-5, as amended by Rev. Proc. 2023-8.

If an organization is required to alter its activities or substantially amend its charter to qualify, the determination letter recognizing exemption will be **effective as of the date specified in the letter**. If a nonsubstantive amendment is made, such as correction of a clerical error in the enabling instrument or the addition of a dissolution clause, exemption will ordinarily be recognized as of the date of formation if the activities of the organization before the determination are consistent with the exemption requirements.

A determination letter recognizing exemption can't be relied on if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization. Also, a determination letter can't be relied on if it is based on any omission or inaccurate material information submitted by the organization. See section 11 of Rev. Proc. 2023-5.

For more information about the effective date of exemption, see [Rev. Proc. 2023-5](#), section 6.



## Revocation of Exemption

A determination letter recognizing exemption may be revoked by:

1. A notice to the organization to which the determination letter originally was issued,
2. Enactment of legislation or ratification of a tax treaty,
3. A decision of the United States Supreme Court,
4. Issuance of temporary or final regulations, or
5. Issuance of a revenue ruling, a revenue procedure, or other statement published in the Internal Revenue Bulletin or Cumulative Bulletin.
6. Section 6033(j), for failure to file a required annual return or notice, for 3 consecutive years, automatically.

**When revocation takes effect.** If the organization omitted or misstated material information, operated in a manner materially different from that originally represented, or, with regard to organizations to which section 503 applies, engaged in a prohibited transaction (such as diverting corpus or income from its exempt purpose), or if there has been a change in the applicable law, the revocation or modification may be retroactive.

**Material change in organization.** If there is a material change, inconsistent with exemption, in the character, purpose, or method of operation of the organization, revocation or modification will ordinarily take effect as of the date of that material change. An organization may seek relief from retroactive revocation or modification of a determination letter under section 7805(b). For more information on requesting section 7805(b) relief, see section 12 of Rev. Proc. 2023-5

**Relief from retroactivity.** If a determination letter was issued in error or the IRS changed its position after issuing a letter, and if section 7805(b) relief is granted, retroactivity of the revocation ordinarily will be limited to a date not earlier than that on which the original determination letter was revoked.

**Foundations.** The determination of the effective date is the same for the revocation or modification of foundation status or operating foundation status unless the effective date is expressly covered by statute or regulations.

**Written notice.** If the IRS concludes, as a result of examining an information return or considering information from any other source, that a determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons for it.

The organization will also be advised of its right to protest the proposed action by requesting Independent Office of Appeals consideration. The appeal procedures are discussed next.

## Appeal Procedures

If your organization applies for recognition of tax-exempt status and Rulings and Agreements determines your organization doesn't qualify for exemption, your organization will be advised of its rights to protest the determination by requesting Independent Office of Appeals consideration. Your organization must submit a statement of its views fully explaining its reasoning. The statement must be submitted within 30 days from the date of the proposed adverse determination letter and must state whether your organization wishes Independent Office of Appeals consideration.

**Representation.** A principal officer or trustee can represent an organization at any level of appeal within the IRS. Also, an attorney, certified public accountant, or individual enrolled to practice before the IRS can represent the organization.

If the organization's representative attends a conference without a principal officer or trustee, the representative must file a proper power of attorney or a tax information authorization before receiving or inspecting confidential information. Form 2848 or Form 8821, Tax Information Authorization, as appropriate (or any other properly written power of attorney or authorization), can be used for this purpose. These forms are available on IRS.gov from the Forms and Instructions page. For more information, see Publication 947, Practice Before the IRS and Power of Attorney, which is also available on IRS.gov from the Forms and Instructions page.

## Independent Office of Appeals Consideration

Before forwarding a case to the Independent Office of Appeals, Rulings and Agreements will consider the applicant's statement protesting and appealing (hereinafter *appealing*) the proposed adverse determination. If the organization does not submit the information that provides a basis for Rulings and Agreements to reconsider its adverse determination, it will forward the appeal and case file to the Independent Office of Appeals. For more information about the role of the Independent Office of Appeals, see Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status. The appeal should include the following information.

1. The organization's name, address, daytime telephone number, and employer identification number.
2. A statement that the organization wants to protest the determination.
3. A copy of the letter showing the determination you disagree with, or the date and IRS office symbols on the determination letter.
4. A statement of facts supporting the organization's position in any contested factual issue.
5. A statement outlining the law or other authority the organization is relying on.

6. A statement as to whether a conference at the Independent Office of Appeals is desired.

The statement of facts in item 4 must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and statements and, to the best of my knowledge and belief, it is true, correct, and complete."

Signature.

If the organization's representative submits the appeal, a substitute declaration must be included, stating:

1. That the representative prepared the appeal and accompanying documents, and
2. Whether the representative knows personally that the statements of fact contained in the appeal and accompanying documents are true and correct.

Be sure the appeal contains all of the information requested. Incomplete appeals will be returned for completion.

The Independent Office of Appeals, after any requested conference and upon consideration of the organization's appeal, as well as information presented in any conference held, will generally notify the organization of its decision and issue an appropriate determination letter. An adverse decision can be appealed to the courts (discussed later). If new information is submitted during Independent Office of Appeals consideration, the matter may be returned to Rulings and Agreements for further consideration. See section 9 of Rev. Proc. 2023-5 for more information.

The Independent Office of Appeals must request technical advice on any exempt organization issue concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that nonuniformity exists. If an organization believes that its case involves such an issue, it should ask the Independent Office of Appeals to request technical advice.

Any determination letter issued on the basis of technical advice can't be appealed to the Independent Office of Appeals for those issues that were the subject of the technical advice.

## Administrative Remedies

In the case of an application under section 501(c) or 501(d) and exempt from tax under 501(a), all of the following actions, called administrative remedies, must be completed by your organization before an unfavorable determination letter from the IRS can be appealed to the courts.

1. The filing of the correct completed application or group exemption request under section 501(c), or 501(d) and exempt from tax under 501(a) (described earlier in this chapter) or the filing of a request for a

determination of foundation status (see [Private Foundations and Public Charities](#) in chapter 3).

2. In the case of a late-filed application, requesting relief under Regulations section 301.9100 regarding applications for extensions of time for making an election or application for relief from tax (see [Application for Recognition of Exemption](#) in chapter 3).
3. The timely submission of all additional information requested to perfect an exemption application or request for determination of private foundation status.
4. Exhaustion of all administrative appeals available within the IRS.

The actions just described won't be considered completed until the IRS has had a reasonable time to act upon the appeal or protest, as the case may be.

An organization won't be considered to have exhausted its administrative remedies before the earlier of:

1. The completion of the steps just listed and the sending by certified or registered mail of a notice of final determination, or
2. The expiration of the 270-day period in which the IRS has not issued a notice of final determination and the organization has taken, in a timely manner, all reasonable steps to secure a ruling or determination.

**270-day period.** The 270-day period will be considered by the IRS to begin on the date a completed application, or group exemption request is sent or submitted to the IRS. See [Application Procedures](#), earlier, for information needed to complete the application form.

If the application doesn't contain all of the required items, it won't be further processed and may be returned to the applicant for completion. The 270-day period, in this event, won't be considered as starting until the date the application is remailed to the IRS with the requested information, or, if a postmark isn't evident, on the date the IRS receives a completed application.

## Appeal to Courts

If the IRS issues an unfavorable determination letter to your organization and you have exhausted all the administrative remedies just discussed, your organization can seek judicial remedies.

For example, if your organization has paid the tax resulting from the adverse determination and met all other statutory prerequisites, it can file suit for a refund in a U.S. District Court or the U.S. Court of Federal Claims. Or, if your organization elected not to pay the tax deficiency resulting from the adverse determination and met all other statutory prerequisites, it can file suit for a redetermination of the tax deficiencies in the United States Tax Court. For more information on these types of suits, get Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

In certain situations, your organization can file suit for a declaratory judgment in the U.S.

District Court for the District of Columbia, the U.S. Court of Federal Claims, or the U.S. Tax Court. This remedy is available if your organization received an adverse notice of final determination, or if the IRS failed to make a timely determination on your initial or continuing qualification or classification as an exempt organization. However, your exempt status claim must be as:

- An organization qualifying under section 501(c) or 501(d) and exempt from tax under 501(a),
- An organization to which a deduction for a contribution is allowed under section 170(c)(2),
- An organization that is a private foundation under section 509(a),
- A private operating foundation under section 4942(j)(3), or
- A cooperative organization that is exempt from tax under section 521.

**Adverse notice of final determination.** The adverse notice of final determination referred to above is a determination letter sent by certified or registered mail holding that your organization:

- Isn't described in section 501(c) or 501(d) and exempt from tax under 501(a), or section 170(c)(2);
- Is a private foundation and not a public charity described in a part of section 509 or section 170(b)(1)(A);
- Is not a private operating foundation as defined in section 4942(j)(3), or
- Is a public charity described in a part of section 509(a) or section 170(b)(1)(A) other than the part under which your organization requested classification.

**Favorable court rulings - IRS procedure.** If a suit results in a final determination that your organization is exempt from tax, the IRS will issue a favorable determination letter, provided your organization has filed an application for exemption and submitted a statement that the underlying facts and applicable law are the same as in the period considered by the court.

## Group Exemption Letter

A group exemption letter is a determination letter issued to a central organization recognizing on a group basis the exemption under section 501(c) of subordinate organizations on whose behalf the central organization has applied for recognition of exemption.

A central organization is an organization that has one or more subordinates under its general supervision or control. A subordinate organization is a chapter, local, post, or unit of a central organization.

A subordinate organization may or may not be incorporated, but it must have an organizing document and it must have its own taxpayer identification number (EIN). A subordinate that is organized and operated in a foreign country can't be included in a group exemption letter. A subordinate described in section 501(c)(3) can't be included in a group exemption letter if it is a private foundation described in section 509(a).

If your organization is a subordinate controlled by a central organization (for example, a church, a veterans' organization, or a fraternal organization), you should check with the central organization to see if it has been issued a group exemption letter that covers your organization. If it has, you don't have to file a separate application unless your organization no longer wants to be included in the group exemption letter.

If the group exemption letter doesn't cover your organization, ask your central organization about being included in the next annual group ruling update that it submits to the IRS.

See [Publication 4573, Group Exemptions](#), for additional general information about group exemption. Go to the Charities & Nonprofits page on IRS.gov for Group Exemption Resources for the most current information and updates.

## Central Organization Application Procedure

**Note:** The content about the Central Organization Application Procedure is included here for informational purposes. However, as stated in Notice 2020-36, IRB 2020-21, 840 and Rev. Proc. 2023-5, IRB 2023-1, 256, the IRS is not accepting any requests for group exemption letters until publication of the final revenue procedure described in the Notice or other guidance in the Internal Revenue Bulletin.

If your organization is a central organization with affiliated subordinates under its control, it can apply for a group exemption letter for its subordinates, provided it has obtained recognition of its own exemption. A central organization obtains recognition of its own exemption by submitting Form 1023 or 1023-EZ, 1024, or 1024-A as described in their instructions with the appropriate user fee. You request the group exemption letter for the central organization's subordinates by letter rather than a specific application form. The issuance of the group exemption letter relieves each of the covered subordinates from filing its own application.

A central organization that has previously obtained recognition of its own exemption must indicate its employer identification number and the date of the letter recognizing its exemption, but need not forward documents already submitted. However, if it has not already done so, the central organization must submit a copy of any amendment to its governing instruments or internal regulations as well as any information about changes in its character, purposes, or method of operation.

**Employer identification number.** Each subordinate must have its own EIN, even if it has no employees. When submitting its group exemption application, the central organization must provide an EIN for each subordinate organization.

**Information required for subordinate organizations.** The exempt central organization requests the group ruling letter. The central organization must submit information for subordinates it will include in the group



exemption letter. The information should be forwarded in a letter signed by a principal officer of the central organization setting forth or including as attachments the following.

1. Information verifying that the subordinates:

- Are affiliated with the central organization at the close of its annual accounting period;
- Are subject to its general supervision or control;
- Are all eligible to qualify for exemption under the same paragraph of section 501(c), though not necessarily the paragraph under which the central organization itself is exempt;
- If described in section 501(c)(3), aren't private foundations;
- Are all on the same accounting period as the central organization if they are to be included in group returns (described later); and
- If described in section 501(c)(3), are organizations that have been formed within the 15-month period preceding the date of submission of the group exemption application if they are subject to the requirements of section 508(a) and wish to be recognized as exempt from their dates of creation. If one or more of the subordinates haven't been organized within the 15-month period, a group ruling may be issued if all subordinates are willing to be recognized as exempt only from the date of application.

2. A detailed description of the purposes and activities of the subordinates, including the sources of receipts and the nature of expenditures.

3. A sample copy of a uniform governing instrument (such as articles of incorporation or articles of association) adopted by the subordinates, or, in its absence, copies of representative instruments.

4. An affirmation to the effect that, to the best of the officer's knowledge, the purposes and activities of the subordinates are as stated in (2) and (3), above.

5. A statement that each of the subordinates has provided a written authorization to the central organization, signed by an authorized officer of the subordinate, agreeing to be included in the group exemption (see also [New 501\(c\)\(3\) organizations that want to be included](#), later in this section).

6. A list of subordinates to be included in the group exemption letter, to which the IRS has issued an outstanding determination letter.

7. An affirmation to the effect that, to the best of the officer's knowledge and belief, no subordinate described in section 501(c)(3) is a private foundation, as defined in section 509(a).

8. For each subordinate that is a school claiming exemption under section 501(c)(3), the information required by Revenue Ruling 75-50, 1975-2 C.B. 587 (as modified by Rev. Proc. 71-447, 1971-2 C.B. 230 and Rev. Proc. 2019-22, 2019-2 I.R.B. 1260 (these requirements are described in chapter 3, under [Private Schools](#)).

9. For any school affiliated with a church, the information to show that the provisions of Revenue Ruling 75-231, 1975-1 C.B. 158, have been met.

10. A list of the names, mailing addresses, actual addresses if different, and EINs of subordinates to be included in the group exemption letter. A current directory of subordinates may be furnished instead of the list if it includes the required information and if the subordinates not to be included in the group exemption letter are identified.

**New 501(c)(3) organizations that want to be included.** A new organization, described in section 501(c)(3), that wants to be included in a group exemption letter must submit its authorization (as explained in item number 5, earlier, under [Information required for subordinate organizations](#)) to the central organization before the end of the 15th month after it was formed in order to satisfy the requirement of section 508(a). The central organization must also include this subordinate in its next annual submission of information, as discussed later, under [Information Required Annually](#).

## Keeping the Group Exemption Letter in Force

Continued effectiveness of a group exemption letter is based on the following conditions.

- The continued existence of the central organization.
- The continued qualification of the central organization for exemption under section 501(c).
- The submission by the central organization of the information regarding its subordinate organizations that is required annually (described under [Information Required Annually](#)).
- The annual filing of an information return (Form 990, for example) by the central organization if required.

In addition, a group exemption letter will not be effective as to a particular subordinate if the subordinate ceases to conform to the requirements for inclusion in a group exemption letter and authorization for inclusion (see items 1 and 5 in [Information required for subordinate organizations](#), earlier), and the annual filing of any required information return for the subordinate. A central organization may file a group return for some or all of its subordinates. If it does so, the group return must be filed on Form 990 under a separate EIN obtained exclusively for the purpose of filing the group return. Form 990-EZ cannot be used for a group return.

## Information Required Annually

To maintain a group exemption letter, the central organization must submit annually, at least

90 days before the close of its annual accounting period, all of the following information.

- Information about all changes in the purposes, character, or method of operation of the subordinates included in the group exemption letter.
- A separate list (that includes the names, mailing addresses, actual addresses if different, and EINs of the affected subordinates) for each of the three following categories.
  - Subordinates that have changed their names or addresses during the year.
  - Subordinates no longer to be included in the group exemption letter because they no longer exist or have disaffiliated from or withdrawn their authorization to the central organization.
  - Subordinates to be added to the group exemption letter because they are newly organized or affiliated or because they have recently authorized the central organization to include them.

An annotated directory of subordinates won't be accepted for this purpose. If there were none of the above changes, the central organization must submit a statement to that effect.

- The same information about new subordinates that was required in the initial application for group exemption. (This information is listed in items 1 through 10, under [Information required for subordinate organizations](#), earlier.) If a new subordinate doesn't differ in any material respects from the subordinates included in the application for group exemption, however, a statement to this effect may be submitted in lieu of detailed information.



The organization should send this information to:

Internal Revenue Service Center  
Ogden, UT 84201-0027



**CAUTION** Submitting the required information annually doesn't relieve the central organization or any of its subordinates of the duty to submit any other information that may be required by an EO area manager to determine whether the conditions for continued exemption are being met.



**TIP** As of 2019, the IRS will no longer send the List of Parent and Subsidiary Accounts to the central organizations.

## Events Causing Loss of Group Exemption

A group exemption letter no longer has effect, for either a particular subordinate or the group as a whole, when:

- The central organization notifies the IRS that it is going out of existence;

2. The central organization notifies the IRS, by its annual submission or otherwise, that any of its subordinates will no longer fulfill the conditions for continued effectiveness, explained earlier, or
3. The IRS notifies the central organization or the affected subordinate that the group exemption letter will no longer have effect for some or all of the group because the conditions for continued effectiveness of a group exemption letter haven't been fulfilled.

When notice is given under any of these three conditions, the IRS will no longer recognize the exempt status of the affected subordinates until they file separate applications on their own behalf or the central organization files complete supporting information for their inclusion in the group exemption at the time of its annual submission. However, when the notice is given by the IRS and the withdrawal of recognition is based on the failure of the organization to comply with the requirements for recognition of tax-exempt status under the particular subsection of section 501(c), the revocation will ordinarily take effect as of the date of that failure. The notice, however, will be given only after the appeal procedures described earlier in this chapter are completed.

In addition, the IRS will cease to recognize the subordinates under a group exemption as tax-exempt if the central organization is automatically revoked for failure to file required returns or notices for 3 consecutive years. See *Automatic Revocation*, later. Subordinates under a group exemption are also subject to automatic revocation for failure to file required returns (or appear on a group return if the subordinate does not file its own) or notices for 3 consecutive years. A subordinate organization that is automatically revoked must apply to the IRS for reinstatement of its exempt status. Thereafter, it may retain independent exempt status or it may seek to resume its status as a subordinate of the central organization. See [Group Exemption Resources](#).

## 2.

# Filing Requirements and Required Disclosures

## Introduction

Most exempt organizations (including private foundations) must file various returns and reports at some time during (or following the close of) their accounting period.

## Topics

This chapter discusses:

- Annual information returns
- Unrelated business income tax return
- Employment tax returns
- Political organization income tax return
- Reporting requirements for a political organization
- Donee information return
- Information provided to donors
- Report of cash received
- Public inspection of exemption applications, annual returns, and political organizations reporting forms
- Required disclosures
- Miscellaneous rules

## Useful Items

You may want to see:

### Publication

- ☐ **15** Circular E, Employer's Tax Guide
- ☐ **15-A** Employer's Supplemental Tax Guide
- ☐ **15-B** Employer's Tax Guide to Fringe Benefits
- ☐ **598** Tax on Unrelated Business Income of Exempt Organizations

### Form (and Instructions)

- ☐ **941** Employer's Quarterly Federal Tax Return
- ☐ **990** Return of Organization Exempt From Income Tax
- ☐ **990-EZ** Short Form Return of Organization Exempt From Income Tax
- ☐ **Schedule A (Form 990)** Public Charity Status and Public Support
- ☐ **Schedule B (Form 990)** Schedule of Contributors
- ☐ **Schedule C (Form 990)** Political Campaign and Lobbying Activities

- ☐ **Schedule D (Form 990)** Supplemental Financial Statements
- ☐ **Schedule E (Form 990)** Schools
- ☐ **Schedule F (Form 990)** Statement of Activities Outside the United States
- ☐ **Schedule G (Form 990)** Supplemental Information Regarding Fundraising or Gaming Activities
- ☐ **Schedule H (Form 990)** Hospitals
- ☐ **Schedule I (Form 990)** Grants and Other Assistance to Organizations, Governments, and Individuals in the United States
- ☐ **Schedule J (Form 990)** Compensation Information
- ☐ **Schedule K (Form 990)** Supplemental Information on Tax-Exempt Bonds
- ☐ **Schedule L (Form 990)** Transactions With Interested Persons
- ☐ **Schedule M (Form 990)** Noncash Contributions
- ☐ **Schedule N (Form 990)** Liquidation, Termination, Dissolution, or Significant Disposition of Assets
- ☐ **Schedule O (Form 990)** Supplemental Information to Form 990
- ☐ **940** Employer's Annual Federal Unemployment (FUTA) Tax Return
- ☐ **Schedule R (Form 990)** Related Organizations and Unrelated Partnerships
- ☐ **990-PF** Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation
- ☐ **990-N** Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ
- ☐ **990-T** Exempt Organization Business Income Tax Return
- ☐ **Schedule A (Form 990-T)** Unrelated Business Taxable Income from an Unrelated Trade or Business
- ☐ **990-W** Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations
- ☐ **1120-POL** U.S. Income Tax Return for Certain Political Organizations
- ☐ **4720** Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code
- ☐ **5768** Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation
- ☐ **6069** Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953
- ☐ **7004** Application for Automatic Extension of Time to File Certain Business

Income Tax, Information, and Other Returns

- ❑ **8274** Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employer Social Security and Medicare Taxes
- ❑ **8282** Donee Information Return
- ❑ **8300** Report of Cash Payments Over \$10,000 Received in a Trade or Business
- ❑ **8453-X** Political Organization Declaration for Electronic Filing of Notice of Section 527 Status
- ❑ **8822-B** Change of Address or Responsible Party-Business
- ❑ **8868** Application for Automatic Extension of Time to File an Exempt Organization Return
- ❑ **8870** Information Return for Transfers Associated with Certain Personal Benefits Contracts
- ❑ **8871** Political Organization Notice of Section 527 Status
- ❑ **8872** Political Organization Report of Contributions and Expenditures
- ❑ **8886-T** Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction
- ❑ **8899** Notice of Income from Donated Intellectual Property
- ❑ **8976** Notice of Intent to Operate Under Section 501(c)(4)

See chapter 6 for information about getting these publications and forms.

## Annual Information Returns

Every organization exempt from federal income tax under section 501(a) must file an [Annual Exempt Organization Return](#) **except**:

1. A church, an interchurch organization of local units of a church, a convention or association of churches;
2. An integrated auxiliary of a church;
3. A church-affiliated organization that is exclusively engaged in managing funds or maintaining retirement programs;
4. A school below college level affiliated with a church or operated by a religious order;
5. Church-affiliated mission societies if more than half of their activities are conducted in, or are directed at persons in, foreign countries;
6. An exclusively religious activity of any religious order;
7. A state institution, the income of which is excluded from gross income under section 115;
8. A corporation described in section 501(c)(1) that is organized under an Act of Congress, an instrumentality of the United

States, and is exempt from federal income taxes;

9. A stock bonus, pension, or profit-sharing trust that qualifies under section 401 (required to file Form 5500, *Annual Return/Report of Employee Benefit Plan*);
10. A religious or apostolic organization described in section 501(d) (required to file Form 1065, *U.S. Return of Partnership Income*);
11. A governmental unit or an affiliate of a governmental unit that meets the requirements of [Rev. Proc. 95-48, 1995-2 C.B. 418, IRS.gov/pub/irs-tege/rp1995-48.pdf](#);
12. A private foundation described in section 501(c)(3) and exempt under section 501(a) (required to file Form 990-PF, *Return of Private Foundation*);
13. A political organization that is a state or local committee of a political party, a political committee of a state or local candidate, a caucus or association of state or local officials, or required to report under the Federal Election Campaign Act of 1971 as a political committee;
14. An exempt organization (other than a private foundation or a supporting organization described in *Supporting Organization Annual Information Return*, later) that normally has annual gross receipts of \$50,000 or less (required to file Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*), or
15. A foreign organization, or an organization located in a U.S. possession, that normally has annual gross receipts from sources within the United States of \$50,000 or less.

## Supporting Organization Annual Information Return

Each section 509(a)(3) supporting organization is required to file Form 990 or 990-EZ with the IRS regardless of the organization's gross receipts, unless it qualifies as one of the following:

1. An integrated auxiliary of a church;
2. The exclusively religious activities of a religious order; or
3. An organization, the gross receipts of which are normally not more than \$5,000, that supports a section 509(a)(3) religious order.

If the organization is described in item (3) above, then it must submit Form 990-N (e-Postcard) unless it voluntarily files Form 990 or 990-EZ.

On its annual information return, in Part I, Schedule A (Form 990) a supporting organization must:

- List the organizations to which it provides support;
- Indicate whether it is a Type I, Type II, or Type III supporting organization; and
- Certify that the organization isn't controlled directly or indirectly by disqualified persons

(other than by foundation managers and other than one or more publicly supported organizations).

## Annual Electronic Notice Filing Requirement for Small Tax-Exempt Organizations

Small tax-exempt organizations with annual gross receipts normally \$50,000 or less that are not otherwise required to file an annual information return and are not otherwise exempted entirely from a filing requirement must submit Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ*, with the IRS each year, if they choose not to file a Form 990 or 990-EZ. Form 990-N requires the following information:

- The organization's legal name, and mailing address;
- Any name under which it operates and does business;
- Its Internet website address (if any);
- Its taxpayer identification number;
- The name and address of a principal officer;
- Organization's annual tax period;
- Verification that the organization's annual gross receipts are normally \$50,000 or less; and
- Notification if the organization has terminated.

Form 990-N is due by the 15th day of the fifth month after the close of the tax year. For tax years beginning after December 31, 2006, any organization that fails to meet its annual reporting requirement for 3 consecutive years will automatically lose its tax-exempt status. To regain its exempt status an organization will have to reapply for recognition as a tax-exempt organization.

**Exceptions.** This filing requirement doesn't apply to:

- Churches, their integrated auxiliaries, and conventions or associations of churches;
- Organizations that are included in a group return;
- Private foundations required to file Form 990-PF; and
- Section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ.

## Forms 990 and 990-EZ

Exempt organizations, other than private foundations, must file their annual information returns on Form 990 or 990-EZ, unless excepted from filing or allowed to submit Form 990-N, described earlier.

Generally, political organizations with gross receipts of \$25,000 (\$100,000 for a qualified state or local political organization (QSLPO)) or more for the tax year are required to file Form 990 or 990-EZ unless specifically excepted from filing the annual return. The following political organizations aren't required to file Form 990 or Form 990-EZ.

- A state or local committee of a political party.
- A political committee of a state or local candidate.



- A caucus or association of state or local officials.
- A political organization that is required to report as a political committee under the Federal Election Campaign Act.
- A 501(c) organization that has expenditures for influencing or attempting to influence the selection, nomination, election, or appointment of any individual for a federal, state, or local public office.


**Form 990-EZ.** This is a shortened version of Form 990. Form 990-EZ is designed for use by small exempt organizations and nonexempt charitable trusts.

An organization can file either Form 990 or 990-EZ if it satisfies both of the following:

1. Its gross receipts during the year are less than \$200,000.
2. Its total assets (line 25, column (B) of Form 990-EZ) at the end of the year are less than \$500,000.

If your organization doesn't satisfy both of these conditions, it can't file Form 990-EZ. Instead, the organization must file Form 990.

**Group return.** A group return on Form 990 may be filed by a central, parent, or like organization for two or more local organizations, none of which is a private foundation. This return is in addition to the central organization's separate annual return if it must file a return. The central organization can't be included in the group return. See the Instructions for Form 990 for the conditions under which this procedure may be used.

 *In any year that an organization is properly included as a subordinate organization on a group return, it shouldn't file its own Form 990.*

**Schedule A (Form 990).** Organizations, other than private foundations, that are described in section 501(c)(3) and that are otherwise required to file Form 990 or 990-EZ must also complete Schedule A of that form.

**Schedule B (Form 990).** Organizations that file Form 990, 990-EZ or 990-PF use this schedule to provide required information regarding certain contributors.

**Schedule O (Form 990).** Organizations that file Form 990 or 990-EZ, must use this schedule to provide required additional information or if additional space is needed.

Other schedules may be required to be filed with Form 990 or 990-EZ. See the Instructions for Form 990 or the Instructions for Form 990-EZ for more information.

**Report significant new or changed program services and changes to organizational documents.** An organization should report new significant program services or significant changes in how it conducts program services, and significant changes to its organizational documents, on its Form 990 rather than in a letter to EO Determinations. EO Determinations no longer issues letters confirming the tax-exempt status of organizations that report new services or significant changes, or changes to

organizational documents. See *Miscellaneous Rules, Organization Changes and Exempt Status*, later.

## Form 990-PF

All private foundations exempt under section 501(c)(3) must file Form 990-PF. These organizations are discussed in chapter 3.

## Electronic Filing

For tax years beginning on or before July 1, 2019, your organization may be required to file Form 990, Form 990-EZ, or Form 990-PF, and related forms, schedules, and attachments electronically. For tax years beginning after July 1, 2019, under the Taxpayer First Act, organizations are required to file certain returns electronically, including Form 990, 990-EZ, 990-PF, 8872, and 990-T. The e-filing requirement is generally effective for tax years beginning after July 1, 2019. The Taxpayer First Act allows transitional relief for certain small organizations or other organizations for which the IRS determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time.

If an organization is required to file a return electronically but doesn't, it isn't considered to have filed its return. See Regulations section 301.6033-4 for more information.

**Form 990.** For tax years beginning on or before July 1, 2019, an organization is required to file Form 990 electronically if it files at least 250 returns during the calendar year and has total assets of \$10 million or more at the end of the tax year. For tax years beginning after July 1, 2019, an organization is required to file Form 990 electronically unless exceptions described in the form instructions apply. As of the 2020 Form 990, the instructions no longer describe any exceptions to the e-filing requirement.

**Form 990-EZ.** For small exempt organizations, the legislation specifically allowed a postponement ("transitional relief"). For tax years ending before July 31, 2021, the IRS will accept either paper or electronic filing of Form 990-EZ, Short Form Return of Organization Exempt from Income Tax. For tax years ending July 31, 2021, and later, Forms 990-EZ must be filed electronically. Generally, Form 990-EZ is for organizations with annual gross receipts less than \$200,000 and total assets at tax year-end less than \$500,000.

**Form 990-PF.** For tax years beginning on or before July 1, 2019, an organization is required to file Form 990-PF electronically if it files at least 250 returns during the calendar year. For tax years beginning after July 1, 2019, an organization is required to file Form 990-PF electronically unless exceptions described in the form instructions apply. As of the 2020 Form 990-PF, the instructions no longer describe any exceptions to the e-filing requirement.

**Form 990-N.** An organization that is eligible and elects to submit Form 990-N must submit it electronically.

**Form 990-T.** The IRS continued to accept paper forms Form 990-T into 2021 pending its conversion into electronic format. In March 2020, the IRS announced the availability of the electronic filing of Form 990-T. Any 2020, and any future year Form 990-T with a due date on or after April 15, 2021, must be filed electronically and not on paper.

**Form 8872.** Form 8872 must be filed electronically if reporting on periods after 2019.

## Due Date

Forms 990, 990-EZ, or 990-PF must be filed by the 15th day of the fifth month after the end of your organization's accounting period. Thus, for a calendar year taxpayer, Forms 990, 990-EZ, or 990-PF are due May 15 of the following year. If any due date falls on a Saturday, Sunday, or legal holiday, the return will be due the next business day.

**Extension of time to file.** Use Form 8868 to request an automatic six month extension of time to file Forms 990, 990-EZ, or 990-PF.

When filing Form 8868 for an automatic extension, neither a signature, nor an explanation is required.

**Application for exemption pending.** An organization that claims to be exempt under section 501(a) but has not established its exempt status by the due date for filing an information return must complete and file Form 990, 990-EZ, 990-N, or 990-PF (if it considers itself a private foundation), unless the organization is exempt from Form 990-series filing requirements. If the organization's application is pending with the IRS, it must so indicate on Forms 990, 990-EZ, or 990-PF (whichever applies) by checking the *application pending* block at the top of page 1 of the return. For more information on the filing requirements, see the Instructions for Forms 990, 990-EZ, and 990-PF.

**State reporting requirements.** Copies of Forms 990, 990-EZ, or 990-PF may be used to satisfy state reporting requirements. See the instructions for those forms.

**Form 8870.** Organizations that filed a Form 990, 990-EZ, or 990-PF, and paid premiums or received transfers on certain life insurance, annuity, and endowment contracts (personal benefit contracts), must file Form 8870. For more information, see Form 8870 and the instructions for that form.

**Form 8822-B.** If you moved during the year, fill out Form 8822-B, Change of Address or Responsible Party-Business. Also, if your "Responsible Party" changed this year, you must also fill out Form 8822-B. The "Responsible Party" is the tax-exempt organization's "Principal Officer", as defined in the Form 990 instructions, in the *Glossary* section.

## Automatic Revocation

If the organization fails to file a Form 990, 990-EZ, or 990-PF, or fails to submit a Form 990-N, as required, for 3 consecutive years, it will automatically lose its tax-exempt status by

operation of law effective as of the due date for the third missed return or notice. The list of organizations whose tax-exempt status has been automatically revoked is available on [IRS.gov](http://IRS.gov). This list (Auto-Revocation List) may be viewed and searched on [Tax-Exempt Organization Search](#). The Auto-Revocation List includes each organization's name, employer identification number (EIN) and last known address. It also includes the effective date of the automatic revocation and the date it was posted to the list. For auto-revoked organizations that applied for and received reinstatement, the list gives the date of reinstatement. The IRS updates the list monthly to include additional organizations that lose their tax-exempt status.

## Tax Effect of Loss of Tax-Exempt Status

If your organization's tax-exempt status is automatically revoked, you may be required to file one of the following federal income tax returns and pay any applicable income taxes:

- Form 1120, *U.S. Corporation Income Tax Return*, due by the 15th day of the 3rd month after the end of your organization's tax year, or
- Form 1041, *U.S. Income Tax Return for Estates and Trusts*, due by the 15th day of the 4th month after the end of your organization's tax year.

In addition, a section 501(c)(3) organization that loses its tax-exempt status can't receive tax-deductible contributions and won't be identified in the IRS Business Master File extract as eligible to receive tax-deductible contributions, or be included in Tax-Exempt Organization Search (Pub. 78 database).

An organization whose exemption was automatically revoked must apply for tax exemption in order to regain its tax exemption (even if it wasn't originally required to apply). In some situations, an organization may be able to obtain exemption retroactive to its date of revocation. Similarly, if the central organization with a Group Exemption Number is automatically revoked, all its covered subsidiaries may need to apply for exemption as independent organizations.

For more information about automatic revocation, go to [IRS.gov](http://IRS.gov) and select *Charities & Non-Profits* and then select *Reinstated?* Learn more with *Reinstate Tax-Exempt Status*.

## Penalties

**Penalties for failure to file.** Generally, an exempt organization that fails to file a required return must pay a penalty of \$20 a day for each day the failure continues. The same penalty will apply if the organization doesn't give all the information required on the return or doesn't give the correct information.

**Maximum penalty.** The maximum penalty for any one return is the smaller of \$10,000 or 5% of the organization's gross receipts for the year.

**Organization with gross receipts over \$1 million.** For an organization that has gross receipts of over \$1 million for the year, the penalty is \$100 a day up to a maximum of \$50,000.

**Managers.** If the organization is subject to this penalty, the IRS may specify a date by which the return or correct information must be supplied by the organization. Failure to comply with this demand will result in a penalty imposed upon the manager of the organization, or upon any other person responsible for filing a correct return. The penalty is \$10 a day for each day that a return isn't filed after the period given for filing. The maximum penalty imposed on all persons with respect to any one return is \$5,000.

**Penalties indexed for inflation.** These penalty provisions are indexed for inflation for returns required to be filed after December 31, 2014.

**Exception for reasonable cause.** No penalty will be imposed if reasonable cause for failure to file timely can be shown.

## Unrelated Business Income Tax Return

Even though your organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. Unrelated business income is income from a trade or business, regularly carried on, that isn't substantially related to the charitable, educational, or other purpose that is the basis for the organization's exemption.

If your organization has gross income of \$1,000 or more from a regularly conducted unrelated trade or business, you must file Form 990-T in addition to your required annual information return or notice. The form instructions and [IRS.gov](http://IRS.gov) should be consulted for electronic filing guidance. For tax years beginning after December 31, 2017, an organization with more than one unrelated trade or business must compute its UBTI (unrelated business taxable income), including for purposes of determining any net operating loss deduction, separately with respect to each such trade or business. Organizations complete a separate Schedule A (Form 990-T) to calculate UBTI for each of its trades or businesses.

**Estimated tax.** An organization that expects to owe \$500 or more in tax (including tax on unrelated business income) is required to make quarterly estimated tax payments. Use Form 990-W to figure your organization's estimated tax payments. Failure to make appropriate quarterly estimated tax payments may result in an underpayment penalty.

See Publication 598, *Tax on Unrelated Business Income of Exempt Organizations* for more information on UBTI.

## Employment Tax Returns

Every employer, including an organization exempt from federal income tax that pays wages to employees is responsible for withholding, depositing, paying, and reporting federal income tax, social security and Medicare (FICA) taxes, and federal unemployment tax (FUTA), unless that employer is specifically excepted by law from those requirements, or if the taxes clearly don't apply.

For more information, obtain a copy of Publication 15, which summarizes the responsibilities of an employer, Publication 15-A, Publication 15-B, and Form 941.

**Small Business Health Care Tax Credit.** If your small tax-exempt organization provides health care coverage for your workers you may qualify for the small business health care tax credit. Go to [Affordable Care Act Tax Provisions](#) for more details. See also [Small Business Health Care Tax Credit](#).

**Trust fund recovery penalty.** If any person required to collect, truthfully account for, and pay over any of these taxes willfully fails to satisfy any of these requirements or willfully tries in any way to evade or defeat any of them, that person will be subject to a penalty. The penalty is equal to the tax evaded, not collected, or not accounted for and paid over. The term *person* includes:

- An officer or employee of a corporation, or
- A member or employee of a partnership.

**Exception.** The penalty isn't imposed on any unpaid volunteer director or member of a board of trustees of an exempt organization if the unpaid volunteer serves solely in an honorary capacity, doesn't participate in the day-to-day or financial operations of the organization, and doesn't have actual knowledge of the failure on which the penalty is imposed.

This exception doesn't apply if it results in no one being liable for the penalty.

**Certification Program for Professional Employer Organizations (CPEOs).** The Tax Increase Prevention Act of 2014, enacted Dec. 19, 2014, requires the IRS to establish a voluntary certification program for professional employer organizations (PEOs). PEOs handle various payroll administration and tax reporting responsibilities for their business clients and are typically paid a fee based on payroll costs. For further information, go to: [IRS.gov/for-tax-pros/basic-tools/certified-professional-employer-organization](http://IRS.gov/for-tax-pros/basic-tools/certified-professional-employer-organization).

**FICA and FUTA tax exceptions.** Payments for services performed by a minister of a church in the exercise of the ministry, or a member of a religious order performing duties required by the order, are generally not subject to FICA or FUTA taxes.

**FUTA tax exception.** Payments for services performed by an employee of a religious, charitable, educational, or other organization described in section 501(c)(3) that are generally

subject to FICA taxes if the payments are \$100 or more for the year, aren't subject to FUTA taxes. However, a section 501(c)(3) organization is liable for FUTA tax when paying wages for employees on behalf of others, examples include but are not limited to related non-section 501(c)(3) organizations, fiscal agents such as IRC 3504, common paymaster, etc.

**FICA tax exemption election.** Churches and qualified church-controlled organizations can elect exemption from employer FICA taxes by filing Form 8274.

To elect the exemption, Form 8274 must be filed before the first date on which a quarterly employment tax return would otherwise be due from the electing organization. The organization can make the election only if it is opposed for religious reasons to the payment of FICA taxes.

The election applies to payments for services of current and future employees other than services performed in an unrelated trade or business.

**Revoking the election.** The election can be revoked by the IRS if the organization fails to file Form W-2, Wage and Tax Statement, for 2 years and fails to furnish certain information upon request by the IRS. Such revocation will apply retroactively to the beginning of the 2-year period.

**Definitions.** For purposes of this election, the term *church* means a church, a convention or association of churches, or an elementary or secondary school that is controlled, operated, or principally supported by a church or by a convention or association of churches.

The term *qualified church-controlled organization* means any church-controlled section 501(c)(3) tax-exempt organization, other than an organization that both:

1. Offers goods, services, or facilities for sale, other than on an incidental basis, to the general public at other than a nominal charge that is substantially less than the cost of providing such goods, services, or facilities, and
2. Normally receives more than 25% of its support from the sum of governmental sources and receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities that aren't unrelated trades or businesses.

**Effect on employees.** If a church or qualified church-controlled organization has made an election, payment for services performed for that church or organization, other than in an unrelated trade or business, won't be subject to FICA taxes. However, the employee, unless otherwise exempt, will be subject to self-employment tax on the income. The tax applies to income of \$108.28 or more for the tax year from that church or organization, and no deductions for trade or business expenses are allowed against this self-employment income.

Schedule SE (Form 1040), Self-Employment Tax, should be attached to the employee's income tax return.

## Political Organization Income Tax Return

Generally, a political organization is treated as an organization exempt from tax. Certain political organizations, however, must file an annual income tax return, Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for any year they have political organization taxable income in excess of the \$100 specific deduction allowed under section 527.

**TIP** A political organization that has \$25,000 (\$100,000 for a qualified state or local political organization) or more in gross receipts for the tax year must file Form 990 or Form 990-EZ (and Schedule B of the form), unless excepted. See [Forms 990 and 990-EZ](#), earlier.

**Political organization.** A political organization is a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

**Exempt function.** An exempt function means influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, local public office or office in a political organization, or the election of the Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. It also includes certain office expenses of a holder of public office or an office in a political organization.

**CAUTION** Certain political organizations are required to notify the IRS that they are section 527 organizations. These organizations must use Form 8871. Some of these section 527 organizations must use Form 8872 to file periodic reports with the IRS disclosing their contributions and expenditures. For a discussion on these forms, see Reporting Requirements for a Political Organization, later.

**Political organization taxable income.** Political organization taxable income is the excess of:

1. Gross income for the tax year (excluding exempt function income) minus
2. Deductions directly connected with the earning of gross income.

To figure taxable income, allow for a \$100 specific deduction, but don't allow for the net operating loss deduction, the dividends-received deduction, and other special deductions for corporations.

**Exempt organization not a political organization.** An organization exempt under section 501(c) that spends any amount for an exempt function must file Form 1120-POL for any year which it has political taxable income. These organizations must include in gross income the lesser of:

1. The total amount of its exempt function expenditures, or
2. The organization's net investment income.

**Separate fund.** A section 501(c) organization can set up a separate segregated fund that will be treated as an independent political organization. The earnings and expenditures made by the separate fund won't be attributed to the section 501(c) organization.

**CAUTION** Section 501(c)(3) organizations are precluded from, and may suffer loss of exemption for, engaging in any political campaign on behalf of, or in opposition to, any candidate for public office.

**Due date.** Form 1120-POL is due by the 15th day of the 4th month after the end of the tax year. Thus, for a calendar year taxpayer, Form 1120-POL is due on April 15 of the following year. If any due date falls on a Saturday, Sunday, or legal holiday, the organization can file the return on the next business day.

**TIP** Form 1120-POL is not required of an exempt organization that makes expenditures for political purposes if its gross income doesn't exceed its directly connected deductions by more than \$100 for the tax year.

**Extension of time to file.** Use Form 7004 to request an automatic extension of time to file Form 1120-POL. The extension will be granted if you complete Form 7004 properly, make a proper estimate of the tax (if applicable), file Form 1120-POL by the due date, and pay any tax due.

**Failure to file.** A political organization that fails to file Form 1120-POL is subject to a penalty equal to 5% of the tax due for each month (or partial month) the return is late up to a maximum of 25% of the tax due, unless the organization shows the failure was due to reasonable cause.

For more information about filing Form 1120-POL, refer to the instructions accompanying the form.

**Failure to pay on time.** An organization that doesn't pay the tax when due generally may have to pay a penalty of 1/2 of 1% of the unpaid tax for each month or part of a month the tax isn't paid, up to a maximum of 25% of the unpaid tax. The penalty won't be imposed if the organization can show that the failure to pay on time was due to reasonable cause.

