



Exempt Organizations Annual Meeting

March 7, 2024



Welcome and Administrative Announcements

Save the Dates:

June 7, 2024 – Live in DC and Dallas

November 22, 2024 - Virtual

Question/Comment Submission

Submit questions or comments for future speakers:

<https://www.eocouncil.org/question-submission.html>

For Council information – admin@eocouncil.org or visit www.eocouncil.org



Thanks to Our Producers and Sponsors:



11:00-11:10 ET	Welcome/Initial Comments
11:10-12:40 ET	IRS Exempt Organization Update and Q&A
12:40 – 12:55 ET	Lunch Break
12:55 – 1:10 ET	EO's & the IRS's Strategic Operating Plan
1:10-1:15 ET	Break
1:15-2:15 ET	501(c)(3)s' Navigation in Political Campaign Intervention Waters
2:15-2:25 ET	Break
2:25-3:25 ET	Public Support Test – Traps for the Unwary
3:25-3:35 ET	Break
3:35-4:35 ET	Lobbying, Campaign Activity and Private Benefit, Oh My! Pitfalls for Section 501(c)(3)s in their Relationships with Section 501(c)(4)s, 501(c)(6)s and 527's
6:00 – 9:00 ET	Dinner/Reception Sponsored by GWSCPA (Additional Registration and Payment Required)

TEGE

EXEMPT
ORGANIZATIONS
COUNCIL

Exempt Organizations Update

Robert Malone, Director of Exempt Organizations and Government Entities, IRS

John Montague, Acting Senior Technical Advisor to the Director, Exempt Organizations, IRS

Moderators: Anne Fulton, Deloitte & Preston Quesenberry, KPMG

FY 2024 EO R&A Determinations results through January 26, 2024

Received 42,750 applications for tax-exempt status; closed 41,083

Average age of open inventory - 100 days

- Average age of Form 1023-EZ - 54 days
- Average age of Form 1023 - 116 days
- Average age of Form 1024 - 119 days
- Average age of Form 1024-A - 125 days
- Average age of Form 8940 - 118 days

Average processing time for all closed case inventory - 50 days

- Average processing time for closed Forms 1023-EZ - 22 days
- Average processing time for closed Forms 1023 - 105 days
- Average processing time for closed Forms 1024 - 178 days
- Average processing time for closed Forms 1024-A - 191 days
- Average processing time for closed Forms 8940 - 183 days

**FY 2024 EO
Examination results
through
January 26, 2024:**

- Started 713 total exams; closed 637
 - 74.4% overall change rate
 - Started 56 compliance strategy exams (7.8% of exam starts), closed 78
 - ✓ 51.3% change rate on closed compliance strategy exams
 - Started 160 data driven exams (22.4% of exam starts), closed 239
 - ✓ 72.8% change rate on closed data driven exams
 - Started 497 referrals, claims and other casework exams (69.7% of exam starts), closed 320
 - ✓ 81.3% change rate on closed referrals, claims and other casework exams

Helpful Links

- [TEGE Outreach Survey](#)
- [Current IRS job listings](#)
- [Direct File](#)
- [Elective Pay and Transferability](#)
- [Elective Pay and Transferability Frequently Asked Questions: Elective Pay](#)
- [Charities and Nonprofits](#)
- [Where's My Application for Tax-Exempt Status?](#)
- [EO Update](#)
- [Tax Exempt Organization Search \(TEOS\)](#)
- [EO Audit Technique Guides \(ATGs\) and Technical Guides \(TGs\)](#)

TEGE

EXEMPT
ORGANIZATIONS
COUNCIL

Observations

Moderators: Anne Fulton, Deloitte
Preston Quesenberry, KPMG &
Jennifer Becker Harris, Clark Nuber

Lunch Break

TEGE

EXEMPT
ORGANIZATIONS
COUNCIL

EO's & the IRS' Strategic Operating Plan

Eve Borenstein, Harmon, Curran, Spielberg & Eisenberg, LLP and Eve Rose Borenstein, LLC

Overview



1960's-era "Business Master File"

- Exempt Organizations reside in the BMF
- Multiple "modern language" programs intersect with BMF's data
- Some programs are out-sourced to third party contractors (e.g. EFTPS, pay.gov)

Inflation Reduction Act Strategic Operating Plan

- Strategy to implement updated IRS systems between FY2023-2031
- [Publication 3744](#)