## Reporting Requirements for a Political Organization

Certain political organizations are required to notify the IRS that the organization is to be treated as a section 527 political organization. The organization is also required to periodically report certain contributions received and expenditures made by the organization. To notify the IRS of section 527 treatment, an organization must file Form 8871. To report contributions



and expenditures, certain tax-exempt political organizations must file Form 8872.

## Form 8871

A political organization must electronically file Form 8871 to notify the IRS that it is to be treated as a section 527 organization. However, an organization isn't required to file Form 8871 if:

- It reasonably expects its annual gross receipts to always be less than \$25,000.
- It is a political committee required to report under the Federal Election Campaign Act of 1971 (FECA) (52 U.S.C. section 30101 et seq.).
- It is a state or local candidate committee.
- It is a state or local committee of a political party.

All other political organizations are required to file Form 8871.

An organization must provide on Form 8871:

1. Its name and address (including any business address, if different) and its electronic mailing address;
2. Its purpose;
3. The names and addresses of its officers, highly compensated employees, contact person, custodian of records, and members of its board of directors;
4. The name and address of, and relationship to, any related entities (within the meaning of section 168(h)(4)); and
5. Whether it intends to claim an exemption from filing Form 8872, Form 990, or Form 990-EZ.

**Employer identification number.** If your organization needs an EIN, you can apply for one online. Click on the Employer ID Numbers (EINs) link at [IRS.gov/businesses/small](https://irs.gov/businesses/small).

If you previously applied for an EIN and haven't yet received it, or you are unsure whether you have an EIN, please call our toll-free customer account services number, 1-877-829-5500, for assistance.

**Due dates.** The initial Form 8871 must be filed within 24 hours of the date on which the organization was established. If there is a material change, an amended Form 8871 must be filed within 30 days of the material change. When the organization terminates its existence, it must file a final Form 8871 within 30 days of termination.

If the due date falls on a Saturday, Sunday, or legal holiday, the organization can file on the next business day.

**How to file.** An organization must file Form 8871 electronically via the IRS Internet website at [IRS.gov/polorgs](https://irs.gov/polorgs).

**Form 8453-X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.** After electronically submitting the initial Form 8871, the political organization must print, sign, and mail Form 8453-X to the IRS. Upon receipt of the Form 8453-X, the IRS will send the organization a username and password that must be used to file an amended

or final Form 8871 or to electronically file Form 8872.

## Penalties

**Failure to file.** An organization that is required to file Form 8871, but fails to do so on a timely basis, won't be treated as a tax-exempt section 527 organization for any period before the date Form 8871 is filed. Also, the taxable income of the organization for that period will include its exempt function income (including contributions received, membership dues, and political fundraising receipts) minus any deductions directly connected with the production of that income.

Failure to file an amended Form 8871 will cause the organization to not be treated as a tax-exempt section 527 organization. If an organization is treated as not being a tax-exempt section 527 organization, the taxable income of the organization will be determined by considering any exempt function income and deductions during the period beginning on the date of the material change and ending on the date that the amended Form 8871 is filed.

The tax is computed by multiplying the organization's taxable income by the highest corporate tax rate.

**Fraudulent returns.** Any individual or corporation that willfully delivers or discloses to the IRS any list, return, account, statement or other document known to be fraudulent or false as to any material matter will be fined not more than \$10,000 (\$50,000 in the case of a corporation) or imprisoned for not more than 1 year or both.

**Waiver of penalties.** The IRS may waive any additional tax assessed on an organization for failure to file Form 8871 if the failure was due to reasonable cause and not willful neglect.

**Additional information.** For more information on Form 8871, see the form and its instructions. For a discussion on the public inspection requirements for the form, see [Public Inspection of Exemption Applications, Annual Returns, and Political Organization Reporting Forms](#), later.

## Form 8872

Every tax-exempt section 527 political organization that accepts a contribution or makes an expenditure, for an exempt function during the calendar year, must file Form 8872 **except:**

- A political organization that isn't required to file Form 8871 (discussed earlier).
- A political organization that is subject to tax on its income because it didn't file or amend Form 8871.
- A qualified state or local political organization (QSLPO), discussed below.

All other tax-exempt section 527 organizations that accept contributions or make expenditures for an exempt function are required to file Form 8872.

**Qualified state or local political organization.** A state or local political organization may be a QSLPO if:

1. All of its political activities relate solely to state or local public office (or office in a state or local political organization).

2. It is subject to a state law that requires it to report (and it does report) to a state agency information about contributions and expenditures that is similar to the information that the organization would otherwise be required to report to the IRS.

3. The state agency and the organization make the reports publicly available.

4. No federal candidate or office holder:

- a. Controls or materially participates in the direction of the organization,
- b. Solicits contributions for the organization, or
- c. Directs the disbursements of the organization.

**Information required on Form 8872.** If an organization pays an individual \$500 or more for the calendar year, the organization is required to disclose the individual's name, address, occupation, employer, amount of the expense, the date the expense was paid, and the purpose of the expense on Form 8872.

If an organization receives contributions of \$200 or more from one contributor for the calendar year, the organization must disclose the donor's name, address, occupation, employer, and the date the contributions were made.

For additional information that is required, see Form 8872.

**Due dates.** The due dates for filing Form 8872 vary depending on whether the form is due for a reporting period that occurs during a calendar year in which a regularly scheduled election is held, or any other calendar year (a nonelection year).

If the due date falls on a Saturday, Sunday, or legal holiday, the organization can file on the next business day.

**Election year filing.** In election years, Form 8872 must be filed on either a quarterly or a monthly basis. Both a pre-election report and a post-election report are also required to be filed in an election year. An *election year* is any year in which a regularly scheduled general election for federal office is held (an even-numbered year).

**Nonelection year filing.** In nonelection years, the form must be filed on a semiannual or monthly basis. A complete listing of these filing periods are in the Form 8872 instructions. A *nonelection year* is any odd-numbered year.

**How to file.** An organization must file Form 8872 electronically if reporting on periods after 2019. For reporting on periods before 2020, Form 8872 can be filed either electronically or by mail, but organizations that have, or expect to have, contributions or expenditures of \$50,000 or more for the year are required to file electronically.

**Electronic filing.** File electronically via the IRS internet website at [IRS.gov/polorgs](https://irs.gov/polorgs). You will need a user ID and password to electronically file Form 8872. Organizations that have completed the electronic filing of Form 8871 and submitted a completed and signed Form

8453-X will receive a username and password in the mail.

Organizations that have completed the electronic filing of Form 8871, but haven't received their user ID and password can request one by writing to the following address:

Internal Revenue Service  
Attn: Request for 8872 Password  
Mail Stop 6273  
Ogden, UT 84201

**Lost username and password.** If you have forgotten or misplaced the username and password issued to your organization after you filed your initial Form 8871, send a letter requesting a new username and password to the address under *Electronic filing*. You can also fax your request to (801) 620-3249. It may take 3-6 weeks for your new username and password to arrive, as they will be mailed to the organization.

## Penalty

A penalty will be imposed if the organization is required to file Form 8872 and it:

- Fails to file the form by the due date, or
- Files the form but fails to report all of the information required or reports incorrect information.

The penalty is 21% for tax years beginning after December 31, 2017 (35% for tax years beginning before December 31, 2017), of the total amount of contributions and expenditures to which a failure relates.

**Fraudulent returns.** Any individual or corporation that willfully delivers or discloses any list, return, account, statement, or other document known to be fraudulent or false as to any material matter will be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned for not more than 1 year, or both.

**Waiver of penalties.** The IRS may waive any additional tax assessed on an organization for failure to file Form 8872 if the failure was due to reasonable cause and not willful neglect.

## Donee Information Return

**Dispositions of donated property.** If an organization receives charitable deduction property and within 3 years sells, exchanges, or otherwise disposes of the property, the organization must file [Form 8282, Donee Information Return](#). However, an organization isn't required to file Form 8282 if:

- The property is valued at \$500 or less, or
- The property is consumed or distributed for charitable purposes.

Form 8282 must be filed with the IRS within 125 days after the disposition. Additionally, a copy of Form 8282 must be given to the donor. If the organization fails to file the required information return, penalties may apply.

**Charitable deduction property.** This is any property (other than money or publicly

traded securities) for which the donee organization signed an appraisal summary or Form 8283, Noncash Charitable Contributions.

**Publicly traded securities.** These are securities for which market quotations are readily available on an established securities market as of the date of the contribution.

**Appraisal summary.** If the value of the donated property exceeds \$5,000, the donor must get a qualified appraisal for contributions of property, see *Exceptions*, below.

**Exceptions.** A written appraisal isn't needed if the property is:

- Nonpublicly traded stock of \$10,000 or less;
- A vehicle (including a car, boat, or airplane), if your deduction for the vehicle is limited to the gross proceeds from its sale;
- Intellectual property;
- Certain securities considered to have market quotations readily available (see Regulations section 1.170A-13(c)(7)(xi)(B));
- Inventory and other property donated by a corporation that are qualified contributions for the care of the ill, the needy, or infants, within the meaning of section 170(e)(3)(A), or
- Any donation of stock in trade, inventory, or property held primarily for sale to customers in the ordinary course of your trade or business.

The donee organization isn't a qualified appraiser for the purpose of valuing the donated property. For more information, get Publication 561, *Determining the Value of Donated Property*.

**Form 8283.** For noncash donations over \$5,000, the donor must attach Form 8283 to the tax return to support the charitable deduction. The donee must sign Part IV of Section B, Form 8283 unless publicly traded securities are donated. The person who signs for the donee must be an official authorized to sign the donee's tax or information returns, or a person specifically authorized to sign by that official. The signature doesn't represent concurrence in the appraised value of the contributed property. A signed acknowledgment represents receipt of the property described on Form 8283 on the date specified on the form. The signature also indicates knowledge of the information reporting requirements on dispositions, as previously discussed. A copy of Form 8283 must be given to the donee.

## Information Provided to Donors

In some situations, a donor must obtain certain information from a donee organization to obtain a deduction for a charitable contribution. In other situations, the donee organization is required to provide information to the donor.

A charitable organization must give a donor a disclosure statement for a quid pro quo contribution over \$75. (See [Disclosure statement](#), later.) This is a payment a donor makes to a charity partly as a contribution and partly for

goods or services. See *Quid pro quo contribution* below for an example.

Failure to make the required disclosure may result in a penalty to the organization. A donor can't deduct a charitable contribution of \$250 or more unless the donor has a written acknowledgment from the charitable organization.

In certain circumstances, an organization may be able to meet both of these requirements with the same written document.

## Disclosure of Quid Pro Quo Contributions

A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution over \$75.

**Quid pro quo contribution.** A contribution made by a donor in exchange for goods or services is known as a quid pro quo contribution. Your charitable organization must provide the donor a written statement informing the donor of the fair market value of the items or services it provided in exchange for the contribution. Generally, a written statement is required for each payment, whenever the contribution portion is over \$75.

**Example.** If a donor gives your charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable part of the payment is \$60. Even though the deductible part of the payment isn't more than \$75, a written statement must be filed because the total payment is more than \$75. If your organization fails to disclose quid pro quo contributions, the organization may be subject to a penalty.

**Disclosure statement.** The required written disclosure statement must:

1. Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the fair market value of goods or services provided by the charity, and
2. Provide the donor with a good faith estimate of the fair market value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it isn't necessary for the organization to provide another statement when it actually receives the contribution.

No disclosure statement is required if any of the following are true.

1. The goods or services given to a donor have insubstantial value, as described in Rev. Proc. 90-12, 1990-1 C.B. 471, [Rev. Proc. 90-12](#), and Rev. Proc. 92-49, 1992-1 C.B. 507 (as adjusted for inflation), [Rev. Proc. 92-49](#).

2. There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop).
3. There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally isn't sold in a commercial transaction outside the donative context. For example, a donor who, for a payment, is granted admission to a religious ceremony for which there is no admission charge is provided an intangible religious benefit. A donor isn't provided intangible religious benefits for payments made for tuition for education leading to a recognized degree, travel services, or consumer goods.
4. The donor makes a payment of \$75 or less per year and receives only annual membership benefits that consist of:
  - a. Any rights or privileges (other than the right to purchase tickets for college athletic events) that the taxpayer can exercise often during the membership period, such as free or discounted admissions or parking or preferred access to goods or services; or
  - b. Admission to events that are open only to members and the cost per person of which is within the limits for low-cost articles described in Rev. Proc. 90-12 (as adjusted for inflation), [Rev. Proc. 90-12](#).

**Good faith estimate of fair market value (FMV).** An organization can use any reasonable method to estimate the FMV of goods or services it provided to a donor, as long as it applies the method in good faith.

The organization can estimate the FMV of goods or services that generally aren't commercially available by using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they don't have the unique qualities of the goods or services being valued.

**Example 1.** A charity provides a 1-hour tennis lesson with a tennis professional for the first \$500 payment it receives. The tennis professional provides 1-hour lessons on a commercial basis for \$100. A good faith estimate of the lesson's FMV is \$100.

**Example 2.** For a payment of \$50,000, a museum allows a donor to hold a private event in a room of the museum. A good faith estimate of the FMV of the right to hold the event in the museum can be made by using the cost of renting a hotel ballroom with a capacity, amenities, and atmosphere comparable to the museum room, even though the hotel ballroom lacks the unique art displayed in the museum room. If the hotel ballroom rents for \$2,500, a good faith estimate of the FMV of the right to hold the event in the museum is \$2,500.

**Example 3.** For a payment of \$1,000, a charity provides an evening tour of a museum

conducted by a well-known artist. The artist doesn't provide tours on a commercial basis. Tours of the museum normally are free to the public. A good faith estimate of the FMV of the evening museum tour is \$0 even though it is conducted by the artist.

**Penalty for failure to disclose.** A penalty is imposed on a charity that doesn't make the required disclosure of a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

## Acknowledgment of Charitable Contributions of \$250 or More

A donor can deduct a charitable contribution of \$250 or more only if the donor has a written acknowledgment from the charitable organization. The donor must get the acknowledgment by the earlier of:

1. The date the donor files the original return for the year the contribution is made, or
2. The due date, including extensions, for filing the return.

The donor is responsible for requesting and obtaining the written acknowledgment from the donee. A charitable organization that receives a payment made as a contribution is treated as the donee organization for this purpose even if the organization (according to the donor's instructions or otherwise) distributes the amount received to one or more charities.

**Quid pro quo contribution.** If the donee provides goods or services to the donor in exchange for the contribution (a quid pro quo contribution), the acknowledgment must include a good faith estimate of the value of the goods or services. See [Disclosure of Quid Pro Quo Contributions](#), earlier.

**Form of acknowledgment.** Although there is no prescribed format for the written acknowledgment, it must provide enough information to substantiate the amount of the contribution. For more information, see Publication 1771, Charitable Contributions – Substantiation and Disclosure Requirements.

**Cash contributions.** To deduct a contribution of cash, a check, or other monetary gift (regardless of the amount), a donor must maintain a bank record or a written communication from the donee organization showing the donee's name, date, and amount of the contribution. In the case of a lump-sum contribution (rather than a contribution by payroll deduction) made through the Combined Federal Campaign or a similar program such as a United Way Campaign, the written communication must include the name of the donee organization that is the ultimate recipient of the charitable contribution.

**Contributions by payroll deduction.** An organization may substantiate an employee's contribution by deduction from its payroll by:

- A pay stub, Form W-2, or other document showing a contribution to a donee organization, together with
- A pledge card or other document from the donee organization that shows its name.

For contributions of \$250 or more, the document must state that the donee organization provides no goods or services for any payroll contributions. The amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

## Acknowledgment of Vehicle Contribution


If an exempt organization receives a contribution of a qualified vehicle with a claimed value of more than \$500, the donee organization is required to provide a contemporaneous written acknowledgment to the donor. The donee organization can use a completed Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes, for the contemporaneous written acknowledgment. See section 3.03 of [Notice 2005-44, 2005-25 I.R.B. 1287](#) for guidance on the information that must be included in a contemporaneous written acknowledgment and the deadline for furnishing the acknowledgment to the donor.

Any donee organization that provides a contemporaneous written acknowledgment to a donor is required to report to the IRS the information contained in the acknowledgment. The report is due by February 28 (March 31 if filing electronically) of the year following the year in which the donee organization provides the acknowledgment to the donor. The organization must file the report on Copy A of Form 1098-C.

An organization that files Form 1098-C on paper should send it with Form 1096, Annual Summary and Transmittal of U.S. Information Returns. See the Instructions for Form 1096 for the correct filing location.

An organization that is required to file 250 or more Forms 1098-C during the calendar year must file the forms electronically or magnetically. Specifications for filing Form 1098-C electronically or magnetically can be found in Publication 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically at [Pub. 1220](#).

## Acknowledgment

 **For a contribution of a qualified vehicle with a claimed value of \$500 or less, don't file Form 1098-C. However, you can use it as the contemporaneous written acknowledgment under section 170(f)(8) by providing the donor with Copy C only. See the Instructions for Form 1098-C.**

Generally, the organization should complete Form 1098-C as the written acknowledgment to



the donor and the IRS. The contents of the acknowledgment depend upon whether the organization:

- Sells a qualified vehicle without any significant intervening use or material improvement,
- Intends to make a significant intervening use of or material improvement to a qualified vehicle prior to sale, or
- Sells a qualified vehicle to a needy individual at a price significantly below fair market value, or a gratuitous transfer to a needy individual in direct furtherance of a charitable purpose of the organization of relieving the poor and distressed or the underprivileged who are in need of a means of transportation.

For more information on the acknowledgment, see [Notice 2005-44](#).

**Material improvements or significant intervening use.** To constitute significant intervening use, the organization must actually use the vehicle to substantially further the organization's regularly conducted activities, and the use must be significant, not incidental. Factors in determining whether a use is a significant intervening use depend on the nature, extent, frequency, and duration. For this purpose, use includes providing transportation on a regular basis for a significant period of time or significant use directly related to training in vehicle repair. Use doesn't include the use of a vehicle to provide training in business skills, such as marketing or sales. Examples of significant use include:

- Driving a vehicle every day for 1 year to deliver meals to needy individuals, if delivering meals is an activity regularly conducted by the organization.
- Driving a vehicle for 10,000 miles over a 1-year period to deliver meals to needy individuals, if delivering meals is an activity regularly conducted by the organization.

Material improvements include major repairs and additions that improve the condition of the vehicle in a manner that significantly increases the value. To be a material improvement, the improvement can't be funded by an additional payment to the organization from the donor of the vehicle. Material improvements don't include cleaning, minor repairs, routine maintenance, painting, removal of dents or scratches, cleaning or repair of upholstery, and installation of theft deterrent devices.

**Penalties.** If your charitable organization receives contributions of used motor vehicles, boats, and airplanes valued over \$500, it may be subject to a penalty if it knowingly:

- Fails to furnish an acknowledgement in a timely manner, showing the required information; or
- Furnishes a false or fraudulent acknowledgement of the contribution.



*Other penalties may apply. See Part O in the current General Instructions for Certain Information Returns.*

An acknowledgment containing a certification will be presumed to be false or fraudulent if the qualified vehicle is sold to a buyer other

than a needy individual without a significant intervening use or material improvement within 6 months of the date of the contribution.

If a charity sells a donated vehicle at auction, the IRS won't accept as substantiation an acknowledgment from the charity stating that the vehicle is to be transferred to a needy individual for significantly below fair market value. Vehicles sold at auction aren't sold at prices significantly below fair market value, and the IRS won't treat vehicles sold at auction as qualifying for this exception.

The penalty for a false or fraudulent acknowledgment where the donee certifies that the vehicle won't be transferred for money, other property, or services before completion of material improvements or significant intervening use or the donee certifies that the vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of the donee's charitable purpose is the larger of \$5,000 or the claimed value of the vehicle multiplied by 39.6%.

The penalty for an acknowledgment relating to a qualified vehicle being sold in an arm's length transaction to an unrelated party is the larger of the gross proceeds from the sale or the sales price stated in the acknowledgment multiplied by 39.6%.

## Qualified Intellectual Property

A taxpayer who contributes qualified intellectual property to a charity may be entitled to a charitable deduction, in addition to any initial deduction allowed in the year of contribution. The additional deduction is based on a specified percentage of the qualified donee income with respect to the qualified intellectual property. To qualify for the additional charitable deduction, the donor must provide notice to the donee at the time of the contribution that the donor intends to treat the contribution as qualified intellectual property contribution for purposes of sections 170(m) and 6050L.

Every donee organization described in section 170(c) (except a private foundation as defined in section 509(a) that isn't described in section 170(b)(1)(F)) that receives or accrues net income from a charitable gift of qualified intellectual property must file Form 8899.

**Form 8899.** Form 8899, Notice of Income from Donated Intellectual Property, is used by a donee to report net income from qualified intellectual property to the donor of the property and to the IRS and is due by the last day of the first full month following the close of the donee's tax year. This form must be filed for each tax year of the donee in which the donated property produces net income, but only if all or part of that tax year occurs during the 10-year period beginning on the date of the contribution and that tax year doesn't begin after the expiration of the legal life of the donated property.

**Qualified donee income.** Qualified donee income is any net income received by or accrued to the donee that is properly allocable to the qualified intellectual property for the tax year of the donee which ends within or with the tax year of the donor. Income isn't treated as allocated

to qualified intellectual property if it is received or accrued after the earlier of the expiration of the legal life of the qualified intellectual property, or the 10-year period beginning with the date of the contribution.

**Qualified intellectual property.** Qualified intellectual property is generally any patent, copyright, trademark, trade name, trade secret, know-how, software or similar property, or applications or registrations of such property (other than property contributed to or for the use of a private foundation, as defined in section 509(a) that isn't described in section 170(b)(1)(F)). See *Exceptions* below.

**Exceptions.** The following property isn't considered qualified intellectual property for purposes of the additional charitable deduction:

1. Computer software that is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified.
2. A copyright held by a taxpayer:
  - Whose personal efforts created the property, or
  - In whose hands the basis of the property is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of the property in the hands of a taxpayer whose personal efforts created the property.

## Report of Cash Received

An exempt organization that receives, in the course of its activities, more than \$10,000 cash in one transaction (or two or more related transactions) that isn't a charitable contribution must report the transaction to the IRS on Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

## Public Inspection of Exemption Applications, Annual Returns, and Political Organization Reporting Forms

The general rule under section 6103 is that returns and return information of all taxpayers are confidential except as authorized under the Code. Section 6104 provides exceptions to the general rule of confidentiality for disclosure of certain information about exempt organizations.

In addition, included in this section is a discussion on the public inspection requirements for political organizations filing Forms 8871 and 8872.

## Annual Information Return

An exempt organization must make available for public inspection, upon request and without charge, a copy of its original and amended

annual information returns. Each information return must be made available from the date it is required to be filed (determined with regard to any extensions), or is actually filed, whichever is later. An original return doesn't have to be made available if more than 3 years have passed from the date the return was required to be filed (including any extensions) or was filed, whichever is later. An amended return doesn't have to be made available if more than 3 years have passed from the date it was filed.

An annual information return includes an exact copy of the return (Forms 990, 990-EZ, 990-BL, 990-PF, 990-T, or 1065), and amended return, if any, and all schedules, attachments, and supporting documents filed with the IRS.

An annual information return doesn't include:

- Schedule A of Form 990-BL,
- Schedule K-1 of Form 1065, or
- Form 1120-POL.

In the case of a tax-exempt organization other than a private foundation, an annual information return doesn't include the names and addresses of contributors to the organization.



**Form 990-T.** All section 501(c)(3) organizations that file Form 990-T must make the return public, regardless of whether the organization is otherwise subject to the disclosure requirements of section 6104. For example, although churches aren't required to file Form 1023 or Form 990 with the IRS, they must file the Form 990-T with the IRS to report unrelated business taxable income. Thus, churches must disclose Form 990-T to the public.

State colleges and universities that have been recognized by the IRS as exempt under section 501(a) as organizations described in section 501(c)(3) must disclose Form 990-T to the public. However, state colleges and universities that are subject to tax under section 511(a) solely by virtue of section 511(a)(2)(B) and that haven't been recognized by the IRS as exempt under section 501(a) as organizations described in section 501(c)(3) aren't required to make their Forms 990-T public.

## Public Inspection of Exemption Application

An exempt organization must also make available for public inspection without charge its application for tax-exempt status. An application for tax exemption includes the application form (such as Forms 1023 or 1024), all documents and statements the IRS requires the organization to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the IRS concerning the application.

The application for exemption doesn't include:

- Any application from an organization that isn't yet recognized as exempt;
- Any material that is required to be withheld from public inspection, see [Material required to be withheld from public inspection](#), next;

- In the case of a tax-exempt organization other than a private foundation, the names and addresses of contributors to the organization; or
- Any applications filed before July 15, 1987, if the organization didn't have a copy of the application on July 15, 1987.

If there is no prescribed application form, see Regulations section 301.6104(d)-1(b)(3)(ii) for a list of the documents that must be made available.

**Material required to be withheld from public inspection.** Material that is required to be withheld from public inspection includes:

- Trade secrets, patents, processes, styles of work, or apparatus for which withholding was requested and granted;
- National defense material;
- Unfavorable rulings or determination letters issued in response to applications for tax exemption;
- Rulings or determination letters revoking or modifying a favorable determination letter;
- Technical advice memoranda relating to a disapproved application for tax exemption or the revocation or modification of a favorable determination letter;
- Any letter or document filed with or issued by the IRS relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503; and
- Any other letter or document filed with or issued by the IRS which, although it relates to an organization's tax-exempt status as an organization described in section 501(c) or 501(d), doesn't relate to that organization's application for tax exemption.

**Time, place, and manner restrictions.** The annual returns and exemption application must be made available for inspection, without charge, at the organization's principal, regional, and district offices during regular business hours. The organization can have an employee present during inspection, but must allow the individual to take notes freely and to photocopy at no charge if the individual provides the photocopying equipment. Generally, regional and district offices are those that have paid employees who together are normally paid for at least 120 hours a week.

If the organization doesn't maintain a permanent office, it must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice. It must permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At its option, it can mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization can charge the requester for copying and actual postage costs only if the requester consents to the charge.

An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, must make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

**Furnishing copies.** An exempt organization must also provide a copy of all, or any specific part or schedule, of its three most recent annual information returns and/or exemption application to anyone who requests a copy either in person or in writing at its principal, regional, or district office during regular business hours. If the individual made the request in person, the copy must be provided on the same business day the request is made unless there are unusual circumstances. Unusual circumstances are defined in Regulations section 301.6104(d)-1(d)(1)(ii).

The organization must honor a written request for a copy of documents or specific parts or schedules of documents that are required to be disclosed. However, this rule only applies if the request:

- Is addressed to the exempt organization's principal, regional, or district office;
- Is sent to that address by mail, electronic mail (e-mail), facsimile (fax), or a private delivery service approved by the IRS; and
- Gives the address to where the copy of the document should be sent.

The organization must mail the copy within 30 days from the date it receives the request. The organization can request payment in advance and must then provide the copies within 30 days from the date it receives payment.

**Fees for copies.** The organization can charge a reasonable fee for providing copies. It can charge no more for the copies than the per page rate the IRS charges for providing copies. The IRS can't charge more for copies than the fees listed in the Freedom of Information Act (FOIA) fee schedule. Although the IRS charges no fee for the first 100 pages, the organization can charge a fee for all copies. For noncommercial requesters, the FOIA schedule currently provides a rate of \$0.10 per page for black and white pages, and \$0.20 per page for color pages. The organization can also charge the actual postage costs it pays to provide the copies.

**Regional and district offices.** Generally, the same rules regarding public inspection and providing copies of applications and annual information returns that apply to a principal office of an exempt organization also apply to its regional and district offices. However, a regional or district office isn't required to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extensions) or is actually filed, whichever is later.

**Local and subordinate organizations.** A local or subordinate organization is an exempt organization that didn't file its own application for tax exemption because it is covered by a group exemption letter. Generally, a local or subordinate organization of an exempt organization must, upon request, make available for public inspection, or provide copies of:

1. The application submitted to the IRS by the central or parent organization to obtain the group exemption letter, and
2. Those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter.

However, if the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it.

The local or subordinate organization must permit public inspection or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In lieu of allowing an inspection, the local or subordinate organization can mail a copy of the applicable documents to the person requesting inspection within the same time period. In that case, the organization can charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its application for exemption, it must fulfill the request in the time and manner specified earlier.

The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central or parent organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, it must make the list or directory available for public inspection, but it is required to provide copies only of those pages of the list or directory that refer to particular local or subordinate organizations specified by the requester. The central or parent organization must fulfill such requests in the time and manner specified earlier.

A local or subordinate organization that doesn't file its own annual information return (because it is affiliated with a central or parent organization that files a group return) must, on request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization. However, if the group return includes separate schedules for each local or subordinate organization included in the group return, the local or subordinate organization receiving the request can omit any schedules relating only to other organizations included in the group return. The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.

In lieu of allowing an inspection, the local or subordinate organization can mail a copy of the applicable documents to the person requesting inspection within the same time period. In this case, the organization can charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified earlier. The requester has the option of requesting from the central or parent

organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified earlier.

If an organization fails to comply, it may be liable for a penalty. See [Penalties](#), later.

**Making applications and annual information returns widely available.** An exempt organization doesn't have to comply with requests for copies of its annual information returns or exemption application if it makes them widely available. However, making these documents widely available doesn't relieve the organization from making its documents available for public inspection.

The organization can make its application and annual information returns widely available by posting the application and annual information returns on the Internet. For the rules to follow so that the Internet posting will be considered widely available, see Regulations section 301.6104(d)-2(b).

If the organization has made its application for tax exemption and/or annual information returns widely available, it must inform any individual requesting a copy where the documents are available, including the website address on the Internet, if applicable. If the request is made in person, the notice must be provided immediately. If the request is made in writing, the notice must be provided within 7 days.

**Harassment campaign.** If the tax-exempt organization is the subject of a harassment campaign, the organization may not have to fulfill requests for information. For more information, see Regulations section 301.6104(d)-3.

## Political Organization Reporting Forms

Forms 8871 and 8872 (discussed earlier under [Reporting Requirements for a Political Organization](#)) are open to public inspection.

**Form 8871.** Form 8871 (including any supporting papers), and any letter or other document the IRS issues with regard to Form 8871, are open to public inspection online at [IRS.gov/polorgs](https://www.irs.gov/polorgs).

**Form 8872.** Form 8872 (including Schedules A and B) are open to public inspection online at [IRS.gov/polorgs](https://www.irs.gov/polorgs).

Electronically filed Forms 8871 and 8872 are available online 48 hours after the form has been filed. Forms 8872 that are filed by mail are available online after being imaged by the IRS. These forms are considered widely available if you provide the online address to the requester. In addition, your organization must make a copy of these materials available for public inspection during regular business hours at the organization's principal office and at each of its regional or district offices having at least three paid employees.

## Penalties

The penalty for failure to allow public inspection of annual returns is \$20 for each day the failure

continues. The maximum penalty on all persons for failures involving any one return is \$10,000.

The penalty for failure to allow public inspection of exemption applications is \$20 for each day the failure continues.

The penalty for willful failure to allow public inspection of a return or exemption application is \$5,000 for each return or application. The penalty also applies to a willful failure to provide copies.

The penalty for failure to allow public inspection of a political organization's section 527 notice (Form 8871) is \$20 for each day the failure continues.

The penalty for failure to allow public inspection of a section 527 organization's contributions and expenditures report (Form 8872) is \$20 for each day the failure continues. The maximum penalty on all persons for failures involving any one report is \$10,000.

## Required Disclosures

Certain exempt organizations must disclose to the IRS or the public certain information about their activities. Generally, an organization discloses this information by entering it on the appropriate lines of its annual return. In addition, there are disclosure requirements for:

- Solicitation of nondeductible contributions,
- Sales of information or services that are available free from the government,
- Dues paid to the organization that aren't deductible because they are used for lobbying or political activities, and
- Prohibited tax shelter transactions.

## Solicitation of Nondeductible Contributions

Solicitations for contributions or other payments by certain exempt organizations (including lobbying groups and political action committees) must include a statement that payments to those organizations aren't deductible as charitable contributions for federal income tax purposes. The statement must be included in the fundraising solicitation and be conspicuous and easily recognizable.

**Organizations subject to requirements.** An organization must follow these disclosure requirements if it is exempt under section 501(c), other than section 501(c)(1), or under section 501(d), unless the organization is eligible to receive tax deductible charitable contributions under section 170(c). These requirements must be followed by, among others:

1. Social welfare organizations (section 501(c)(4));
2. Labor unions (section 501(c)(5));
3. Trade associations (section 501(c)(6));
4. Social clubs (section 501(c)(7));
5. Fraternal organizations (section 501(c)(8) and 501(c)(10)) (however, fraternal organizations described in section 170(c)(4)



must follow these requirements only for solicitations for funds that are to be used for noncharitable purposes not described in section 170(c)(4));

6. Any political organization described in section 527(e), including political campaign committees and political action committees; and
7. Any organization not eligible to receive tax-deductible contributions if the organization or a predecessor organization was, at any time during the 5-year period ending on the date of the fundraising solicitation, an organization of the type to which this disclosure requirement applies.

**Fundraising solicitation.** This disclosure requirement applies to a fundraising solicitation if all of the following are true.

1. The organization soliciting the funds normally has gross receipts over \$100,000 per year.
2. The solicitation is part of a coordinated fundraising campaign that is soliciting more than 10 persons during the year.
3. The solicitation is made in written or printed form, by television or radio, or by telephone.

**Penalties.** Failure by an organization to make the required statement will result in a penalty of \$1,000 for each day the failure occurred, up to a maximum penalty of \$10,000 for a calendar year. No penalty will be imposed if it is shown that the failure was due to reasonable cause. If the failure was due to intentional disregard of the requirements, the penalty may be higher and isn't subject to a maximum amount.

## Sales of Information or Services Available Free from Government

Certain organizations that offer to sell to individuals (or solicit money for) information or routine services that could be readily obtained free (or for a nominal fee) from the federal government must include a statement that the information or service can be so obtained. The statement must be made in a conspicuous and easily recognized format when the organization makes an offer or solicitation to sell the information or service. Organizations affected are those exempt under section 501(c) or 501(d) and political organizations defined in section 527(e).

**Penalty.** A penalty is provided for failure to comply with this requirement if the failure is due to intentional disregard of the requirement. The penalty is the greater of \$1,000 for each day the failure occurred, or 50% of the total cost of all offers and solicitations that were made by the organization the same day that it fails to meet the requirement.

## Dues Used for Lobbying or Political Activities

Certain exempt organizations must notify anyone paying dues to the organization whether

any part of the dues isn't deductible because it is related to lobbying or political activities.

An organization must provide the notice if it is exempt from tax under section 501(a) and is one of the following.

1. A social welfare organization described in section 501(c)(4) that isn't a veterans' organization.
2. An agricultural or horticultural organization described in section 501(c)(5).
3. A business league, chamber of commerce, real estate board, or other organization described in section 501(c)(6).

However, an organization described in (1), (2), or (3) doesn't have to provide the notice if it establishes that substantially all the dues paid to it aren't deductible anyway or if certain other conditions are met. For more information, see Rev. Proc. 98-19, 1998-1 C.B. 547 (or later update).

If the organization doesn't provide the required notice, it may have to pay a tax that is reported on Form 990-T. But the tax doesn't apply to any amount on which the section 527 tax has been paid on Form 1120-POL. See [Political Organization Income Tax Return](#), earlier.

For more information about nondeductible dues, see [Deduction not allowed for dues used for political or legislative activities](#), under [Section 501\(c\)\(6\) organizations](#), later.

## Prohibited Tax Shelter Transactions

Every exempt organization (as defined in section 4965(c)) that is a party to a prohibited tax shelter transaction is required to disclose to the IRS the following information:

- Whether such organization is a party to the prohibited tax shelter transaction (as defined in section 4965(e)); and
- The identity of any other party to the transaction that is known to the exempt organization.

**Party to a prohibited tax shelter transaction.** An exempt organization is a party to a prohibited tax shelter transaction if the organization:

1. Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status; or
2. Is identified in published guidance by type, class, or role as a party to a prohibited tax shelter transaction.

See [Prohibited Tax Shelter Transactions](#), later, for further information.

**Disclosure.** A single disclosure is made by the organization for each prohibited tax shelter transaction. The disclosure is made on Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.

**Due date.** Generally, for exempt organizations described in 1 above, the disclosure is due on or before May 15 of the calendar year following the close of the calendar year that the exempt organization entered into the prohibited

tax shelter transaction. If any date falls on a Saturday, Sunday, or legal holiday, substitute the next business day. However, the disclosure for subsequently listed transactions (as defined in section 4965(e)(2)) is due on or before May 15 of the calendar year following the close of the calendar year that the transaction was identified by the Secretary as a listed transaction.

The disclosure for exempt organizations described in 2 above is due on or before the date the first tax return (whether original or amended return) is filed that reflects a reduction or elimination of the exempt organization's liability for applicable federal employment, excise, or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

**Penalty.** Exempt organizations that fail to file the required disclosure are subject to a nondisclosure penalty of \$100 for each day the failure continues with a maximum penalty for any one disclosure of \$50,000.

Also, if the IRS makes a written demand on any exempt organization subject to this penalty, giving the organization a reasonable date to make the disclosure, and the organization fails to make the disclosure by that date, the organization is subject to a penalty of \$100 for each day after the date specified by the IRS until disclosure is made (with a maximum penalty for any one disclosure of \$10,000).

## Miscellaneous Rules

### Organizational Changes and Exempt Status

If you've changed your form or place of organization, review [Rev. Proc. 2018-15, 2018-9 I.R.B. 379](#), to determine whether you're required to file a new exemption application. If your organization becomes inactive for a period of time but doesn't cease being an entity under the laws of the state in which it was formed, you will have to continue to file an annual information return during the period of inactivity, unless a filing exception applies. If your organization has been liquidated, dissolved, terminated, or substantially contracted, you should file your annual return of information by the 15th day of the 5th month after the change and follow the applicable instructions for the form.

If your organization amends its articles of organization or its internal regulations (bylaws), then follow the instructions for Form 990, Form 990-EZ, or Form 990-PF for reporting these changes. Regardless of whether your organization files an annual information return, you may also report these changes to the EO Determinations office; however, such reporting doesn't relieve your organization from reporting the changes on its annual information return. For information about informing the IRS of a termination or merger, see Publication 4779, Facts about Terminating or Merging Your Exempt Organization.

An organization should report new significant program services or significant changes in how it conducts program services, and

significant changes to its organizational documents, on its Form 990 rather than in a letter to EO Determinations. EO Determinations no longer issues letters confirming the tax-exempt status of organizations that report new services or significant changes, or changes to organizational documents.

## Change in Accounting Period

The procedures that an organization must follow to change its accounting period differ for an independent organization and for a central organization that seeks a group change for its subordinate organizations.

**Independent organizations.** If an organization isn't required to file an annual information return, but files a Form 990-T, it can change its annual accounting period by timely filing the Form 990-T. If neither an information return nor a Form 990-T is required to be filed, an organization must notify the IRS by letter that it has changed its fiscal period.

If an organization changed its annual accounting period at any time within the previous 10 years and within that time it had a filing requirement, the organization must file a Form 1128, Application to Adopt, Change, or Retain a Tax Year, with its timely filed annual information return or Form 990-T, as appropriate, whether or not the filing of the information return or Form 990-T would have otherwise been required for that year.

**Central organizations.** A central organization can obtain approval for a group change in an annual accounting period for its subordinate organizations on a group basis only by filing Form 1128 with the IRS Service Center where it files its annual information return. For more information, see Rev. Proc. 76-10, 1976-1 C.B. 548, as modified by Rev. Proc. 79-3, 1979-1 C.B. 483, or any later updates.

**Due date.** Form 1128 must be filed by the 15th day of the 5th month following the close of the short period.

## Modify or Obtain an NTEE Code.

Organizations that wish to modify or obtain a National Taxonomy of Exempt Entities (NTEE) Code should send a written request to the Correspondence Unit with the relevant facts, including the Code currently assigned, if any, and the requested Code, as well as who selected the currently assigned Code initially, if known. The Correspondence Unit will refer to EO Determinations, if necessary, and will notify the organization if a form or user fee is required to make the requested change. The written request must be sent or faxed to:

Internal Revenue Service  
Attn: Correspondence Unit  
P.O. Box 2508, Room 6403  
Cincinnati, Ohio 45201  
Fax: (855) 204-6184

Express and Overnight Delivery:

Internal Revenue Service  
Attn: Correspondence Unit  
500 Main Street, Room 6403  
Cincinnati, Ohio 45202

## 3.

# Section 501(c)(3) Organizations

## Introduction

An organization may qualify for exemption from federal income tax under section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes.

- Religious.
- Charitable.
- Scientific.
- Testing for public safety.
- Literary.
- Educational.
- Fostering national or international amateur sports competition (but only if none of its activities involve providing athletic facilities or equipment; however, see [Amateur Athletic Organizations](#), later in this chapter).
- The prevention of cruelty to children or animals.

To qualify, the organization must be organized as a corporation (including a limited liability company), unincorporated association, or trust. Sole proprietorships, partnerships, individuals, or loosely associated groups of individuals won't qualify.

**Examples.** Qualifying organizations include:

- Nonprofit old-age homes,
- Parent-teacher associations,
- Charitable hospitals or other charitable organizations,
- Alumni associations,
- Schools,
- Chapters of the Red Cross,
- Boys' or Girls' Clubs, and
- Churches.

**Child care organizations.** The term *educational purposes* includes providing for care of children away from their homes if substantially all the care provided is to enable individuals (the parents) to be gainfully employed and the services are available to the general public.

**Instrumentalities.** A state or municipal instrumentality may qualify under section 501(c)(3) if it is organized as a separate entity from the governmental unit that created it and if it otherwise meets the organizational and operational tests of section 501(c)(3). Examples of a qualifying instrumentality may include state schools, uni-

versities, or hospitals. However, if an organization is an integral part of the local government or possesses governmental powers, it doesn't qualify for exemption. A state or municipality itself doesn't qualify for exemption under section 501(c)(3).

## Topics

This chapter discusses:

- Contributions to 501(c)(3) organizations,
- Applications for recognition of exemption,
- Articles of Organization,
- Educational organizations and private schools,
- Organizations providing insurance,
- Other section 501(c)(3) organizations,
- Private foundations and public charities, and
- Lobbying expenditures.

## Useful Items

You may want to see:

### Forms (and Instructions)

- **1023** Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
- **1023-EZ** Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Form 1023 and Form 1023-EZ must be filed electronically on Pay.gov.

See chapter 6 for information about getting publications and forms.

## Contributions to 501(c)(3) Organizations

Contributions to domestic organizations described in this chapter, except organizations testing for public safety, are deductible as charitable contributions on the donor's federal income tax return.

**Fundraising events.** If the donor receives something of value in return for the contribution, a common occurrence with fundraising efforts, part or all of the contribution may not be deductible. This may apply to fundraising activities such as charity balls, bazaars, banquets, auctions, concerts, athletic events, and solicitations for membership or contributions when merchandise or benefits are given in return for payment of a specified minimum contribution.

If the donor receives or expects to receive goods or services in return for a contribution to your organization, the donor can't deduct any part of the contribution unless the donor intends to, and does, make a payment greater than the fair market value of the goods or services. If a deduction is allowed, the donor can deduct only the part of the contribution, if any, that is more than the fair market value of the goods or services received. You should determine in advance the fair market value of any goods or services to be given to contributors and tell them, when you publicize the fundraising event

or solicit their contributions, how much is deductible and how much is for the goods or services. See [Disclosure of Quid Pro Quo Contributions](#) in chapter 2.

**Exemption application not filed.** Generally, donors can't deduct any charitable contribution to an organization that is required to apply for recognition of exemption but has not done so.

**Separate fund—contributions that are deductible.** An organization that is exempt from federal income tax other than as an organization described in section 501(c)(3) can, if it desires, establish a fund, separate and apart from its other funds, exclusively for religious, charitable, scientific, literary, or educational purposes, fostering national or international amateur sports competition, or for the prevention of cruelty to children or animals.

If the fund is organized and operated exclusively for these purposes, it may qualify for exemption as an organization described in section 501(c)(3), and contributions made to it will be deductible, as provided by section 170. A fund with these characteristics must be organized in such a manner as to prohibit the use of its funds upon dissolution, or otherwise, for the general purposes of the organization creating it.

**Personal benefit contracts.** Generally, charitable deductions won't be allowed for a transfer to, or for the use of, a section 501(c)(3) or (c)(4) organization if in connection with the transfer:

- The organization directly or indirectly pays, or previously paid, a premium on a personal benefit contract for the transferor; or
- There is an understanding or expectation that anyone will directly or indirectly pay a premium on a personal benefit contract for the transferor.

A *personal benefit contract* with respect to the transferor is any life insurance, annuity, or endowment contract, if any direct or indirect beneficiary under the contract is the transferor, any member of the transferor's family, or any other person designated by the transferor.

**Certain annuity contracts.** If an organization incurs an obligation to pay a charitable gift annuity, and the organization purchases an annuity contract to fund the obligation, individuals receiving payments under the charitable gift annuity won't be treated as indirect beneficiaries if the organization owns all of the incidents of ownership under the contract, is entitled to all payments under the contract, and the timing and amount of the payments are substantially the same as the timing and amount of payments to each person under the obligation (as such obligation is in effect at the time of the transfer).

**Certain contracts held by a charitable remainder trust.** An individual won't be considered an indirect beneficiary under a life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust solely by reason of being entitled to the payment if the trust owns all of the incidents of ownership under the contract, and the trust is entitled to all payments under the contract.

**Excise tax.** If the premiums are paid in connection with a transfer for which a deduction isn't allowable under the deduction denial rule, without regard to when the transfer to the charitable organization was made, an excise tax will be applied that is equal to the amount of the premiums paid by the organization on any life insurance, annuity, or endowment contract. The excise tax doesn't apply if all of the direct and indirect beneficiaries under the contract are organizations.

**Excise taxes.** A charitable organization liable for excise taxes must file Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code. Generally, the due date for filing Form 4720 occurs on the 15th day of the 5th month following the close of the organization's tax year.

**Indoor tanning services.** If your organization provides an indoor tanning bed service, the ACA imposed a 10% excise tax on services provided after June 30, 2010. For more information, go to [IRS.gov](#) and select *Affordable Care Act Tax Provisions*.

## Application for Recognition of Exemption

This discussion describes certain information to be provided upon application for recognition of exemption by all organizations created for any of the purposes described earlier in this chapter. See the organization headings that follow for specific information your organization may need to provide.

**Form 1023 or Form 1023-EZ.** Your organization must file its application for recognition of exemption on Form 1023 or Form 1023-EZ. See chapter 1 and the instructions accompanying Form 1023 or Form 1023-EZ for the procedures to follow in applying. Some organizations aren't required to file Form 1023 or Form 1023-EZ. See *Organizations Not Required to File Form 1023 or 1023-EZ*, later.

If you are a small organization, you may be eligible to apply for recognition of exemption by filing Form 1023-EZ instead of Form 1023. Specific eligibility requirements apply. You can find more information about eligibility to use Form 1023-EZ at [Instructions for Form 1023-EZ](#).

**TIP** Additional information to help you complete your application can be found online. Go to Exemption Requirement – Section 501(c)(3) Organizations and select the link at the bottom of the web page for step by step help with the application process. See [Exemption Requirements - Section 501\(c\)\(3\) Organizations](#).

Form 1023 and accompanying statements must show that all of the following are true.

1. The organization is organized exclusively for, and will be operated exclusively for, one or more of the purposes (religious, charitable, etc.) specified in the introduction to this chapter.

2. No part of the organization's net earnings will inure to the benefit of private shareholders or individuals. You must establish that your organization won't be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests.

3. The organization won't, as a substantial part of its activities, attempt to influence legislation (unless it elects to come under the provisions allowing certain lobbying expenditures) or participate to any extent in a political campaign for or against any candidate for public office. See [Political activity](#), next, and [Lobbying Expenditures](#), near the end of this chapter.

**Political activity.** If any of the activities (whether or not substantial) of your organization consist of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office, your organization won't qualify for tax-exempt status under section 501(c)(3). Such participation or intervention includes the publishing or distributing of statements. See the Form 1023 instructions.

Whether your organization is participating or intervening, directly or indirectly, in any political campaign on behalf of (or in opposition to) any candidate for public office depends upon all of the facts and circumstances of each case. Certain voter education activities or public forums conducted in a nonpartisan manner may not be prohibited political activity under section 501(c)(3), while other so-called voter education activities may be prohibited.

**Effective date of exemption.** Most organizations described in this chapter that were organized after October 9, 1969, won't be treated as tax exempt unless they apply for recognition of exemption by filing Form 1023 or Form 1023-EZ. These organizations won't be treated as tax exempt for any period before they file Form 1023 or Form 1023-EZ, unless they file the form within 27 months from the end of the month in which they were organized. If the organization files the application within this 27-month period, the organization's exemption will generally be recognized retroactively to the date it was organized. Otherwise, exemption will be recognized only from the date of receipt. The date of receipt is the date of the U.S. postmark on the cover in which an exemption application is mailed or, if no postmark appears on the cover, the date the application is stamped as received by the IRS or, for an electronic submission, the date submitted to the IRS. See section 6.08 of Rev. Proc. 2023-5.

**Private delivery service.** You can use certain private delivery services (PDS) designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to [IRS.gov/PDS](#) for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to [IRS.gov/PDStreetAddresses](#).





*Private delivery services can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

**Amendments to organizing documents required.** If an organization is required to alter its activities or to make substantive amendments to its organizing document, the determination letter recognizing its exempt status will be effective as of the date the changes are made. If only a nonsubstantive amendment is made, exempt status will be effective as of the date it was organized, if the application was filed within the 27-month period, or the date the application was filed.

**Discretionary extension of time for filing.** An organization that fails to file a Form 1023 within the 27-month period may be granted an extension to file if it submits evidence (including affidavits) to establish that:

1. It acted reasonably and in good faith, and
2. Granting a discretionary extension won't prejudice the interests of the government.

The discretionary extension of the time for filing Form 1023 does not apply if granting relief would result in the organization's exempt status being automatically revoked for failure to file a required annual information return or notice for 3 consecutive years, effective before the application date. See [Rev. Proc. 2023-5](#).

Additionally, organizations that are not required to apply for recognition of exemption in order to be exempt are not eligible to request the discretionary extension. See [Rev. Proc. 2023-5](#). However, these organizations may be exempt prior to the effective date the IRS recognizes exempt status because they may be tax-exempt under Section 501(c)(3) without filing an application. See [Organizations Not Required to File Form 1023 or Form 1023-EZ](#).

**How to show reasonable action and good faith.** The following factors are considered in determining whether an organization acted reasonably and showed good faith.

1. The organization failed to file an application because of intervening events beyond its control.
2. The organization exercised reasonable diligence (taking into account the complexity of the filing or issue and the organization's experience in these matters) but wasn't aware of the application filing requirement.
3. The organization reasonably relied upon the written advice of the IRS.
4. The organization reasonably relied upon the advice of a qualified tax professional who failed to file or advise the organization to file Form 1023 or Form 1023-EZ. An organization can't rely on the advice of a tax professional if it knows or should know that he or she isn't competent to render advice on filing exemption applications or isn't aware of all the relevant facts.

5. The organization filed required Form 990-series returns or notices consistent with its requested status.

**Not acting reasonably and in good faith.**

An organization has not acted reasonably and in good faith under the following circumstances.

1. It seeks to change a return position for which an accuracy-related penalty has been or could be imposed at the time the relief is requested.
2. It was informed of the requirement to file and related tax consequences, but chose not to file.
3. It uses hindsight in requesting relief. The IRS won't ordinarily grant an extension if specific facts have changed since the due date that makes filing an application advantageous to an organization.
4. Granting the request for relief would result in the organization's tax-exempt status being automatically revoked effective before the application date.

**Prejudicing the interest of the government.** Prejudice to the interest of the government results if granting an extension of time to file to an organization results in a lower total tax liability for the years to which the filing applies than would have been the case if the organization had filed on time. Before granting an extension, the IRS can require the organization requesting it to submit a statement from an independent auditor certifying that no prejudice will result if the extension is granted.

The interests of the Government are ordinarily prejudiced if the tax year in which the application should have been filed (or any tax year that would have been affected had the filing been timely) are closed by the statute of limitations before relief is granted. Therefore, the request for relief will not be granted if the period of limitations on assessment under section 6501(a) for any taxable year for which the organization claims tax-exempt status has expired prior to the date of application. See [Rev. Proc. 2023-5](#). The IRS can condition a grant of relief on the organization providing the IRS with a statement from an independent auditor certifying that the interests of the Government aren't prejudiced.

**Procedure for requesting extension.** To request a discretionary extension, an organization must submit the relevant portions of Form 1023, Schedule E, including describing in detail the events that led to the failure to apply and to the discovery of that failure. If the organization relied on a tax professional's advice, the schedule should describe the engagement and responsibilities of the professional and the extent to which the organization relied on the tax professional. An organization applying for Section 501(c)(3) status can no longer request the extension by filing Form 1023-EZ and then submitting correspondence to the IRS.

A request for this relief in connection with an application for exemption doesn't require payment of an additional user fee. Also, a request for relief under the automatic 12-month extension doesn't require payment of a user fee.

**More information.** For more information about these procedures, see Regulations sections 301.9100-1, 301.9100-2, and 301.9100-3, [Rev. Proc. 2023-5](#).

**Notification from the IRS.** Organizations filing Form 1023 or Form 1023-EZ and satisfying all requirements of section 501(c)(3) will be notified of their exempt status in writing.

## Organizations Not Required to File Form 1023 or Form 1023-EZ

Some organizations aren't required to file Form 1023 or 1023-EZ. These include:

- Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group.
- Any organization (other than a private foundation) normally having annual gross receipts of not more than \$5,000 (see [Gross receipts test](#), later).

These organizations are exempt automatically if they meet the requirements of section 501(c)(3). However, such organizations will not appear on the Tax-Exempt Organization Search list of organizations eligible to receive tax-deductible contributions. These organizations also cannot obtain a written affirmation of their exempt status. To be included in the IRS database of exempt organizations and be eligible to receive a written determination or affirmation of exempt status, these organization must file Form 1023 or 1023-EZ.

**Filing Form 1023 or 1023-EZ to establish exemption.** If the organization wants to establish its exemption with the IRS and receive a determination letter recognizing its exempt status, it should file Form 1023 or 1023-EZ (if eligible). By establishing its exemption, potential contributors are assured by the IRS that contributions will be deductible. A subordinate organization (other than a private foundation) covered by a group exemption letter doesn't have to submit a Form 1023 or Form 1023-EZ for itself.

**Private foundations.** See [Private Foundations and Public Charities](#), later in this chapter, for more information about the additional notice required from an organization in order for it not to be presumed to be a private foundation and for the additional information required from a private foundation claiming to be an operating foundation.

**Gross receipts test.** For purposes of the gross receipts test, an organization normally doesn't have more than \$5,000 annually in gross receipts if:

1. During its first tax year the organization received gross receipts of \$7,500 or less,
2. During its first 2 years the organization had a total of \$12,000 or less in gross receipts, and
3. In the case of an organization that has been in existence for at least 3 years, the total gross receipts received by the

organization during the immediately preceding 2 years, plus the current year, are \$15,000 or less.

An organization with gross receipts more than the amounts in the gross receipts test, unless otherwise exempt from filing Form 1023 or Form 1023-EZ, must apply for recognition of exemption within 90 days after the end of the period in which the amounts are exceeded. For example, an organization's gross receipts for its first tax year were less than \$7,500, but at the end of its second tax year its gross receipts for the 2-year period were more than \$12,000. The organization must apply for recognition of exemption within 90 days after the end of its second tax year.

If the organization had existed for at least 3 tax years and had met the gross receipts test for all prior tax years but fails to meet the requirement for the current tax year, its tax-exempt status for the prior years won't be lost even if it does not apply for recognition of exemption within 90 days after the close of the current tax year. However, the organization won't be treated as a section 501(c)(3) organization for the period beginning with the current tax year and ending with the filing of its application for recognition of exemption.

**Example.** An organization is organized and operated exclusively for charitable purposes and isn't a private foundation. It was incorporated on January 1, 2017, and files returns on a calendar-year basis. It didn't apply for recognition of exemption. The organization's gross receipts during the years 2017 through 2020 were as follows:

2017 .....	\$3,600
2018 .....	2,900
2019 .....	400
2020 .....	12,600

The organization's total gross receipts for 2017, 2018, and 2019 were \$6,900. Therefore, it didn't have to apply for recognition of exemption and is exempt for those years. However, for 2018, 2019, and 2020 the total gross receipts were \$15,900. Therefore, the organization must apply for recognition of exemption within 90 days after the end of its 2020 tax year. If it doesn't apply within this time period, it won't be exempt under section 501(c)(3) for the period beginning with tax year 2020 ending when the application for recognition of exemption is received by the IRS. The organization, however, won't lose its exempt status for the tax years ending before January 1, 2020.

The IRS will consider applying the Commissioner's discretionary authority to extend the time for filing an application for recognition of exemption. See the procedures for this extension discussed earlier.

## Articles of Organization

Your organization must be a legal entity (corporation, trust or association) separate from its organizers and must have written articles of organization. Depending upon the type of entity, its articles organization may be a corporate charter (filed articles of incorporation), trust instrument, articles of association, or any other

written instrument by which the organization was created. If applying for recognition of exemption using Form 1023, a conformed copy of the articles of organization must be uploaded with the application for recognition of exemption. See Form 1023 Part II. An organization applying for exemption using Form 1023-EZ does not submit a copy of the articles of organization with its application; however, the organization could be asked to provide a copy at any time as part of a compliance check or examination.

## Organizational Test

The articles of organization must limit the organization's purposes to one or more of those described at the beginning of this chapter and mustn't expressly empower it to engage, other than as an insubstantial part of its activities, in activities that don't further one or more of those purposes. These conditions for exemption are referred to as the organizational test.

Section 501(c)(3) is the provision of law that grants exemption to the organizations described in this chapter. Therefore, the organizational test may be met if the purposes stated in the articles of organization are limited in some way by reference to section 501(c)(3).

The requirement that your organization's purposes and powers must be limited by the articles of organization isn't satisfied if the limit is contained only in the bylaws or other rules or regulations. Moreover, the organizational test isn't satisfied by statements of your organization's officers that you intend to operate only for exempt purposes. Also, the test isn't satisfied by the fact that your actual operations are for exempt purposes.

In interpreting an organization's articles, the law of the state where the organization was created is controlling. If an organization contends that the terms of its articles have a different meaning under state law than their generally accepted meaning, such meaning must be established by a clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other appropriate state authorities.

The following are examples illustrating the organizational test.

**Example 1.** Articles of organization state that an organization is formed exclusively for literary and scientific purposes within the meaning of section 501(c)(3). These articles appropriately limit the organization's purposes. The organization meets the organizational test.

**Example 2.** An organization, by the terms of its articles, is formed to engage in research without any further description or limitation. The organization won't be properly limited as to its purposes since all research isn't scientific. The organization doesn't meet the organizational test.

**Example 3.** An organization's articles state that its purpose is to receive contributions and pay them over to organizations that are described in section 501(c)(3) and exempt from taxation under section 501(a). The organization meets the organizational test.

**Example 4.** If a stated purpose in the articles is the conduct of a school of adult education and its manner of operation is described in detail, such a purpose will be satisfactorily limited.

**Example 5.** If the articles state the organization is formed for charitable purposes, without any further description, such language ordinarily will be sufficient since the term charitable has a generally accepted legal meaning. On the other hand, if the purposes are stated to be charitable, philanthropic, and benevolent, the organizational requirement won't be met since the terms philanthropic and benevolent have no generally accepted legal meaning and, therefore, the stated purposes may, under the laws of the state, permit activities that are broader than those intended by the exemption law.

**Example 6.** If the articles state an organization is formed to promote American ideals, or to foster the best interests of the people, or to further the common welfare and well-being of the community, without any limitation or provision restricting such purposes to accomplishment only in a charitable manner, the purposes won't be sufficiently limited. Such purposes are vague and may be accomplished other than in an exempt manner.

**Example 7.** A stated purpose to operate a hospital doesn't meet the organizational test since it isn't necessarily charitable. A hospital may or may not be exempt depending on the manner in which it is operated.

**Example 8.** An organization that is expressly empowered by its articles to carry on social activities won't be sufficiently limited as to its power, even if its articles state that it is organized and will be operated exclusively for charitable purposes.

## Dedication and Distribution of Assets

Assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose described in this chapter, or to the Federal Government or to a state or local government for a public purpose. If the assets could be distributed to members or private individuals or for any other purpose, the organizational test isn't met.

**Dedication.** To establish that your organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision ensuring their distribution for an exempt purpose in the event of dissolution. Although reliance can be placed upon state law to establish permanent dedication of assets for exempt purposes, review of an application for exemption may be facilitated if the articles of organization include a provision ensuring permanent dedication of assets for exempt purposes.

**Distribution.** Rev. Proc. 82-2, 1982-1 C.B. 367, identifies the states and circumstances in which the IRS won't require an express

provision for the distribution of assets upon dissolution in the articles of organization. The procedure also provides a sample of an acceptable dissolution provision for organizations required to have one.

If a named beneficiary is to be the distributee, it must be one that would qualify and would be exempt within the meaning of section 501(c)(3) at the time the dissolution takes place. Since the named beneficiary at the time of dissolution may not be qualified, may not be in existence, or may be unwilling or unable to accept the assets of the dissolving organization, a provision should be made for distribution of the assets for one or more of the purposes specified in this chapter in the event of any such contingency.

**Sample articles of organization.** See sample articles of organization in the Appendix in the back of this publication.

## Educational Organizations and Private Schools

If your organization wants to obtain recognition of exemption as an educational organization, you must submit complete information as to how your organization carries on or plans to carry on its educational activities, such as by conducting a school, by panels, discussions, lectures, forums, radio and television programs, or through various cultural media such as museums, symphony orchestras, or art exhibits. In each instance, you must explain by whom and where these activities are or will be conducted and the amount of admission fees, if any. You must submit a copy of the pertinent contracts, agreements, publications, programs, etc.

If you are organized to conduct a school, you must submit full information regarding your tuition charges, number of faculty members, number of full-time and part-time students enrolled, courses of study and degrees conferred, together with a copy of your school catalog. See Form 1023 Schedule B and [Private Schools](#), discussed later.

### Educational Organizations

The term educational relates to:

1. The instruction or training of individuals for the purpose of improving or developing their capabilities, or
2. The instruction of the public on subjects useful to individuals and beneficial to the community.

**Advocacy of a position.** Advocacy of a particular position or viewpoint may be educational if there is a sufficiently full and fair exposition of pertinent facts to permit an individual or the public to form an independent opinion or conclusion. The mere presentation of unsupported opinion isn't educational.

**Method not educational.** The method used by an organization to develop and present its views is a factor in determining if an organization qualifies as educational within the

meaning of section 501(c)(3). The following factors may indicate that the method isn't educational.

1. The presentation of viewpoints unsupported by facts is a significant part of the organization's communications.
2. The facts that purport to support the viewpoint are distorted.
3. The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of emotion than of objective evaluations.
4. The approach used isn't aimed at developing an understanding on the part of the audience because it doesn't consider their background or training.

Exceptional circumstances, however, may exist where an organization's advocacy may be educational even if one or more of the factors listed above are present.

**Qualifying organizations.** The following types of organizations may qualify as educational:

1. An organization, such as a primary or secondary school, a college, or a professional or trade school, that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on;
2. An organization whose activities consist of conducting public discussion groups, forums, panels, lectures, or other similar programs;
3. An organization that presents a course of instruction by correspondence or through the use of television or radio;
4. A museum, zoo, planetarium, symphony orchestra, or other similar organization;
5. A nonprofit children's day-care center; and
6. A credit counseling organization.

**College book stores, cafeterias, restaurants, etc.** These and other on-campus organizations should submit information to show that they are controlled by and operated for the convenience of the faculty and student body or by whom they are controlled and whom they serve.

**Alumni association.** An alumni association should establish that it is organized to promote the welfare of the university with which it is affiliated, is subject to the control of the university as to its policies and destination of funds, and is operated as an integral part of the university or is otherwise organized to promote the welfare of the college or university. If your association doesn't have these characteristics, it may still be exempt as a social club if it meets the requirements described in chapter 4, under [501\(c\)\(7\) - Social and Recreation Clubs](#).

**Athletic organization.** This type of organization must submit evidence that it is engaged in activities such as directing and controlling interscholastic athletic competitions, conducting tournaments, and prescribing eligibility rules for

contestants. If it isn't so engaged, your organization may be exempt as a social club described in chapter 4. Raising funds to be used for travel and other activities to interview and persuade prospective students with outstanding athletic ability to attend a particular university doesn't show an exempt purpose. If your organization isn't exempt as an educational organization, see [Amateur Athletic Organizations](#), later in this chapter.

### Private Schools

Every private school filing an application for recognition of tax-exempt status must supply the IRS (on Schedule B, Form 1023) with the following information.

1. The racial composition of the student body, and of the faculty and administrative staff, as of the current academic year. (This information must also be projected, so far as may be feasible, for the next academic year.)
2. The amount of scholarship and loan funds, if any, awarded to students enrolled and the racial composition of students who have received the awards.
3. A list of the school's incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.
4. A statement indicating whether any of the persons described in item (3) above have an objective of maintaining segregated public or private school education at the time the application is filed and, if so, whether any of the individuals described in item (3) are officers or active members of those organizations at the time the application is filed.
5. The public school district and county in which the school is located.

**How to determine racial composition.** The racial composition of the student body, faculty, and administrative staff can be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit to the school information that the school otherwise doesn't require. Nevertheless, a statement of the method by which the racial composition was determined must be supplied. The identity of individual students or members of the faculty and administrative staff shouldn't be included with this information.

A school that is a state or municipal instrumentality (see [Instrumentalities](#), near the beginning of this chapter), whether or not it qualifies for exemption under section 501(c)(3), isn't considered to be a private school for purposes of the following discussion.

### Racially Nondiscriminatory Policy

To qualify as an organization exempt from federal income tax, a private school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and that it doesn't



discriminate against applicants and students on the basis of race, color, or national or ethnic origin. Also, the school must circulate information that clearly states the school's admission policies. A racially nondiscriminatory policy toward students means that the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school doesn't discriminate on the basis of race in administering its educational policies, admission policies, scholarship and loan programs, and athletic and other school-administered programs.

The IRS considers discrimination on the basis of race to include discrimination on the basis of color or national or ethnic origin.

The existence of a racially discriminatory policy with respect to the employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. Conversely, the absence of racial discrimination in the employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

A policy of a school that favors racial minority groups with respect to admissions, facilities and programs, and financial assistance isn't discrimination on the basis of race when the purpose and effect of this policy is to promote establishing and maintaining the school's nondiscriminatory policy.

A school that selects students on the basis of membership in a religious denomination or unit isn't discriminating if membership in the denomination or unit is open to all on a racially nondiscriminatory basis.

**Policy statement.** The school must include a statement of its racially nondiscriminatory policy in all its brochures and catalogs dealing with student admissions, programs, and scholarships. Also, the school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses to inform prospective students of its programs.

**Publicity requirement.** The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. Selective communication of a racially nondiscriminatory policy that a school provides solely to leaders of racial groups won't be considered an effective means of communication to make the policy known to all segments of the community. To satisfy this requirement, the school must use one of the following three methods.

**Method one.** The school can publish a notice of its racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community. Such publication must be repeated at least once annually during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. When more than one community is served by a school, the school can publish the notice in those newspapers that are reasonably likely to

be read by all racial segments in the communities that the school serves.

If this method is used, the notice must meet the following printing requirements.

1. It must appear in a section of the newspaper likely to be read by prospective students and their families.
2. It must occupy at least 3 column inches.
3. It must have its title printed in at least 12 point bold face type.
4. It must have the remaining text printed in at least 8 point type.

The following is an acceptable example of the notice:

#### NOTICE OF NONDISCRIMINATORY POLICY AS TO STUDENTS

The M School admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It doesn't discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

**Method two.** The school can use the broadcast media to publicize its racially nondiscriminatory policy if this use makes the policy known to all segments of the general community the school serves. If the school uses this method, it must provide documentation showing that the means by which this policy was communicated to all segments of the general community was reasonably expected to be effective. In this case, appropriate documentation would include copies of the tapes or scripts used and records showing that there was an adequate number of announcements. The documentation also would include proof that these announcements were made during hours when they were likely to be communicated to all segments of the general community, that they were long enough to convey the message clearly, and that they were broadcast on radio or television stations likely to be listened to by substantial numbers of members of all racial segments of the general community. Announcements must be made during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period.

**Method three.** Rev. Proc. 2019-22, 2019-22 I.R.B. 1260 modifies Rev. Proc. 75-50, 1975-2 C.B. 587, to reflect technological advances since its publication and provides a third method for a private school to satisfy the requirement contained in section 4.03 of the revenue procedure by using its Internet website to publicize the school's racially nondiscriminatory policy as to students. To satisfy the requirement using this method, the school may display a notice (consisting of the same language as in Method 1) of its racially nondiscriminatory policy on its primary publicly accessible Internet

homepage at all times during its taxable year (excluding temporary outages due to website maintenance or technical problems) in a manner reasonably expected to be noticed by visitors to the homepage. See Rev. Proc. 2019-22 for more information about satisfying the publicity requirement using this method.

**Exceptions.** The publicity requirements won't apply in the following situations.

**First,** if for the preceding 3 years the enrollment of a parochial or other church-related school consists of students at least 75% of whom are members of the sponsoring religious denomination or unit, the school can make known its racially nondiscriminatory policy in whatever newspapers or circulars the religious denomination or unit uses in the communities from which the students are drawn. These newspapers and circulars can be distributed by a particular religious denomination or unit or by an association that represents a number of religious organizations of the same denomination. If, however, the school advertises in newspapers of general circulation in the community or communities from which its students are drawn and the second exception (discussed next) doesn't apply to the school, then it must comply with either of the publicity requirements explained earlier.

**Second,** if a school customarily draws a substantial percentage of its students nationwide, worldwide, from a large geographic section or sections of the United States, or from local communities, and if the school follows a racially nondiscriminatory policy as to its students, the school may satisfy the publicity requirement by complying with the instructions explained earlier under [Policy statement](#).

The school can demonstrate that it follows a racially nondiscriminatory policy either by showing that it currently enrolls students of racial minority groups in meaningful numbers or, except for local community schools, when minority students aren't enrolled in meaningful numbers, that its promotional activities and recruiting efforts in each geographic area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The question as to whether a school demonstrates such a policy satisfactorily will be determined on the basis of the facts and circumstances of each case.

The IRS recognizes that the failure by a school drawing its students from local communities to enroll racial minority group students may not necessarily indicate the absence of a racially nondiscriminatory policy when there are relatively few or no such students in these communities. Actual enrollment is, however, a meaningful indication of a racially nondiscriminatory policy in a community in which a public school or schools became subject to a desegregation order of a federal court or are otherwise expressly obligated to implement a desegregation plan under the terms of any written contract or other commitment to which any federal agency was a party.

The IRS encourages schools to satisfy the publicity requirement by using either of the

methods described earlier, even though a school considers itself to be within one of the *Exceptions*. The IRS believes that these publicity requirements are the most effective methods to make known a school's racially nondiscriminatory policy. In this regard, it is each school's responsibility to determine whether either of the exceptions applies. Such responsibility will prepare the school, if it is audited by the IRS, to demonstrate that the failure to publish its racially nondiscriminatory policy in accordance with either one of the publicity requirements was justified by one of the exceptions. Also, a school must be prepared to demonstrate that it has publicly disavowed or repudiated any statements purported to have been made on its behalf (after November 6, 1975) that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal official was aware of these statements.

**Facilities and programs.** A school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner.

**Scholarship and loan programs.** As a general rule, all scholarship or other comparable benefits obtainable at the school must be offered on a racially nondiscriminatory basis. This must be known throughout the general community being served by the school and should be referred to in its publicity. Financial assistance programs, as well as scholarships and loans made under financial assistance programs, that favor members of one or more racial minority groups and that don't significantly detract from or are designed to promote a school's racially nondiscriminatory policy won't adversely affect the school's exempt status.

**Certification.** An individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, on Schedule E (Form 990) or Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax, whichever applies, that to the best of their knowledge and belief the school has satisfied all requirements that apply, as previously explained.

Failure to comply with the guidelines ordinarily will result in the proposed revocation of the exempt status of a school.



**Recordkeeping requirements.** With certain exceptions, given later, each exempt private school must maintain the following records for a minimum period of 3 years, beginning with the year after the year of compilation or acquisition.

1. Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year.
2. Records sufficient to document that scholarship and other financial assistance is awarded on a racially nondiscriminatory basis.
3. Copies of all materials used by or on behalf of the school to solicit contributions.

4. Copies of all brochures, catalogs, and advertising dealing with student admissions, programs, and scholarships. (Schools advertising nationally or in a large geographic segment or segments of the United States need only maintain a record sufficient to indicate when and in what publications their advertisements were placed.)

The racial composition of the student body, faculty, and administrative staff can be determined in the same manner as that described at the beginning of this section. However, a school can't discontinue maintaining a system of records that reflect the racial composition of its students, faculty, and administrative staff used on November 6, 1975, unless it substitutes a different system that compiles substantially the same information, without advance approval of the IRS.

The IRS doesn't require that a school release any personally identifiable records or personal information except in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974. Similarly, the IRS doesn't require a school to keep records prohibited under state or federal law.

**Exceptions.** The school doesn't have to independently maintain these records for IRS use if both of the following are true.

1. Substantially the same information has been included in a report or reports filed with an agency or agencies of federal, state, or local governments, and this information is current within 1 year.
2. The school maintains copies of these reports from which this information is readily obtainable.

If these reports don't include all of the information required, as discussed earlier, records providing such remaining information must be maintained by the school for IRS use.

**Failure to maintain records.** Failure to maintain or to produce the required records and information, upon proper request, will create a presumption that the organization has failed to comply with these guidelines.

See [Rev. Proc. 2019-22](#) for more information on private school's racially nondiscriminatory policy requirements.

## Organizations Providing Insurance

An organization described in sections 501(c)(3) or 501(c)(4) may be exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance.

However, this rule doesn't apply to state-sponsored organizations described in sections 501(c)(26) or 501(c)(27), which are discussed in [chapter 4](#), or to charitable risk pools, discussed next.

## Charitable Risk Pools

A charitable risk pool is treated as organized and operated exclusively for charitable purposes if it satisfies all of the following requirements:

1. Is organized and operated only to pool insurable risks of its members (not including risks related to medical malpractice) and to provide information to its members about loss control and risk management,
2. Consists only of members that are section 501(c)(3) organizations exempt from tax under section 501(a),
3. Is organized under state law authorizing this type of risk pooling,
4. Is exempt from state income tax (or will be after qualifying as a section 501(c)(3) organization),
5. Has obtained at least \$1,000,000 in startup capital from nonmember charitable organizations,
6. Is controlled by a board of directors elected by its members, and
7. Is organized under documents requiring that:
  - a. Each member be a section 501(c)(3) organization exempt from tax under section 501(a),
  - b. Each member that receives a final determination that it no longer qualifies under section 501(c)(3) notify the pool immediately, and
  - c. Each insurance policy issued by the pool provide that it won't cover events occurring after a final determination described in (b).

## Other Section 501(c)(3) Organizations

In addition to the information required for all organizations, as described earlier, you should include any other information described in this section.

## Charitable Organizations

If your organization is applying for recognition of exemption as a charitable organization, it must show that it is organized and operated for purposes that are beneficial to the public interest. Some examples of this type of organization are those organized for:

- Relief of the poor, the distressed, or the underprivileged;
- Advancement of religion;
- Advancement of education or science;
- Erection or maintenance of public buildings, monuments, or works;
- Lessening the burdens of government;
- Lessening of neighborhood tensions;
- Elimination of prejudice and discrimination;
- Defense of human and civil rights secured by law; and
- Combating community deterioration and juvenile delinquency.

The rest of this section contains a description of the information to be provided by certain specific organizations. This information is in addition to the required inclusions described in chapter 1, and other statements requested on Form 1023 or 1023-EZ. Each of the following organizations must submit the information described.

**Charitable organization supporting education.** Submit information showing how your organization supports education — for example, contributes to an existing educational institution, endows a professorial chair, contributes toward paying teachers' salaries, or contributes to an educational institution to enable it to carry on research.

**Scholarships.** If the organization awards or plans to award scholarships, complete Schedule H of Form 1023. Also, submit the following:

1. Criteria used for selecting recipients, including the rules of eligibility;
2. How and by whom the recipients are or will be selected;
3. If awards are or will be made directly to individuals, whether information is required assuring that the student remains in school;
4. If awards are or will be made to recipients of a particular class, for example, children of employees of a particular employer—
  - a. Whether any preference is or will be accorded an applicant by reason of the parent's position, length of employment, or salary;
  - b. Whether as a condition of the award the recipient must upon graduation accept employment with the company; and
  - c. Whether the award will be continued even if the parent's employment ends.
5. A copy of the scholarship application form and any brochures or literature describing the scholarship program.

**Hospital.** If you are organized to operate a charitable hospital, complete and attach Section I of Schedule C, Form 1023.

If your hospital was transferred to you from proprietary ownership, complete and attach Schedule G of Form 1023. You must attach a list showing:

1. The names of the active and courtesy staff members of the proprietary hospital, as well as the names of your medical staff members after the transfer to nonprofit ownership; and
2. The names of any doctors who continued to lease office space in the hospital after its transfer to nonprofit ownership and the amount of rent paid. Submit also an appraisal showing the fair rental value of the rented space.

**Clinic.** Schedule C, Form 1023, is also designed to encompass outpatient clinics. If you are organized to operate a clinic, provide information regarding:

1. A description of the facilities and services;
2. To whom the services are offered, such as the public at large or a specific group;
3. How charges are determined, such as on a profit basis, to recover costs, or at less than cost;
4. By whom administered and controlled;
5. Whether any of the professional staff (that is, those who perform or will perform the clinical services) also serve or will serve in an administrative capacity; and
6. How compensation paid the professional staff is or will be determined.

**Organization providing loans.** If you make, or will make, loans for charitable and educational purposes, submit the following information.

1. An explanation of the circumstances under which such loans are, or will be, made.
2. Criteria for selection, including the rules of eligibility.
3. How and by whom the recipients are or will be selected.
4. Manner of repayment of the loan.
5. Security required, if any.
6. Interest charged, if any, and when payable.
7. Copies in duplicate of the loan application and any brochures or literature describing the loan program.

**Public-interest law firms.** If your organization was formed to litigate in the public interest (as opposed to providing legal services to the poor), such as in the area of protection of the environment, you should submit the following information.

1. How the litigation can reasonably be said to be representative of a broad public interest rather than a private one.
2. Whether the organization will accept fees for its services.
3. A description of the cases litigated or to be litigated and how they benefit the public generally.
4. Whether the policies and program of the organization are the responsibility of a board or committee representative of the public interest, which is neither controlled by employees or persons who litigate on behalf of the organization nor by any organization that isn't itself an organization described in this chapter.
5. Whether the organization is operated, through sharing of office space or otherwise, in a way to create identification or confusion with a particular private law firm.
6. Whether there is an arrangement to provide, directly or indirectly, a deduction for the cost of litigation that is for the private benefit of the donor.

**Acceptance of attorneys' fees.** A nonprofit public-interest law firm can accept attorneys' fees in public-interest cases if the fees are

paid directly by its clients and the fees aren't more than the actual costs incurred in the case. Upon undertaking a representation, the organization can't withdraw from the case because the litigant is unable to pay the fee.

Firms can accept fees awarded or approved by a court or an administrative agency and paid by an opposing party if the firms don't use the likelihood or probability of fee awards as a consideration in the selection of cases. All fee awards must be paid to the organization and not to its individual staff attorneys. Instead, a public-interest law firm can reasonably compensate its staff attorneys, but only on a straight salary basis. Private attorneys, whose services are retained by the firm to assist it in particular cases, can be compensated by the firm, but only on a fixed fee or salary basis.

The total amount of all attorneys' fees (court awarded and those received from clients) mustn't be more than 50% of the total cost of operations of the organization's legal functions, calculated over a 5-year period.

If, to carry out its program, an organization violates applicable canons of ethics, disrupts the judicial system, or engages in any illegal action, the organization will jeopardize its exemption.

## Religious Organizations

To determine whether an organization meets the religious purposes test of section 501(c)(3), the IRS maintains two basic guidelines.

1. That the particular religious beliefs of the organization are truly and sincerely held.
2. That the practices and rituals associated with the organization's religious belief or creed aren't illegal or contrary to clearly defined public policy.

Therefore, your group (or organization) may not qualify for treatment as an exempt religious organization for tax purposes if its actions, as contrasted with its beliefs, are contrary to well established and clearly defined public policy. If there is a clear showing that the beliefs (or doctrines) are sincerely held by those professing them, the IRS won't question the religious nature of those beliefs.

**Churches.** Although a church, its integrated auxiliaries, or a convention or association of churches isn't required to file Form 1023 to be exempt from federal income tax or to receive tax deductible contributions, the organization may find it advantageous to obtain recognition of exemption. See Form 1023, Schedule A. In this event, you should submit information showing that your organization is a church, synagogue, association or convention of churches, religious order, or religious organization that is an integral part of a church, and that it is engaged in carrying out the function of a church.

In determining whether an admittedly religious organization is also a church, the IRS doesn't accept every assertion that the organization is a church. Because beliefs and practices vary widely, there is no single definition of the word church for tax purposes. The IRS considers the facts and circumstances of each organization applying for church status.



### **Convention or association of churches.**

Any organization that is otherwise a convention or association of churches won't fail to qualify as a church merely because the membership of the organization includes individuals as well as churches or because the individuals have voting rights in the organization.

**Integrated auxiliaries.** An organization is an integrated auxiliary of a church if all the following are true.

1. The organization is described both in sections 501(c)(3) and 509(a)(1), 509(a)(2), or 509(a)(3).
2. It is affiliated with a church or a convention or association of churches.
3. It is internally supported. An organization is internally supported unless both of the following are true.
  - a. It offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for a small part of the cost).
  - b. It normally gets more than 50% of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that aren't unrelated trades or businesses.

**Special rule.** Men's and women's organizations, seminaries, mission societies, and youth groups that satisfy (1) and (2) shown earlier are integrated auxiliaries of a church even if they aren't internally supported.

In order for an organization (including a church and religious organization) to qualify for tax exemption, no part of its net earnings can inure to any individual.

Although an individual is entitled to a charitable deduction for contributions to a church, the assignment or similar transfer of compensation for personal services to a church generally doesn't relieve a taxpayer of federal income tax liability on the compensation, regardless of the motivation behind the transfer.

## **Scientific Organizations**

You must show that your organization's research will be carried on in the public interest. Scientific research will be considered to be in the public interest if the results of the research (including any patents, copyrights, processes, or formulas) are made available to the public on a nondiscriminatory basis; if the research is performed for the United States or a state, county, or municipal government; or if the research is carried on for one of the following purposes.

1. Aiding in the scientific education of college or university students.
2. Obtaining scientific information that is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public.
3. Discovering a cure for a disease.

4. Aiding a community or geographical area by attracting new industry to the community or area, or by encouraging the development or retention of an industry in the community or area.

Scientific research, for exemption purposes, doesn't include activities of a type ordinarily incidental to commercial or industrial operations such as the ordinary inspection or testing of materials or products, or the designing or constructing of equipment, buildings, etc.

If you engage or plan to engage in research, submit all of the following.

1. An explanation of the nature of the research.
2. A brief description of research projects completed or presently being engaged in.
3. How and by whom research projects are determined and selected.
4. Whether you have contracted or sponsored research, or contemplated doing so, and, if so, names of past sponsors or grantors, terms of grants or contracts, together with copies of any executed contracts or grants.
5. Disposition made or to be made of the results of your research, including whether preference has been or will be given to any organization or individual either as to results or time of release.
6. Who will retain ownership or control of any patents, copyrights, processes, or formulas resulting from your research.
7. A copy of publications or other media showing reports of your research activities. Only reports of your research activities or those conducted on your behalf, as distinguished from those of your creators or members conducted in their individual capacities, should be submitted.

## **Literary Organizations**

If your organization is established to operate a book store or engage in publishing activities of any nature (printing, publication, or distribution of your own material or that printed or published by others and distributed by you), explain fully the nature of the operations, including whether sales are or will be made to the general public, the type of literature involved, and how these activities are related to your stated purposes.

## **Amateur Athletic Organizations**

There are two types of amateur athletic organizations that can qualify for tax-exempt status. The first type is an organization that fosters national or international amateur sports competition but only if none of its activities involve providing athletic facilities or equipment. The second type is a [Qualified amateur sports organization](#) (discussed below). The difference is that a qualified amateur sports organization can provide athletic facilities and equipment.

Donations to either type of amateur athletic organization are deductible as charitable contributions on the donor's federal income tax return. However, no deduction is allowed if there is a direct personal benefit to the donor or any other person other than the organization.

**Qualified amateur sports organization.** An organization will be a qualified amateur sports organization if it is organized and operated:

1. Exclusively to foster national or international amateur sports competition, and
2. Primarily to conduct national or international competition in sports or to support and develop amateur athletes for that competition.

The organization's membership can be local or regional in nature.

## **Prevention of Cruelty to Children or Animals**

Examples of activities that may qualify this type of organization for exempt status are:

1. Preventing children from working in hazardous trades or occupations,
2. Promoting high standards of care for laboratory animals, and
3. Providing funds to pet owners to have their pets spayed or neutered to prevent overbreeding.

## **Private Foundations and Public Charities**

It is important that you determine if your organization is a private foundation. Most organizations exempt from income tax (as organizations described in section 501(c)(3)) are presumed to be private foundations unless they notify the IRS within a specified period of time that they meet the requirements of section 509(a) to be treated as other than a private foundation. This notice requirement applies to most section 501(c)(3) organizations regardless of when they were formed. See Form 1023, Part VII.

### **Private Foundations**

Every organization that qualifies for tax exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term (referred to in sections 509(a)(1), 509(a)(2), 509(a)(3), or 509(a)(4)). In effect, the definition divides these organizations into two classes, namely private foundations and public charities. Public charities are discussed later.

Organizations that fall into the excluded categories are generally those that either have broad public support or actively function in a supporting relationship to those organizations. Organizations that test for public safety are also excluded.

**Application to IRS.** Even if an organization falls within one of the categories excluded from the definition of private foundation, it will be presumed to be a private foundation, with some exceptions, unless it files a timely Form 1023 or Form 1023-EZ with the IRS showing it isn't a private foundation. This application requirement applies to an organization regardless of when it was organized. The only exceptions to this requirement are those organizations that are excepted from the requirement of filing Form 1023 or 1023-EZ as discussed, earlier, under [Organizations Not Required To File Form 1023](#).

**When to file application.** If an organization has to file the application, it must do so within 27 months from the end of the month in which it was organized.

If your organization is newly applying for recognition of exemption as an organization described in this chapter (a section 501(c)(3) organization) and you wish to establish that your organization is a public charity rather than a private foundation, you must complete the applicable lines of Part VII of Form 1023 or Part IV of Form 1023-EZ. See [Application for Recognition of Exemption](#), earlier in this chapter, for more information.

In determining the date on which a corporation is organized for purposes of applying for recognition of section 501(c)(3) status, the IRS looks to the date the corporation came into existence under the law of the state in which it is incorporated. For example, where state law provides that existence of a corporation begins on the date its articles are filed by a certain state official in the appropriate state office, the corporation is considered organized on that date. Later nonsubstantive amendments to the enabling instrument won't change the date of organization, for purposes of the filing requirement.

**Application filed late.** An organization that states it is a private foundation when it files its application for recognition of exemption after the 27-month period will be treated as a section 501(c)(3) organization and as a private foundation only from the date it files its application, rather than the date that it was created or first became described in section 501(c)(3). The organization may obtain retroactive exemption, however, if it establishes that it qualifies for relief from the 27-month deadline.