Advocacy for Exempt Organizations

- Cataloguing of both errors the sector is experiencing in BMF data and quirks of modern language programs' intersection with sector's taxpayers
- Provide suggestions for planning of new systems
 - Functional needs assessment
 - Understanding the impact on all the stakeholders of BMF data
 - Push for long-term commitments from the IRS

- Survey Link:
<https://clarknuber.cnf.io/>

**ACTION
NEEDED**

- BMF War Stories
- Additional Queries

Break

ELIAS
LAW
GROUP

TRISTER, ROSS,
SCHADLER & GOLD

P L L C

501(c)(3)s' Navigation in Political Campaign Intervention Waters

TEGE Exempt Organizations Council
Annual Exempt Organizations Update and Meeting
Thursday, March 7, 2024



charitable **allies**
your nonprofit advocate

WC&B
WEBSTER, CHAMBERLAIN & BEAN, LLP

NAVIGATION IN
POLITICAL
CAMPAIGN
INTERVENTION
WATERS

- Zac Kester
 - *Charitable Allies*
- Renata Strause
 - *Trister, Ross, Schadler & Gold, PLLC*
- Charles (“Chip”) Watkins
 - *Webster, Chamberlain & Bean, LLP*
- Ezra Reese
 - *Elias Law Group*

ELECTION-RELATED ACTIVITIES BY 501(C)(3)S

- A 501(c)(3) is absolutely prohibited from participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- This prohibition applies to elections at the federal, state and local level.
- There are a few clear lines, but *only* a few.
 - The IRS will examine all of the “facts and circumstances” to decide if a 501(c)(3) is engaged in political intervention.
 - 501(c)(3)s and practitioners must look to decades-old guidance for questions about current advocacy environment and current technologies.

CLEARLY PROHIBITED BY 501(C)(3)S AS POLITICAL INTERVENTION

- Candidate endorsement or opposition
- Statements for/against a particular candidate, group of candidates or party
 - Prohibits more than “express advocacy”
 - Distributing statements prepared by the 501(c)(3) *as well as* statements prepared by others
- Contributions to candidates, parties and PACs
 - Both monetary and in-kind contribution of resources (including use by political person of 501(c)(3) resources)
 - *But* 501(c)(3)s may give to “PACs” that exclusively support/oppose ballot measures (treated as lobbying by IRS)
 - *But BUT ...* 501(c)(3)s must still check that the committee is *not* a 527 and vet its work

POLITICAL INTERVENTION: FACTS & CIRCUMSTANCES

Whether a 501(c)(3)'s communication....

- identifies one or more candidates for a given public office;
- expresses approval or disapproval for one or more candidates' positions and/or actions;
- is delivered close in time to the election;
- refers to voting or an election;
- addresses an issue that has been raised as an issue distinguishing candidates for a given office;
- is part of an ongoing series of communications by the 501(c)(3) organization on the same issue that are made independent of the timing of any election; or
- is related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office...

... will be key factors the IRS considers when whether or not the communication constitutes impermissible political campaign intervention.

501(C)(3) ENGAGEMENT WITH VOTERS & VOTING

- 501(c)(3)s may engage in nonpartisan activities related to voter registration and voting processes, including by:
 - Sharing information about voting processes and deadlines;
 - Encouraging citizens to register to vote and helping them do so;
 - Advocating for changes in election administration policy and procedures;
 - Monitoring voting procedures and communicating observations and recommendations to officials and the public;
 - Litigating cases related to voting rights, voting procedures and election integrity; and
 - Encouraging voting and explaining processes for casting and “curing” ballots.

KEEPING 501(C)(3) ELECTION ACTIVITIES NONPARTISAN*

*WHICH DOESN'T MEAN BIPARTISAN

501(c)(3)s must take particular care to undertake election-related activities in a manner that is strictly nonpartisan.

- Each 501(c)(3) should ask:
 - How does this activity serve *our charitable purpose*?
 - Why are we speaking to *this particular audience*?
 - Why are we speaking *at this particular moment*?
- “Nonpartisan” does *not* mean working with or commenting on candidates from both major political parties.
 - *Except* when it does – *e.g.*, candidate forums that follow specific IRS guidelines; voter guides; providing the *same* testimony on an issue to both major parties’ platform committees
- A 501(c)(3) must not show any bias in the content, timing or targeting of the activity that favors or disfavors a candidate or group of candidates.