An organization that states it is a publicly supported charity when it files its application for recognition of exemption after the 27-month period can't be treated as a section 501(c)(3) organization before the date it files the application, except as discussed above. Financial support received before that date can't be used for purposes of determining whether the organization is publicly supported. However, an organization that can reasonably be expected to meet the support requirements (discussed later under [Public Charities](#)) when it applies for tax-exempt status will be classified as a publicly supported charity and not a private foundation.

**Excise taxes on private foundations.** There is an excise tax on the net investment income of most domestic private foundations. In addition, excise taxes may be imposed on the private foundation or disqualified persons if the foundation or disqualified persons have engaged in

certain transactions or activities. Managers may also be subject to excise tax for their role in approving the activity. See [Chapter 5](#) for more information on excise taxes.

**Governing instrument.** A private foundation can't be tax exempt nor will contributions to it be deductible as charitable contributions unless its governing instrument contains special provisions in addition to those that apply to all organizations described in section 501(c)(3).

**Sample governing instruments.** The following samples of governing instrument provisions illustrate the special charter requirements that apply to private foundations. Draft A is a sample of provisions in articles of incorporation; Draft B, a trust indenture.

## Draft A

### General

1. The corporation will distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.
2. The corporation won't engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
3. The corporation won't retain any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
4. The corporation won't make any investments in a manner as to subject it to tax under section 4944 of the Internal Revenue Code, or the corresponding section of any future federal tax code.
5. The corporation won't make any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

## Draft B

Any other provisions of this instrument notwithstanding, the trustees shall distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Any other provisions of this instrument notwithstanding, the trustees won't engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code; nor retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code; nor make any investments in a manner as to incur tax liability under section 4944 of the Internal Revenue Code, or the corresponding section of any future federal

tax code; nor make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

**Effect of state law.** A private foundation's governing instrument will be considered to meet these charter requirements if valid provisions of state law have been enacted that:

1. Require it to act or refrain from acting so as not to subject the foundation to the taxes imposed on prohibited transactions, or
2. Treat the required provisions as contained in the foundation's governing instrument.

The IRS has published a list of states with this type of law. The list is in Revenue Ruling 75-38, 1975-1 C.B. 161 (or later update).

## Public Charities


A private foundation is any organization described in [Section 501\(c\)\(3\)](#), unless it falls into one of the categories specifically excluded from the definition of that term in section 509(a), which lists four basic categories of exclusions. These categories are discussed under the Section 509(a)(1), 509(a)(2), 509(a)(3), and 509(a)(4) Organizations headings that follow this introduction. See [Section 509\(a\)\(1\) Organizations](#), etc.

If your organization falls into one of these categories, it isn't a private foundation and you should state this in Part VII of Form 1023 or Part IV of Form 1023-EZ.

If your organization doesn't fall into one of these categories, it is a private foundation and is subject to the applicable rules and restrictions until it terminates its private foundation status. Some private foundations also qualify as private operating foundations; these are discussed near the end of this chapter.

Generally speaking, a large class of organizations excluded under section 509(a)(1) and all organizations excluded under section 509(a)(2) depend upon a support test. This test is used to assure a minimum percentage of broad-based public support in the organization's total support pattern. Thus, in the following discussions, when the one-third support test (see [Qualifying as Publicly Supported](#), later) is referred to, it means the following fraction normally must equal at least one-third.

$$\frac{\text{Qualifying support}}{\text{Total support}}$$

 Including items of support in qualifying support (the numerator of the fraction) or excluding items of support from total support (the denominator of the fraction) may decide whether an organization is excluded from the definition of a private foundation, and thus from the liability for certain excise taxes. It is very important to classify items of support correctly.

## Section 509(a)(1) Organizations

Section 509(a)(1) organizations include:

### Section 501(c)(3) Organizations

1. A church or a convention or association of churches (section 170(b)(1)(A)(i)),
2. An educational organization such as a school or college (section 170(b)(1)(A)(ii)),
3. A hospital or medical research organization operated in conjunction with a hospital (section 170(b)(1)(A)(iii)),
4. Endowment funds operated for the benefit of certain state and municipal colleges and universities (section 170(b)(1)(A)(iv)),
5. A governmental unit (section 170(b)(1)(A)(v)),
6. An agricultural research organization (section 170(b)(1)(A)(xi)), and
7. A publicly supported organization (section 170(b)(1)(A)(vi)).

**Church.** The characteristics of a church are discussed earlier in this chapter under *Religious Organizations*.

**Educational organizations.** An educational organization that qualifies as a public charity under section 170(b)(1)(A)(ii) is one whose primary function is to present formal instruction that normally maintains a regular faculty and curriculum and that normally has a regularly enrolled body of pupils or students in attendance at the place where it regularly carries on its educational activities. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes federal, state, and other publicly supported schools that otherwise come within the definition. It doesn't include organizations engaged in both educational and noneducational activities, unless the latter are merely incidental to the educational activities. A recognized university that incidentally operates a museum or sponsors concerts is an educational organization. However, the operation of a school by a museum doesn't necessarily qualify the museum as an educational organization.

An exempt organization that operates a tutoring service for students on a one-to-one basis in their homes, maintains a small center to test students to determine their need for tutoring, and employs tutors on a part-time basis isn't an educational organization for these purposes. Nor is an exempt organization that conducts an internship program by placing college and university students with cooperating government agencies an educational organization.

**Hospitals and medical research organizations.** A hospital described in section 170(b)(1)(A)(iii) is an organization whose principal purpose or function is to provide hospital or medical care or either medical education or medical research. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a hospital if its principal purpose or function is providing hospital or medical care. If the accommodations of an organization qualify as being part of a skilled nursing facility, that organization may qualify as a hospital if its principal purpose or function is providing hospital or medical care.

**Exceptions.** The term hospital doesn't include convalescent homes, homes for children

or the aged, or institutions whose principal purpose or function is to train handicapped individuals to pursue a vocation. An organization that mainly provides medical education or medical research won't be considered a hospital, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an in-patient or out-patient basis, as an integral part of its medical education or medical research functions.

A cooperative hospital service organization that meets the requirements of section 501(e) will qualify as a hospital.

**Hospitals participating in provider-sponsored organizations.** An organization can be treated as organized and operated exclusively for a charitable purpose even if it owns and operates a hospital that participates in a provider-sponsored organization, whether or not the provider-sponsored organization is tax exempt. For section 501(c)(3) purposes, any person with a material financial interest in the provider-sponsored organization is treated as a private shareholder or individual with respect to the hospital.

**Requirements for section 501(c)(3) hospitals under the Affordable Care Act.** The Affordable Care Act (ACA), enacted March 23, 2010, added requirements that hospital organizations must satisfy in order to be described in section 501(c)(3), as well as reporting and excise taxes.

**Requirements for Charitable Hospitals.** Section 501(r), added to the Code by the ACA, imposes requirements on section 501(c)(3) organizations that operate one or more hospital facilities (hospital organizations). Each section 501(c)(3) hospital organization is required to meet four general requirements on a facility-by-facility basis:

- establish written financial assistance and emergency medical care policies,
- limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital's FAP,
- make reasonable efforts to determine whether an individual is eligible for assistance under the hospital's FAP before engaging in extraordinary collection actions against the individual, and
- conduct a community health needs assessment (CHNA) at least once every 3 years. (This CHNA requirement is effective for tax years beginning after March 23, 2012).

The ACA also added section 4959, which imposes an excise tax for failure to meet the CHNA requirements, and added reporting requirements under section 6033(b) related to sections 501(r) and 4959. See Regulations sections 1.501(r)-1 through 1.501(r)-7.

**Correction and disclosure procedures under section 501(r).** Revenue Procedure 2015-21 provides correction and disclosure procedures under which certain failures to meet the requirements of section 501(r) will be excused for purposes of sections 501(r)(1) and 501(r)(2)(B). See *Rev. Proc. 2015-21, 2015-13 I.R.B. 817*, or later guidance.

**Medical research organization.** A medical research organization must be directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and that activity must be the organization's principal purpose or function.

**Endowment funds.** Organizations operated for the benefit of certain state and municipal colleges and universities may be endowment funds described in section 170(b)(1)(A)(iv). They are organized and operated exclusively to:

1. Receive, hold, invest, and administer property for a college or university; and
2. Make expenditures to or for the benefit of a college or university;

The college or university must be:

1. An agency or instrumentality of a state or political subdivision; or
2. Owned or operated by:
  - a. A state or political subdivision; or
  - b. An agency or instrumentality of one or more states or political subdivisions.

The phrase "expenditures to or for the benefit of a college or university" includes expenditures made for any one or more of the normal functions of a college or university. These expenditures include those for:

1. Acquiring and maintaining real property comprising part of the campus area;
2. Erecting (or participating in erecting) college or university buildings;
3. Acquiring and maintaining equipment and furnishings used for, or in conjunction with, normal functions of colleges and universities;
4. Libraries;
5. Scholarships; and
6. Student loans.

The organization must normally receive a substantial part of its support from the United States or any state or political subdivision, or from direct or indirect contributions from the general public, or from a combination of these sources.

**Support.** Support doesn't include income received in the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for exemption.

In determining the amount of support received by an organization for a contribution of property when the value of the contribution by the donor is subject to reduction for certain ordinary income and capital gain property, the fair market value of the property is taken into account.

**Indirect contribution.** An example of an indirect contribution from the public is the receipt by the organization of its share of the proceeds of an annual collection campaign of a community chest, community fund, or united fund.



**Governmental units.** A governmental unit described in section 170(b)(1)(A)(v) includes a state, a possession of the United States, or a political subdivision of either of the foregoing, or the United States or the District of Columbia.

**Agricultural research organizations.** Agricultural research organizations described in section 170(b)(1)(A)(ix) operated in conjunction with a land-grant college or university or a non-land-grant college of agriculture may now qualify for public charity status. See the Instructions for Form 1023 for more information.

**Publicly supported organizations.** An organization is a publicly supported organization if it is one that normally receives a substantial part of its support from a governmental unit or from the general public.

Types of organizations that generally qualify are:

- Museums of history, art, or science;
- Libraries;
- Community centers to promote the arts;
- Organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama, or for some other direct service to the general public; and
- Organizations such as the American Red Cross or the United Way.

## Qualifying as Publicly Supported

An organization will qualify as publicly supported under section 170(b)(1)(A)(vi) if it passes the one-third support test. If it fails that test, it may qualify under the facts and circumstances test. An organization may also qualify as publicly supported under section 509(a)(2). See [Section 509\(a\)\(2\) Organizations](#), later.

**One-third support test.** An organization will qualify as publicly supported under section 170(b)(1)(A)(vi) if it normally receives at least one-third of its total support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources. For a definition of support, see [Support](#), later.

**Definition of normally for one-third support test.** An organization will be considered as normally meeting the one-third support test under section 170(b)(1)(A)(vi) for its current tax year and the next tax year if, for the current tax year and the 4 tax years immediately before the current tax year, the organization meets the one-third support test on an aggregate basis. See also [Computation period for public support](#) (*Special computation period for new organizations*) later, in this discussion.

**Facts and circumstances test.** The facts and circumstances test is for organizations failing to meet the one-third support test. If your organization fails to meet the one-third support test, it may still be treated as a publicly supported organization described in section 170(b)(1)(A)(vi) if it normally receives a substantial part of its support from governmental units, from direct or indirect contributions from the general public, or from a combination of these sources. To qualify, an organization must meet the ten-per-

cent-of-support requirement and the attraction of public support requirement. These requirements establish, under all the facts and circumstances, that an organization normally receives a substantial part of its support from governmental units or from direct or indirect contributions from the general public. The organization must also be in the nature of a publicly supported organization, taking into account five different factors. See [Additional requirements \(the five public support factors\)](#), later.

### Ten-percent-of-support requirement.

The percentage of support normally received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources must be substantial. An organization won't be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received is at least 10% of the total support normally received by that organization.

**Attraction of public support requirement.** An organization must be organized and operated in a manner to attract new and additional public or governmental support on a continuous basis. An organization will meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other charitable organizations described in section 509(a)(1). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fundraising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization may, in its early years of existence, limit the scope of its solicitation to persons who would be most likely to provide seed money sufficient to enable it to begin its charitable activities and expand its solicitation program.

**Definition of normally for facts and circumstances test.** An organization will normally meet the requirements of the facts and circumstances test for its current tax year and the next tax year if, for the current tax year and the 4 tax years immediately before the current tax year, the organization meets the ten-percent-of-support and the attraction of public support requirements on an aggregate basis and satisfies a sufficient combination of the factors discussed later. The combination of factors that an organization normally must meet doesn't have to be the same for each 4-year period as long as a sufficient combination of factors exists to show compliance.

**Additional requirements (the five public support factors).** In addition to the two requirements of the facts and circumstances test, the following five public support factors will be considered in determining whether an organization is publicly supported. However, an organization generally doesn't have to satisfy all of the factors. The factors relevant to each case and the weight accorded to any one of them may

differ depending upon the nature and purpose of the organization and the length of time it has existed. The combination of factors that an organization normally must meet doesn't have to be the same for each 4-year period as long as a sufficient combination of factors exists to show that the organization is publicly supported.

**1. Percentage of financial support factor.** When an organization normally receives at least 10% but less than one-third of its total support from public or governmental sources, the percentage of support received from those sources will be considered in determining whether the organization is publicly supported. As the percentage of support from public or governmental sources increases, the burden of establishing the publicly supported nature of the organization through other factors decreases, while the lower the percentage, the greater the burden.

If the percentage of the organization's support from the general public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, the organization will be treated as complying with this factor if the endowment fund was originally contributed by a governmental unit or by the general public. However, if the endowment funds were originally contributed by a few individuals or members of their families, this fact will increase the burden on the organization to establish compliance with other factors. Facts pertinent to years before the 4 tax years immediately before the current tax year may also be considered.

**2. Sources of support factor.** If an organization normally receives at least 10% but less than one-third of its total support from public or governmental sources, the fact that it receives the support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be considered in determining whether the organization is publicly supported. In determining what is a representative number of persons, consideration will be given to the type of organization involved, the length of time it has existed, and whether it limits its activities to a particular community or region or to a special field that can be expected to appeal to a limited number of persons. Facts pertinent to years before the 4 tax years immediately before the current tax year may also be considered.

**3. Representative governing body factor.** The fact that an organization has a governing body that represents the broad interests of the public rather than the personal or private interest of a limited number of donors will be considered in determining whether the organization is publicly supported.

An organization will meet this requirement if it has a governing body composed of:

1. Public officials acting in their public capacities,
2. Individuals selected by public officials acting in their public capacities,
3. Persons having special knowledge or expertise in the particular field or discipline in which the organization is operating, and

- Community leaders, such as elected or appointed officials, members of the clergy, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community.

In a membership organization, the governing body should also include individuals elected by a broadly based membership according to the organization's governing instrument or bylaws.

**4. Availability of public facilities or services factor.** The fact that an organization generally provides facilities or services directly for the benefit of the general public on a continuing basis is evidence that the organization is publicly supported. Examples are:

- A museum or library that is open to the public,
- A symphony orchestra that gives public performances,
- A conservation organization that provides educational services to the public through the distribution of educational materials, or
- An old-age home that provides domiciliary or nursing services for members of the general public.

The fact that an educational or research institution regularly publishes scholarly studies widely used by colleges and universities or by members of the general public is also evidence that the organization is publicly supported.

Similarly, the following factors are also evidence that an organization is publicly supported.

- Participating in, or sponsoring, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders.
- Maintaining a definitive program by the organization to accomplish its charitable work in the community, such as slum clearance or developing employment opportunities.
- Receiving a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

**5. Additional factors pertinent to membership organizations.** The following are additional factors in determining whether a membership organization is publicly supported.

- Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities).
- Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons.
- Whether the activities of the organization will be likely to appeal to persons having

some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

**Special rule.** The fact that an organization has normally met the one-third support test requirements for a current tax year, but is unable normally to meet the requirements for a later tax year, won't in itself prevent the organization from meeting the requirements of the facts and circumstances test for the later tax year.

**Example.** X is recognized as an organization described in section 501(c)(3). On the basis of support received during tax years 2017, 2018, 2019, 2020, and 2021, it meets the one-third support test for tax year 2021 (the current tax year). X also meets the one-third support test for 2022, as the immediately succeeding tax year.

In tax years 2018, 2019, 2020, 2021, and 2022, in the aggregate, X doesn't receive at least one-third of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X still meets the one-third support test for tax year 2022 based on the aggregate support received for tax years 2017 through 2021.

In tax years 2019, 2020, 2021, 2022, and 2023, in the aggregate, X doesn't receive at least one-third of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X doesn't meet the one-third support test for tax year 2023.

Based on the aggregate support and other factors listed in Regulations section 1.170A-9(f)(3)(iii)(A) through (E) for tax years 2018, 2019, 2020, 2021, and 2022, X meets the facts and circumstances test for tax year 2021 and for tax year 2023 (as the immediately succeeding tax year). Therefore, X is still an organization described in section 170(b)(1)(A)(vi) for tax year 2023 even though X didn't meet the one-third support test for that year.

**Special computation period for new organizations (Computation period for public support).** If, at the time of applying for tax-exempt status, an organization can reasonably be expected to meet the one-third support test or the facts and circumstances test during its first 5 tax years, the organization will qualify as publicly supported for its first 5 years. The organization will be classified as a public charity for its first 5 years, regardless of the public support actually received during this period. Beginning with the organization's sixth tax year, the organization will qualify as publicly supported if it meets the one-third support test or the facts and circumstances test for its sixth year (based on support received in its second through sixth tax years), or as a carryover for its fifth tax year (based on support received in its first through fifth tax years). If the organization is required to file Form 990 or 990-EZ, it must establish that it meets the public support test each year on Schedule A (Form 990).

**Reasonable expectation of public support.** An organization that can reasonably be expected to meet the one-third support test or the facts and circumstances test during its first 5 years is one that can show that its organizational structure, current or proposed programs and activities, and actual or intended method of operation can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet the public support requirements discussed earlier under *Qualifying As Publicly Supported*.

**Example.** Organization Y was formed in January 2017 and uses a December 31 tax year. After September 9, 2017, and before December 31, 2017, Organization Y filed a Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in sections 170(b)(1)(A)(vi) and 509(a)(1). In its application, Organization Y established that it can reasonably be expected to meet the one-third support test. Organization Y receives a determination letter that it is an organization described in section 501(c)(3) and sections 170(b)(1)(A)(vi) and 509(a)(1) effective as of the date of formation.

Organization Y is described in sections 170(b)(1)(A)(vi) and 509(a)(1) for its first 5 tax years (tax years ending December 31, 2017, through December 31, 2021). Organization Y can qualify as a public charity beginning with the tax year ending December 31, 2021, if Organization Y meets the one-third support test or facts and circumstances test for the tax years ending December 31, 2018, through December 31, 2022, or for the tax years ending December 31, 2017, through December 31, 2021.

**Determinations of public support status.** An organization may request a determination letter that it is described in section 170(b)(1)(A)(vi). This request is made on Form 1023 or Form 1023-EZ, or at such other time as the organization believes it is described in section 170(b)(1)(A)(vi). The IRS may revoke the section 170(b)(1)(A)(vi) determination letter if, on examination, the organization has not met the requirements. The IRS may also revoke the section 170(b)(1)(A)(vi) determination letter if the organization's application for a determination contained an omission or inaccurate material information.

**Reliance by grantors or contributors.** As a general rule, grantors or contributors may rely on a determination that an organization is described in section 170(b)(1)(A)(vi) until notice of change of status of the organization is made to the public. The IRS publishes such notices from time to time in the Internal Revenue Bulletin, [IRS.gov/irb/](https://www.irs.gov/irb/). Grantors and contributors can also find information about an organization's exempt status under section 501(c)(3) and its status as a public charity or private foundation from [Tax-Exempt Organization Search](#). However, a grantor or contributor can't rely on a determination letter or information on Tax-Exempt Organization Search if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification as a publicly supported organization.

**Support.** For purposes of publicly supported organizations, the term support includes (but isn't limited to):

1. Gifts, grants, contributions, or membership fees;
2. Net income from unrelated business activities, whether or not those activities are carried on regularly as a trade or business;
3. Gross investment income;
4. Tax revenues levied for the benefit of an organization and either paid to or spent on behalf of the organization; and
5. The value of services or facilities furnished by a governmental unit to an organization without charge (except services or facilities generally furnished to the public without charge).

**Amounts that aren't support.** The term support doesn't include:

1. Any amount received from the exercise or performance by an organization of the purpose or function constituting the basis for its exemption (in general, these amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of the exempt purpose or function, other than through the production of income); or
2. Contributions of services for which a deduction isn't allowed.

These amounts are excluded from both the numerator and the denominator of the fractions in determining compliance with the one-third support test and ten-percent-of-support requirement. The following discusses an exception to this general rule.

**Organizations dependent primarily on gross receipts from related activities.** Organizations won't satisfy the one-third support test or the ten-percent-of-support requirement if they receive:

1. Almost all support from gross receipts from related activities; and
2. An insignificant amount of support from governmental units (without regard to amounts referred to in (3) in the list of items included in support) and contributions made directly or indirectly by the general public.

**Example.** Z, an organization described in section 501(c)(3), is controlled by Thomas Blue, its president. Z received \$500,000 during the current tax year and the 4 tax years immediately before its current tax year under a contract with the Department of Transportation, under which Z engaged in research to improve a particular vehicle used primarily by the federal government. During the same period, the only other support received by Z was \$5,000 in small contributions primarily from Z's employees and business associates. The \$500,000 is gross receipts from a related activity and not support from a governmental unit, because the services are provided to serve the direct and immediate needs of the payor rather than primarily to confer a direct benefit on the public. Because of this fact, and because Z's contributions from the

public are insignificant, Z doesn't meet the one-third support test or the ten-percent-of-support requirement.

For the rules that apply to organizations that fail to qualify as section 509(a)(1) publicly supported organizations because of these provisions, see [Section 509\(a\)\(2\) Organizations](#), later. See also [Gross receipts from a related activity](#) in the discussion on section 509(a)(2) organizations.

**Membership fees.** Membership fees are included in the term support if they are paid to provide support for the organization rather than to buy admissions, merchandise, services, or the use of facilities.

**Support from a governmental unit.** For purposes of the one-third support test and the ten-percent-of-support requirement, the term support from a governmental unit includes any amounts received from a governmental unit, including donations or contributions and amounts received on a contract entered into with a governmental unit for the performance of services, or from a government research grant. However, these amounts aren't support from a governmental unit for these purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions.

Any amount paid by a governmental unit to an organization won't be treated as received from the exercise or performance of its exempt function if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing the service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. This includes:

1. Amounts paid to maintain library facilities that are open to the public,
2. Amounts paid under government programs to nursing homes or homes for the aged to provide health care or domiciliary services to residents of these facilities, and
3. Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community.

These payments are mainly to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances in which the amount would be treated as a grant will generally constitute support from a governmental unit. See the discussion of *Grants*, later, under [Section 509\(a\)\(2\) Organizations](#).

**Medicare and Medicaid payments.** Medicare and Medicaid payments are received from contracts entered into with state and federal governmental units. However, payments are made for services already provided to eligible individuals, rather than to encourage or enable an organization to provide services to the public. The individual patient, not a governmental unit, actually controls the ultimate recipient of

these payments by selecting the health care organization. As a result, these payments aren't considered support from a governmental unit. Medicare and Medicaid payments are gross receipts derived from the exercise or performance of exempt activities and, therefore, aren't included in the term support.

**Support from the general public.** In determining whether the one-third support test or the ten-percent-of-support requirement is met, include in your computation support from direct or indirect contributions from the general public. This includes contributions from an individual, trust, or corporation but only to the extent that the total contributions from the individual, trust, or corporation, during the current tax year and the 4-year period immediately before the current tax year, aren't more than 2% of the organization's total support for the same period.

Thus, a contribution by any one individual will be included in full in the denominator of the fraction used in the one-third support test or the ten-percent-of-support requirement. However, the contribution will be included in the numerator only to the extent that it isn't more than 2% of the denominator. In applying the 2% limit, all contributions made by a donor and by any person in a special relationship to the donor (certain *Disqualified persons* discussed under *Absence of control by disqualified persons*, later) are considered made by one person. The 2% limit doesn't apply to support received from governmental units or to contributions from other publicly supported charities, except as provided under *Grants from public charities*, later.

**Indirect contributions.** The term indirect contributions from the general public includes contributions received by the organization from organizations (such as publicly supported organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided under *Grants from public charities*, next.

**Grants from public charities.** Contributions received from a governmental unit or from a publicly supported organization (including a church that meets the requirements for being publicly supported) aren't subject to the 2% limit unless the contributions represent amounts either expressly or impliedly earmarked by a donor to the governmental unit or publicly supported organization as being for, or for the benefit of, the particular organization claiming a publicly supported status.

**Example 1.** M, a national foundation for the encouragement of the musical arts, is a publicly supported organization. George Spruce gives M a donation of \$5,000 without imposing any restrictions or conditions upon the gift. M later makes a \$5,000 grant to X, an organization devoted to giving public performances of chamber music. Since the grant to X is treated as being received from M, it is fully includible in the numerator of X's support fraction for the tax year of receipt.

**Example 2.** Assume M is the same organization described in *Example 1*. Tom Grove gives M a donation of \$10,000, but requires that M spend the money to support organizations devoted to the advancement of contemporary



American music. M has complete discretion as to the organizations of the type described to which it will make a grant. M decides to make grants of \$5,000 each to Y and Z, both being organizations described in section 501(c)(3) and devoted to furthering contemporary American music. Since the grants to Y and Z are treated as having been received from M, Y and Z each may include one of the \$5,000 grants in the numerator of its support fraction. Although the donation to M was conditioned upon the use of the funds for a particular purpose, M was free to select the ultimate recipient.

**Example 3.** N is a national foundation for the encouragement of art and is a publicly supported organization. Grants to N are permitted to be earmarked for particular purposes. O, which is an art workshop devoted to training young artists and which is claiming status as a publicly supported organization, persuades C, a private foundation, to make a grant of \$25,000 to N. C is a disqualified person with respect to O. C makes the grant to N with the understanding that N would be bound to make a grant to O in the sum of \$25,000, in addition to a matching grant of N's funds to O in the sum of \$25,000. Only the \$25,000 received directly from N is considered a grant from N. The other \$25,000 is an indirect contribution from C to O and is to be excluded from the numerator of O's support fraction to the extent it exceeds the 2% limit.

**Unusual grants.** In applying the 2% limit to determine whether the one-third support test or the ten-percent-of-support requirement is met, exclude contributions that are considered unusual grants from both the numerator and denominator of the appropriate percent-of-support fraction. Generally, unusual grants are substantial contributions or bequests from disinterested parties if the contributions:

- 1. Are attracted by the publicly supported nature of the organization;
- 2. Are unusual or unexpected in amount; and
- 3. Would adversely affect, because of the size, the status of the organization as normally being publicly supported. (The organization must otherwise meet the support test in that year without benefit of the grant or contribution.)

For a grant (see *Grants*, later) that meets the requirements for exclusion, if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year under the terms of the grant may be excluded for that year. However, no item of gross investment income (defined under [Section 509\(a\)\(2\) Organizations](#), later) may be excluded under this rule.

**Characteristics of an unusual grant.** A grant or contribution will be considered an unusual grant if the previous three factors apply and if it has all of the following characteristics. If these factors and characteristics apply, then even without the benefit of an advance ruling, grantors or contributors have assurance that

they won't be considered responsible for substantial and material changes in the organization's sources of support status. See section 7.08 of Rev. Proc. 2018-32, 2018-23 I.R.B. 739.

- 1. The grant or contribution isn't made by a person (or related person) who created the organization or was a substantial contributor to the organization before the grant or contribution.
- 2. The grant or contribution isn't made by a person (or related person) who is in a position of authority, such as a foundation manager, or who otherwise has the ability to exercise control over the organization. Similarly, the grant or contribution isn't made by a person (or related person) who, because of the grant or contribution, obtains a position of authority or the ability to otherwise exercise control over the organization.
- 3. The grant or contribution is in the form of cash, readily marketable securities, or assets that directly further the organization's exempt purposes, such as a gift of a painting to a museum.
- 4. The donee organization has received a final determination letter classifying it as a publicly supported organization and the organization is actively engaged in a program of activities in furtherance of its exempt purpose.
- 5. No material restrictions or conditions have been imposed by the grantor or contributor upon the organization in connection with the grant or contribution.
- 6. If the grant or contribution is intended for operating expenses, rather than capital items, the terms and amount of the grant or contribution are expressly limited to 1 year's operating expenses.

**Determination request.** Before any grant or contribution is made, a potential grantee organization can request a determination as to whether the grant or contribution may be excluded as an unusual grant. This request can be filed by the grantee organization by submitting Form 8940, Request for Miscellaneous Determination, supporting documents described in the Instructions for Form 8940, and the appropriate user fee. The organization must submit all information necessary to support a determination, including information relating to the factors and characteristics listed in the preceding paragraphs. If a favorable determination is issued, the determination can be relied upon by the grantor or contributor of the particular contribution in question. The issuance of the determination will be at the sole discretion of the IRS.

Grants and contributions that fail to qualify for exclusion will affect the way the support tests are applied. See [Additional requirements \(the five public support factors\)](#), earlier.

If a determination is requested, in addition to the characteristics listed earlier under [Characteristics of an unusual grant](#), the following factors may be considered by the IRS in determining if the grant or contribution is an unusual grant.

- 1. Whether the contribution was a bequest or a transfer while living. A bequest will be

given more favorable consideration than a transfer while living.

- 2. Whether, before the receipt of the contribution, the organization has carried on an active program of public solicitation and exempt activities and has been able to attract a significant amount of public support.
- 3. Whether, before the year of contribution, the organization met the one-third support test without benefit of any exclusions of unusual grants.
- 4. Whether the organization may reasonably be expected to attract a significant amount of public support after the contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization can't reasonably be expected to attract future support from the general public.
- 5. Whether the organization has a representative governing body.

Comprehensive Examples

**Example 1.** M is recognized as an organization described in section 501(c)(3). For the years 2017 through 2021 (the applicable period for the tax year 2021 under Regulations section 1.170A-9(f)(3)), M received support (as defined in paragraphs Regulations section 1.170A-9(f)(6) through (8)) of \$600,000 from the following sources:

Investment Income	\$300,000
City Y (a governmental unit described in section 170(c)(1))	40,000
United Way (an organization described in section 170(b)(1)(A)(vi))	40,000
Contributions	220,000
Total support	\$600,000

For tax year 2021, M's public support is computed as follows:

One-third of total support	\$200,000
Support from a governmental unit described in section 170(c)(1)	\$40,000
Indirect contributions from the general public (United Way)	40,000
Contributions by various donors (no one having made contributions that total more than \$12,000—2% of total support)	50,000
Six contributions (each in excess of \$12,000—2% of total support) 6 x \$12,000	72,000
	\$202,000

M's support from governmental units and from direct and indirect contributions from the general public for the 2019 tax year normally exceeds one-third of M's total support (\$202,000/\$600,000 = 33.67%) for the applicable period (2016 through 2020). M meets the one-third support test for 2020 and is therefore publicly supported for the tax years 2021 and 2022.

**Example 2.** N is recognized as an organization described in section 501(c)(3). It was

created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract many visitors each year. For the current tax year and the 4 tax years preceding the current tax year, 95% of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the 5-year period in question, these fees from the general public constituted the remaining 5% of the organization's total support. Under these circumstances, N doesn't meet the one-third support test for its current tax year. Furthermore, since only 5% was received from the general public, N doesn't satisfy the 10% support limitation under Regulations section 1.170A-9(f)(3)(i), and therefore doesn't qualify as publicly supported under the facts and circumstances test. Because N has failed to satisfy the 10% support limitation, none of the other requirements or factors in Regulations section 1.170A-9(f)(3)(iii)(A) through (E) can be considered in determining whether N qualifies as a publicly supported organization. For its current tax year, N isn't an organization described in section 170(b)(1)(A)(vi).

**Example 3.** O, an art museum, is recognized as an organization described in section 501(c)(3). In 1930, O was founded in S City by members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in relationship to the members of that family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of S City from a variety of professions and occupations who represent the interests and views of the people of S City in the activities carried on by the organization rather than the personal or private interests of the founding family. O solicits contributions from the general public, and for the current tax year and each of the 4 tax years immediately preceding the current tax year, O has received total contributions (in small sums of less than \$100, none of which exceeds 2% of O's total support for such period) in excess of \$10,000. These contributions from the general public represent 25% of the organization's total support for that 5-year period. For the same period, investment income from several large endowment funds has constituted 75% of O's total support. O expends substantially all of its annual income for its exempt purposes and thus depends on the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from S City and elsewhere) have visited

the museum in the current tax year and the 4 years immediately preceding the current tax year.

Under these circumstances, O doesn't meet the one-third support test for its current year because it has received only 25% of its total support for the applicable 5-year period from the general public. However, under the facts set forth, O has met the 10% support limitation under Regulations section 1.170A-9(f)(3)(i), as well as the requirements of Regulations section 1.170A-9(f)(3)(ii). Under all of the facts set forth, O is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying Regulations section 1.170A-9(f)(3)(iii)(A) through (D). O is therefore publicly supported for its current tax year and the immediately succeeding tax year.

**Example 4.** In 1960, the P Philharmonic Orchestra was organized in T City by a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is recognized as an organization described in section 501(c)(3). The orchestra is composed of professional musicians who are paid by the association. Twelve performances, open to the public, are scheduled each year. A small admission charge is made for each of these performances. In addition, several performances are staged annually without charge.

During the current tax year and the 4 tax years immediately preceding the current tax year, P received separate contributions of \$200,000 each from A and B (not members of a single family) and support of \$120,000 from the T Community Chest, a public federated fundraising organization operating in T City. P depends on these funds to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fundraising campaign in an attempt to expand its activities for the coming years.

P is governed by a Board of Directors composed of five individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local Chamber of Commerce currently serve on the Board and represent the interests and views of the community in the activities carried on by P.

For P's current tax year, its sources of support are computed on the basis of the current tax year and the 4 immediately preceding tax years, as follows.

Contributions	\$520,000
Receipts from performances	100,000
	<u>\$620,000</u>
Less:	
Receipts from performances (excluded, see <i>Support</i> )	100,000
Total support	<u>\$520,000</u>
T Community Chest (indirect support from the general public)	\$120,000
Two contributions (each over \$10,400—2% of total support) 2 × \$10,400	20,800
Total support from general public	<u>\$140,800</u>

P's support from the general public, directly and indirectly, doesn't meet the one-third support

test (\$140,800/\$520,000 = 27% of total support). However, because P receives 27% of its total support from the general public, it meets the 10% support limitation under Regulations section 1.170A-9(f)(3)(i). P also meets the requirements of Regulations section 1.170A-9(f)(3)(ii). As a result of satisfying these requirements and factors, P is considered to meet the facts and circumstances test and therefore qualifies as a publicly supported organization for its current tax year and the immediately succeeding tax year.

**Example 5.** Q is recognized as an organization described in section 501(c)(3) and it is a philanthropic organization. Q was founded in 1965 by C for the purpose of making annual contributions to worthy charities. C created Q as a charitable trust by transferring \$500,000 worth of appreciated securities to Q.

Under the trust agreement, C and two other family members are the sole trustees of Q and are vested with the right to appoint successor trustees. In each of the current tax year and the 4 tax years immediately preceding the current tax year, Q received \$12,000 in investment income from its original endowment. Each year Q solicits funds by operating a charity ball at C's residence. Guests are invited and asked to make contributions of \$100 per couple. During the 5-year period involved, \$15,000 was received from the proceeds of these events. C and his family have also made contributions to Q of \$25,000 over the 5-year period at issue. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

Q's sources of support for the current tax year and the 4 tax years immediately preceding the current tax year are as follows:

Investment income	\$60,000
Contributions	40,000
Total support	<u>\$100,000</u>
Contributions from the general public	\$15,000
One contribution (over \$2,000—2% of total support) 1 × \$2,000	2,000
Total support from general public	<u>\$17,000</u>

Q's support from the general public doesn't meet the one-third support test (\$17,000/\$100,000 = 17% of total support). Even though it does meet the ten-percent-of-support requirement, its method of solicitation makes it questionable whether Q satisfies Regulations section 1.170A-9(f)(3)(ii). Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature. Based on these facts and on Q's failure to receive favorable consideration under the remaining factors of Regulations section 1.170A-9(f)(3)(iii), Q doesn't satisfy the facts and circumstances test and therefore doesn't qualify as a publicly supported organization.

### Community Trusts

Community trusts are often established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area. Often these contributions come initially from a small number of donors. While the community trust generally has a governing

body composed of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds that are subject to varying degrees of control by the governing body.

To qualify as a publicly supported organization, a community trust must meet the one-third support test, explained earlier under [Qualifying as Publicly Supported](#). If it can't meet that test, it must be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test, also explained earlier. Community trusts are generally able to satisfy the attraction of public support requirement (as contained in the facts and circumstances test) if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust, however, doesn't have to engage in periodic, community-wide, fundraising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or a united fund.

**Separate trusts or funds.** Any community trust may be treated as a single entity for public support purposes, rather than as an aggregation of separate funds, in which case all qualifying funds associated with that organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) will be treated as component parts of the organization for public support purposes.

**Single entity.** To be treated as a single entity for public support purposes, a community trust must meet all of the following requirements.

1. The organization must be commonly known as a community trust, fund, foundation, or other similar name conveying the concept of a capital or endowment fund to support charitable activities in the community or area it serves.
2. All funds of the organization must be subject to a common governing instrument (or a master trust or agency agreement) that may be embodied in a single (or several) document(s) containing common language.
3. The organization must have a common governing body (or distribution committee) that either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all funds exclusively for charitable purposes. The governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or bylaws of the governing body, a written agreement, or otherwise—
  - a. To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole

judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), the restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

- b. To replace any participating trustee, custodian, or agent for breach of fiduciary duty under state law; and
  - c. To replace any participating trustee, etc., for failure to produce a reasonable return of net income over a reasonable period of time. (The governing body will determine what is reasonable.)
4. The organization must prepare periodic financial reports treating all of the funds that are held by the community trust, either directly or in component parts, as funds of the organization.

A community trust can meet the requirement in (3) above even if its exercise of the powers in (3)(a), (b), or (c) is reviewable by an appropriate state authority.

**Component part.** To be treated as a component part of a community trust (rather than as a separate trust or a not-for-profit corporation for public support purposes), a trust or fund:

1. Must be created by gift, bequest, legacy, devise, or other transfer to a community trust that is treated as a single entity (described above), and
2. May not be directly or indirectly subjected by the transferor to any material restriction or condition with respect to the transferred assets.

**Grantors and contributors.** Grantors, contributors, or distributors to a community trust may rely on the public charity status, which the organization has claimed in a timely filed notice, on or before the date the IRS informs the public (through such means as publication in the Internal Revenue Bulletin) that such reliance has expired. However, if the grantor, contributor, or distributor acquires knowledge that the IRS has notified the community trust that it has failed to establish that it is a public charity, then reliance on the claimed status expires at the time such knowledge is acquired.

## Section 509(a)(2) Organizations

Section 509(a)(2) excludes certain types of broadly based, publicly supported organizations from private foundation status. Generally, an organization described in section 509(a)(2) may also fit the description of a publicly supported organization under section 509(a)(1). There are, however, two basic differences.

1. For section 509(a)(2) organizations, the term support includes items of support discussed earlier (under [Support](#), in the discussion of [Section 509\(a\)\(1\) Organizations](#)) and income from activities directly related to their exempt function. This income isn't included in meeting the support

test for a publicly supported organization under section 509(a)(1).

2. Section 509(a)(2) places a limit on the total gross investment income and unrelated business taxable income (in excess of the unrelated business tax) an organization may have, while section 509(a)(1) doesn't.

To be excluded from private foundation treatment under section 509(a)(2), an organization must meet two support tests.

1. The one-third support test.
2. The not-more-than-one-third support test.

Both these tests are designed to ensure that an organization excluded from private foundation treatment is responsive to the general public, rather than to the private interests of a limited number of donors or other persons.

**One-third support test.** The one-third support test will be met if an organization normally receives more than one-third of its support in each tax year from any combination of:

1. Gifts, grants, contributions, or membership fees; and
2. Gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities in an activity that isn't an unrelated trade or business, subject to certain limits, discussed under [Limit on gross receipts](#), later.

For this purpose, the support must be from permitted sources, which include:

- Section 509(a)(1) organizations, described earlier;
- Governmental units, described under [Section 509\(a\)\(1\) Organizations](#), earlier; and
- Persons other than [Disqualified persons](#) (defined under [Section 509\(a\)\(3\) Organizations](#)), later.

**Limit on gross receipts.** In computing the amount of support received from gross receipts under (2) above, gross receipts from related activities received from any person or from any bureau or similar agency of a governmental unit are includible in any tax year only to the extent the gross receipts aren't more than the greater of \$5,000 or 1% of the organization's total support in that year.

**Not-more-than-one-third support test.** This test will be met if an organization normally receives no more than one-third of its support in each tax year from the total of:

1. Gross investment income, and
2. The excess (if any) of unrelated business taxable income from unrelated trades or businesses acquired after June 30, 1975, over the tax imposed on that income.

**Gross investment income.** Gross investment income means the gross amount of income from interest, dividends, payments with respect to securities loans, rents, and royalties, but it doesn't include any income that would be included in computing tax on unrelated business income from trades or businesses.



**Definition of normally.** Both support tests are computed on the basis of the nature of the organization's normal sources of support. An organization will be considered to have normally met both tests for its current tax year and the tax year immediately following, if it meets those tests on the basis of the total support received for the current tax year and the 4 tax years immediately before the current tax year.

**Computation period for public support.** If at the time of applying for tax-exempt status, an organization can reasonably be expected to meet the one-third support test and the not-more-than-one-third support test during its first 5 tax years, the organization will qualify for classification as a public charity under section 509(a)(2) for its first 5 years. Beginning with the organization's sixth tax year, the organization will be described in section 509(a)(2) if it meets the one-third support test and not-more-than-one-third support test for its sixth year (based on support received in its second through sixth tax years) or as a carryover for its fifth tax year (based on support received in its first through fifth tax years). If the organization is required to file Form 990 or 990-EZ, it must establish that it meets the one-third support test and not-more-than-one-third support test each year on Schedule A (Form 990).

**Reasonable expectation of public support.** An organization that can reasonably be expected to meet the one-third support test and not-more-than-one-third support test under section 509(a)(2) during its first 5 tax years is one that can show that its organizational structure, current or proposed programs and activities, and actual or intended method of operation can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet these tests. The facts that are relevant to this determination and the weight accorded each fact may differ from case to case. An organization can't reasonably be expected to meet the one-third support test and the not-more-than-one-third support test when the facts indicate that an organization is likely during its first 5 tax years to receive less than one-third of its support from permitted sources or to receive more than one-third of its support from gross investment income and unrelated business taxable income.

All pertinent facts and circumstances are taken into account in determining whether the organizational structure, programs, or activities, and method of operation of an organization will give that organization a reasonable expectation that it will meet the support tests. Some pertinent factors considered are:

1. Whether the organization has or will have a governing body that is composed of persons having special knowledge in the particular field in which the organization is operating or of community leaders, such as elected officials, members of the clergy, and educators, or, in the case of a membership organization, of individuals elected under the organization's governing instrument or bylaws by a broadly based membership,

2. Whether a substantial part of the organization's initial funding is to be provided by the general public, by public charities, or by government grants rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization,
3. Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment and whether the investment of those funds is unlikely to result in more than one-third of its total support being received from gross investment income and from unrelated business taxable income in excess of the tax imposed on that income,
4. Whether an organization that carries on fundraising activities has developed a specific plan for solicitation of funds on a community or area-wide basis,
5. Whether an organization that carries on community service activities has a specific program to carry out its work in the community,
6. Whether membership dues for individual (rather than institutional) members of an organization that carries on education or other exempt activities for or on behalf of members have been fixed at rates designed to make membership available to a broad cross section of the public rather than to restrict membership to a limited number of persons, and
7. Whether an organization that provides goods, services, or facilities is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units rather than to a limited number of persons or organizations.

**Unusual grants.** An unusual grant can be excluded from the support test computation if it:

1. Was attracted by the publicly supported nature of the organization,
2. Was unusual or unexpected in amount, and
3. Would, because of its size, adversely affect the status of the organization as normally meeting the one-third support test. (The organization must otherwise meet the test in that year without benefit of the grant or contribution.)

**Characteristics of an unusual grant.** A grant or contribution will be considered an unusual grant if the above three factors apply and it has all of the following characteristics. If these factors and characteristics apply, then even without the benefit of an advance ruling, grantors or contributors have assurance that they won't be considered responsible for an act that results in an organization's change of support status. See Rev. Proc. 2018-32, 2018-23 I.R.B. 739.

1. The grant or contribution isn't made by a person (or related person) who created

the organization or was a substantial contributor to the organization before the grant or contribution.

2. The grant or contribution isn't made by a person (or related person) who is in a position of authority, such as a foundation manager, or who otherwise has the ability to exercise control over the organization. Similarly, the grant or contribution isn't made by a person (or related person) who, because of the grant or contribution, obtains a position of authority or the ability to otherwise exercise control over the organization.
3. The grant or contribution is in the form of cash, readily marketable securities, or assets that directly further the organization's exempt purposes, such as a gift of a painting to a museum.
4. The donee organization has received either an advance ruling or final determination letter classifying it as a publicly supported organization and, except for an organization operating under an advance ruling or determination letter, the organization is actively engaged in a program of activities in furtherance of its exempt purpose.
5. No material restrictions or conditions have been imposed by the grantor or contributor upon the organization in connection with the grant or contribution.
6. If the grant or contribution is intended for operating expenses, rather than capital items, the terms and amount of the grant or contribution are expressly limited to one year's operating expenses.

**Determination request.** If there is any doubt that a grant or contribution can be excluded as an unusual grant, the grantee organization can request a determination by submitting Form 8940, *Request for Miscellaneous Determination*, supporting documents described in the Instructions for Form 8940 and the appropriate user fee. The IRS has the sole discretion of issuing a determination, but if a favorable determination is issued, it can be relied on by the grantor or contributor for purposes of a charitable contributions deduction and by the organization for purposes of the exclusion for unusual grants.

In addition to the characteristics listed above, the following factors may be considered by the IRS in determining if the grant or contribution is an unusual grant.

1. Whether the contribution was a bequest or a transfer while living. A bequest will ordinarily be given more favorable consideration than a transfer while living.
2. Whether, before the contribution, the organization carried on an actual program of public solicitation and exempt activities and was able to attract a significant amount of public support.
3. Whether the organization may reasonably be expected to attract a significant amount of public support after the contribution. Continued reliance on unusual grants to fund an organization's current operating

expenses can be evidence that the organization can't attract future support from the general public.

4. Whether the organization met the one-third support test in the past without the benefit of any exclusions of unusual grants.
5. Whether the organization has a representative governing body.

**Example 1.** Y, an organization described in section 501(c)(3), was created by Marshall Pine, the holder of all the common stock in M corporation, Lisa, Marshall's wife, and Edward Forest, Marshall's business associate. The purpose of Y was to sponsor and equip athletic teams composed of underprivileged children in the community. Each of the three creators makes small cash contributions to Y. Marshall, Lisa, and Edward have been active participants in the affairs of Y since its creation. Y regularly raises small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events. The operations of Y are carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children.

In 2012, M Corporation recapitalizes and creates a first and second class of 6% nonvoting preferred stock, most of which is held by Marshall and Lisa. In 2013, Marshall contributes 49% of his common stock in M to Y. Marshall's contribution of M's common stock was substantial and constitutes 90% of Y's total support for 2013. A combination of the facts and circumstances of the determining factors preclude Marshall's contribution of M's common stock in 2013 from being excluded as an unusual grant under Temporary Regulations section 1.509(a)-3T(c)(3) for purposes of determining whether Y meets the one-third support test under section 509(a)(2).

**Example 2.** M was organized in 2012 to promote the appreciation of ballet in a particular region of the United States. Its principal activities consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. M receives a determination letter that it is an organization described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of M consists of nine prominent unrelated citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form.

In 2013, Z, a private foundation, proposes to make a grant of \$500,000 in cash to M to provide sufficient capital for M to commence its activities. Although Albert Cedar, the creator of Z, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fundraising efforts, Albert doesn't, directly or indirectly, exercise any control over M. By the close of its first tax year, M also has received a significant amount of support from a number of smaller contributions and pledges from members of the general public. M charges admission to the ballet performances to the general public.

Although the support received in 2013 won't impact M's status as a public charity for its first 5 tax years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for the 2017 tax year, using the computation period 2013 through 2017. Within the appropriate time-frame, M may submit a request for a determination letter that the \$500,000 contribution from Z qualifies as an unusual grant.

Under the above circumstances, even though Albert was a founder and member of the governing body of M, M may exclude Z's contribution of \$500,000 in 2013 as an unusual grant under Regulations section 1.509(a)-3T(c)(3) for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2017.

**Gifts, contributions, and grants distinguished from gross receipts.** In determining whether an organization normally receives more than one-third of its support from permitted sources, include all gifts, contributions, and grants received from permitted sources in the numerator of the support fraction in each tax year. However, gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities, in an activity that isn't an unrelated trade or business, are includible in the numerator of the support fraction in any tax year only to the extent that the amounts received from any person or from any bureau or similar agency of a governmental unit aren't more than the greater of \$5,000 or 1% of support.

#### **Determinations of public support status.**

An organization may request a determination letter that it is described in section 509(a)(2). This request is made on Form 1023 or Form 1023-EZ, or at such other time as the organization believes it is described in section 509(a)(2). The IRS may revoke the section 509(a)(2) determination letter if, upon examination, the organization has not met the requirements. The IRS may also revoke the section 509(a)(2) determination letter if the organization's application for determination contained an omission or inaccurate material information.

#### **Reliance by grantors or contributors.**

Grantors or contributors may rely on a determination that an organization is described in section 509(a)(2) until notice of change of status of the organization is made to the public (such as by publication in the *Internal Revenue Bulletin*, or Tax-Exempt Organization Search, either of which can be searched at IRS.gov). See [Rev. Proc. 2018-32, 2018-23 I.R.B. 739](#). Tax-Exempt Organization Search is only available online at [Tax-Exempt Organization Search](#). However, this won't apply if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification as a publicly supported organization.

**Gifts and contributions.** Any payment of money or transfer of property without adequate consideration is considered a gift or contribution. When payment is made or property is transferred as consideration for admissions, sales of merchandise, performance of services, or furnishing facilities to the donor, the status of

the payment or transfer under section 170(c) determines whether and to what extent the payment or transfer is a gift or contribution as distinguished from gross receipts from related activities.

The amount includible in computing support from gifts, grants, or contributions of property or use of property is the fair market or rental value of the property at the date of the gift or contribution.

**Example.** P is a local agricultural club and is an organization described in section 501(c)(3). It makes awards at its annual fair for outstanding specimens of produce and livestock to encourage interest and proficiency by young people in farming and raising livestock. Most of these awards are cash or other property donated by local businessmen. When the awards are made, the donors are given recognition for their donations by being identified as the donor of the award. The recognition given to donors is merely incidental to the making of the award to worthy youngsters. For these reasons, the donations are contributions. The amount includible in computing support is equal to the cash contributed or the fair market value of other property on the dates contributed.

**Grants.** Grants often contain certain terms and conditions imposed by the grantor. Because of the imposition of terms and conditions, the frequent similarity of public purposes of grantor and grantee, and the possibility of benefit to the grantor, amounts received as grants for carrying on exempt activities are sometimes difficult to distinguish from amounts received as gross receipts from carrying on exempt activities.

In distinguishing the term gross receipts from the term grants, the term gross receipts means amounts received from an activity that isn't an unrelated trade or business, if a specific service, facility, or product is provided to serve the direct and immediate needs of the payor rather than primarily to confer a direct benefit on the general public. In general, payments made primarily to enable the payor to realize or receive some economic or physical benefit as a result of the service, facility, or product obtained will be treated as gross receipts by the payee.

For example, a profit-making organization, primarily for its own betterment, contracts with a nonprofit organization for a service from that organization. Any payments received by the nonprofit organization (whether from the profit-making organization or from another nonprofit) for similar services are primarily for the benefit of the payor and are therefore gross receipts, rather than grants.

Research leading to the development of tangible products for the use or benefit of a payor generally will be treated as a service provided to serve the direct and immediate needs of the payor, while basic research or studies carried on in the physical or social sciences generally will be treated as primarily to confer a direct benefit upon the general public.

Medicare and Medicaid payments are gross receipts from the exercise or performance of an exempt function. The individual patient, not a governmental unit, actually controls the ultimate recipient of these payments. Therefore, Medicare and Medicaid receipts for services

provided to each patient are included as gross receipts to the extent they aren't more than the greater of \$5,000 or 1% of the organization's total support for the tax year.

**Membership fees distinguished from gross receipts.** The fact that a membership organization provides services, admissions, facilities, or merchandise to its members as part of its overall activities won't, in itself, result in the classification of fees received from members as gross receipts subject to the \$5,000 or 1% limit rather than membership fees. However, if an organization uses membership fees as a means of selling admissions, merchandise, services, or the use of facilities to members of the general public who have no common goal or interest (other than the desire to buy the admissions, merchandise, services, or use of facilities), the fees aren't membership fees but are gross receipts.

On the other hand, to the extent the basic purpose of the payment is to provide support for the organization rather than to buy admissions, merchandise, services, or the use of facilities, the payment is a membership fee.

**Bureau defined.** The term bureau or similar agency of a governmental unit for determining amounts subject to the \$5,000 or 1% limit means a specialized operating unit of the executive, judicial, or legislative branch of government in which business is conducted under certain rules and regulations. Since the term bureau refers to a unit functioning at the operating, as distinct from the policy-making, level of government, it normally means a subdivision of a department of government. The term wouldn't usually include those levels of government that are basically policy-making or administrative, such as the office of the Secretary or Assistant Secretary of a department, but would consist of the highest operational level under the policy-making or administrative levels.

Amounts received from a unit functioning at the policy-making or administrative level of government are treated as received from one bureau or similar agency of the unit. Units of a governmental agency above the operating level are combined and considered a separate bureau for this purpose. Thus, an organization that has gross receipts from both a policy-making or administrative unit and an operational unit of a department will be treated as having gross receipts from two bureaus. For this purpose, the Departments of Air Force, Army, and Navy are separate departments and each has its own policy-making, administrative, and operating units.

**Example 1.** The Bureau for Africa and the Bureau for Latin America are considered separate bureaus. Each is an operating unit under the Administrator of the Agency for International Development, a policy-making official. If an organization had gross receipts from both of these bureaus, the amount of gross receipts from each would be subject to the greater of \$5,000 or the 1% limit.

**Example 2.** A bureau is an operating unit under the administrative office of the Executive Director. The subdivisions of the bureau are Geographic Areas and Project Development

Staff. If an organization had gross receipts from these subdivisions, the total gross receipts from these subdivisions would be considered gross receipts from the same bureau and would be subject to the greater of \$5,000 or the 1% limit.

**Grants from public charities.** For purposes of the one-third support test, grants received from a section 509(a)(1) organization (public charity) are generally includible in full in computing the numerator of the support fraction for that tax year.

However, if the amount received is considered an indirect contribution from one of the public charity's donors, it will retain its character as a contribution from the donor, and if, for example, the donor is a substantial contributor to the ultimate recipient, the amount is excluded from the numerator of the support fraction. If a public charity makes both an indirect contribution from its donor and an additional grant to the ultimate recipient, the indirect contribution is treated as made first.

An indirect contribution is one that is expressly or impliedly earmarked by the donor as being for, or for the benefit of, a particular recipient rather than for a particular purpose.

**Method of accounting.** An organization's support is determined under the same accounting method that it uses in keeping its books and that it otherwise uses to report on its Form 990 or 990-EZ, if it is required to file Form 990 or 990-EZ. For example, if a grantor makes a grant to an organization payable over a term of years, the grant will be includible in the support fraction of the grantee organization under the accounting method it regularly uses in keeping its books.

**Gross receipts from a related activity.** When the charitable purpose of an organization described in section 501(c)(3) is accomplished through furnishing facilities for a rental fee or loans to a particular class of persons, such as aged, sick, or needy persons, the support received from those persons will be considered gross receipts from a related exempt activity rather than gross investment income or unrelated business taxable income.

However, if the organization also furnishes facilities or loans to persons who aren't members of a particular class and furnishing the facilities or funds doesn't contribute importantly to accomplishing the organization's exempt purposes, the support received from furnishing the facilities or funds will be considered rents or interest and will be treated as gross investment income or unrelated business taxable income.

**Example.** X, an organization described in section 501(c)(3), is organized and operated to provide living facilities for needy widows of deceased servicemen. X charges the widows a small rental fee for the use of the facilities. Since X is accomplishing its exempt purpose through the rental of the facilities, the support received from the widows is considered gross receipts from a related exempt activity. However, if X rents part of its facilities to persons having no relationship to X's exempt purpose, the support received from these rentals will be considered gross investment income or unrelated business taxable income.

## Section 509(a)(3) Organizations

Section 509(a)(3) excludes from the definition of private foundation those organizations that meet all of the three following requirements.

1. The organization must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations, as described in sections 509(a)(1) or 509(a)(2). These section 509(a)(1) and 509(a)(2) organizations are commonly called publicly supported organizations.
2. The organization has one of three types of relationships with one or more organizations described in sections 509(a)(1) or 509(a)(2). It must be:
  - a. Operated, supervised, or controlled by one or more section 509(a)(1) or 509(a)(2) organizations (Type I supporting organization),
  - b. Supervised or controlled in connection with one or more section 509(a)(1) or 509(a)(2) organizations (Type II supporting organization), or
  - c. Operated in connection with one or more section 509(a)(1) or 509(a)(2) organizations (Type III supporting organization).
3. The organization mustn't be controlled directly or indirectly by disqualified persons (defined later) other than foundation managers and other than one or more organizations described in section 509(a)(1) or 509(a)(2).

Section 509(a)(3) differs from the other provisions of section 509 that describe a publicly supported organization. Instead of describing an organization that conducts a particular kind of activity or that receives financial support from the general public, section 509(a)(3) describes organizations that have established certain relationships in support of section 509(a)(1) or 509(a)(2) organizations. Thus, an organization can qualify as other than a private foundation even though it may be funded by a single donor, family, or corporation (with certain exceptions described in [Organizations controlled by donors](#), later). This kind of funding ordinarily would indicate private foundation status, but a section 509(a)(3) organization has limited purposes and activities and gives up a significant degree of independence.

More than one type of relationship may exist between a supporting organization and a publicly supported organization. Any relationship, however, must ensure that the supporting organization will be responsive to the needs or demands of, and will be an integral part of or maintain a significant involvement in, the operations of one or more publicly supported organizations.

The Type I and Type II relationships rely on majority control of the governing body of the supporting organization by the publicly supported organization. They have the same rules for meeting the tests under requirement (1) and are discussed in [Category one](#) below. The operated



in connection with relationship requires that the supporting organization be responsive to and have operational relationships with publicly supported organizations. This third relationship has different rules for meeting the requirement (1) tests and is discussed separately in [Category two](#), later.

**Supported organizations.** Supported organizations are organizations described in section 509(a)(1) or 509(a)(2) for whose benefit the supporting organization is organized and operated. A section 501(c)(4), (c)(5), or (c)(6) organization that would be described in section 509(a)(2) if it were a 501(c)(3) organization may be treated as a 509(a)(2) organization for purposes of these rules, and therefore may be a supported organization as well, subject to certain restrictions. See *Supporting other than section 501(c)(3) organizations*, later.

**Organizations controlled by donors.** Generally, if a Type I or Type III supporting organization supports an organization that is controlled by a donor, the supporting organization is treated as a private foundation (rather than as a public charity). Type I and Type III organizations may not accept any gifts or contributions from:

1. Any person (other than an organization described in section 509(a)(1), (2), or (4)) who controls, directly or indirectly, either alone or together with persons listed in (2) or (3) below, the governing body of a supported organization;
2. A family member of a person described in (1), above; or
3. A 35% controlled entity.

**Category one - Type I and Type II supporting organizations.** This category includes organizations either operated, supervised, or controlled by (Type I) or supervised or controlled in connection with (Type II) organizations described in section 509(a)(1) or 509(a)(2) (which can be either domestic or foreign).

These kinds of organizations have a governing body that either includes a majority of members elected or appointed by one or more publicly supported organizations (Type I) or that consists of the same persons that control or manage the publicly supported organizations (Type II). If an organization is to qualify under this category, it must also meet an organizational test and an operational test, and mustn't be controlled by disqualified persons. These requirements are covered later in this discussion.

**Type I - Operated, supervised, or controlled by.** The Type I relationship presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by its supported organizations. The relationship required is comparable to that of a parent and subsidiary, in which the subsidiary is under the direction of, and is accountable or responsible to, the parent organization. This relationship is typically established when the supported organization(s) may regularly appoint or elect a majority of the directors or trustees of the supporting organization.

**Type II - Supervised or controlled in connection with.** An organization that is

supervised or controlled in connection with one or more section 509(a)(1) or 509(a)(2) organizations is a Type II supporting organization. The control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organization. In order for an organization to be supervised or controlled in connection with a supported organization, common supervision or control by the persons supervising or controlling both organizations must exist to ensure that the supporting organization will be responsive to the needs and requirements of the supported organization. This relationship is typically established when a majority of the directors or trustees of the supporting organization also serve as directors or trustees of one or more supported organizations.

**Organizational and operational tests.** Like all supporting organizations, Type I and II supporting organizations must be both organized and operated exclusively for the purposes set out in requirement (1) at the beginning of this section. If an organization fails to meet either the organizational or the operational test, it can't qualify as a supporting organization.

**Organizational test.** An organization is organized exclusively for one or more of the purposes specified in requirement (1) only if its articles of organization:

1. Limit the purposes of the organization to one or more of those purposes,
2. Don't expressly empower the organization to engage in activities that aren't in furtherance of those purposes,
3. Specify (as explained later under [Specified organizations](#)) the publicly supported organizations on whose behalf the organization is operated, and
4. Don't expressly empower the organization to operate to support or benefit any organization other than the ones specified in item (3).

In meeting the organizational test, the organization's purposes as stated in its articles can be as broad as, or more specific than, the purposes set forth in requirement (1) at the beginning of the discussion of [Section 509\(a\)\(3\) Organizations](#). Therefore, an organization that by the terms of its articles is formed for the benefit of one or more specified publicly supported organizations will, if it otherwise meets the other requirements, be considered to have met the organizational test.

For example, articles stating that an organization is formed to perform the publishing functions of a specified university are enough to comply with the organizational test. A Type I or Type II supporting organization meets these requirements if the purposes set forth in its articles are similar to but no broader than the purposes set forth in the articles of its controlling organizations. However, a Type I or Type II supporting organization that supports a publicly supported section 501(c)(4), 501(c)(5), or 501(c)(6) organization (see *Supporting other than section 501(c)(3) organizations*, later) meets these requirements if its articles require it to carry on charitable, etc., activities within the meaning of section 170(c)(2).

**Limits.** An organization isn't organized exclusively for the purposes specified in requirement (1) if its articles expressly permit it to operate to support or to benefit any organization other than the specified publicly supported organizations. It won't meet the organizational test even though the actual operations of the organization have been exclusively for the benefit of the specified publicly supported organizations.

**Specified organizations.** All supporting organizations must ensure that their supported organizations are specified in their articles. However, Type I and Type II supporting organizations have greater flexibility regarding how their supported organizations may be "specified".

Type I and Type II supporting organizations may specify their supported organizations:

1. By name,
2. By class or purpose designated in a manner sufficient to identify the supported organizations, or
3. By demonstrating that the supporting organization and its supported organization(s) have a historic and continuing relationship, because of which a substantial identity of interests has developed between or among the organizations.

The articles of a Type I or Type II supporting organization may also:

1. Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles,
2. Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles, or
3. Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

See also the rules considered under the *Organizational test*, in the later discussion for organizations in [Category two - Type III supporting organizations](#).

**Operational test — permissible beneficiaries.** A supporting organization must engage solely in activities that support or benefit its specified supported organizations. These activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by its supported organization(s).

For example, a supporting organization may make a payment indirectly through another unrelated organization to a member of a charitable class benefited by a specified publicly supported organization, but only if the payment is a grant to an individual rather than a grant to an organization. Similarly, a supporting organization may support or benefit a section 501(c)(3) organization, other than a private foundation, that is operated, supervised, or controlled directly by or in connection with its supported

organization(s). However, a supporting organization's activities may not further its purpose other than supporting or benefiting its supported organization(s).

**Operational test — permissible activities.** A supporting organization may make payments to its supported organization(s) or to permissible beneficiaries, or may carry on independent activities or programs that support or benefit its supported organization(s). All such support, however, must be limited to permissible beneficiaries described earlier. The supporting organization may also engage in fundraising activities, such as solicitations, fundraising dinners, and unrelated trade or business, to raise funds for its supported organization(s) or for the permissible beneficiaries.

**Absence of control by disqualified persons.** The third requirement an organization must meet to qualify as a supporting organization requires that the organization not be controlled directly or indirectly by one or more disqualified persons (other than foundation managers or one or more publicly supported organizations).

**Disqualified persons.** For the purposes of the rules discussed in this publication, the following persons are considered disqualified persons:

1. All substantial contributors to the foundation.
2. All foundation managers of the foundation.
3. An owner of more than 20% of:
  - a. The total combined voting power of a corporation that is (during such ownership) a substantial contributor to the foundation,
  - b. The profits interest of a partnership that is (during such ownership) a substantial contributor to the foundation, or
  - c. The beneficial interest of a trust or unincorporated enterprise that is (during such ownership) a substantial contributor to the foundation.
4. A member of the family of any of the individuals just listed.
5. A corporation of which more than 35% of the total combined voting power is owned by persons just listed.
6. A partnership of which more than 35% of the profits interest is owned by persons described in (1), (2), (3), or (4).
7. A trust, or estate, of which more than 35% of the beneficial interest is owned by persons described in (1), (2), (3), or (4).

Remember, however, that foundation managers and publicly supported organizations aren't disqualified persons for purposes of this control requirement.

If a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor, is appointed or designated as a foundation manager of the supporting organization by a supported organization to serve as its representative, that person is still a disqualified person.

An organization is considered controlled for this purpose if the disqualified persons, by combining their votes or positions of authority, can require the organization to perform any act that significantly affects its operations or can prevent the organization from performing the act. This includes, but isn't limited to, the right of any substantial contributor or spouse to designate annually the recipients from among the supported organizations of the income from the contribution. Except as explained under [Proof of independent control](#), next, a supporting organization will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of those persons is 50% or more of the total voting power of the organization's governing body, or if one or more of those persons has the right to exercise veto power over the actions of the organization.

Thus, if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, the foundation isn't considered controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances (including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting rights with respect to stocks in which members of its governing body also have some interest) are considered in determining whether a disqualified person does in fact indirectly control an organization.

**Proof of independent control.** An organization is permitted to establish to the satisfaction of the IRS that disqualified persons don't directly or indirectly control it. For example, in the case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay persons who are substantial contributors to the organization won't disqualify the organization under section 509(a)(3) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization.

**Category two - Type III supporting organizations.** This category includes organizations operated in connection with one or more organizations described in section 509(a)(1) or 509(a)(2).

All supporting organizations must be responsive to the needs and demands of, and must constitute an integral part of or maintain significant involvement in, their supported organizations. Type I and Type II supporting organizations are deemed to accomplish these responsiveness and integral part requirements by virtue of the control relationships discussed earlier. However, a Type III supporting organization isn't subject to the same level of control by its supported organization(s). Therefore, Type III supporting organizations must pass separate responsiveness and integral part tests, in addition to the organizational and operational tests applicable to all supporting organizations. Type III supporting organizations mustn't be controlled by disqualified persons

(as described earlier), and may not receive contributions from certain controlling donors (see *Contributions from controlling donors*, later). In addition, a Type III supporting organization may not support any organization not organized in the United States.

**Functional integration.** A Type III supporting organization may be "functionally-integrated" or "non-functionally integrated" depending on the manner in which it meets the integral part test (see Integral part test - functionally-integrated, and Integral part test - non-functionally integrated, later). Type III functionally-integrated supporting organizations are subject to fewer restrictions and requirements than Type III non-functionally integrated supporting organizations. In particular, distributions from private foundations to Type III non-functionally integrated supporting organizations aren't qualifying distributions for purposes of satisfying a private foundation's required annual distributions under section 4942, and may be taxable expenditures under section 4945.

**Organizational test.** The organizational test for a Type III supporting organization is generally the same as for a Type I or Type II supporting organization (described earlier). However, Type III supporting organizations are more limited regarding how their supported organizations must be "specified" in their articles. A Type III supporting organization's articles must specify its supported organization(s) by name, or the organization must demonstrate that the supporting organization and its supported organization(s) have a historic and continuing relationship, because of which a substantial identity of interests has developed between or among the organizations. "Class or purpose" designations don't satisfy the organizational test for Type III supporting organizations. However, a Type III supporting organization's articles may:

1. Permit a publicly supported organization that is designated by class or purpose rather than by name to be substituted for the publicly supported organization or organizations designated by name in the articles, but only if the substitution is conditioned upon the occurrence of an event that is beyond the control of the supporting organization, such as loss of exemption, substantial failure or abandonment of operations, or dissolution of the organization or organizations designated in the articles,
2. Permit the supporting organization to operate for the benefit of an organization that isn't a publicly supported organization, but only if the supporting organization is currently operating for the benefit of a publicly supported organization and the possibility of its operating for the benefit of other than a publicly supported organization is remote, or
3. Permit the supporting organization to vary the amount of its support between different designated organizations, as long as it meets the requirements of the integral-part test (discussed later) with respect to at least one beneficiary organization.

If the remote possibility referred to in (2) comes to pass and the supporting organization

thereafter operates for the benefit of an organization that isn't a publicly supported organization, it will no longer qualify under section 509(a)(3).

**Operational test.** The operational rules described earlier for Type I and Type II supporting organizations apply as well to Type III supporting organizations (see *Operational test - permissible beneficiaries*, and *Operational test - permissible activities*, earlier). In addition, a Type III supporting organization must operate in a manner consistent with the requirements of the responsiveness test and the integral part test, discussed later.

**Responsiveness test.** A Type III supporting organization must be responsive to the needs or demands of its supported organization(s). To meet this test, the supported organizations must (1) elect one or more officers, directors, or trustees; (2) have one or more officers, directors, or trustees of the supported organization(s) serving simultaneously as officers, directors, or trustees of the supporting organization; or (3) maintain a close and continuous working relationship with the officers, directors, or trustees of the supporting organization. In addition, as a result of this representation or close working relationship, the supported organization(s) must have a significant voice in the investment policies of the supporting organization, the timing of grants and the manner of making them, the selection of recipients, and generally the use of the income or assets of the supporting organization.

**Notification requirement.** In each tax year, the Type III supporting organization must notify each supported organization of its support and provide a copy of the supporting organization's most recently filed Form 990 or 990-EZ and copies of any amendments to its articles, bylaws, or other governing documents.

**Integral part test - functionally integrated.** A Type III supporting organization may satisfy the integral part test as functionally-integrated in one of three ways:

1. Engaging in activities substantially all of which directly further the exempt purposes of its supported organization(s) and which, but for the supporting organization's involvement, the supported organization would normally engage in;
2. Being the parent of, appointing a majority of the directors or trustees of, and exercising a substantial degree of direction over the policies, programs, and activities of its supported organizations; or
3. Supporting a governmental entity.

**Direct furtherance activities.** For purposes of the test in item (1), activities "directly further" a supported organization's exempt purposes only if conducted by the supporting organization itself. Direct furtherance activities include holding title to and managing exempt-use assets, but not fundraising or investing and managing non-exempt-use assets. Grantmaking may qualify as direct furtherance activities if the requirements of Regulations section 1.509(a)-4(i)(4)(ii)(D) are met.

**Integral part test - non-functionally integrated.** A Type III supporting organization that doesn't satisfy the integral part test as functionally-integrated will still qualify as a Type III non-functionally integrated supporting organization if it satisfies a distribution requirement and an attentiveness requirement. Alternatively, certain trusts established before November 20, 1970 may qualify if they meet the requirements of Regulations section 1.509(a)-4(i)(5)(i)(9).

**Distribution requirement.** A Type III non-functionally integrated supporting organization must distribute a certain amount annually to or for the benefit of its supported organization(s). That amount is equal to the greater of 85% of the organization's adjusted net income and 3.5% of the fair market value of the organization's non-exempt-use assets (with certain adjustments). See Regulations section 1.509(a)-4(i)(5) and (8) for more information regarding the distribution requirement and valuation of non-exempt-use assets. See Regulations section 1.509(a)-4(i)(6) for more information regarding what distributions or expenditures count towards the distribution requirement.

**Attentiveness requirement.** Each year, a Type III non-functionally integrated supporting organization must distribute one-third or more of the amount that it must distribute that year to one or more supported organizations that are attentive to the operations of the supporting organization and to which the supporting organization is responsive. A supported organization is "attentive" for these purposes if the amount received by the supported organization from the supporting organization:

1. Equals at least 10% of the supported organization's total support for the year in question;
2. was necessary to avoid interruption of a particular function or activity of the supported organization; or
3. was, based on all facts and circumstances (including evidence of actual attentiveness), a sufficient part of the supported organization's total support to ensure attentiveness.

**Supporting other than section 501(c)(3) organizations.** An organization operated in conjunction with a social welfare organization, labor or agricultural organization, business league, chamber of commerce, or other organization described in section 501(c)(4), 501(c)(5), or 501(c)(6) may qualify as a supporting organization under section 509(a)(3) and therefore not be classified as a private foundation if both the following conditions are met.

1. The supporting organization meets all the requirements previously specified (the organizational tests, the operational test, and one of the relationship tests and not be controlled by disqualified persons).
2. The section 501(c)(4), 501(c)(5), or 501(c)(6) organization would be described in section 509(a)(2) if it was a charitable organization described in section 501(c)(3). This provision allows separate charitable funds of certain noncharitable organizations to be described in section 509(a)(3) if the noncharitable organizations receive

their support and otherwise operate in the manner specified by section 509(a)(2).

**Special rules of attribution.** To determine whether an organization meets the not-more-than-one-third support test in section 509(a)(2), amounts received by the organization from an organization that seeks to be a section 509(a)(3) organization because of its support of the organization are deemed gross investment income (rather than gifts or contributions) to the extent they are gross investment income of the distributing organization. (This rule also applies to amounts received from a charitable trust, corporation, fund, association, or similar organization that is required by its governing instrument or otherwise to distribute, or that normally does distribute, at least 25% of its adjusted net income to the organization, and whose distribution normally comprises at least 5% of its adjusted net income.) All income that is gross investment income of the distributing organization will be considered distributed first by that organization. If the supporting organization makes distributions to more than one organization, the amount of gross investment income considered distributed will be prorated among the distributees.

Also, treat amounts paid by an organization to provide goods, services, or facilities for the direct benefit of an organization seeking section 509(a)(2) status (rather than for the direct benefit of the general public) in the same manner as amounts received by the latter organization. These amounts will be treated as gross investment income to the extent they are gross investment income of the organization spending the amounts. An organization seeking section 509(a)(2) status must file a separate statement with its annual information return, Form 990 or 990-EZ, listing all amounts received from supporting organizations.

**Relationships created for avoidance purposes.** If a relationship between an organization seeking section 509(a)(3) status and an organization seeking section 509(a)(2) status is established or used to avoid classification as a private foundation with respect to either organization, then the character and amount of support received by the section 509(a)(3) organization will be attributed to the section 509(a)(2) organization for purposes of determining whether the latter meets the support tests under section 509(a)(2). If this type of relationship is established or used between an organization seeking 509(a)(3) status and two or more organizations seeking 509(a)(2) status, the amount and character of support received by the former organization will be prorated among the latter organizations.

In determining whether a relationship exists between an organization seeking 509(a)(3) status (supporting organization) and one or more organizations seeking 509(a)(2) status (beneficiary organizations) for the purpose of avoiding private foundation status, all pertinent facts and circumstances will be taken into account. The following facts may be used as evidence that such a relationship wasn't established or availed of to avoid classification as a private foundation.



1. The supporting organization is operated to support or benefit several specified beneficiary organizations.
2. The beneficiary organization has a substantial number of dues-paying members who have an effective voice in the management of both the supporting and the beneficiary organizations.
3. The beneficiary organization is composed of several membership organizations, each of which has a substantial number of members, and the membership organizations have an effective voice in the management of the supporting and beneficiary organizations.
4. The beneficiary organization receives a substantial amount of support from the general public, public charities, or governmental grants.
5. The supporting organization uses its funds to carry on a meaningful program of activities to support or benefit the beneficiary organization and, if the supporting organization were a private foundation, this use would be sufficient to avoid the imposition of the tax on failure to distribute income.
6. The operations of the beneficiary and supporting organizations are managed by different persons, and each organization performs a different function.
7. The supporting organization isn't able to exercise substantial control or influence over the beneficiary organization because the beneficiary organization receives support or holds assets that are disproportionately large in comparison with the support received or assets held by the supporting organization.

**Effect on section 509(a)(3) organizations.** If a beneficiary organization fails to meet either of the support tests of section 509(a)(2) due to these provisions, and the beneficiary organization is one for whose support the organization seeking section 509(a)(3) status is operated, then the supporting organization won't be considered to be operated exclusively to support or benefit one or more section 509(a)(1) or 509(a)(2) organizations and therefore wouldn't qualify for section 509(a)(3) status.

**Request change in public charity classification.** A section 501(c)(3) tax-exempt organization seeking to change its public charity classification from a section 509(a)(3) supporting organization to a section 509(a)(1) or 509(a)(2) organization must file Form 8940, *Request for Miscellaneous Determination*. See the Instructions for Form 8940 for more information regarding supporting material and applicable user fees.

For more information about applying for section 501(c)(3) status see [Life Cycle of a Private Foundation](#) at IRS.gov.

**Classification under section 509(a).** If an organization is described in section 509(a)(1), and is also described in either Section 509(a)(2) or [Section 509\(a\)\(3\)](#), it will be treated as a section 509(a)(1) organization. The organization

should file Form 8940, *Request for Miscellaneous Determination*, if it wishes to receive a letter showing a change in classification.

**Reliance by grantors and contributors.** Once an organization has received a ruling or determination letter classifying it as an organization described in [Section 509\(a\)\(1\)](#), [Section 509\(a\)\(2\)](#), or [Section 509\(a\)\(3\)](#), the treatment of grants and contributions and the status of grantors and contributors to the organization will generally not be affected by reason of a later revocation by the IRS of the organization's classification until the date on which notice of change of status is made to the public (generally by publication in the Internal Revenue Bulletin) or another applicable date, if any, specified in the public notice. In appropriate cases, however, the treatment of grants and contributions and the status of grantors and contributors to an organization described in [Section 509\(a\)\(1\)](#), [Section 509\(a\)\(2\)](#), or [Section 509\(a\)\(3\)](#) may be affected pending verification of the continued classification of the organization. Notice to this effect will be made in a public announcement by the IRS. In these cases, the effect of grants and contributions made after the date of the announcement will depend on the statutory qualification of the organization as an organization described in [Section 509\(a\)\(1\)](#), [Section 509\(a\)\(2\)](#), or [Section 509\(a\)\(3\)](#).



*The preceding paragraph shall not apply if the grantor or contributor:*

1. Had knowledge of the revocation of the ruling or determination letter classifying the organization as an organization described in section 509(a)(1), 509(a)(2), or 509(a)(3); or
2. Was in part responsible for, or was aware of, the act, the failure to act, or the substantial and material change on the part of the organization that gave rise to the revocation.

**Interim guidance for supporting organizations and grantors.** Notice 2014-4 provides further interim guidance for section 509(a)(3) supporting organizations and their grantors about the application of certain requirements enacted as part of the Pension Protection Act of 2006. The notice provides transitional rules for Type III supporting organizations that want to qualify as "functionally integrated" because they support governmental entities. The notice also provides additional interim guidance for private foundations and sponsoring organizations that maintain donor-advised funds on the procedures to be followed in determining whether a potential grantee is a Type I, Type II or functionally integrated Type III supporting organization. See [Notice 2014-4](#), 2014-2 I.R.B. 274 (extended as described in the preamble to the 2015 final regulations regarding the distribution requirement for non-functionally integrated Type III supporting organizations (T.D. 9746)).

## Section 509(a)(4) Organizations

Section 509(a)(4) excludes from classification as private foundations those organizations that qualify under section 501(c)(3) as organized

and operated for the purpose of testing products for public safety. Generally, these organizations test consumer products to determine their acceptability for use by the general public.

## Loss of Qualification as Public Charity

If your organization ceases to qualify as a public charity under section 509(a)(1)-(4), it becomes a private foundation. The organization must file Form 990-PF, *Return of Private Foundation* or *Section 4947(a)(1) Trust Treated as a Private Foundation* to satisfy its filing obligation. The organization can no longer file Form 990, 990-EZ, or 990-N. A private foundation retains that status unless or until it terminates its private foundation status under section 507.

## Private Operating Foundations

Private foundations are divided into two categories - nonoperating private foundations and private operating foundations. Nonoperating foundations generally accomplish their charitable purpose by making grants to other charities. Operating foundations make qualifying distributions directly for the active conduct of their educational, charitable, and religious purposes.

Most of the restrictions and requirements that apply to private foundations also apply to private operating foundations. However, there are advantages to being classified as a private operating foundation. For example, a private operating foundation (as compared to a private foundation) can be the recipient of grants from a private foundation without having to distribute the funds received currently within 1 year, and the funds nevertheless may be treated as qualifying distributions by the donating private foundation; charitable contributions to a private operating foundation qualify for a higher charitable deduction limit on the donor's tax return; and the excise tax on net investment income doesn't apply to an exempt operating foundation (a private operating foundation that meets certain additional requirements - see [Exempt operating foundations](#), later).

A private operating foundation is any private foundation that meets the assets test, the support test, or the endowment test, and makes qualifying distributions directly, for the active conduct of its activities for which it was organized, of substantially all (85% or more) of the lesser of its:

1. Adjusted net income, or
2. Minimum investment return.

**Assets test.** A private foundation will meet the assets test if substantially more than half (65% or more) of its assets are:

1. Devoted directly to the active conduct of its exempt activity, to a functionally related business, or to a combination of the two;
2. Stock of a corporation that is controlled by the foundation (by ownership of at least 80% of the total voting power of all classes of stock entitled to vote and at least 80% of the total shares of all other classes of

stock) and substantially all (at least 85%) the assets of which are devoted as provided above; or

3. Any combination of (1) and (2).

This test is intended to apply to organizations such as museums and libraries.

**Support test.** A private foundation will meet the support test if:

1. Substantially all (at least 85%) of its support (other than gross investment income) is normally received from the general public and five or more unrelated exempt organizations,
2. Not more than 25% of its support (other than gross investment income) is normally received from any one exempt organization, and
3. Not more than 50% of its support is normally received from gross investment income.

This test is intended to apply to special-purpose foundations, such as learned societies and associations of libraries.

**Endowment test.** A foundation will meet the endowment test if it normally makes qualifying distributions directly for the active conduct of its exempt function of at least two-thirds of its minimum investment return.

The minimum investment return for any private foundation for any tax year is 5% of the excess of the total fair market value of all assets of the foundation (other than those used directly in the active conduct of its exempt purpose) over the amount of indebtedness incurred to acquire those assets.

In determining whether the amount of qualifying distributions is at least two-thirds of the organization's minimum investment return, the organization isn't required to trace the source of the expenditures to determine whether they were derived from investment income or from contributions.

This test is intended to apply to organizations such as research organizations that actively conduct charitable activities but whose personal services are so great in relationship to charitable assets that the cost of those services can't be met out of small endowments.

**Exempt operating foundations.** The excise tax on net investment income doesn't apply to an exempt operating foundation. An exempt operating foundation for the tax year is any private foundation that:

1. Is an operating foundation, as described previously;
2. Has been publicly supported for at least 10 tax years or was an operating foundation on January 1, 1983, or for its last tax year ending before January 1, 1983;
3. Has a governing body that, at all times during the tax year, is broadly representative of the general public and consists of individuals no more than 25% of whom are disqualified individuals; and
4. Doesn't have any officer, at any time during the tax year, who is a disqualified individual.

The foundation must obtain a determination letter from the IRS recognizing this special status (see *Existing organization*, later).

**New organization.** If you are applying for recognition of exemption as an organization described in section 501(c)(3) and you wish to establish that your organization is a private operating foundation, you should complete Part VII of your exemption application (Form 1023).

**Existing organization.** If you are an existing organization seeking reclassification as a private operating foundation or as an exempt operating foundation, you must file Form 8940, *Request for Miscellaneous Determination*.

## Lobbying Expenditures

In general, if a substantial part of the activities of your organization consists of carrying on propaganda or otherwise attempting to influence legislation, your organization will not qualify for exemption under section 501(c)(3). However, a public charity (other than a church, an integrated auxiliary of a church or of a convention or association of churches, or a member of an affiliated group of organizations that includes a church, etc.) may elect instead an expenditure test under section 501(h) as an alternative to measure its lobbying activity. Under the Section 501(h) test, the lobbying limit is defined in terms of expenditures for influencing legislation instead of whether lobbying is a substantial part of the organization's activities. Private foundations can't make this election.

**Making the election.** Use Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation, to make the election. The form must be signed and postmarked within the first tax year to which it applies. If the form is used to revoke the election, it must be signed and postmarked before the first day of the tax year to which it applies.

Eligible section 501(c)(3) organizations that have made the election to be subject to the limits on lobbying expenditures must use Part II-A of Schedule C (Form 990) to figure these limits.

**Attempting to influence legislation.** Attempting to influence legislation, for this purpose, means:

1. Any attempt to influence any legislation through an effort to affect the opinions of the general public or any segment thereof (grass roots lobbying), and
2. Any attempt to influence any legislation through communication with any member or employee of a legislative body or with any government official or employee who may participate in the formulation of legislation (direct lobbying).

However, the term attempting to influence legislation doesn't include the following activities.

1. Making available the results of nonpartisan analysis, study, or research.
2. Examining and discussing broad social, economic, and similar problems.

3. Providing technical advice or assistance (where the advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by that body or subdivision.

4. Appearing before, or communicating with, any legislative body about a possible decision of that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization.

5. Communicating with a government official or employee, other than:

- a. A communication with a member or employee of a legislative body (when the communication would otherwise constitute the influencing of legislation), or
- b. A communication with the principal purpose of influencing legislation.

Also excluded are communications between an organization and its bona fide members about legislation or proposed legislation of direct interest to the organization and the members, unless these communications directly encourage the members to attempt to influence legislation or directly encourage the members to urge nonmembers to attempt to influence legislation, as explained earlier.

**Lobbying expenditures limits.** If a public charity makes the election under section 501(h) to be subject to the lobbying expenditures limits rules (instead of the substantial part of activities test), it won't lose its tax-exempt status under section 501(c)(3), unless it normally makes:

- Lobbying expenditures that are more than 150% of the lobbying nontaxable amount for the organization for each tax year, or
- Grass roots expenditures that are more than 150% of the grass roots nontaxable amount for the organization for each tax year.

See [Tax on excess expenditures to influence legislation](#), later, in this section.

**Lobbying expenditures.** These are any expenditures that are made for the purpose of attempting to influence legislation, as discussed earlier under [Attempting to influence legislation](#).

**Grass roots expenditures.** This term refers only to those lobbying expenditures that are made to influence legislation by attempting to affect the opinions of the general public or any segment thereof.

**Lobbying nontaxable amount.** The lobbying nontaxable amount for any organization for any tax year is the lesser of \$1,000,000 or:

1. 20% of the exempt purpose expenditures if the exempt purpose expenditures aren't over \$500,000,
2. \$100,000 plus 15% of the excess of the exempt purpose expenditures over \$500,000 if the exempt purpose expenditures are over \$500,000 but not over \$1,000,000,
3. \$175,000 plus 10% of the excess of the exempt purpose expenditures over

\$1,000,000 if the exempt purpose expenditures are over \$1,000,000 but not over \$1,500,000, or

4. \$225,000 plus 5% of the excess of the exempt purpose expenditures over \$1,500,000 if the exempt purpose expenditures are over \$1,500,000.