WC&B

WEBSTER, CHAMBERLAIN & BEAN, LLP

Charles (“Chip”) Watkins

Election-Related Activities by 501(c)(3)s

- A 501(c)(3) is absolutely prohibited from participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- This prohibition applies to elections at the federal, state and local level.
- There are a few clear lines, but *only* a few.
 - The IRS will examine all of the “facts and circumstances” to decide if a 501(c)(3) is engaged in political intervention.
 - 501(c)(3)s and practitioners must look to decades-old guidance for questions about current advocacy environment and current technologies.

Federal Campaign Finance Overview

- **Hard / Soft Money**
 - The Federal Election Campaign Act requires that contributions to candidates and political committees are subject to source restrictions and contribution limits (“hard money”)
 - *Citizens United* and related cases and FEC guidance permit raising beyond those limits and restrictions* (“soft money”) for organizations that do not make contributions to candidates and party committees, even if they are sponsoring political communications
- **In-Kind Contributions**
 - If an organization is raising “soft money” and sponsors a communication that results in an in-kind contribution to a candidate or party committee, both it and the recipient have violated federal law

*The ban on receipt of funds from foreign nationals, federal contractors, and corporations chartered by act of Congress remain

Express Advocacy (Rarely a 501(c)(3) Problem)

- **Under FEC rules, either:**
 - Uses phrases “which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)”; or
 - “When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)”

Express advocacy requires an FEC filing if more than \$250 is spent in a calendar year (even if it’s not a “public communication”)

FEC Coordinated Communications

- A “public communication” is an in-kind contribution under federal law if:
 - It is “coordinated” with a federal candidate or a political party committee; and
 - It meets certain content standards
- Coordination includes:
 - Both specific discussion regarding a communication; and
 - Receipt of nonpublic “plans, projects, activities, or needs” from a campaign or party committee, or through a common vendor or a former employee or contractor of a campaign or party
 - The FEC recognizes a “safe harbor” for the implementation of a firewall policy



FEC Coordination Rules

A public communication includes:

- TV or radio ad;
- Outdoor advertising;
- Mass mailing;
- Telephone bank; and
- Internet ads with paid distribution

Exceptions include: e-mail; websites; unpaid social media; and (new) opt-in text messages



FEC Coordination Content Standards

A public communication that is coordinated with a candidate or party is an in-kind contribution if:

- At any time in cycle, it:
 - Republishes campaign materials; or
 - Expressly advocates or contains the functional equivalent of express advocacy
- During specific time frames, it references a clearly identified candidate or political party
 - Within 90 days of congressional election (primary or general); or
 - In each state, starting 120 days before the presidential primary

Electioneering Communications

- Refers to a clearly identified candidate for federal office;
 - Is distributed on broadcast, cable, or satellite within 30 days of a primary or within 60 days of a general election;
 - Can be received by 50,000 or more persons in the district/state

Electioneering communications require specific written (for TV) and oral disclaimers, and filings if spending more than \$10,000 a calendar year



Intersecting the IRS and FEC Standards

	FEC Regulated	FEC Not Regulated
IRS Political	<p>“Stop Marianne Williamson from hurting Biden’s chances of beating Trump.”</p> <p>Political intervention under Rev. Rul. 2007-41 Express advocacy for FEC purposes</p>	<p>Digital ad in October 2023: “Call Joe Biden and tell him to stop hurting America and secure our border.”</p> <p>Political intervention under IRS rulings. Probably not express advocacy; not an “electioneering communication” because it’s not on TV, radio or satellite</p> <p><i>However, if “coordinated” it would be an in-kind contribution</i></p>
IRS Non Political	<p>February 2024 TV ad in California: “Tell your Congressman and the Administration to support clean energy.”</p> <p>Probably non political under IRS standards. Clearly identifies a federal candidate (<i>see</i> 11 C.F.R. § 100.17 and <i>Hispanic Leadership Fund, Inc. v. FEC</i>) within 30 days of an election; this is an “electioneering communication”</p>	<p>April 2023 TV ad in Nevada: “Senator Rosen and Senator Corsez Mastro: Don’t confirm Biden’s nominee for IRS Commissioner.”</p> <p>Probably non political under IRS standards given the timing and the issue</p> <p>Not regulated by the FEC given the timing</p>

Advanced Electioneering Comms

Let's discuss that February 2024 ad in more detail

February 2024 TV ad in California: "Tell your Congressman and the Administration to support clean energy."