The term exempt purpose expenditures means the total of the amounts paid or incurred (including depreciation and amortization, but not capital expenditures) by an organization for the tax year to accomplish its exempt purposes. In addition, it includes:

1. Administrative expenses paid or incurred for the organization's exempt purposes, and
2. Amounts paid or incurred for the purpose of influencing legislation, whether or not the legislation promotes the organization's exempt purposes.

Exempt purpose expenditures don't include amounts paid or incurred to or for:

1. A separate fundraising unit of the organization, or
2. One or more other organizations, if the amounts are paid or incurred primarily for fundraising.

**Grass roots nontaxable amount.** The grass roots nontaxable amount for any organization for any tax year is 25% of the lobbying nontaxable amount for the organization for that tax year.

**Years for which election is effective.** Once an organization elects to come under these provisions, the election will be in effect for all tax years that end after the date of the election and begin before the organization revokes this election.

**Note.** These elective provisions for lobbying activities by public charities don't apply to a church, an integrated auxiliary of a church or of a convention or association of churches, or a member of an affiliated group of organizations that includes a church, etc., or a private foundation. Moreover, these provisions won't apply to any organization for which an election isn't in effect.

**Expenditures of affiliated organizations.** If two or more section 501(c)(3) organizations are members of an affiliated group of organizations and at least one of these organizations has made the election regarding the treatment of certain lobbying expenditures, then the determination as to whether excess lobbying expenditures has been made and the determination as to whether the expenditure limits, described earlier, has been exceeded by more than 150% will be made as though the affiliated group is one organization.

If the group has excess lobbying expenditures, each organization for which the election is effective for the year will be treated as an organization that has excess lobbying expenditures in an amount that equals the organization's proportionate share of the group's excess lobbying expenditures. Further, if the expenditure limits described in this section are

exceeded by more than 150%, each organization for which the election is effective for that year will lose its tax-exempt status under section 501(c)(3).

Two organizations will be considered members of an affiliated group of organizations if:

1. The governing instrument of one of the organizations requires it to be bound by decisions of the other organization on legislative issues or
2. The governing board of one of the organizations includes persons who:
  - a. Are specifically designated representatives of the other organization or are members of the governing board, officers, or paid executive staff members of the other organization; and
  - b. Have enough voting power to cause or prevent action on legislative issues by the controlled organization by combining their votes.

**Tax on excess expenditures to influence legislation.** If an election for a tax year is in effect for an organization and that organization exceeds the lobbying expenditures limits, an excise tax of 25% of the excess lobbying expenditures for the tax year will be imposed. Excess lobbying expenditures for a tax year, in this case, means the greater of:

1. The amount by which the lobbying expenditures made by the organization during the tax year are more than the lobbying nontaxable amount for the organization for that tax year, or
2. The amount by which the grass roots expenditures made by the organization during the tax year are more than the grass roots nontaxable amount for the organization for that tax year.

Eligible organizations that have made the election to be subject to the limits on lobbying expenditures and that owe the tax on excess lobbying expenditures (as computed in Part II-A of Schedule C (Form 990)) must file Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, to report and pay the tax.

**Organization that no longer qualifies.** An organization that no longer qualifies for exemption under section 501(c)(3) because of substantial lobbying activities won't at any time thereafter be treated as an organization described in section 501(c)(4). This provision, however, doesn't apply to certain organizations (churches, etc.) that can't make the election discussed earlier.

**Tax on disqualifying lobbying expenditures.** The law imposes a tax on certain organizations if they no longer qualify under section 501(c)(3) by reason of having made disqualifying lobbying expenditures. An additional tax may be imposed on the managers of those organizations.

**Tax on organization.** Organizations that lose their exemption under section 501(c)(3)

due to lobbying activities generally will be subject to an excise tax of 5% of the lobbying expenditures. The tax doesn't apply to private foundations. Also, the tax doesn't apply to organizations that have elected the lobbying limits of section 501(h) or to churches or church-related organizations that can't elect these limits. This tax must be paid by the organization.

**Tax on managers.** Managers may also be liable for a 5% tax on the lobbying expenditures that result in the disqualification of the organization. For the tax to apply, a manager would have to agree to the expenditures knowing that the expenditures were likely to result in the organization's not being described in section 501(c)(3). No tax will be imposed if the manager's agreement isn't willful and is due to reasonable cause.

**Excise taxes on political expenditures.** The law imposes an excise tax on the political expenditures of section 501(c)(3) organizations. A two-tier tax is imposed on both the organizations and the managers of those organizations.

**Taxes on organizations.** An initial tax of 10% of certain political expenditures is imposed on a charitable organization. A second tax of 100% of the expenditure is imposed if the political expenditure that resulted in the imposition of the initial (first-tier) tax isn't corrected within a specified period. These taxes must be paid by the organization.

**Taxes on managers.** An initial tax of 2<sup>1</sup>/<sub>2</sub>% of the amount of certain political expenditures (up to \$5,000 for each expenditure) is imposed on a manager of an organization who agrees to such expenditures knowing that they are political expenditures. No tax will be imposed if the manager's agreement wasn't willful and was due to reasonable cause. A second tax of 50% of the expenditures (up to \$10,000 for each expenditure) is imposed on a manager if they refuse to agree to a correction of the expenditures that resulted in the imposition of the initial (first-tier) tax. For purposes of these taxes, an organization manager is generally an officer, director, trustee, or any employee having authority or responsibility concerning the organization's political expenditures. These taxes must be paid by the manager of the organization.

**Political expenditures.** Generally, political expenditures that will trigger these taxes are amounts paid or incurred by a section 501(c)(3) organization in any participation or intervention in any political campaign for or against any candidate for public office. Political expenditures include publication or distribution of statements for these purposes. Political expenditures also include certain expenditures by organizations that are formed primarily to promote the candidacy (or prospective candidacy) of an individual for public office and by organizations that are effectively controlled by a candidate and are used primarily to promote that candidate.

**Correction of expenditure.** A correction of a political expenditure is the recovery, if possible, of all or part of the expenditure and the establishment of safeguards to prevent future political expenditures.



**Status after loss of exemption for lobbying or political activities.** As explained earlier, an organization can lose its tax-exempt status under section 501(c)(3) because of lobbying activities or participation or intervention in a political campaign on behalf of or in opposition to a candidate for public office. If this happens to an organization, it can't later qualify for exemption under section 501(c)(4).

## 4.

# Other Section 501(c) Organizations

## Introduction

This chapter contains specific information for certain organizations described in section 501(c), other than those organizations that are described in section 501(c)(3). Section 501(c)(3) organizations are covered in chapter 3 of this publication.

The Table of Contents at the beginning of this publication, as well as the [Organization Reference Chart](#), may help you locate at a glance the type of organization discussed in this chapter.

## 501(c)(4) - Civic Leagues and Social Welfare Organizations

If your organization isn't organized for profit and will be operated primarily to promote social welfare to benefit the community, it may qualify for exemption under section 501(c)(4).

**Notice requirement.** Every new section 501(c)(4) organization must use Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*, to provide notice to the Internal Revenue Service. The organization must file Form 8976 within 60 days of establishment. Providing notice on Form 8976 is not a determination that the IRS recognizes your organization as exempt under section 501(c)(4).

**Optional application for recognition of exemption.** Your organization may (but is not required to) file Form 1024-A, *Application for Recognition of Exemption under Section 501(c)(4)*, to apply for recognition of exemption from federal income tax under section 501(c)(4). The discussion that follows describes the information you must provide when applying. For application procedures, see chapter 1.

To qualify for exemption under section 501(c)(4), no part of the organization's net earnings can inure to the benefit of any private shareholder or individual. If the organization provides an excess benefit to certain persons, an excise tax may be imposed. See [Excise tax on excess benefit transactions](#), under [Excess Benefit Transactions](#) in chapter 5 for more information about this tax.

**Examples.** Types of organizations that are considered to be social welfare organizations are civic associations and volunteer fire companies.

**Nonprofit operation.** You must submit evidence that your organization is organized and will be operated on a nonprofit basis. However, such evidence, including the fact that your organization is organized under a state law relating to nonprofit corporations, won't in itself establish a social welfare purpose.

**Social welfare.** To establish that your organization is operated primarily to promote social welfare, you should submit evidence with your application showing that your organization will operate primarily to further (in some way) the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements).

An organization that restricts the use of its facilities to employees of selected corporations and their guests is primarily benefiting a private group rather than the community. It therefore doesn't qualify as a section 501(c)(4) organization. Similarly, an organization formed to represent member-tenants of an apartment complex doesn't qualify, since its activities benefit the member-tenants and not all tenants in the community. However, an organization formed to promote the legal rights of all tenants in a particular community may qualify under section 501(c)(4) as a social welfare organization.

**Political activity.** Promoting social welfare doesn't include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, if you submit proof that your organization is organized primarily to promote social welfare, it can obtain exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office. See the discussion in chapter 2 under [Political Organization Income Tax Return](#).

**Social or recreational activity.** If social activities will be the primary purpose of your organization, you shouldn't file an application for exemption as a social welfare organization but you may qualify for exemption as a social club described in section 501(c)(7).

**Retirement benefit program.** An organization established by its members that has as its primary activity providing supplemental retirement benefits to its members or death benefits to their beneficiaries doesn't qualify as an exempt social welfare organization. It may qualify under another paragraph of section 501(c) depending on all the facts.

However, a nonprofit association that is established, maintained, and funded by a local

government to provide the only retirement benefits to a class of employees may qualify as a social welfare organization under section 501(c)(4).

**Tax treatment of donations.** Donations to volunteer fire companies are deductible on the donor's federal income tax return, but only if made for exclusively public purposes. However, contributions to civic leagues or other section 501(c)(4) organizations generally aren't deductible as charitable contributions for federal income tax purposes. They may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer's business. However, see [Deduction not allowed for dues used for political or legislative activities](#), under [501\(c\)\(6\) - Business Leagues, etc.](#) for more information.

For more information on social welfare organizations, see [Life Cycle of a Social Welfare Organization](#).

## Specific Organizations

The following information should be contained in the application form and accompanying statements of certain types of civic leagues or social welfare organizations.

**Volunteer fire companies.** If your organization wishes to obtain exemption as a volunteer fire company or similar organization, you should submit evidence that its members are actively engaged in firefighting and similar disaster assistance, whether it actually owns the firefighting equipment, and whether it provides any assistance for its members, such as death and medical benefits in case of injury to them.

If your organization doesn't have an independent social purpose, such as providing recreational facilities for members, it may be exempt under section 501(c)(3). In this event, your organization should file Form 1023.

**Homeowners' associations.** A membership organization formed by a real estate developer to own and maintain common green areas, streets, and sidewalks and to enforce covenants to preserve the appearance of the development should show that it is operated for the benefit of all the residents of the community. The term community generally refers to a geographical unit recognizable as a governmental subdivision, unit, or district thereof. Whether a particular association meets the requirement of benefiting a community depends on the facts and circumstances of each case. Even if an area represented by an association isn't a community, the association can still qualify for exemption if its activities benefit a community.

The association should submit evidence that areas such as roadways and park land that it owns and maintains are open to the general public and not just its own members. It also must show that it doesn't engage in exterior maintenance of private homes.

A homeowners' association that isn't exempt under section 501(c)(4) and that is a condominium management association, a residential real estate management association, or a timeshare association generally can elect under the provisions of section 528 to receive certain tax

benefits that, in effect, permit it to exclude its exempt function income from its gross income.

**Other organizations.** Other nonprofit organizations that qualify as social welfare organizations include:

- An organization operating an airport that is on land owned by a local government, which supervises the airport's operation, and that serves the general public in an area with no other airport;
- A community association that works to improve public services, housing, and residential parking; publishes a free community newspaper; sponsors a community sports league, holiday programs, and meetings; and contracts with a private security service to patrol the community;
- A community association devoted to preserving the community's traditions, architecture, and appearance by representing it before the local legislature and administrative agencies in zoning, traffic, and parking matters;
- An organization that tries to encourage industrial development and relieve unemployment in an area by making loans to businesses so they will relocate to the area; and
- An organization that holds an annual festival of regional customs and traditions.

## 501(c)(5) - Labor, Agricultural, and Horticultural Organizations

If you are a member of an organization that wants to obtain recognition of exemption from federal income tax as a labor, agricultural, or horticultural organization, you should submit an application on Form 1024. You must indicate in your application for exemption and accompanying statements that no part of the organization's net earnings will inure to the benefit of any member. In addition, you should follow the procedure for obtaining recognition of exempt status described in chapter 1. Submit any additional information that may be required, as described in this section.

**Tax treatment of donations.** Contributions to labor, agricultural, and horticultural organizations aren't deductible as charitable contributions on the donor's federal income tax return. However, such payments may be deductible as business expenses if they are ordinary and necessary in the conduct of the taxpayer's trade or business. For more information about certain limits affecting the deductibility of these business expenses, see [Deduction not allowed for dues used for political or legislative activities](#), under [501\(c\)\(6\) - Business Leagues, etc.](#)

## Labor Organizations

A labor organization is an association of workers who have combined to protect and promote

the interests of the members by bargaining collectively with their employers to secure better working conditions, wages, and similar benefits.

To show that your organization has the purpose of a labor organization, you should include in your organizing document or accompanying statements (submitted with your exemption application) information establishing that the organization is organized to better the conditions of workers, improve the grade of their products, and develop a higher degree of efficiency in their respective occupations. In addition, no net earnings of the organization can inure to the benefit of any member.

**Composition of membership.** While a labor organization is generally composed of employees or representatives of the employees (in the form of collective bargaining agents) and similar employee groups, evidence that an organization's membership consists mainly of workers doesn't in itself indicate an exempt purpose. You must show in your application that your organization has the purposes described in the preceding paragraph. These purposes can be accomplished by a single labor organization acting alone or by several organizations acting together through a separate organization.

**Benefits to members.** The payment by a labor organization of death, sick, accident, and similar benefits to its individual members with funds contributed by its members, if made under a plan to better the conditions of the members, doesn't preclude exemption as a labor organization. However, an organization doesn't qualify for exemption as a labor organization if its primary activity is to provide a strike fund that is controlled by private individuals who controlled the organization that paid benefits to workers.

For more information on labor organizations, see [Life Cycle of a Labor Organization](#).

## Agricultural and Horticultural Organizations

Agricultural and horticultural organizations are connected with raising livestock, cultivating land, raising and harvesting crops or aquatic resources, cultivating useful or ornamental plants, and similar pursuits.

For the purpose of these provisions, aquatic resources include only animal or vegetable life, but not mineral resources. The term harvesting, in this case, includes fishing and related pursuits.

Agricultural organizations are often designed to encourage the development of better agricultural and horticultural products through a system of awards, using income from entry fees, gate receipts, and donations to meet the necessary expenses of upkeep and operation. When the activities are directed toward the improvement of marketing or other business conditions in one or more lines of business, rather than the improvement of production techniques or the betterment of the conditions of persons engaged in agriculture, the organization must qualify for exemption as a business league, board of trade, or other organization, as

discussed next in the section on 501(c)(6) organizations.

The primary purpose of exempt agricultural and horticultural organizations must be to better the conditions of those engaged in agriculture or horticulture, develop more efficiency in agriculture or horticulture, or improve the products.

The following list contains some examples of activities that show an agricultural or horticultural purpose.

1. Promoting various cooperative agricultural, horticultural, and civic activities among rural residents by a state, farm, or home bureau.
2. Exhibiting livestock, farm products, and other characteristic features of agriculture and horticulture.
3. Testing soil for members and nonmembers of the farm bureau on a cost basis, the results of the tests and other recommendations being furnished to the community members to educate them in soil treatment.
4. Guarding the purity of a specific breed of livestock.
5. Encouraging improvements in the production of fish on privately owned fish farms.
6. Negotiating with processors for the price to be paid to members for their crops.

For more information on agricultural or horticultural organizations, see [Life Cycle of an Agricultural or Horticultural Organization](#).

## 501(c)(6) - Business Leagues, etc.

If your organization wants to apply for recognition of exemption from federal income tax as a nonprofit business league, chamber of commerce, real estate board, or board of trade, it should file Form 1024. For a discussion of the procedure to follow, see chapter 1.

Your organization must indicate in its application form and attached statements that no part of its net earnings will inure to the benefit of any private shareholder or individual and that it isn't organized for profit or organized to engage in an activity ordinarily carried on for profit (even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining).

In addition, your organization must be primarily engaged in activities or functions that are the basis for its exemption. It must be primarily supported by membership dues and other income from activities substantially related to its exempt purpose.

A business league, in general, is an association of persons having some common business interest, the purpose of which is to promote that common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Trade associations and professional associations are considered business leagues.

**Chamber of commerce.** A chamber of commerce is usually composed of the merchants and traders of a city.

**Board of trade.** A board of trade often consists of persons engaged in similar lines of business. For example, a nonprofit organization formed to regulate the sale of a specified agricultural commodity to assure equal treatment of producers, warehouse workers, and buyers is a board of trade.

Chambers of commerce and boards of trade usually promote the common economic interests of all the commercial enterprises in a given trade community.

**Real estate board.** A real estate board consists of members interested in improving the business conditions in the real estate field. It isn't organized for profit and no part of the net earnings inures to the benefit of any private shareholder or individual.

**Professional football leagues.** The Internal Revenue Code specifically defines professional football leagues as exempt organizations under section 501(c)(6). They are exempt whether or not they administer a pension fund for football players.

**General purpose.** You must indicate in the material submitted with your application that your organization will be devoted to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. It must be shown that the conditions of a particular trade or the interests of the community will be advanced. Merely indicating the name of the organization or the object of the local statute under which it is created isn't enough to demonstrate the required general purpose.

**Line of business.** This term generally refers either to an entire industry or to all components of an industry within a geographic area. It doesn't include a group composed of businesses that market a particular brand within an industry.

**Common business interest.** A common business interest of all members of the organization must be established by the application documents.

**Examples.** Activities that would tend to illustrate a common business interest are:

1. Promotion of higher business standards and better business methods and encouragement of uniformity and cooperation by a retail merchants association,
2. Education of the public in the use of credit,
3. Establishment of uniform casualty rates and compilation of statistical information by an insurance rating bureau operated by casualty insurance companies,
4. Establishment and maintenance of the integrity of a local commercial market,
5. Operation of a trade publication primarily intended to benefit an entire industry, and

6. Encouragement of the use of goods and services of an entire industry (such as a lawyer referral service whose main purpose is to introduce individuals to the use of the legal profession in the hope that they will enter into lawyer-client relationships on a paying basis as a result).

**Improvement of business conditions.**

Generally, this must be shown to be the purpose of the organization. This isn't established by evidence of particular services that provide a convenience or economy to individual members in their businesses, such as advertising that carries the name of members, interest-free loans, assigning exclusive franchise areas, operation of a real estate multiple listing system, or operation of a credit reporting agency.

**Stock or commodity exchange.** A stock or commodity exchange isn't a business league, chamber of commerce, real estate board, or board of trade and isn't exempt under section 501(c)(6).

**Legislative activity.** An organization that is exempt under section 501(c)(6) can work for the enactment of laws to advance the common business interests of the organization's members.

**Deduction not allowed for dues used for political or legislative activities.** A taxpayer can't deduct the part of dues or other payments to a business league, trade association, labor union, or similar organization that is reported to the taxpayer by the organization as having been used for any of the following activities.

1. Influencing legislation.
2. Participating or intervening in a political campaign for, or against, any candidate for public office.
3. Trying to influence the general public, or part of the general public, with respect to elections, legislative matters, or referendums (also known as grass roots lobbying).
4. Communicating directly with certain executive branch officials to try to influence their official actions or positions.

See [Dues Used for Lobbying or Political Activities](#) under [Required Disclosures](#) in chapter 2 for more information.

**De minimis exception.** In-house expenditures of \$2,000 or less for the year for activities (1) – (4) listed earlier won't prevent a deduction for dues if the dues meet all other tests to be deductible as a business expense.

**Grass roots lobbying.** A tax-exempt trade association, labor union, or similar organization is considered to be engaging in grass roots lobbying if it contacts prospective members or calls upon its own members to contact their employees and customers for the purpose of urging such persons to communicate with their elected state or Congressional representatives to support the promotion, defeat, or repeal of legislation that is of direct interest to the organization. Any dues or assessments directly related to such activities aren't deductible by the taxpayer, since the individuals being contacted,

who aren't members of the organization, are a segment of the general public.

**Tax treatment of donations.** Contributions to organizations described in this section aren't deductible as charitable contributions on the donor's federal income tax return. They may be deductible as trade or business expenses if ordinary and necessary in the conduct of the taxpayer's business.

For more information on business leagues, see [Life Cycle of a Business League \(Trade Association\)](#) on IRS.gov.

## 501(c)(7) - Social and Recreation Clubs

If your club is organized for pleasure, recreation, and other similar nonprofitable purposes and substantially all of its activities are for these purposes, it should file Form 1024 to apply for recognition of exemption from federal income tax.

In applying for recognition of exemption, you should submit the information described in this section. Also see [chapter 1](#) for the procedures to follow.

Typical organizations that should file for recognition of exemption as social clubs include:

- College alumni associations that aren't described in chapter 3 under [Alumni association](#);
- College fraternities or sororities operating chapter houses for students;
- Country clubs;
- Amateur hunting, fishing, tennis, swimming, and other sport clubs;
- Dinner clubs that provide a meeting place, library, and dining room for members;
- Hobby clubs;
- Garden clubs; and
- Variety clubs.

**Discrimination prohibited.** Your organization won't be recognized as tax exempt if its charter, bylaws, or other governing instrument, or any written policy statement provides for discrimination against any person on the basis of race, color, or religion.

However, a club that in good faith limits its membership to the members of a particular religion to further the teachings or principles of that religion and not to exclude individuals of a particular race or color won't be considered as discriminating on the basis of religion. Also, the restriction on religious discrimination doesn't apply to a club that is an auxiliary of a fraternal beneficiary society (discussed later) if that society is described in section 501(c)(8) and exempt from tax under section 501(a) and limits its membership to the members of a particular religion.

**Private benefit prohibited.** No part of the organization's net earnings can inure to the benefit of any person having a personal and private interest in the activities of the organization. For purposes of this requirement, it isn't necessary that net earnings be actually distributed. Even undistributed earnings can benefit members. Examples of this include a decrease in



membership dues or an increase in the services the club provides to its members without a corresponding increase in dues or other fees paid for club support. However, fixed-fee payments to members who bring new members into the club aren't an inurement of the club's net earnings, if the payments are reasonable compensation for performance of a necessary administrative service.

**Purposes.** To show that your organization possesses the characteristics of a club within the meaning of the exemption law, you should submit evidence with your application that personal contact, commingling, and fellowship exist among members. You must show that members are bound together by a common objective of pleasure, recreation, and other nonprofitable purposes.

Fellowship need not be present between each member and every other member of a club if it is a material part in the life of the organization. A statewide or nationwide organization that is made up of individual members, but is divided into local groups, satisfies this requirement if fellowship is a material part of the life of each local group.

The term other non-profitable purposes means other purposes similar to pleasure and recreation. For example, a club that, in addition to its social activities, has a plan for the payment of sick and death benefits isn't operating exclusively for pleasure, recreation, and other non-profitable purposes.

**Limited membership.** The membership in a social club must be limited. To show that your organization has a purpose that would characterize it as a club, you should submit evidence with your application that there are limits on admission to membership consistent with the character of the club.

A social club that issues corporate membership is dealing with the general public in the form of the corporation's employees. Corporate members of a club aren't the kind of members contemplated by the law. Gross receipts from these members would be a factor in determining whether the club qualifies as a social club. See [Gross receipts from nonmembership sources](#), later. Bona fide individual memberships paid for by a corporation wouldn't have an effect on the gross receipts source.

The fact that a social club may have an associate (nonvoting) class of membership won't be, in and of itself, a cause for nonrecognition of exemption. However, if one membership class pays substantially lower dues and fees than another membership class, although both classes enjoy the same rights and privileges in using the club facilities, there may be an inurement of income to the benefited class, resulting in a denial of the club's exemption.

**Support.** In general, your club should be supported solely by membership fees, dues, and assessments. However, if otherwise entitled to exemption, your club won't be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

**Business activities.** If your club will engage in business, such as selling real estate, timber, or other products or services, it generally will be

denied exemption. However, evidence submitted with your application form that your organization will provide meals, refreshments, or services related to its exempt purposes only to its own members or their dependents or guests won't cause denial of exemption.

**Facilities open to public.** Evidence that your club's facilities will be open to the general public (persons other than members or their dependents or guests) may cause denial of exemption. This doesn't mean, however, that any dealing with outsiders will automatically deprive a club of exemption.

**Gross receipts from nonmembership sources.** A section 501(c)(7) organization can receive up to 35% of its gross receipts, including investment income, from sources outside of its membership without losing its tax-exempt status. Income from nontraditional business activity with members isn't exempt function income, and thus is included as income from sources outside of the membership. Of the 35% gross receipts listed above, up to 15% of the gross receipts can be derived from the use of the club's facilities or services by the general public. If an organization has outside income that is more than these limits, all the facts and circumstances will be taken into account in determining whether the organization qualifies for exempt status.

**Gross receipts.** Gross receipts, for this purpose, are receipts from the normal and usual (traditionally conducted) activities of the club. These receipts include charges, admissions, membership fees, dues, assessments, investment income, and normal recurring capital gains on investments. Receipts don't include initiation fees and capital contributions. Unusual amounts of income, such as from the sale of a clubhouse or similar facility, aren't included in gross receipts or in figuring the percentage limits.

**Nontraditional activities.** Traditional business activities are those that further a social club's exempt purposes. Nontraditional business activities don't further the exempt purposes of a social club even if conducted solely on a membership basis. Nontraditional business activities are prohibited (subject to an insubstantial, trivial, and nonrecurrent test) for businesses conducted with both members and nonmembers. Examples of nontraditional business activities include sale of package liquor, take-out food, and long-term room rental.

**Fraternity foundations.** If your organization is a foundation formed for the exclusive purpose of acquiring and leasing a chapter house to a local fraternity chapter or sorority chapter maintained at an educational institution and doesn't engage in any social or recreational activities, it may be a title holding corporation (discussed later under section 501(c)(2) organizations and under section 501(c)(25) organizations) rather than a social club.

**Tax treatment of donations.** Donations to exempt social and recreation clubs aren't deductible as charitable contributions on the donor's federal income tax return.

## 501(c)(8) and 501(c)(10) - Fraternal Beneficiary Societies and Domestic Fraternal Societies

This section describes the information to be provided upon application for recognition of exemption by two types of fraternal societies: beneficiary and domestic. The major distinction is that fraternal beneficiary societies provide for the payment of life, sick, accident, or other benefits to their members or their dependents, while domestic fraternal societies don't provide these benefits but rather devote their earnings to fraternal, religious, charitable, etc., purposes. The procedures to follow in applying for recognition of exemption are described in chapter 1.

If your organization is controlled by a central organization, you should check with your controlling organization to determine whether your unit has been included in a group exemption letter or can be added. If so, your organization need not apply for individual recognition of exemption. For more information, see [Group Exemption Letter](#) in chapter 1 of this publication.

**Tax treatment of donations.** Donations by an individual to a domestic fraternal beneficiary society or a domestic fraternal society operating under the lodge system are deductible as charitable contributions only if used exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals.

### Fraternal Beneficiary Societies (501(c)(8))

A fraternal beneficiary society, order, or association must file an application for recognition of exemption from federal income tax on Form 1024. The application and accompanying statements should establish that the organization:

1. Is a fraternal organization;
2. Operates under the lodge system or for the exclusive benefit of the members of a fraternal organization itself operating under the lodge system; and
3. Provides for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents.

**Lodge system.** Operating under the lodge system means carrying on activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like.

**Payment of benefits.** It isn't essential that every member be covered by the society's program of sick, accident, or death benefits. An organization can qualify for exemption if most of its members are eligible for benefits, and the

benefits are paid from contributions or dues paid by those members.

The benefits must be limited to members and their dependents. If members will have the ability to confer benefits to other than themselves and their dependents, exemption won't be recognized.

**Whole-life insurance.** Whole-life insurance constitutes a life benefit under section 501(c)(8) even though the policy may contain investment features such as a cash surrender value or a policy loan.

**Reinsurance pool.** Payments by a fraternal beneficiary society into a state-sponsored reinsurance pool that protects participating insurers against excessive losses on major medical health and accident insurance won't preclude exemption as a fraternal beneficiary society.

## Domestic Fraternal Societies (501(c)(10))

A domestic fraternal society, order, or association must file an application for recognition of exemption from federal income tax on Form 1024. The application and accompanying statements should establish that the organization:

1. Is a domestic fraternal organization organized in the United States;;
2. Operates under the lodge system;
3. Devotes its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes; and
4. Doesn't provide for the payment of life, sick, accident, or other benefits to its members.

The organization can arrange with insurance companies to provide optional insurance to its members without jeopardizing its exempt status.

## 501(c)(4), 501(c)(9), and 501(c)(17) - Employees' Associations

This section describes the information to be provided upon application for recognition of exemption by the following types of employees' associations:

1. A voluntary employees' beneficiary association (including federal employees' associations) organized to pay life, sick, accident, and similar benefits to members or their dependents, or designated beneficiaries, if no part of the net earnings of the association inures to the benefit of any private shareholder or individual; and
2. A supplemental unemployment benefit trust whose primary purpose is providing for payment of supplemental unemployment benefits.

Both the application form to file and the information to provide are discussed later under

the section that describes your employee association. Chapter 1 describes the procedures to follow in applying for exemption.

**Tax treatment of donations.** Donations to these organizations aren't deductible as charitable contributions on the donor's federal income tax return.

## Local Employees' Associations (501(c)(4))

A local association of employees whose membership is limited to employees of a designated person or persons in a particular municipality, and whose income will be devoted exclusively to charitable, educational, or recreational purposes. A local employees' association must apply for recognition of exemption by filing Form 1024-A. The organization must submit evidence that:

1. It is of a purely local character;
2. Its membership is limited to employees of a designated person or persons in a particular locality; and
3. Its net earnings will be devoted exclusively to charitable, educational, or recreational purposes.

A local association of employees that has established a system of paying retirement or death benefits, or both, to its members won't qualify for exemption since the payment of these benefits isn't considered as being for charitable, educational, or recreational purposes. Similarly, a local association of employees that is operated primarily as a cooperative buying service for its members in order to obtain discount prices on merchandise, services, and activities doesn't qualify for exemption.

## Voluntary Employees' Beneficiary Associations (501(c)(9))

An application for recognition of exemption as a voluntary employees' beneficiary association must be filed on Form 1024. The material submitted with the application must show that your organization:

1. Is a voluntary association of employees;
2. Will provide for payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries and substantially all of its operations are for this purpose; and
3. Won't allow any of its net earnings to inure to the benefit of any private individual or shareholder except in the form of scheduled benefit payments.

To be complete, an application must include a copy of the document (such as the trust instrument) by which the organization was created; a full description of the benefits available to participants and the terms and conditions of eligibility for benefits (usually contained in a plan document); and, if providing benefits pursuant to a collective bargaining agreement, a copy of that agreement.

**Note.** Under section 4976, the reversion of funds from a section 501(c)(9) organization to the employer who created the beneficiary association may subject the employer to a 100% penalty excise tax on the amount of the reversion.

**Notice requirement.** An organization won't be considered tax exempt under this section unless the organization gives notice to the IRS that it is applying for recognition of exempt status. The organization gives notice by filing Form 1024. If the notice isn't given by 15 months after the end of the month in which the organization was created, the organization won't be exempt for any period before notice is given. An extension of time for filing the notice can be granted under the same procedures as those described for section 501(c)(3) organizations in chapter 3 under [Application for Recognition of Exemption](#).

**Membership.** Membership of a section 501(c)(9) organization must consist of individuals who are employees and have an employment-related common bond. This common bond can be a common employer (or affiliated employers), coverage under one or more collective bargaining agreements, membership in a labor union, or membership in one or more locals of a national or international labor union.

The membership of an association can include some individuals who aren't employees, provided they have an employment-related bond with the employee-members. For example, the owner of a business whose employees are members of the association can be a member. An association will be considered composed of employees if 90% of its total membership on 1 day of each quarter of its tax year consists of employees.

**Employees.** Employees include individuals who became entitled to membership because they are or were employees. For example, an individual will qualify as an employee even though the individual is on a leave of absence or has been terminated due to retirement, disability, or layoff.

Generally, membership is voluntary if an affirmative act is required on the part of an employee to become a member. Conversely, membership is involuntary if the designation as a member is due to employee status. However, an association will be considered voluntary if employees are required to be members of the organization as a condition of their employment and they don't incur a detriment (such as a payroll deduction) as a result of their membership. An employer has not imposed involuntary membership on the employee if membership is required as the result of a collective bargaining agreement or as an incident of membership in a labor organization.

**Payment of benefits.** The information submitted with your application must show that your organization will pay life, sick, accident, supplemental unemployment, or other similar benefits. The benefits can be provided directly by your association or indirectly by your association through the payments of premiums to an insurance company (or fees to a medical clinic). Benefits can be in the form of medical, clinical,

or hospital services, transportation furnished for medical care, or money payments.

**Nondiscrimination requirements.** An organization that is part of a plan won't be exempt unless the plan meets certain nondiscrimination requirements. However, if the organization is part of a plan that is a collective bargaining agreement that was the subject of good faith bargaining between employee organizations and employers, the plan need not meet these requirements for the organization to qualify as tax exempt.

A plan meets the nondiscrimination requirements only if both of the following statements are true.

1. Each class of benefits under the plan is provided under a classification of employees that is set forth in the plan and doesn't discriminate in favor of employees who are highly compensated individuals.
2. The benefits provided under each class of benefits don't discriminate in favor of highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit doesn't discriminate in favor of highly compensated individuals merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

If a plan provides a benefit for which there is a nondiscrimination provision provided under Chapter 1 of the Internal Revenue Code as a condition of that benefit being excluded from gross income, these nondiscrimination requirements don't apply. The benefit will be considered nondiscriminatory only if it meets the nondiscrimination provision of the applicable Code section. For example, benefits provided under a medical reimbursement plan would meet the nondiscrimination requirements for an association, if the benefits meet the nondiscrimination requirements of section 105(h)(3) and 105(h)(4).

**Excluded employees.** Certain employees who aren't covered by a plan can be excluded from consideration in applying these requirements. These include employees:

1. Who haven't completed 3 years of service,
2. Who haven't attained age 21,
3. Who are seasonal or less than half-time employees,
4. Who aren't in the plan and who are included in a unit of employees covered by a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining, or
5. Who are nonresident aliens and who receive no earned income from the employer that has United States sourced income.

**Highly compensated individual.** A highly compensated individual is one who:

1. Owned 5% or more of the employer at any time during the current year or the preceding year,

2. Received more than \$125,000 in compensation from the employer for the preceding year (the amount is annualized for inflation. Go to IRS.gov, and search "Pension Plan Limitation" for the year), and
3. Was among the top 20% of employees by compensation for the preceding year.

However, the employer can choose not to have (3) apply.

**Aggregation rules.** The employer can choose to treat two or more plans as one plan for purposes of meeting the nondiscrimination requirements. Employees of controlled groups of corporations, trades, or businesses under common control, or members of an affiliated service group, are treated as employees of a single employer. Leased employees are treated as employees of the recipient.

**One employee.** A trust created to provide benefits to one employee won't qualify as a voluntary employees' beneficiary association under section 501(c)(9).

## Supplemental Unemployment Benefit Trusts (501(c)(17))

A trust or trusts forming part of a written plan (established and maintained by an employer, the employees, or both) providing solely for the payment of supplemental unemployment compensation benefits must file the application for recognition of exemption on Form 1024. The trust must be a valid, existing trust under local law and must be evidenced by an executed document. A conformed copy of the plan of which the trust is a part should be attached to the application.

To be complete, an application must include a copy of the document (such as the trust instrument) by which the organization was created; a full description of the benefits available to participants and the terms and conditions of eligibility for benefits (usually contained in a plan document); and, if providing benefits pursuant to a collective bargaining agreement, a copy of that agreement.

**Note.** Under section 4976, the reversion of funds from a section 501(c)(17) organization to the employer who created the supplemental unemployment benefit trust may subject the employer to a 100% penalty excise tax on the amount of the reversion.

**Notice requirement.** An organization won't be considered tax exempt under this section unless the organization gives notice to the IRS that it is applying for recognition of exempt status. The organization gives notice by filing Form 1024. If the notice isn't given by 15 months after the end of the month in which the organization was created, the organization won't be exempt for any period before such notice is given. An extension of time for filing the notice is granted under the same procedures as those described for section 501(c)(3) organizations in chapter 3 under [Application for Recognition of Exemption](#).

**Types of payments.** You must show that the supplemental unemployment compensation benefits will be benefits paid to an employee because of the employee's involuntary separation from employment (whether or not the separation is temporary) resulting directly from a reduction-in-force, discontinuance of a plant or operation, or other similar conditions. In addition, sickness and accident benefits (but not vacation, retirement, or death benefits) may be included in the plan if these are subordinate to the unemployment compensation benefits.

**Diversion of funds.** It must be impossible under the plan (at any time before the satisfaction of all liabilities with respect to employees under the plan) to use or to divert any of the corpus or income of the trust to any purpose other than the payment of supplemental unemployment compensation benefits (or sickness or accident benefits to the extent just explained).

**Discrimination in benefits.** Neither the terms of the plan nor the actual payment of benefits can be discriminatory in favor of the company's officers, stockholders, supervisors, or highly paid employees. However, a plan isn't discriminatory merely because benefits bear a uniform relationship to compensation or the rate of compensation.

**Prohibited transactions and exemption.** If your organization is a supplemental unemployment benefit trust and has received a denial of exemption because it engaged in a prohibited transaction, as defined by section 503(b), it can file a claim for exemption in any tax year following the tax year in which the notice of denial was issued. It must file the claim on Form 1024. The organization must include a written declaration that it won't knowingly again engage in a prohibited transaction. An authorized principal officer of your organization must make this declaration under the penalties of perjury.

If your organization has satisfied all requirements as a supplemental unemployment benefit trust described in section 501(c)(17), it will be notified in writing that it has been recognized as exempt. However, the organization will be exempt only for those tax years after the tax year in which the claim for exemption (Form 1024) is filed. Tax year in this case means the established annual accounting period of the organization or, if the organization has not established an annual accounting period, the calendar year. For more information about the requirements for re-establishing an exemption previously denied, contact the IRS.

## 501(c)(12) - Local Benevolent Life Insurance Associations, Mutual Irrigation and Telephone Companies, and Like Organizations

Each of the following organizations apply for recognition of exemption from federal income tax by filing Form 1024.



1. Benevolent life insurance associations of a purely local character and like organizations.
2. Mutual ditch or irrigation companies and like organizations.
3. Mutual or cooperative telephone companies and like organizations.

A like organization is an organization that performs a service comparable to that performed by any one of the above organizations.

The information to be provided upon application by each of these organizations is described in this section. For information as to the procedures to follow in applying for exemption, see chapter 1.

**General requirements.** These organizations must use their income solely to cover losses and expenses, with any excess being returned to members or retained to cover future losses and expenses. They must collect at least 85% of their income from members for the sole purpose of meeting losses and expenses.

**Mutual character.** These organizations, other than benevolent life insurance associations, must be organized and operated on a mutual or cooperative basis. They are associations of persons or organizations, or both, banded together to provide themselves a mutually desirable service approximately at cost and on a mutual basis. To maintain the mutual characteristic of democratic ownership and control, they must be so organized and operated that their members have the right to choose the management, to receive services at cost, to receive a return of any excess of payments over losses and expenses, and to share in any assets upon dissolution.

The rights and interests of members in the annual savings of the organization must be determined in proportion to their business with the organization. Upon dissolution, gains from the sale of appreciated assets must be distributed to all persons who were members during the period the assets were owned by the organization in proportion to the amount of business done during that period. The bylaws mustn't provide for forfeiture of a member's rights and interest upon withdrawal or termination.

**Membership.** Membership of a mutual organization consists of those who join the organization to obtain its services, and have a voice in its management. In a stock company, the stockholders are members. However, a mutual life insurance organization can't have policyholders other than its members.

**Losses and expenses.** In furnishing services substantially at cost, an organization must use its income solely for paying losses and expenses. Any excess income not retained in reasonable reserves for future losses and expenses belongs to members in proportion to their patronage or business done with the organization. If such patronage refunds are retained in reasonable amounts for purposes of expanding and improving facilities, retiring capital indebtedness, acquiring other assets, and unexpected expenses, the organization must maintain records sufficient to reflect the equity of each member in the assets acquired with the funds.

**Distributions of proceeds.** The cooperative may distribute the unexpended balance of collections or assessments remaining on hand at the end of the year to members or patrons prorated on the basis of their patronage or business done with the cooperative. Such distribution represents a refund in the costs of services rendered to the member.

## The 85% Requirement

All of the organizations listed above must submit evidence with their application that they receive 85% or more of their gross income from their members for the sole purpose of meeting losses and expenses. Nevertheless, certain items of income are excluded from the computation of the 85% requirement if the organization is a mutual or cooperative telephone or electric company.

**Mutual or cooperative telephone company.** A mutual or cooperative telephone company will exclude from the computation of the 85% requirement any income received or accrued from:

1. A nonmember telephone company for the performance of communication services involving the completion of long distance calls to, from, or between members of the mutual or cooperative telephone company;
2. Qualified pole rentals;
3. The sale of display listings in a directory furnished to its members; or
4. The prepayment of a loan created in 1987, 1988, or 1989, under section 306A, 306B, or 311 of the Rural Electrification Act of 1936;
5. Grants, contributions, and assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or by local, state, or regional governmental entities for disasters or emergencies; and certain grants or contributions provided by a government entity for electric, communications, broadband, Internet, or other utility facilities or services. This is effective for taxable years beginning after December 31, 2017.

**Mutual or cooperative electric company.** A mutual or cooperative electric company will exclude from the computation of the 85% requirement any income received or accrued from:

1. Qualified pole rentals;
2. Any provision or sale of electric energy transmission services or ancillary service if the services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by the Federal Energy Regulatory Commission (FERC) or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member);
3. The provision or sale of electric energy distribution services or ancillary services if the services are provided on a nondiscriminatory open-access basis to distribute electric energy not owned by the mutual or electric cooperative company:

minatory open-access basis to distribute electric energy not owned by the mutual or electric cooperative company:

- a. To end-users who are served by distribution facilities not owned by the company or any of its members (other than income received or accrued directly or indirectly from a member), or
  - b. Generated by a generation facility not owned or leased by the company or any of its members and which is directly connected to distribution facilities owned by the company or any of its members (other than income received or accrued directly or indirectly from a member),
4. Any nuclear decommissioning transaction,
  5. Any asset exchange or conversion transaction; or
  6. Grants, contributions, and assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or by local, state, or regional governmental entities for disasters or emergencies; and certain grants or contributions provided by a government entity for electric, communications, broadband, Internet, or other utility facilities or services. This is effective for taxable years beginning after December 31, 2017.

An electric cooperative's sale of excess fuel at cost in the year of purchase isn't income for purposes of determining compliance with the 85% requirement.

**Qualified pole rental.** The term qualified pole rental means any rental of a pole (or other structure used to support wires) if the pole (or other structure) is used:

1. By the telephone or electric company to support one or more wires that are used by the company in providing telephone or electric services to its members, and
2. Pursuant to the rental to support one or more wires (in addition to wires described in (1)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

The term rental, for this purpose, includes any sale of the right to use the pole (or other structure).

The 85% requirement is applied on the basis of an annual accounting period. Failure of an organization to meet the requirement in a particular year precludes exemption for that year, but has no effect upon exemption for years in which the 85% requirement is met.

Gain from the sale or conversion of the organization's property isn't considered an amount received from members in determining whether the organization's income consists of amounts collected from members.

Because the 85% income test is based on gross income, capital losses can't be used to reduce capital gains for purposes of this test.

**Example.** The books of an organization reflect the following for the calendar year.

Collections from members .....	\$2,400
Short-term capital gains .....	600
Short-term capital losses .....	400
Other income .....	None
Gross income (\$2,400 + \$600 - \$300) .....	100%
Collected from members (\$2,400) .....	80%

Since amounts collected from members don't constitute at least 85% of gross income, the organization isn't entitled to exemption from federal income tax for the year.

Voluntary contributions in the nature of gifts aren't taken into account for purposes of the 85% computation.

Other tax-exempt income besides gifts is considered as income received from other than members in applying the 85% test.

If the 85% test isn't met, your organization, if classifiable under this section, won't qualify for exemption as any other type of organization described in this publication.

**Tax treatment of donations.** Donations to an organization described in this section aren't deductible as charitable contributions on the donor's federal income tax return.

**Government grants.** In the past, government grants were not treated as income but as contributions to capital. Under the Tax Cuts & Jobs Act, P.L. No. 115-97 section 13312, section 118 was amended so that government grants may no longer be treated as capital contributions. In 2019, P.L. No. 116-94 amended section 501(c)(12) to exclude from the 85% requirement certain government grants for assistance to mutual and cooperative telephone and electric companies.

## Local Life Insurance Associations

A benevolent life insurance association or an organization seeking recognition of exemption on grounds of similarity to a benevolent life insurance association must submit evidence upon applying for recognition of exemption that it will be of a purely local character, that its excess funds will be refunded to members or retained in reasonable reserves to meet future losses and expenses, and that it meets the 85% income requirement. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of the insurance and maintains investments from which more than 15% of its income is derived, it won't be entitled to exemption.

To establish that your organization is of a purely local character, it should show that its activities will be confined to a particular community, place, or district irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it can't be purely local in character. A benevolent life insurance association that doesn't terminate membership when a member moves from the local area in which the association operates will qualify for exemption if it meets the other requirements.

A copy of each type of policy issued by your organization should be included with the application for recognition of exemption.

**Organizations similar to local benevolent life insurance companies.** These organizations include those that in addition to paying death benefits also provide for the payment of sick, accident, or health benefits. However, an organization that pays only sick, accident, or health benefits, but not life insurance benefits, isn't an organization similar to a benevolent life insurance association and shouldn't apply for recognition of exemption, as described in this section.

**Burial and funeral benefit insurance organization.** This type of organization can apply for recognition of exemption as an organization similar to a benevolent life insurance company if it establishes that the benefits are paid in cash and if it isn't engaged directly in the manufacture of funeral supplies or the performance of funeral services. An organization that provides its benefits in the form of supplies and service isn't a life insurance company. Such an organization can seek recognition of exemption from federal income tax, however, as a mutual insurance company other than life.

## Mutual or Cooperative Associations

Mutual ditch or irrigation companies, mutual or cooperative telephone companies, and like organizations need not establish that they are of a purely local character. They can serve noncontiguous areas.

**Like organization.** A like organization is a cooperative or mutual organization that performs a service similar to mutual ditch, irrigation, telephone, or electric companies. Examples include the following: cooperatives that provide protection of river banks to prevent erosion, water and sewer services, cable television, satellite, television, cellular phone services, two-way radio service, or natural gas services.

## 501(c)(13) - Cemetery Companies

If your organization wishes to obtain recognition of exemption from federal income tax as a cemetery company or a corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, it must file an application on Form 1024. For the procedure to follow to file an application, see [Application, Approval, and Appeal Procedures](#) in chapter 1.

A nonprofit mutual cemetery company that seeks recognition of exemption should submit evidence with its application that it is owned and operated exclusively for the benefit of its lot owners who hold lots for bona fide burial purposes and not for purposes of resale. A mutual cemetery company that also engages in charitable activities, such as the burial of paupers, will be regarded as operating within this standard. The fact that a mutual cemetery company limits its membership to a particular class of individuals, such as members of a family, won't affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

If your organization is a nonprofit corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, you should show that it isn't permitted by its charter to engage in any business not necessarily incident to that purpose. Operating a mortuary isn't permitted. However, selling monuments, markers, vaults, and flowers solely for use in the cemetery is permitted if the profits from these sales are used to maintain the cemetery as a whole.

**How income can be used.** You should show that your organization's earnings are or will be used only in one or more of the following ways.

1. To pay the ordinary and necessary expenses of operating, maintaining, and improving the cemetery or crematorium.
2. To buy cemetery property.
3. To create a fund that will provide a source of income for the perpetual care of the cemetery or a reasonable reserve for any ordinary or necessary purpose.

No part of the net earnings of your organization can inure to the benefit of any private shareholder or individual.

Ordinary and necessary expenses in connection with the operation, management, maintenance, and improvement of the cemetery are permitted, as are reasonable fees for the services of a manager.

**Buying cemetery property.** Payments can be made to amortize debt incurred to buy land, but can't be in the nature of profit distributions. You must show the method used to finance the purchase of the cemetery property and that the purchase price of the land at the time of its sale to the cemetery wasn't unreasonable.

Except for holders of preferred stock (discussed later), no person can have any interest in the net earnings of a tax-exempt cemetery company or crematorium. Therefore, if property is transferred to the organization in exchange for an interest in the organization's net earnings, the organization won't be exempt so long as that interest remains outstanding.

An equity interest in the organization is an interest in the net earnings of the organization. However, an interest in the organization that isn't an equity interest may still be an interest in the organization's net earnings. For example, a bond issued by a cemetery company that provides for a fixed rate of interest and also provides for additional interest payments based on the income of the organization is considered an interest in the net earnings of the organization. Similarly, a convertible debt obligation issued after July 7, 1975, is considered an interest in the net earnings of the organization.

**Perpetual care organization.** A perpetual care organization, including, for example, a trust organized to receive, maintain, and administer funds that it receives from a nonprofit tax-exempt cemetery under state law and contracts, can apply for recognition of exemption on Form 1024, even though it doesn't own the land used for burial. However, the income from these funds must be devoted exclusively to the perpetual care and maintenance of the

nonprofit cemetery as a whole. Also, no part of the net earnings can inure to the benefit of any private shareholder or individual.

In addition, a perpetual care organization not operated for profit, but established as a civic enterprise to maintain and administer funds, the income of which is devoted exclusively to the perpetual care and maintenance of an abandoned cemetery as a whole, may qualify for exemption.

**Care of individual plots.** When funds are received by a cemetery company for the perpetual care of an individual lot or crypt, a trust is created that is subject to federal income tax. Any trust income that is used or permanently set aside for the care, maintenance, or beautification of a particular family burial lot or mausoleum crypt isn't deductible in computing the trust's taxable income.

**Common and preferred stock.** A cemetery company that issues common stock can qualify for exemption only if no dividends may be paid. The payment of dividends must be legally prohibited either by the corporation's charter or by applicable state law.

Generally, a cemetery company or crematorium isn't exempt if it issues preferred stock. However, it can still be exempt if the preferred stock was issued before November 28, 1978, or was issued after that date under a written plan adopted before that date. The adoption of the plan must be shown by the acts of the responsible officers and appear on the official records of the organization.

The preferred stock issued either before November 28, 1978, or under a plan adopted before that date, must meet all the following requirements.

1. The preferred stock entitles the holders to dividends at a fixed rate that isn't more than the greater of the legal rate of interest in the state of incorporation or 8% a year on the value of the consideration for which the stock was issued.
2. The organization's articles of incorporation require:
  - a. That the preferred stock be retired at par as rapidly as funds become available from operations, and
  - b. That all funds not required for the payment of dividends on or for the retirement of preferred stock be used by the company for the care and improvement of the cemetery property.

**Tax treatment of donations.** Donations to exempt cemetery companies, corporations chartered solely for human burial purposes, and perpetual care funds (operated in connection with such exempt organizations) are deductible as charitable contributions on the donor's federal income tax return. However, a donor can't deduct a contribution made for the perpetual care of a particular lot or crypt. Payments made to a cemetery company or corporation as part of the purchase price of a burial lot or crypt, whether irrevocably dedicated to the perpetual care of the cemetery as a whole or earmarked for the care of a particular lot, are also not deductible.

## 501(c)(14) - Credit Unions and Other Mutual Financial Organizations

If your organization wants to obtain recognition of exemption as a credit union without capital stock, organized and operated under state law for mutual purposes and without profit, it must file the application for recognition of exemption on Form 1024.

Federal credit unions organized and operated in accordance with the Federal Credit Union Act, as amended, are instrumentalities of the United States and, therefore, are exempt under section 501(c)(1). They are included in a group exemption letter issued to the National Credit Union Administration. They aren't discussed in this publication.

State-chartered credit unions and other mutual financial organizations file applications for recognition of exemption from federal income tax under section 501(c)(14). The other mutual financial organizations must be corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit to provide reserve funds for, and insurance of, shares or deposits in:

1. Domestic building and loan associations,
2. Cooperative banks (without capital stock) organized and operated for mutual purposes and without profit,
3. Mutual savings banks (not having capital stock represented by shares), or
4. Mutual savings banks described in section 591(b).

Similar organizations, formed before September 1, 1957, that provide reserve funds for (but not insurance of shares or deposits in) one of the types of savings institutions described in (1), (2), or (3) above may be exempt from tax if 85% or more of the organization's income is from providing reserve funds and from investments. There is no specific restriction against the issuance of capital stock for these organizations.

Building and loan associations, savings and loan associations, mutual savings banks, and cooperative banks, other than those described in this section, aren't exempt from tax. However, certain corporations organized and operated in conjunction with farmers' cooperatives can be exempt under section 521.

## State-Chartered Credit Unions

Your organization must show on its application that it is formed under a state credit union law, the state and date of incorporation, and that the state credit union law with respect to loans, investments, and dividends, if any, your organization is operated in compliance with.

## Other Mutual Financial Organizations

Every other organization included in this section must show in its application the state in which the organization is incorporated and the date of incorporation; the character of the organization; the purpose for which it was organized; its actual activities; the sources of its receipts and the disposition thereof; whether any of its income may be credited to surplus or may benefit any private shareholder or individual; whether the law relating to loans, investments, and dividends is being complied with; and, in general, all facts relating to its operations that affect its right to exemption.

The application must include detailed information showing either that the organization provides both reserve funds for and insurance of shares and deposits of its member financial organizations or that the organization provides reserve funds for shares or deposits of its members and 85% or more of the organization's income is from providing reserve funds and from investments. There should be attached a conformed copy of the articles of incorporation or other document setting forth the permitted powers or activities of the organization; the by-laws or other similar code of regulations; and the latest annual financial statement showing the receipts, disbursements, assets, and liabilities of the organization.

## 501(c)(19) - Veterans' Organizations

A post or organization of past or present members of the Armed Forces of the United States must file Form 1024 to apply for recognition of exemption from federal income tax. You should follow the general procedures outlined in chapter 1. The organization must also meet the qualifications described in this section.

Examples of groups that qualify for exemption are posts or auxiliaries of the American Legion, Veterans of Foreign Wars, and similar organizations.

To qualify for recognition of exemption, your application should show:

1. That the post or organization is organized in the United States or any of its possessions,
2. That at least 75% of the members are past or present members of the U.S. Armed Forces and that at least 97.5% of all members of the organization are past or present members of the U.S. Armed Forces, cadets (including only students in college or university ROTC programs or at armed services academies) or spouses, widows, widowers, ancestors, or lineal descendants of any of those listed here, and
3. That no part of net earnings inure to the benefit of any private shareholder or individual.

In addition to these requirements, a veterans' organization must also be operated exclusively for one or more of the following purposes.



1. To promote the social welfare of the community (that is, to promote in some way the common good and general welfare of the people of the community).
  2. To assist disabled and needy war veterans and members of the U.S. Armed Forces and their dependents and the widows and orphans of deceased veterans.
  3. To provide entertainment, care, and assistance to hospitalized veterans or members of the U.S. Armed Forces.
  4. To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors.
  5. To conduct programs for religious, charitable, scientific, literary, or educational purposes.
  6. To sponsor or participate in activities of a patriotic nature.
  7. To provide insurance benefits for its members or dependents of its members or both.
  8. To provide social and recreational activities for its members.
- b. Religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals; or
  - c. An insurance set aside.
3. The trust income isn't unreasonably accumulated and, if the trust or foundation isn't an insurance set aside, a substantial portion of the income is in fact distributed to the parent organization or for the purposes described in item 2(b).
  4. It is organized exclusively for one or more of the purposes listed earlier in this section that are specifically applicable to the parent organization.

**Tax treatment of donations.** Donations to war veterans' organizations are deductible as charitable contributions on the donor's federal income tax return. At least 90% of the organization's membership must consist of war veterans. The term war veterans means persons, whether or not present members of the U.S. Armed Forces, who have served in the U.S. Armed Forces during a period of war (including the Korean and Vietnam conflicts, the Persian Gulf war, and later declared wars).

**Auxiliary unit.** An auxiliary unit or society of a veterans' organization can apply for recognition of exemption provided that the veterans' organization (parent organization) meets the requirements explained earlier in this section. The auxiliary unit or society must also meet all the following additional requirements.

1. It is affiliated with, and organized in accordance with, the bylaws and regulations formulated by the parent organization.
2. At least 75% of its members are either past or present members of the U.S. Armed Forces, spouses of those members, or related to those members within two degrees of kinship (grandparent, brother, sister, and grandchild represent the most distant allowable relationship).
3. All of its members either are members of the parent organization, spouses of a member of the parent organization, or related to a member of such organization within two degrees of kinship.
4. No part of its net earnings inure to the benefit of any private shareholder or individual.

**Trusts or foundations.** Trusts or foundations for a veterans' organization can also apply for recognition of exemption provided that the parent organization meets the requirements explained earlier. The trust or foundation must also meet all the following qualifications.

1. The trust or foundation is in existence under local law and, if it is organized for charitable purposes, has a dissolution provision similar to charitable organizations. (See [Articles of Organization](#) in chapter 3 of this publication.)
2. The corpus or income can't be diverted or used other than for:
  - a. The funding of a veterans' organization, described in this section;

## 501(c)(21) - Black Lung Benefit Trusts

If your organization wishes to obtain recognition of exemption as a black lung benefit trust, it must file the application for recognition of exemption on Form 1024 and include a copy of its trust instrument. The general procedures to follow for obtaining recognition are discussed in chapter 1 of this publication. This section describes the additional (or specific) information to be provided upon application.

**Requirements.** A black lung benefit trust that is established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) will qualify for tax-exempt status if it meets both of the following requirements. The trust must be irrevocable and there can be no right or possibility of reversion of the corpus or income of the trust to the coal mine operator or other creator, except that the creator may recover excess contributions.

1. Its only purpose is:
  - a. To satisfy in whole or in part the liability of that person (generally, the coal mine operator contributing to the trust) for, or with respect to, claims for compensation arising under federal or state statutes for disability or death due to pneumoconiosis,
  - b. To pay the premiums for insurance that covers only that liability,
  - c. To pay the administrative and other incidental expenses of that trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and processing of black lung claims against

such person arising under federal or state statutes, and

- d. To pay accident and health benefits or insurance premiums and other administrative expenses for retired coal miners and their spouses. The amount of assets available for such use is generally limited to 110% of the present value of the liability for black lung benefits.
2. No part of its assets can be used for, or diverted to, any purposes other than:
    - a. The purposes described in 1,
    - b. Payments into the Black Lung Disability Trust Fund or into the general fund of the U.S. Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust),
    - c. Investment in public debt securities of the U.S., obligations of a state or local government that aren't in default as to principal or interest, or time or demand deposits in a bank or an insured credit union located in the United States. (These investments are restricted to the extent that the trustee determines that a portion of the assets isn't currently needed for the purposes described in 1.)

An annual information return is required of exempt trusts described in section 501(c)(21). Formerly, Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, was used for this purpose. However, Form 990-BL is a historical form beginning with tax year 2021. Section 501(c)(21) trust can no longer file Form 990-BL and will file Form 990 to meet their annual filing obligation. A trust that normally has gross receipts in each tax year of no more than \$50,000 is excepted from this filing requirement. However, it must submit an annual electronic notice, Form 990-N (*e-Postcard*).

**Excise taxes.** See Chapter 5 for information on the excise tax that may be imposed on the organization.

**Tax treatment of donations.** Contributions by a taxpayer (generally, the coal mine operator) to a black lung benefit trust are deductible for federal income tax purposes under section 192. The deduction is limited, and any excess contributions are subject to an excise tax of 5%. Form 6069, Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953, is used to compute the allowable deduction and any excise tax liability. The form doesn't have to be filed if there is no excise tax liability. For more information about these contributions, see Form 6069 and its instructions.

## 501(c)(2) - Title-Holding Corporations for Single Parent Corporations

If your organization wants to obtain recognition of exemption from federal income tax as a corporation organized to hold title to property, collect income from that property, and turn over the entire amount less expenses to a single parent organization that is exempt from income tax, it must file its application on Form 1024. The information to submit upon application is described in this section. For a discussion of the procedures for obtaining recognition of exemption, see chapter 1, [Application Procedures](#).

You must show that your organization is a corporation. If you are in doubt as to whether your organization qualifies as a corporation for this purpose, contact your IRS office.

A title-holding corporation will qualify for exemption only if there is effective ownership and control over it by the distributee exempt organization. For example, the distributee organization may control the title-holding corporation by owning its voting stock or possessing the power to select nominees to hold its voting stock.

**Corporate charter.** The corporate charter must confine the purposes and powers of your organization to holding title to property, collecting income from the property, and turning the income over to an exempt organization. If the charter authorizes your organization to engage in activities that go beyond these limits, its exemption may not be recognized even if its actual operations are so limited. If your organization's original charter doesn't limit its powers, you can amend the charter to conform to the required limits and submit evidence with your application that the charter has been amended.

**Payment of income.** You must show that your corporation is required to turn over the entire income from the property, less expenses, to one or more exempt organizations.

Actual payment of the income is required. A mere obligation to use the income for the exempt organization's benefit, or the fact that such organization has control over the income, doesn't satisfy this requirement.

**Expenses.** Expenses may reduce the amount of income required to be turned over to the tax-exempt organization for which your organization holds property. The term expenses (for this purpose) includes not only ordinary and necessary expenses paid or incurred, but also reasonable additions to depreciation reserves and other reserves that would be proper for a business corporation holding title to and maintaining property.

In addition, the title-holding corporation can retain part of its income each year to apply to debt on property to which it holds title. This transaction is treated as if the income had been turned over to the exempt organization and the latter had used the income to make a contribution to the capital of the title-holding corporation that in turn applied the contribution to the debt.

**Waiver of payment of income.** Generally, there is no payment of rent when the occupant of property held by your title-holding corporation is the exempt organization for which your corporation holds the title. In this situation, the statutory requirement that income be paid over to the exempt organization is satisfied if your corporation turns over whatever income is available.

**Application for recognition of exemption.** In addition to the information required by Form 1024, the title-holding corporation must furnish evidence that the organization for which title is held has obtained recognition of exempt status. If that organization has not been specifically notified in writing by the IRS that it is exempt, the title-holding corporation must submit the necessary application and supporting documents to enable the IRS to determine whether the organization for which title is held qualifies for exemption. A copy of a ruling or determination letter issued to the organization for which title is held will be proof that it qualifies for exemption. However, until the organization for which title is held obtains recognition of exempt status or proof is submitted to show that it qualifies, the title-holding corporation can't obtain recognition of exemption.

**Tax treatment of donations.** Donations to an exempt title-holding corporation generally aren't deductible as charitable contributions on the donor's federal income tax return.

## 501(c)(25) - Title-Holding Corporations or Trusts for Multiple Parent Corporations

If your organization wants to obtain recognition of exemption from federal income tax as an organization organized for the exclusive purpose of acquiring, holding title to, and collecting income from real property, and turning over the entire amount less expenses to member organizations exempt from income tax, it should file its application on Form 1024. For a discussion of the procedures for obtaining recognition of exemption, see chapter 1, [Application Procedures](#).

**Who can control the organization.** Organizations recognized as exempt under this section can have up to 35 shareholders or beneficiaries, in contrast to title-holding organizations recognized as exempt under section 501(c)(2), which can have only one controlling parent organization.

**Organizational requirements.** A section 501(c)(25) organization must be either a corporation or a trust. Only one class of stock is permitted in the case of a corporation. In the case of a trust, only one class of beneficial interest is allowed.

Organizations eligible to acquire or hold interests in this type of title-holding organization are qualified pension, profit-sharing, or stock bonus plans, governmental plans, governments

and their agencies and instrumentalities, and charitable organizations.

The articles of incorporation or trust instrument must include provisions showing that the corporation or trust is organized to meet the requirements of the statute, including compliance with the limitations on membership and classes of stock or beneficial interest, and compliance with the income distribution requirements. The organizing document must permit the organization's shareholders or beneficiaries to dismiss the organization's investment advisor, if any, upon a vote of the shareholders or beneficiaries holding a majority interest in the organization.

The organizing document must permit the shareholders or beneficiaries to terminate their interests by at least one of the following methods.

1. By selling or exchanging their stock or beneficial interest to any organization described in section 501(c)(25)(C), provided that the sale or exchange doesn't cause the number of shareholders or beneficiaries to exceed 35.
2. By having their stock or beneficial interest redeemed by the section 501(c)(25) organization upon 90 days notice.

If state law prevents a corporation from including in its articles of incorporation the above provisions, such provisions must instead be included in the bylaws of the corporation.

A 501(c)(25) organization can be organized as a nonstock corporation if its articles of incorporation or bylaws provide members with the same rights as described above.

**Subsidiaries.** A wholly owned subsidiary won't be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit will be treated as belonging to the section 501(c)(25) organization. Subsidiaries shouldn't apply separately for recognition of exemption.

**Tax treatment of donations.** Donations to an exempt title-holding corporation generally aren't deductible as charitable contributions on the donor's federal income tax return.

## Unrelated Business Income

In general, the receipt of unrelated business income by a section 501(c)(25) organization will subject the organization to loss of exempt status since the organization can't be exempt from taxation if it engages in any business other than that of holding title to real property and collecting the income from the property. However, exempt status generally won't be affected by the receipt of debt-financed income that is treated as unrelated business taxable income solely because of section 514.

Under section 514(c)(9), certain shareholders or beneficiaries aren't subject to unrelated debt-financed income tax under section 514 on their investments through the organization. These shareholders are generally schools, colleges, universities, or supporting organizations of such educational institutions. Organizations other than these will take into account as gross income from an unrelated trade or business

their pro rata share of income that is treated as unrelated debt-financed income because section 514(c)(9) doesn't apply. These organizations will also take their pro rata share of the allowable deductions from unrelated taxable income.

**Real property.** Real property can include personal property leased in connection with real property, but only if the rent from the personal property isn't more than 15% of the total rent for both the real property and the personal property.

Real property acquired after June 10, 1987, can't include any interest as a tenant in common (or similar interest) or any indirect interest.

## 501(c)(26) - State-Sponsored High-Risk Health Coverage Organizations

A state-sponsored organization established to provide medical care to high-risk individuals applies on Form 1024 for recognition of exemption from federal income tax under section 501(c)(26).

To qualify for exemption, the organization must be a membership organization established by a state exclusively to provide coverage for medical care on a nonprofit basis to high-risk individuals who are state residents. It can provide coverage either by issuing insurance itself or by entering into an arrangement with a health maintenance organization (HMO).

The state must determine the composition of membership in the organization. No part of the net earnings of the organization can inure to the benefit of any private shareholder or individual.

**High-risk individuals.** These are individuals, their spouses, and qualifying children, who, because of a pre-existing medical condition:

1. Can't get medical care coverage for that condition through insurance or an HMO, or
2. Can get coverage for that condition only at a rate that is substantially higher than the rate for the same coverage from the state-sponsored organization.

## 501(c)(27) - Qualified State-Sponsored Workers' Compensation Organizations

**501(c)(27)(A) -- Pre-June 1, 1996, Organizations.** A state-sponsored workers' compensation reinsurance organization applies on Form 1024 for recognition of exemption from federal income tax under section 501(c)(27).

To qualify for exemption, any membership organization must meet all the following requirements.

1. It was established by a state before June 1, 1996, exclusively to reimburse its members for losses under workers' compensation acts.
2. The state requires that the membership consist of all persons who issue insurance covering workers' compensation losses in the state and all persons and government entities who self-insure against those losses.
3. It operates as a nonprofit organization by returning surplus income to its members or workers' compensation policyholders on a periodic basis and by reducing initial premiums in anticipation of investment income.

**501(c)(27)(B) -- Organizations formed after December 31, 1997.** Any organization (including a mutual insurance company) can qualify for exemption if it meets all of the following requirements.

1. It is created by state law and is organized and operated under state law exclusively to:
  - a. Provide workmen's compensation insurance which is required by state law or state law must provide significant disincentives if employers fail to purchase such insurance, and
  - b. Provide related coverage which is incidental to workmen's compensation insurance.
2. It provides workmen's compensation insurance to any employer in the state (for employees in the state or temporarily assigned out-of-state) which seeks such insurance and meets other reasonable requirements relating to the insurance.
3. The state makes a financial commitment to such organization either by extending its full faith and credit to the initial debt of the organization or by providing the initial operating capital of the organization.
4. The assets of the organization revert to the state upon dissolution or the organization isn't permitted to dissolve under state law.
5. The majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the state, by the state legislature, or by both.

## 501(c)(29) - CO-OP Health Insurance Issuers

This includes a qualified nonprofit health insurance issuer which has received a loan or grant under the CO-OP Program under this section of the Code.

## Guidance for Section 501(c)(29) Qualified Nonprofit Health Insurance Issuers

Section 501(c)(29), added to the Code by section 1322(h)(1) of the Affordable Care Act, provides for the exemption of qualified nonprofit health insurance issuers (QNHIIs) that have received a loan or grant under the Centers for Medicare and Medicaid Services (CMS) CO-OP program for periods that they meet both the requirements of section 1322 of the Affordable Care Act and of any loan agreement with CMS. The CO-OP program provides loans and repayable grants to foster the creation of member governed QNHIIs that will operate with a strong consumer focus and offer qualified health insurance plans. Notice 2011-23, 2011-13 I.R.B. 588, discussed requirements for tax exemption for QNHIIs described in Internal Revenue Code section 501(c)(29). The Notice provides guidance on the annual filing requirement for organizations that intend to apply for recognition of section 501(c)(29) status and modified and superseded by Rev. Proc. 2023-8. Under Rev. Proc. 2023-8, an organization applying for recognition of exemption from federal income tax under section 501(c)(29) applies on Form 1024. Rev. Proc. 2015-17, 2015-7 I.R.B. 599, sets out the procedures for issuing determination letters on the exempt status of QNHIIs and provides guidance on the effective date of exempt status. [Rev. Proc. 2015-17](#), supplemented by [Rev. Proc. 2023-5](#) exemption from federal income tax under section 501(c)(29) applies on Form 1024.

## General Requirements for Exemption under 501(c)(29) and Annual Filing Requirement

In general, section 501(c)(29) applies to certain organizations receiving loans or repayable grants under the CO-OP program. An organization will qualify for exemption under section 501(c)(29) only if:

- The organization has received a loan or a repayable grant under the CO-OP program and is in compliance with all requirements of the CO-OP program and any agreement with CMS;
- The organization has applied for recognition of exemption;
- No part of the organization's net earnings inures to the benefit of any private shareholder or individual, except that the organization is required by section 1322(c)(4) of the Affordable Care Act to use its profits to lower premiums, improve benefits or improve the quality of health care delivered to its members;
- No substantial part of the organization's activities involves attempts to influence legislation; and



- The organization doesn't participate or intervene in political campaigns. See Rev. Proc. 2015-17 for complete instructions for filing exemption applications.

## Additional Guidance for Prospective 501(c)(29) Organizations

An organization claiming exempt status under section 501(c)(29) that intends to file an application for recognition of exemption should begin filing Form 990, Return of Organization Exempt from Income Tax, and indicate on its return that it has not yet received a determination letter. In addition to the general information required on Form 990, these organizations must report certain information regarding required reserves.

## 5.

# Excise Taxes

## Introduction

An excise tax may be imposed on certain tax-exempt organizations.

### Topics

This chapter discusses:

- Prohibited tax shelter transactions
- Excess benefit transactions
- Excess business holdings
- Taxable distributions of sponsoring organizations
- Taxes on prohibited benefits distributed from donor advised funds
- Excise taxes on private foundations
- Excise taxes on section 501(c)(21) black lung benefit trusts
- Excise Tax on Failure to Meet the Community Health Needs Assessment Requirements of Hospitals
- Excise tax on excess tax-exempt organization executive compensation
- Excise tax on net investment income of private colleges and universities

### Useful Items

You may want to see:

#### Forms (and Instructions)

- **4720** Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code

See chapter 6 for more information about getting Form 4720.

## Prohibited Tax Shelter Transactions

Section 4965 imposes an excise tax on:

- Certain tax-exempt entities that are party to prohibited tax shelter transactions, and
- Any entity manager who approves or otherwise causes the entity to be a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction.

Additionally, section 6033 provides new disclosure requirements on a tax-exempt entity that is a party to a prohibited tax shelter transaction.

**Tax-exempt entities.** Tax-exempt entities that are subject to section 4965 include:

1. Entities described in section 501(c), including but not limited to the following common types of entities:
  - a. Instrumentalities of the United States described in section 501(c)(1);
  - b. Churches, hospitals, museums, schools, scientific research organizations, and other charities described in section 501(c)(3);
  - c. Civic leagues, social welfare organizations, and local associations of employees described in section 501(c)(4);
  - d. Labor, agricultural, or horticultural organizations described in section 501(c)(5);
  - e. Business leagues, chambers of commerce, trade associations, and other organizations described in section 501(c)(6);
  - f. Voluntary employees' beneficiary associations (VEBAs) described in section 501(c)(9);
  - g. Credit unions described in section 501(c)(14);
  - h. Insurance companies described in section 501(c)(15); and
  - i. Veterans' organizations described in section 501(c)(19).
2. Religious or apostolic associations or corporations described in section 501(d).
3. Entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States).
4. Indian tribal governments within the meaning of section 7701(a)(40).

**Entity manager.** An entity manager is any person with authority or responsibility similar to that exercised by an officer, director, or trustee, and, for any act, the person that has authority or responsibility with respect to the prohibited transaction.

**Prohibited tax shelter transaction.** A prohibited tax shelter transaction is any listed transaction, within the meaning of section 6707A(c)(2), and any prohibited reportable transactions. A prohibited reportable transaction is a confidential transaction within the meaning of Regulations section 1.6011-4(b)(3), and a transaction with contractual protection within the meaning of Regulations section 1.6011-4(b)(4). See the Instructions for Form 8886-T for more information on listed transactions and prohibited reportable transactions.

**Subsequently listed transaction.** Any transaction to which the tax-exempt entity is a party and is later determined to be a listed transaction after the entity has become a party to it, is a subsequently listed transaction.

## Entity Level Tax

Section 4965(a)(1) imposes an entity level excise tax on any tax-exempt entity described in 1, 2, 3, or 4 above that becomes a party to a prohibited tax shelter transaction or is a party to a subsequently listed transaction (defined earlier). The excise tax imposed on a tax-exempt entity applies to tax years in which the entity becomes a party to the prohibited tax shelter transaction and any subsequent tax years. The amount of the excise tax depends on whether the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time it became a party to the transaction.

To figure and report the excise tax imposed on a tax-exempt entity for being a party to a prohibited tax shelter transaction, file Form 4720.

For more information about this excise tax, including information about how it is figured, see the Instructions for Form 4720.

## Manager Level Tax

Section 4965(a)(2) imposes an excise tax on any tax-exempt entity manager who approves or otherwise causes the entity to be a party to a prohibited tax shelter transaction and knows (or has reason to know) that the transaction is a prohibited tax shelter transaction. The excise tax, in the amount of \$20,000, is assessed for each approval or other act causing the organization to be a party to the prohibited tax shelter transaction. To report this tax, file Form 4720.

## Excess Benefit Transactions

**Excise tax on excess benefit transactions.** A disqualified person who benefits from an excess benefit transaction, such as compensation, fringe benefits, or contract payments from certain section 501(c)(3), 501(c)(4), or 501(c)(29) organizations, must correct the transaction and may have to pay an excise tax under section 4958. A manager of the organization may also have to pay an excise tax under section 4958. These taxes are reported on Form 4720.

The excise taxes are imposed if an applicable tax-exempt organization provides an excess

benefit to a disqualified person and that benefit exceeds the value of the benefit received in exchange.

There are three taxes under section 4958. Disqualified persons are liable for the first two taxes and certain organization managers are liable for the third tax.

Taxes imposed on excess benefit transactions don't apply to a transaction under a written contract that was binding on September 13, 1995, and at all times thereafter before the transaction occurred.

## Tax on Disqualified Persons

An excise tax equal to 25% of the excess benefit is imposed on each excess benefit transaction between an applicable tax-exempt organization and a disqualified person. The disqualified person who benefited from the transaction is liable for the tax. See definition of disqualified person, later at [Disqualified person](#).

**Additional tax on the disqualified person.** If the 25% tax is imposed and the excess benefit transaction isn't corrected within the taxable period, an additional excise tax equal to 200% of the excess benefit is imposed on any disqualified person involved.

If a disqualified person makes a payment of less than the full correction amount, the 200% tax is imposed only on the unpaid portion of the correction amount. If more than one disqualified person received an excess benefit from an excess benefit transaction, all such disqualified persons are jointly and severally liable for the taxes.

To avoid the 200% tax, a disqualified person must correct the excess benefit transaction during the taxable period. The 200% tax is abated (refunded if collected) if the excess benefit transaction is corrected within a 90-day correction period beginning on the date a statutory notice of deficiency is issued.

**Taxable period.** The taxable period means the period beginning with the date on which the excess benefit transaction occurs and ending on the earlier of:

- The date a notice of deficiency was mailed to the disqualified person for the initial tax on the excess benefit transaction, or
- The date on which the initial tax on the excess benefit transaction for the disqualified person is assessed.

## Tax on Organization Managers

If tax is imposed on a disqualified person for any excess benefit transaction, an excise tax equal to 10% of the excess benefit is imposed on an organization manager who knowingly participated in an excess benefit transaction, unless such participation wasn't willful and was due to reasonable cause. This tax can't exceed \$20,000 (\$10,000 for transactions entered in a tax year beginning before August 18, 2006), for each transaction. There is also joint and several liability for this tax. A person can be liable for both the tax paid by the disqualified person and the organization manager tax for a particular excess benefit transaction.

**Organization manager.** An organization manager is any officer, director, or trustee of an applicable tax-exempt organization, or any individual having powers or responsibilities similar to officers, directors, or trustees of the organization, regardless of title. An organization manager isn't considered to have participated in an excess benefit transaction where the manager has opposed the transaction in a manner consistent with the fulfillment of the manager's responsibilities to the organization. For example, a director who votes against giving an excess benefit would ordinarily not be subject to the 10% tax.

A person participates in a transaction knowingly if the person:

- Has actual knowledge of sufficient facts so that, based solely upon those facts, such transaction would be an excess benefit transaction;
- Is aware that such a transaction under these circumstances may violate the provisions of federal tax law governing excess benefit transactions; and
- Negligently fails to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction, or the manager is in fact aware that it is such a transaction.

Knowing doesn't mean having reason to know. The organization manager ordinarily won't be considered knowing if, after full disclosure of the factual situation to an appropriate professional, the organization manager relied on the professional's reasoned written opinion on matters within the professional's expertise or if the manager relied on the fact that the requirements for the rebuttable presumption of reasonableness have been satisfied. Participation by an organization manager is willful if it is voluntary, conscious, and intentional. An organization manager's participation is due to reasonable cause if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence.

## Excess Benefit Transaction

An excess benefit transaction is a transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of any disqualified person, and the value of the economic benefit provided by the organization exceeds the value of the consideration (including the performance of services) received for providing such benefit. The excess benefit transaction rules apply to all transactions with disqualified persons, regardless of whether the amount of the benefit provided is determined in whole or in part by the revenues of one or more activities of the organization.

To determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization, and all entities it controls, are taken into account. For purposes of determining the value of economic benefits, the value of property, including the right to use property, is the fair market value. Fair market value is the price at which property, or the right to use property, would

change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to use property, and both having reasonable knowledge of relevant facts.

**Donor advised fund transactions occurring after August 17, 2006.** For a donor advised fund, an excess benefit transaction includes a grant, loan, compensation, or other similar payment from the fund to a:

- Donor or donor advisor;
- Family member of a donor, or donor advisor;
- 35% controlled entity of a donor, or donor advisor; or
- 35% controlled entity of a family member of a donor, or donor advisor.

The excess benefit in this transaction is the amount of the grant, loan, compensation, or other similar payment. For additional information, see the Instructions for Form 4720.

**Supporting organization transactions occurring after July 25, 2006.** For any supporting organization, defined in section 509(a)(3), an excess benefit transaction includes grants, loans, compensation, or other similar payment provided by the supporting organization to a:

- Substantial contributor,
- Family member of a substantial contributor,
- 35% controlled entity of a substantial contributor, or
- 35% controlled entity of a family member of a substantial contributor.

Additionally, an excess benefit transaction includes any loans provided by the supporting organization to a disqualified person (other than an organization described in section 509(a)(1), (2), or (4)).

The excess benefit for substantial contributors and parties related to those contributors includes the amount of the grant, loan, compensation, or other similar payment. For additional information, see the Instructions for Form 4720.

Excess benefit transaction rules generally don't apply to transactions between a supporting organization and its supporting organization described in section 501(c)(4), (5), or (6) in furtherance of charitable purposes.

## Date of Occurrence

An excess benefit transaction occurs on the date the disqualified person receives the economic benefit from the organization for federal income tax purposes. However, when a single contractual arrangement provides for a series of compensation or other payments to or for the use of a disqualified person during the disqualified person's tax year, any excess benefit transaction with respect to these payments occurs on the last day of the taxpayer's tax year.

In the case of benefits provided to a qualified pension, profit-sharing, or stock bonus plan, the transaction occurs on the date the benefit is vested. In the case of the transfer of property subject to a substantial risk of forfeiture, or in the case of rights to future compensation or property, the transaction occurs on the date the property, or the rights to future

compensation or property, isn't subject to a substantial risk of forfeiture. Where the disqualified person elects to include an amount in gross income in the tax year of transfer under section 83(b), the excess benefit transaction occurs on the date the disqualified person receives the economic benefit for federal income tax purposes.

**Correcting the excess benefit.** An excess benefit transaction is corrected by undoing the excess benefit to the extent possible, and by taking any additional measures necessary to place the organization in a financial position not worse than what it would have been if the disqualified person were dealing under the highest fiduciary standards.

A disqualified person corrects an excess benefit by making a payment in cash or cash equivalents, excluding payment by a promissory note, equal to the correction amount to the applicable tax-exempt organization. The correction amount equals the excess benefit plus the interest on the excess benefit. The interest rate can be no lower than the applicable federal rate, compounded annually, for the month the transaction occurred.

A disqualified person can, with the agreement of the applicable tax-exempt organization, make a payment by returning the specific property previously transferred in the excess transaction. In this case, the disqualified person is treated as making a payment equal to the lesser of:

- The fair market value of the property on the date the property is returned to the organization, or
- The fair market value of the property on the date the excess benefit transaction occurred.

If the payment resulting from the return of property is less than the correction amount, the disqualified person must make an additional cash payment to the organization equal to the difference.

If the payment resulting from the return of the property exceeds the correction amount described above, the organization can make a cash payment to the disqualified person equal to the difference.

**Exception.** For a correction of an excess benefit transaction (discussed earlier), no amount repaid in a manner prescribed by the Secretary can be held in a donor advised fund.

## Applicable Tax-Exempt Organization

An applicable tax-exempt organization is a section 501(c)(3), 501(c)(4), or 501(c)(29) organization that is tax-exempt under section 501(a), or was such an organization at any time during a 5-year period ending on the day of the excess benefit transaction.

An applicable tax-exempt organization doesn't include:

1. A private foundation as defined in section 509(a),
2. A governmental entity that is:

- a. Exempt from (or not subject to) taxation without regard to section 501(a), or
  - b. Not required to file an annual return, or
3. A foreign organization, recognized by the IRS or by treaty, that receives substantially all of its support (other than gross investment income) from sources outside the United States.

An organization isn't treated as a section 501(c)(3), 501(c)(4), or 501(c)(29) organization for any period covered by a final determination that the organization wasn't tax-exempt under section 501(a), but only if the determination wasn't based on private inurement or one or more excess benefit transactions.

## Disqualified Person

A disqualified person is:

- Any person (at any time during the 5-year period ending on the date of the transaction) in a position to exercise substantial influence over the affairs of the organization,
- A family member of an individual described in (1), and
- A 35% controlled entity.

### For donor advised funds, sponsoring organizations, and certain supporting organizations occurring after August 17, 2006.

The following persons will be considered disqualified persons along with certain family members and 35% controlled entities associated with them.

- Donors of donor advised funds,
- Investment advisors of sponsoring organizations, and
- Disqualified persons of a section 509(a)(3) supporting organization that supports the applicable tax-exempt organization.

### For certain supporting organization transactions occurring after July 25, 2006.

Substantial contributors to supporting organizations will also be considered disqualified persons with respect to the supporting organizations, along with their family members and 35% controlled entities.

**Investment advisor.** Investment advisor means for any sponsoring organization, any person compensated by such organization (but not an employee of such organization) for managing the investment of, or providing investment advice for, assets maintained in donor advised funds owned by such sponsoring organization.

**Substantial contributor.** In general, a substantial contributor means any person who contributed or bequeathed an aggregate of more than \$5,000 to the organization, if that amount is more than 2% of the total contributions and bequests received by the end of the organization's tax year in which the contribution or bequest is received. A substantial contributor includes the grantor of a trust.

**Family members.** Family members of a disqualified person include a disqualified person's spouse, brothers or sisters (whether by whole or half-blood), spouses of brothers or sisters

(whether by whole or half-blood), ancestors, children (including a legally adopted child), grandchildren, great grandchildren, and spouses of children, grandchildren, and great grandchildren (whether by whole or half-blood).

**35% controlled entity.** A 35% controlled entity is:

1. A corporation in which disqualified persons own more than 35% of the total combined voting power,
2. A partnership in which such persons own more than 35% of the profits interest, or
3. A trust or estate in which such persons own more than 35% of the beneficial interest.

In determining the holdings of a business enterprise, any stock or other interest owned directly or indirectly shall apply.

### Persons having substantial influence.

Among those who are in a position to exercise substantial influence over the affairs of the organization are, for example, voting members of the governing body, and persons holding the power of:

- Presidents, chief executives, or chief operating officers;
- Treasurers and chief financial officers; or
- Persons with a material financial interest in a provider-sponsored organization.

**Persons not considered to have substantial influence.** Persons who aren't considered to be in a position to exercise substantial influence over the affairs of an organization include:

- An employee who receives benefits that total less than the highly compensated amount in section 414(q)(1)(B)(i) and who doesn't hold the executive or voting powers mentioned earlier in the discussion on [Disqualified Person](#), isn't a family member of a disqualified person, and isn't a substantial contributor,
- Tax-exempt organizations described in section 501(c)(3), and
- Section 501(c)(4) organizations with respect to transactions engaged in with other section 501(c)(4) organizations.

**Facts and circumstances.** The determination of whether a person has substantial influence over the affairs of an organization is based on all the facts and circumstances. Facts and circumstances that tend to show a person has substantial influence over the affairs of an organization include, but aren't limited to, the following.

- The person founded the organization.
- The person is a substantial contributor to the organization under the section 507(d) (2)(A) definition, only taking into account contributions to the organization for the past 5 years.
- The person's compensation is primarily based on revenues derived from activities of the organization that the person controls.
- The person has or shares authority to control or determine a substantial portion of



the organization's capital expenditures, operating budget, or compensation for employees.

- The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole.
- The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person.
- The person is a nonstock organization controlled directly or indirectly by one or more disqualified persons.

Facts and circumstances tending to show that a person doesn't have substantial influence over the affairs of an organization include, but aren't limited to, the following.

- The person has taken a bona fide vow of poverty as an employee or agent of a religious organization or on its behalf.
- The person is an independent contractor whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the independent contractor won't economically benefit either directly or indirectly aside from customary fees received for the professional advice rendered.
- Any preferential treatment the person receives based on the size of the person's donation is also offered to others making comparable widely solicited donations.
- The direct supervisor of the person isn't a disqualified person.
- The person doesn't participate in any management decisions affecting the organization as a whole or a discrete segment of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole.

In the case of multiple organizations affiliated by common control or governing documents, the determination of whether a person does or doesn't have substantial influence is made separately for each applicable tax-exempt organization. A person may be a disqualified person with respect to transactions with more than one organization.

**Reasonable compensation.** Reasonable compensation is the value that would ordinarily be paid for like services by like enterprises under like circumstances. The section 162 standard will apply in determining the reasonableness of compensation. The fact that a bonus or revenue-sharing arrangement is subject to a cap is a relevant factor in determining reasonableness of compensation.

To determine the reasonableness of compensation, all items of compensation provided by an applicable tax-exempt organization in exchange for performance of services are taken into account in determining the value of compensation (except for economic benefits that

are disregarded under the discussion [Disregarded benefits](#), later). Items of compensation include:

- All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred noncash compensation;
- The payment of liability insurance premiums for, or the payment or reimbursement by the organization of penalties, taxes, or certain expenses under section 4958, unless excludable from income as a de minimis fringe benefit under section 132(a)(4);
- All other compensatory benefits, whether or not included in gross income for income tax purposes;
- Taxable and nontaxable fringe benefits, except fringe benefits described in section 132; and
- Foregone interest on loans.

#### **Intent to treat benefits as compensation.**

An economic benefit isn't treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid.

An applicable tax-exempt organization (or entity that it controls) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefits under consideration. Ways to provide contemporaneous written substantiation of its intent to provide an economic benefit as compensation include:

- The organization produces a signed written employment contract;
- The organization reports the benefit as compensation on an original Form W-2, Form 1099, or Form 990, or on an amended form filed before starting an IRS examination; or
- The disqualified person reports the benefit as income on the person's original Form 1040 or 1040-SR, or on an amended form filed before starting an IRS examination.

**Exception.** If the economic benefit is excluded from the disqualified person's gross income for income tax purposes, the applicable tax-exempt organization isn't required to indicate its intent to provide an economic benefit as compensation for services.

**Rebuttable presumption that a transaction isn't an excess benefit transaction.** Payments under a compensation arrangement are presumed to be reasonable and the transfer of property (or right to use property) is presumed to be at fair market value, if the following three conditions are met.

1. The transaction is approved in advance by an authorized body of the organization (or an entity it controls) which is composed of individuals who don't have a conflict of interest concerning the transaction.
2. Before making its determination, the authorized body obtained and relied upon appropriate data as to comparability. (There is a special safe harbor for small organizations. If the organization has

gross receipts of less than \$1 million, appropriate comparability data includes data on compensation paid by three comparable organizations in the same or similar communities for similar services.)

3. The authorized body adequately documents the basis for its determination concurrently with making that determination. The documentation should include:
  - a. The terms of the approved transaction and the date approved,
  - b. The members of the authorized body who were present during debate on the transaction that was approved and those who voted on it,
  - c. The comparability data obtained and relied upon by the authorized body and how the data was obtained,
  - d. Any actions by a member of the authorized body having conflict of interest, and
  - e. Documentation of the basis of the determination before the later of the next meeting of the authorized body or 60 days after the final actions of the authorized body are taken, and approval of records as reasonable, accurate, and complete within a reasonable time thereafter.

**Disregarded benefits.** The following economic benefits are disregarded for section 4958 purposes.

- Nontaxable fringe benefits that are excluded from income under section 132.
- Benefits provided to a volunteer for the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of \$75 or less.
- Benefits provided to a member of an organization due to the payment of a membership fee or to a donor as a result of a deductible contribution, if a significant number of disqualified persons make similar payments or contributions and are offered a similar economic benefit.
- Benefits provided to a person solely as a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of its exempt purpose.
- A transfer of an economic benefit to or for the use of a governmental unit, as defined in section 170(c)(1), if exclusively for public purposes.

#### **Special exception for initial contracts.**

Section 4958 doesn't apply to any fixed payment made to a person under an initial contract.

A fixed payment is an amount of cash or other property specified in the contract, or determined by a fixed formula that is specified in the contract, which is to be paid or transferred in exchange for the provision of specified services or property.

A fixed formula can, generally, incorporate an amount that depends upon future specified events or contingencies, as long as no one has discretion when calculating the amount of a payment or deciding whether to make a payment (such as a bonus).

An initial contract is a binding written contract between an applicable tax-exempt organization and a person who wasn't a disqualified person immediately before entering into the contract.

A binding written contract, providing it can be terminated or canceled by the applicable tax-exempt organization without the other party's consent (except as a result of substantial nonperformance) and without substantial penalty, is treated as a new contract, as of the earliest date any termination or cancellation would be effective. Also, if the parties make a material change to a contract, which includes an extension or renewal of the contract (except for an extension or renewal resulting from the exercise of an option by the disqualified person), or a more than incidental change to the amount payable under the contract, it is treated as a new contract as of the effective date of the material change.

**More information.** For more information, see the Instructions for Forms 990 and 4720.

## Excess Business Holdings

**General rule.** Private foundations are generally not permitted to hold more than a 20% interest in an unrelated business enterprise. They may be subject to an excise tax on the amount of any excess business holdings. For purposes of section 4943, for tax years beginning after August 17, 2006, donor advised funds and certain supporting organizations are considered private foundations.

**Exception under section 4943(g).** Section 4943(g) added by the Bipartisan Budget Act of 2018, P.L. No. 115-123, 132 Stat. 64 (2018), provides an exception for certain limited holdings to independently operated businesses. In general, the excess business holdings provisions of section 4943(a) shall not apply with respect to the holdings of a private foundation in any business enterprise which meets all the requirements of section 4943(g)(2), (3), and (4).

The requirements of section 4943(g)(2) are met if:

1. 100% of the voting stock in the business enterprise is held by the private foundation at all times during the tax year, and
2. All of the private foundation's ownership interests were acquired by means other than purchase, such as a gift or bequest.

The requirements of section 4943(g)(3) are met if the business enterprise, no later than 120 days after the close of the tax year, distributes an amount equal to its net operating income for such tax year to the private foundation. For purposes of section 4943(g), the net operating income of any business enterprise for any tax year is an amount equal to the gross income of the business enterprise for the tax year, reduced by the sum of:

1. The deductions allowed by chapter 1 of the Code for the tax year that are directly

connected with the production of such income,

2. The tax imposed by chapter 1 of the Code on the business enterprise for the tax year, and
3. An amount for a reasonable reserve for working capital and other business needs of the business enterprise.

The requirements of section 4943(g)(4) are met if, at all times during the tax year:

1. No substantial contributor (as defined in section 4958(c)(3)(C)) to the private foundation or family member (as determined under section 4958(f)(4)) of such a contributor is a director, officer, trustee, manager, employee, or contractor of the business enterprise (or an individual having powers or responsibilities similar to any of the foregoing);
2. At least a majority of the board of directors of the private foundation are persons who are not (i) directors or officers of the business enterprise, or (ii) family members of a substantial contributor to the private foundation; and
3. There is no loan outstanding from the business enterprise to a substantial contributor to the private foundation or to any family member of such a contributor.

This provision does not apply to any donor advised fund treated as a private foundation by section 4943(e), a supporting organization treated as a private foundation by section 4943(f), a trust described in section 4947(a)(1), or a trust described in section 4947(a)(2).

Section 4943(g) shall apply to tax years beginning after December 31, 2017.

**Donor advised fund.** In general, a donor advised fund is a fund or account separately identified by reference to contributions of a donor or donors that is owned and controlled by a sponsoring organization and for which the donor has or expects to have advisory privileges concerning the distribution or investment of the funds.

**Supporting organizations.** Only certain supporting organizations are subject to the excess business holdings tax under section 4943. These include (1) Type III supporting organizations that aren't functionally integrated and (2) Type II supporting organizations that accept any gift or contribution from a person who alone or in connection with a related party controls the supported organization that the Type II supporting organization supports.

**Taxes.** A private foundation that has excess holdings in a business enterprise may become liable for an excise tax based on the amount of holdings. The initial tax is 10% (5% for tax years beginning before August 18, 2006) of the value of the excess holdings and is imposed on the last day of each tax year that ends during the taxable period. The excess holdings are determined on the day during the tax year when they were the largest.

A foundation that fails to correct the excess business holdings becomes liable for an additional tax of 200% of the remaining excess business holdings as of the earlier of tax assessment or mailing of a notice of deficiency.

For more information on the tax on excess business holdings, see the Instructions for Form 4720.

## Taxable Distributions of Sponsoring Organizations

An excise tax under section 4966 is imposed on a sponsoring organization for each taxable distribution it makes from a donor advised fund. An excise tax is also imposed on any fund manager of the sponsoring organization who agreed to the making of a distribution, knowing that it is a taxable distribution.

**Taxable distribution.** A taxable distribution is any distribution from a donor advised fund to any natural person or to any other person if:

1. The distribution is for any purpose other than one specified in section 170(c)(2)(B), or
2. The sponsoring organization maintaining the donor advised fund doesn't exercise expenditure responsibility with respect to the distribution in accordance with section 4945(h).

However, a taxable distribution doesn't include a distribution from a donor advised fund to:

- Any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),
- The sponsoring organization of the donor advised fund, or
- Any other donor advised fund.

The tax on taxable distributions applies to distributions occurring in tax years beginning after August 17, 2006.

**Sponsoring organization.** A sponsoring organization is a section 170(c) organization that is neither a government organization (as referred to in section 170(c)(1) and (2)(A)) nor a private foundation.

**Donor advised fund.** A donor advised fund is a fund or account:

1. Which is separately identified by reference to contributions of a donor or donors,
2. Which is owned and controlled by a sponsoring organization, and
3. For which the donor (or any person appointed or designated by the donor) has or expects to have advisory privileges concerning the distribution or investment of the funds held in the donor advised funds or accounts because of the donor's status as a donor.

**Exception. A donor advised fund doesn't include:**

1. A fund or account that makes distributions only to a single identified organization or governmental entity; or
2. Any fund or account for a person described in 3 above that gives advice about which individuals receive grants for travel, study, or similar purposes, if the following three requirements are met:
  - a. The person's advisory privileges are performed exclusively by such person in their capacity as a committee member of which all the committee members are appointed by the sponsoring organization,
  - b. No combination of persons with advisory privileges, described in 3 above, or persons related to those in 3 above directly or indirectly control the committee, and
  - c. All grants from the fund or account are awarded on an objective and nondiscriminatory basis according to a procedure approved in advance by the board of directors of the sponsoring organization. The procedure must be designed to ensure that all grants meet the requirements of section 4945(g)(1), (2), or (3).

**Disqualified supporting organization.** A disqualified supporting organization includes (1) a Type III supporting organization that isn't functionally integrated, and (2) any supporting organization where the donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the supporting organization.

**Tax on sponsoring organization.** A tax of 20% of the amount of each taxable distribution is imposed on the sponsoring organization.

**Tax on fund manager.** If a tax is imposed on a taxable distribution of the sponsoring organization, a tax of 5% of the distribution will be imposed on any fund manager who agreed to the distribution knowing that it was a taxable distribution. Any fund manager who took part in the distribution and is liable for the tax must pay the tax. The maximum amount of tax on all fund managers for any one taxable distribution is \$10,000. If more than one fund manager is liable for tax on a taxable distribution, all such managers are jointly and severally liable for the tax.

For more information on the tax on taxable distributions of sponsoring organizations, see the Instructions for Form 4720.

## Taxes on Prohibited Benefits Resulting from Donor Advised Fund Distributions

**Prohibited benefit.** If any donor, donor advisor, or related party advises the sponsoring organization about making a distribution which results in a donor, donor advisor, or related party receiving (either directly or indirectly) a more than incidental benefit, then such benefit is a prohibited benefit. The tax on prohibited benefits applies to distributions occurring in tax years beginning after August 17, 2006.

**Donor advisor.** A donor advisor is any person appointed or designated by a donor to advise a sponsoring organization on the distribution or investment of amounts held in the donor's fund or account.

**Related party.** A related party includes any family member or 35% controlled entity. See the definition of those terms under [Disqualified Person](#), earlier.

**Tax on donor, donor advisor, or related person.** A tax of 125% of the benefit resulting from the distribution is imposed on both the party who advised as to the distribution (which might be a donor, donor advisor, or related party) and the party who received such benefit (which might be a donor, donor advisor, or related party). The advisor and the party who received the benefit are jointly and severally liable for the tax.

**Tax on fund managers.** If a tax is imposed on a prohibited benefit received by a donor, donor advisor, or related person, a tax of 10% of the amount of the prohibited benefit is imposed on any fund manager who agreed to the distribution knowing that it would confer a prohibited benefit. Any fund manager who took part in the distribution and is liable for the tax must pay the tax. The maximum amount of tax on all fund managers for any one taxable distribution is \$10,000. If more than one fund manager is liable for tax on a taxable distribution, all such managers are jointly and severally liable for the tax.

**Exception.** If a person engaged in an excess benefit transaction and received a prohibited benefit for the same transaction, the person is taxed under section 4958, and no tax is imposed under section 4967 for a prohibited benefit.

For more information on taxes on prohibited benefits distributed from donor advised funds, see the Instructions for Form 4720.

## Excise Taxes on Private Foundations

There is an excise tax on the net investment income of most domestic private foundations. Capital gains from appreciation are included in

the tax base on private foundation net investment income. This tax must be reported on Form 990-PF and must be paid annually at the time for filing that return or in quarterly estimated tax payments if the total tax for the year (section 4940 tax minus credits) is \$500 or more. Form 990-W is used to calculate the estimated tax.

In addition, there are several other rules that apply to excise taxes on private foundations. These include:

1. Restrictions on self-dealing between private foundations and their substantial contributors and other disqualified persons,
2. Requirements that the foundation annually distribute income for charitable purposes,
3. Limits on their holdings in any business enterprise (see [Excess Business Holdings](#), earlier),
4. Provisions that investments mustn't jeopardize the carrying out of exempt purposes, and
5. Provisions to assure that expenditures further the organization's exempt purposes.

Violations of these provisions give rise to taxes and penalties against the private foundation and, in some cases, its managers, its substantial contributors, and certain related persons.

For more information on the excise taxes imposed on private foundations, see the Instructions for Form 4720 and the Instructions for Form 990-PF.

## Excise Taxes on Black Lung Benefit Trusts

A black lung benefit trust that makes any expenditures, payments, or investments other than those described in chapter 4 under [501\(c\)\(21\) - Black Lung Benefit Trusts](#) must pay a tax equal to 10% of the amount of such expenditures. If there are any acts of self-dealing between the trust and a disqualified person, a tax equal to 10% of the amount involved is imposed on the disqualified person. Both of these excise taxes are reported on Form 6069. See the Instructions for Form 6069 and Form 990 for more information on these taxes and what has to be filed, even if the trust is excepted from filing.

## Excise Tax on Failure To Meet the Community Health Needs Assessment Requirements

For tax years beginning after March 23, 2012, new section 4959 imposes an excise tax on hospital organizations which fail to meet certain section 501(r) requirements for each of their hospital facilities. These entities must meet section 501(r)(3) requirements at all times during



their tax year. Section 501(r)(3) requirements pertain to a hospital organization preparing a community health needs assessment (CHNA). See Schedule H, Hospitals (Form 990), for details.

## Excise Tax on Executive Compensation

New section 4960 imposes an excise tax on an organization that pays to any covered employee more than \$1 million in remuneration or pays an excess parachute payment during the year starting in 2018. See section 4960 and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, final regulations TD 9938 (Regulations sections 53.4960-0 through 53.4960-6), and Notice 2019-09, 2019-04 I.R.B. 403, for more information.

## Excise Tax on Net Investment Income of Certain Colleges and Universities

New section 4968 imposes an excise tax on the net investment income of certain private colleges and universities. A private college or university will be subject to the excise tax on net investment income under section 4968 if four tests are met.

1. The organization must be an eligible educational institution as defined in section 25A(f)(2). Section 25A(f)(2) defines "eligible educational institution" as an institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. section 1088), as in effect on August 5, 1997, and is eligible to participate in a program under Title IV of such Act (20 U.S.C. sections 1070 et seq.).
2. The organization must have had at least 500 tuition-paying students, based upon a daily average student count, during the preceding tax year.
3. More than 50% of those students must have been located in the United States.
4. The aggregate fair market value, at the end of the preceding tax year, of the assets not used directly in carrying out the organization's exempt purpose, held by the organization and related organizations, must be at least \$500,000 per student.

See the Instructions for Form 990, Part V, Line 16 for more information about organizations subject to the excise tax. See Instructions for Form 4720, Schedule O, and final regulations TD 9917 (Regulations sections 53.4968-1 through 53.4968-4) for more information about calculating the excise tax.

## How To Get Tax Help

If you have questions about a tax issue; need help preparing your tax return; or want to download free publications, forms, or instructions, go to [IRS.gov](https://www.irs.gov) to find resources that can help you right away.

**Preparing and filing your tax return.** After receiving all your wage and earnings statements (Forms W-2, W-2G, 1099-R, 1099-MISC, 1099-NEC, etc.); unemployment compensation statements (by mail or in a digital format) or other government payment statements (Form 1099-G); and interest, dividend, and retirement statements from banks and investment firms (Forms 1099), you have several options to choose from to prepare and file your tax return. You can prepare the tax return yourself, see if you qualify for free tax preparation, or hire a tax professional to prepare your return.

**Free options for tax preparation.** Go to [IRS.gov](https://www.irs.gov) to see your options for preparing and filing your return online or in your local community, if you qualify, which include the following.

- **Free File.** This program lets you prepare and file your federal individual income tax return for free using brand-name tax-preparation-and-filing software or Free File fillable forms. However, state tax preparation may not be available through Free File. Go to [IRS.gov/FreeFile](https://www.irs.gov/FreeFile) to see if you qualify for free online federal tax preparation, e-filing, and direct deposit or payment options.
- **VITA.** The Volunteer Income Tax Assistance (VITA) program offers free tax help to people with low-to-moderate incomes, persons with disabilities, and limited-English-speaking taxpayers who need help preparing their own tax returns. Go to [IRS.gov/VITA](https://www.irs.gov/VITA), download the free IRS2Go app, or call 800-906-9887 for information on free tax return preparation.
- **TCE.** The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors. Go to [IRS.gov/TCE](https://www.irs.gov/TCE), download the free IRS2Go app, or call 888-227-7669 for information on free tax return preparation.
- **MilTax.** Members of the U.S. Armed Forces and qualified veterans may use MilTax, a free tax service offered by the Department of Defense through Military OneSource. For more information, go to [MilitaryOneSource \(MilitaryOneSource.mil/MilTax\)](https://www.MilitaryOneSource.com/MilTax).

Also, the IRS offers Free Fillable Forms, which can be completed online and then filed electronically regardless of income.

**Using online tools to help prepare your return.** Go to [IRS.gov/Tools](https://www.irs.gov/Tools) for the following.

- The [Earned Income Tax Credit Assistant \(IRS.gov/EITCAssistant\)](https://www.irs.gov/EITCAssistant) determines if you're eligible for the earned income credit (EIC).

- The [Online EIN Application \(IRS.gov/EIN\)](https://www.irs.gov/EIN) helps you get an employer identification number (EIN) at no cost.
- The [Tax Withholding Estimator \(IRS.gov/W4app\)](https://www.irs.gov/W4app) makes it easier for you to estimate the federal income tax you want your employer to withhold from your paycheck. This is tax withholding. See how your withholding affects your refund, take-home pay, or tax due.
- The [First-Time Homebuyer Credit Account Look-up \(IRS.gov/HomeBuyer\)](https://www.irs.gov/HomeBuyer) tool provides information on your repayments and account balance.
- The [Sales Tax Deduction Calculator \(IRS.gov/SalesTax\)](https://www.irs.gov/SalesTax) figures the amount you can claim if you itemize deductions on Schedule A (Form 1040).



**Getting answers to your tax questions.** On [IRS.gov](https://www.irs.gov), you can get up-to-date information on current events and changes in tax law.

- [IRS.gov/Help](https://www.irs.gov/Help): A variety of tools to help you get answers to some of the most common tax questions.
- [IRS.gov/ITA](https://www.irs.gov/ITA): The Interactive Tax Assistant, a tool that will ask you questions and, based on your input, provide answers on a number of tax law topics.
- [IRS.gov/Forms](https://www.irs.gov/Forms): Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

### Need someone to prepare your tax return?

There are various types of tax return preparers, including enrolled agents, certified public accountants (CPAs), accountants, and many others who don't have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,
- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).

Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to [Tips for Choosing a Tax Preparer](https://www.irs.gov/TipsforChoosingaTaxPreparer) on [IRS.gov](https://www.irs.gov).

**Coronavirus.** Go to [IRS.gov/Coronavirus](https://www.irs.gov/Coronavirus) for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

**Employers can register to use Business Services Online.** The Social Security Administration (SSA) offers online service at [SSA.gov/employer](https://www.SSA.gov/employer) for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled

agents, and individuals who process Form W-2, Wage and Tax Statement, and Form W-2c, Corrected Wage and Tax Statement.

**IRS social media.** Go to [IRS.gov/SocialMedia](https://www.irs.gov/SocialMedia) to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are our highest priority. We use these tools to share public information with you. **Don't** post your social security number (SSN) or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- [Youtube.com/irsvideos](https://www.youtube.com/irsvideos).
- [Youtube.com/irsvideasmultilingua](https://www.youtube.com/irsvideasmultilingua).
- [Youtube.com/irsvideosASL](https://www.youtube.com/irsvideosASL).

**Watching IRS videos.** The IRS Video portal ([IRSVideos.gov](https://www.irs.gov/IRSVideos)) contains video and audio presentations for individuals, small businesses, and tax professionals.

**Online tax information in other languages.** You can find information on [IRS.gov/MyLanguage](https://www.irs.gov/MyLanguage) if English isn't your native language.

**Free Over-the-Phone Interpreter (OPI) Service.** The IRS is committed to serving our multilingual customers by offering OPI services. The OPI Service is a federally funded program and is available at Taxpayer Assistance Centers (TACs), other IRS offices, and every VITA/TCE return site. The OPI Service is accessible in more than 350 languages.

**Accessibility Helpline available for taxpayers with disabilities.** Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline does not have access to your IRS account. For help with tax law, refunds, or account-related issues, go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp).

**Note.** Form 9000, Alternative Media Preference, or Form 9000(SP) allows you to elect to receive certain types of written correspondence in the following formats.

- Standard Print.
- Large Print.
- Braille.
- Audio (MP3).
- Plain Text File (TXT).
- Braille Ready File (BRF).

**Disasters.** Go to [Disaster Assistance and Emergency Relief for Individuals and Businesses](https://www.irs.gov/DisasterAssistanceandEmergencyReliefforIndividualsandBusinesses) to review the available disaster tax relief.

**Getting tax forms and publications.** Go to [IRS.gov/Forms](https://www.irs.gov/Forms) to view, download, or print all the forms, instructions, and publications you

may need. Or, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to place an order.

**Getting tax publications and instructions in eBook format.** You can also download and view popular tax publications and instructions (including the Instructions for Form 1040) on mobile devices as eBooks at [IRS.gov/eBooks](https://www.irs.gov/eBooks).

**Note.** IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

**Access your online account (individual taxpayers only).** Go to [IRS.gov/Account](https://www.irs.gov/Account) to securely access information about your federal tax account.

- View the amount you owe and a breakdown by tax year.
- See payment plan details or apply for a new payment plan.
- Make a payment or view 5 years of payment history and any pending or scheduled payments.
- Access your tax records, including key data from your most recent tax return, and transcripts.
- View digital copies of select notices from the IRS.
- Approve or reject authorization requests from tax professionals.
- View your address on file or manage your communication preferences.

**Tax Pro Account.** This tool lets your tax professional submit an authorization request to access your individual taxpayer [IRS online account](https://www.irs.gov/onlineaccount). For more information, go to [IRS.gov/TaxProAccount](https://www.irs.gov/TaxProAccount).

**Using direct deposit.** The fastest way to receive a tax refund is to file electronically and choose direct deposit, which securely and electronically transfers your refund directly into your financial account. Direct deposit also avoids the possibility that your check could be lost, stolen, destroyed, or returned undeliverable to the IRS. Eight in 10 taxpayers use direct deposit to receive their refunds. If you don't have a bank account, go to [IRS.gov/DirectDeposit](https://www.irs.gov/DirectDeposit) for more information on where to find a bank or credit union that can open an account online.

**Getting a transcript of your return.** The quickest way to get a copy of your tax transcript is to go to [IRS.gov/Transcripts](https://www.irs.gov/Transcripts). Click on either "Get Transcript Online" or "Get Transcript by Mail" to order a free copy of your transcript. If you prefer, you can order your transcript by calling 800-908-9946.

**Reporting and resolving your tax-related identity theft issues.**

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your SSN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn't initiate contact with taxpayers by email, text messages (including shortened links), telephone calls, or social media channels to request or verify per-

sonal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.

- Go to [IRS.gov/IdentityTheft](https://www.irs.gov/IdentityTheft), the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your SSN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.
- Get an Identity Protection PIN (IP PIN). IP PINs are six-digit numbers assigned to taxpayers to help prevent the misuse of their SSNs on fraudulent federal income tax returns. When you have an IP PIN, it prevents someone else from filing a tax return with your SSN. To learn more, go to [IRS.gov/IPPIN](https://www.irs.gov/IPPIN).

**Ways to check on the status of your refund.**

- Go to [IRS.gov/Refunds](https://www.irs.gov/Refunds).
- Download the official IRS2Go app to your mobile device to check your refund status.
- Call the automated refund hotline at 800-829-1954.

**Note.** The IRS can't issue refunds before mid-February for returns that claimed the EIC or the additional child tax credit (ACTC). This applies to the entire refund, not just the portion associated with these credits.

**Making a tax payment.** Go to [IRS.gov/Payments](https://www.irs.gov/Payments) for information on how to make a payment using any of the following options.

- **IRS Direct Pay:** Pay your individual tax bill or estimated tax payment directly from your checking or savings account at no cost to you.
- **Debit or Credit Card:** Choose an approved payment processor to pay online or by phone.
- **Electronic Funds Withdrawal:** Schedule a payment when filing your federal taxes using tax return preparation software or through a tax professional.
- **Electronic Federal Tax Payment System:** Best option for businesses. Enrollment is required.
- **Check or Money Order:** Mail your payment to the address listed on the notice or instructions.
- **Cash:** You may be able to pay your taxes with cash at a participating retail store.
- **Same-Day Wire:** You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames.

**Note.** The IRS uses the latest encryption technology to ensure that the electronic payments you make online, by phone, or from a mobile device using the IRS2Go app are safe and secure. Paying electronically is quick, easy, and faster than mailing in a check or money order.

**What if I can't pay now?** Go to [IRS.gov/Payments](https://www.irs.gov/Payments) for more information about your options.

- Apply for an [online payment agreement \(IRS.gov/OPA\)](https://www.irs.gov/OPA) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the [Offer in Compromise Pre-Qualifier](https://www.irs.gov/OIC) to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to [IRS.gov/OIC](https://www.irs.gov/OIC).

**Filing an amended return.** Go to [IRS.gov/Form1040X](https://www.irs.gov/Form1040X) for information and updates.

**Checking the status of your amended return.** Go to [IRS.gov/WMAR](https://www.irs.gov/WMAR) to track the status of Form 1040-X amended returns.

**Note.** It can take up to 3 weeks from the date you filed your amended return for it to show up in our system, and processing it can take up to 16 weeks.

**Understanding an IRS notice or letter you've received.** Go to [IRS.gov/Notices](https://www.irs.gov/Notices) to find additional information about responding to an IRS notice or letter.

**Note.** You can use Schedule LEP (Form 1040), Request for Change in Language Preference, to state a preference to receive notices, letters, or other written communications from the IRS in an alternative language. You may not immediately receive written communications in the requested language. The IRS's commitment to LEP taxpayers is part of a multi-year timeline that is scheduled to begin providing translations in 2023. You will continue to receive communications, including notices and letters in English until they are translated to your preferred language.

**Contacting your local IRS office.** Keep in mind, many questions can be answered on

IRS.gov without visiting an IRS TAC. Go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp) for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment, so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to [IRS.gov/TACLocator](https://www.irs.gov/TACLocator) to find the nearest TAC and to check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

## The Taxpayer Advocate Service (TAS) Is Here To Help You

### What Is TAS?

TAS is an *independent* organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the [Taxpayer Bill of Rights](https://www.irs.gov/advocate).

### How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to [TaxpayerAdvocate.IRS.gov](https://www.irs.gov/advocate) to help you understand what these rights mean to you and how they apply. These are *your* rights. Know them. Use them.

### What Can TAS Do for You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;

- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

### How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at [TaxpayerAdvocate.IRS.gov/Contact-Us](https://www.irs.gov/advocate). You can also call them at 877-777-4778.

### How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, report it to them at [IRS.gov/SAMS](https://www.irs.gov/SAMS).

### TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

### Low Income Taxpayer Clinics (LITCs)

LITCs are independent from the IRS. LITCs represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Services are offered for free or a small fee for eligible taxpayers. To find an LTC near you, go to [TaxpayerAdvocate.IRS.gov/about-us/Low-Income-Taxpayer-Clinics-LITC](https://www.irs.gov/advocate) or see IRS Pub. 4134, [Low Income Taxpayer Clinic List](https://www.irs.gov/advocate).



## Organization Reference Chart

Section of 1986 Code	Description of organization	General nature of activities	Application Form <sup>1</sup>	Annual return required to be filed	Contributions allowable
501(c)(1)	Corporations Organized under Act of Congress (including Federal Credit Unions)	Instrumentalities of the United States	No Form	None	Yes, if made for exclusively public purposes
501(c)(2)	Title Holding Corporation For Exempt Organization	Holding title to property of an exempt organization and distributing net income to it	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	Activities of nature implied by description of class of organization	1023, 1023-EZ	990 <sup>2</sup> or 990-EZ <sup>9</sup> , or 990-PF	Yes, generally
501(c)(4)	Civic Leagues, Social Welfare Organizations; and Local Associations of Employees	Promotion of community welfare; charitable, educational, or recreational	Must provide notice on Form 8976; may also submit Form 1024-A	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No, generally <sup>3,4</sup>
501(c)(5)	Labor, Agricultural, and Horticultural Organizations	Educational or instructive, the purpose being to improve conditions of work, and to improve products and/or efficiency	1024	990 <sup>2</sup> or 990-EZ <sup>1</sup>	No <sup>3</sup>
501(c)(6)	Business Leagues, Chambers of Commerce, Real Estate Boards, etc.	Improvement of business conditions of one or more lines of business	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(7)	Social and Recreational Clubs	Pleasure, recreation, social activities	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(8)	Fraternal Beneficiary Societies and Associations	Providing for payment of life, sickness, accident or other benefits to members within a lodge system	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(9)	Voluntary Employees Beneficiary Associations	Employee association providing for payment of life, sickness, accident, or other benefits to members	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(10)	Domestic Fraternal Societies and Associations	Earnings devoted to charitable, fraternal, and other specified purposes within a domestic lodge system. No benefits to members	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(11)	Teachers' Retirement Fund Associations	Teachers' association for payment of retirement benefits	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(12)	Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, and Like Organizations	Activities of a mutual or cooperative nature	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(13)	Cemetery Companies	Burials and incidental activities	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes, generally
501(c)(14)	State-Chartered Credit Unions, Mutual Reserve Funds	Loans to members	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(15)	Mutual Insurance Companies or Associations	Providing insurance to members substantially at cost	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(16)	Cooperative Organizations to Finance Crop Operations	Financing crop operations in conjunction with activities of a marketing or purchasing association	Form 1120-C, 1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(17)	Supplemental Unemployment Benefit Trusts	Provides for payment of supplemental unemployment compensation benefits	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(18)	Employee Funded Pension Trust (created before June 25, 1959)	Payment of benefits under a pension plan funded by employees	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>3</sup>
501(c)(19)	Post or Organization of Past or Present Members of the Armed Forces	Activities implied by nature of organization	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No, generally <sup>8</sup>
501(c)(21)	Black Lung Benefit Trusts	Funded by coal mine operators to satisfy their liability for disability or death due to black lung diseases	1024 <sup>7</sup>	990	No <sup>5</sup>

Section of 1986 Code	Description of organization	General nature of activities	Application Form <sup>1</sup>	Annual return required to be filed	Contributions allowable
501(c)(22)	Withdrawal Liability Payment Fund	To provide funds to meet the liability of employers withdrawing from a multi-employer pension fund	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No <sup>6</sup>
501(c)(23)	Veterans' Organization (created before 1880)	To provide insurance and other benefits to veterans	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No, generally <sup>8</sup>
501(c)(25)	Title Holding Corporations or Trusts with Multiple Parent Corporations	Holding title and paying over income from real property to 35 or fewer parents or beneficiaries	1024	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No
501(c)(26)	State-Sponsored Organization Providing Health Coverage for High-Risk Individuals	Provides health care coverage to high-risk individuals	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No
501(c)(27)	State-Sponsored Workers' Compensation Reinsurance Organization	Reimburses members for losses under workers' compensation acts	1024 <sup>7</sup>	990 <sup>2</sup> or 990-EZ <sup>9</sup>	No
501(c)(28)	National Railroad Retirement Investment Trust	Manages and invests the assets of the Railroad Retirement Account	1024	990 <sup>12</sup>	No <sup>12</sup>
501(c)(29)	CO-OP health insurance issuers	A qualified health insurance issuer which has received a loan or grant under the CO-OP program	1024 and Form 8718 <sup>15</sup>	990 <sup>2</sup>	No <sup>14</sup>
501(d)	Religious and Apostolic Associations	Regular business activities; Communal religious community	1024	1065 <sup>10</sup>	No <sup>3</sup>
501(e)	Cooperative Hospital Service Organizations	Performs cooperative services for hospitals	1023	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes
501(f)	Cooperative Service Organizations of Operating Educational Organizations	Performs collective investment services for educational organizations	1023	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes
501(k)	Child Care Organizations	Provides care for children	1023	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes
501(n)	Charitable Risk Pools	Pools certain insurance risks of sec. 501(c)(3) organizations	1023	990 <sup>2</sup> or 990-EZ <sup>9</sup>	Yes
501(q)	Credit Counseling Organization	Credit counseling services	1023	990 <sup>13</sup>	No
521(a)	Farmers' Cooperative Associations	Cooperative marketing and purchasing for agricultural procedures	1028 or 1024	1120-C	No
527	Political organizations	A party, committee, fund, association, etc., that directly or indirectly accepts contributions or makes expenditures for political campaigns	8871	1120-POL <sup>11</sup> 990 <sup>2</sup> or 990-EZ <sup>8</sup>	No
<sup>1</sup> Most 501(c) organizations, other than those described in sections 501(c)(3) (exceptions apply), (9), and (17), may, but are not required to, submit an application for recognition of tax-exempt status from the IRS. These organizations may self-declare their tax exempt status by operating within the requirements of the applicable code section and filing the required annual returns or notices. <sup>2</sup> For exceptions to the filing requirement, see chapter 2 and the form instructions. Note: For annual tax periods beginning after 2006, most tax-exempt organizations, other than churches, are required to file an annual Form 990, 990-EZ, or 990-PF with the IRS or to submit an annual electronic notice, Form 990-N ( <i>e-Postcard</i> ), to the IRS. Tax-exempt organizations failing to file an annual return or submit an annual notice as required for 3 consecutive years will automatically lose their tax-exempt status. See form instructions as to which 990 series, and other series, forms, after the Taxpayer First Act, are required to be filed electronically. <sup>3</sup> An organization exempt under a subsection of section 501 other than 501(c)(3) can establish a charitable fund, contributions to which are deductible. Such a fund must itself meet the requirements of section 501(c)(3) and the related notice requirements of section 508(a). <sup>4</sup> Contributions to volunteer fire companies and similar organizations are deductible, but only if made for exclusively public purposes. <sup>5</sup> Deductible as a business expense to the extent allowed by section 192. <sup>6</sup> Deductible as a business expense to the extent allowed by section 194A. <sup>7</sup> Reserved <sup>8</sup> Contributions to these organizations are deductible only if 90% or more of the organization's members are war veterans. <sup>9</sup> For limits on the use of Form 990-EZ, see chapter 2 and the general instructions for Form 990-EZ (or Form 990). <sup>10</sup> Although the organization files a partnership return, all distributions are deemed dividends. The members aren't entitled to <b>pass through</b> treatment of the organization's income or expenses. <sup>11</sup> Form 1120-POL is required only if the organization has taxable income as defined in section 527(c). <sup>12</sup> Only required to annually file so much of the Form 990 that relates to the names and addresses of the officers, directors, trustees, and key employees, and their titles, compensation, and hours devoted to their positions (Part VII of Form 990), and to complete Item I in the Heading of Form 990 to confirm its tax-exempt status under section 501(c)(28). <sup>13</sup> See section 501(q) if the organization provides credit counseling services and seeks recognition of exemption under section 501(c)(4). Use Form 1024-A if applying for recognition under section 501(c)(4). <sup>14</sup> See section 501(c)(29) for details. <sup>15</sup> See Rev. Proc. 2015-17, sec. 4.01, 2015-7 I.R.B. 599, as modified and superseded by Rev. Proc. 2023-8, for details.					

## Appendix. Sample Articles of Organization

The following are examples of Articles of Incorporation (Draft A) and a declaration of trust (Draft B) that contain the required information as to purposes and powers of an organization and disposition of its assets upon dissolution. You should bear in mind that requirements for these instruments may vary under applicable state law.

See [Private Foundations and Public Charities](#), earlier for the special provisions required in a private foundation's governing instrument in order for it to qualify for exemption.

### DRAFT A

**Articles of Incorporation of** the undersigned, a majority of whom are citizens of the United States, desiring to form a Non-Profit Corporation under the Non-Profit Corporation Law of \_\_\_\_\_, do hereby certify:

**First:** The name of the Corporation shall be \_\_\_\_\_.

**Second:** The place in this state where the principal office of the Corporation is to be located is the City of \_\_\_\_\_, \_\_\_\_\_ County.

**Third:** Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

**Fourth:** The names and addresses of the persons who are the initial trustees of the corporation are as follows:  
Name \_\_\_\_\_, Address \_\_\_\_\_

**Fifth:** No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

If reference to federal law in articles of incorporation imposes a limitation that is invalid in your state, you may wish to substitute the following for the last sentence of the preceding paragraph: "Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that aren't in furtherance of the purposes of this corporation."

**Sixth:** Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

In witness whereof, we have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



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## Appendix. Sample Articles of Organization, *continued*

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### Draft B

The \_\_\_\_\_ Charitable Trust. Declaration of Trust made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, who hereby declare and agree that they have received this day from \_\_\_\_\_, as Donor, the sum of Ten Dollars (\$10) and that they will hold and manage the same, and any additions to it, in trust, as follows:

**First:** This trust shall be called “The \_\_\_\_\_ Charitable Trust.”

**Second:** The trustees may receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust; but no gift, bequest, or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the income or its principal to any person or organization other than a “charitable organization” or for other than “charitable purposes” within the meaning of such terms as defined in Article Third of this Declaration of Trust, or as shall, in the opinion of the trustees, jeopardize the federal income tax exemption of this trust pursuant to section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

**Third:**

- a) The principal and income of all property received and accepted by the trustees to be administered under this Declaration of Trust shall be held in trust by them, and the trustees may make payments or distributions from income or principal, or both, to or for the use of such charitable organizations, within the meaning of that term as defined in paragraph C, in such amounts and for such charitable purposes of the trust as the trustees shall from time to time select and determine; and the trustees may make payments or distributions from income or principal, or both, directly for such charitable purposes, within the meaning of that term as defined in paragraph D, in such amounts as the trustees shall from time to time select and determine without making use of any other charitable organization. The trustees may also make payments or distributions of all or any part of the income or principal to states, territories, or possessions of the United States, any political subdivision of any of the foregoing, or to the United States or the District of Columbia but only for charitable purposes within the meaning of that term as defined in paragraph D. Income or principal derived from contributions by corporations shall be distributed by the trustees for use solely within the United States or its possessions. No part of the net earnings of this trust shall inure or be payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of this trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of this trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.
- b) The trust shall continue forever unless the trustees terminate it and distribute all of the principal and income, which action may be taken by the trustees in their discretion at any time. On such termination, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. The donor authorizes and empowers the trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Declaration of Trust, such corporation to be organized under the laws of any state or under the laws of the United States as may be determined by the trustees; such corporation when organized to have power to administer and control the affairs and property and to carry out the uses, objects, and purposes of this trust. Upon the creation and organization of such corporation, the trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which this trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the trustees shall determine, consistent with the provisions of this paragraph.

- c) In this Declaration of Trust and in any amendments to it, references to “charitable organizations” or “charitable organization” mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or in any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which don't participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office. It is intended that the organization described in this paragraph C shall be entitled to exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- d) In this Declaration of Trust and in any amendments to it, the term “charitable purposes” shall be limited to and shall include only religious, charitable, scientific, literary, or educational purposes within the meaning of those terms as used in section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, but only such purposes as also constitute public charitable purposes under the law of trusts of the State of \_\_\_\_\_.

**Fourth:** This Declaration of Trust may be amended at any time or times by written instrument or instruments signed and sealed by the trustees, and acknowledged by any of the trustees, provided that no amendment shall authorize the trustees to conduct the affairs of this trust in any manner or for any purpose contrary to the provisions of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. An amendment of the provisions of this Article Fourth (or any amendment to it) shall be valid only if and to the extent that such amendment further restricts the trustees' amending power. All instruments amending this Declaration of Trust shall be noted upon or kept attached to the executed original of this Declaration of Trust held by the trustees.

**Fifth:** Any trustee under this Declaration of Trust may, by written instrument, signed and acknowledged, resign his office. The number of trustees shall be at all times not less than two, and whenever for any reason the number is reduced to one, there shall be, and at any other time there may be, appointed one or more additional trustees. Appointments shall be made by the trustee or trustees for the time in office by written instruments signed and acknowledged. Any succeeding or additional trustee shall, upon his or her acceptance of the office by written instrument signed and acknowledged, have the same powers, rights, and duties, and the same title to the trust estate jointly with the surviving or remaining trustee or trustees as if originally appointed.

None of the trustees shall be required to furnish any bond or surety. None of them shall be responsible or liable for the acts or omissions of any other of the trustees or of any predecessor or of a custodian, agent, depository, or counsel selected with reasonable care.

The one or more trustees, whether original or successor, for the time being in office, shall have full authority to act even though one or more vacancies may exist. A trustee may, by appropriate written instrument, delegate all or any part of his or her powers to another or others of the trustees for such periods and subject to such conditions as such delegating trustee may determine.

The trustees serving under this Declaration of Trust are authorized to pay to themselves amounts for reasonable expenses incurred and reasonable compensation for services rendered in the administration of this trust, but in no event shall any trustee who has made a contribution to this trust ever receive any compensation thereafter.

**Sixth:** In extension and not in limitation of the common law and statutory powers of trustees and other powers granted in this Declaration of Trust, the trustees shall have the following discretionary powers.

- a) To invest and reinvest the principal and income of the trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or real property (including without limitation any interests in or obligations of any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority wouldn't be considered proper and although all of the trust funds are invested in the securities of one company. No principal or income, however, shall be loaned, directly or indirectly, to any trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.
- b) To sell, lease, or exchange any personal, mixed, or real property, at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the trust property, as they consider advisable, whether or not such leases or contracts may extend beyond the duration of the trust.

- c) To borrow money for such periods, at such rates of interest, and upon such terms as the trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.
- d) To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which they engage.
- e) To vote, to give proxies, to participate in the reorganization, merger, or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, depositary, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.
- f) To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, investment agents, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the trustees.

**Seventh:** The trustees' powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable purposes of this trust as specified in Article Third and not otherwise.

**Eighth:** In this Declaration of Trust and in any amendment to it, references to "trustees" mean the one or more trustees, whether original or successor, for the time being in office.

**Ninth:** Any person may rely on a copy, certified by a notary public, of the executed original of this Declaration of Trust held by the trustees, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by anyone who appears from such original documents or from such certified copy to be a trustee under this Declaration of Trust. No one dealing with the trustees need inquire concerning the validity of anything the trustees purport to do. No one dealing with the trustees need see to the application of anything paid or transferred to or upon the order of the trustees of the trust.

**Tenth:** This Declaration of Trust is to be governed in all respects by the laws of the State of \_\_\_\_\_.

- Trustee \_\_\_\_\_
- Trustee \_\_\_\_\_

\_\_\_\_\_ ■





## A

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