- Electioneering communication: references to a clearly identified candidate within 30 days of a primary or 60 days of the general election. This is an electioneering communication
 - "Your Congressman" is a clearly identified candidate!
 - In some circumstances, "the Administration" is referring to the current President (who is up for re-election)
- Coordinated communication: includes a public communication that references a clearly identified candidate within certain timeframes
 - If the sponsoring organization has coordinated with a candidate or political party, this advertisement would be an in-kind contribution to that candidate or party

ELIAS
LAW
GROUP

TRISTER, ROSS,
SCHADLER & GOLD

PLLC

Questions?



charitable **allies**
your nonprofit advocate

WC&B
WEBSTER, CHAMBERLAIN & BEAN, LLP

Break

Public Support Test – Traps for the Unwary

Wendy Campos, CPA, Partner – Moss
Adams LLP

Lisa Schaures, Partner – Seyfarth Shaw
LLP

March 7, 2024



Agenda



- Qualifications as Publicly Supported
- Classification of Revenue
- Public Support Challenges
- Supporting Organizations
- SCH. A, Part II – Section 509(A)(1)
- SCH. A, pART III – Section 509(A)(II)

Form 1023

Part IX Financial Data (Continued)

B. Balance Sheet (for your most recently completed tax year)

		Year End: (Whole dollars)
Assets		
1	Cash	1
2	Accounts receivable, net	2
3	Inventories	3
4	Bonds and notes receivable (attach an itemized list)	4
5	Corporate stocks (attach an itemized list)	5
6	Loans receivable (attach an itemized list)	6
7	Other investments (attach an itemized list)	7
8	Depreciable and depletable assets (attach an itemized list)	8
9	Land	9
10	Other assets (attach an itemized list)	10
11	Total Assets (add lines 1 through 10)	11
Liabilities		
12	Accounts payable	12
13	Contributions, gifts, grants, etc. payable	13
14	Mortgages and notes payable (attach an itemized list)	14
15	Other liabilities (attach an itemized list)	15
16	Total Liabilities (add lines 12 through 15)	16
Fund Balances or Net Assets		
17	Total fund balances or net assets	17
18	Total Liabilities and Fund Balances or Net Assets (add lines 16 and 17)	18
19	Have there been any substantial changes in your assets or liabilities since the end of the period shown above? If "Yes," explain. <input type="checkbox"/> Yes <input type="checkbox"/> No	

Part X Public Charity Status

Part X is designed to classify you as an organization that is either a **private foundation** or a **public charity**. Public charity status is a more favorable tax status than private foundation status. If you are a private foundation, Part X is designed to further determine whether you are a **private operating foundation**. See instructions.

- 1 a** Are you a private foundation? If "Yes," go to line 1b. If "No," go to line 5 and proceed as instructed. If you are unsure, see the instructions. Yes No
- b** As a private foundation, section 508(e) requires special provisions in your organizing document in addition to those that apply to all organizations described in section 501(c)(3). Check the box to confirm that your organizing document meets this requirement, whether by express provision or by reliance on operation of state law. Attach a statement that describes specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document or by operation of state law. See the instructions, including Appendix B, for information about the special provisions that need to be contained in your organizing document. Go to line 2.
- 2** Are you a private operating foundation? To be a private operating foundation you must engage directly in the active conduct of charitable, religious, educational, and similar activities, as opposed to indirectly carrying out these activities by providing grants to individuals or other organizations. If "Yes," go to line 3. If "No," go to the signature section of Part XI. Yes No
- 3** Have you existed for one or more years? If "Yes," attach financial information showing that you are a private operating foundation; go to the signature section of Part XI. If "No," continue to line 4. Yes No
- 4** Have you attached either (1) an affidavit or opinion of counsel, (including a written affidavit or opinion from a certified public accountant or accounting firm with expertise regarding this tax law matter), that sets forth facts concerning your operations and support to demonstrate that you are likely to satisfy the requirements to be classified as a private operating foundation; or (2) a statement describing your proposed operations as a private operating foundation? Yes No
- 5** If you answered "No" to line 1a, indicate the type of public charity status you are requesting by checking one of the choices below. You may check only one box.
- The organization is not a private foundation because it is:
- a** 509(a)(1) and 170(b)(1)(A)(i)—a church or a convention or association of churches. Complete and attach Schedule A.
 - b** 509(a)(1) and 170(b)(1)(A)(ii)—a school. Complete and attach Schedule B.
 - c** 509(a)(1) and 170(b)(1)(A)(iii)—a hospital, a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital. Complete and attach Schedule C.
 - d** 509(a)(3)—an organization supporting either one or more organizations described in line 5a through c, f, h, or i or a publicly supported section 501(c)(4), (5), or (6) organization. Complete and attach Schedule D.



Form 1023

Part X Public Charity Status (Continued)

- e 509(a)(4) – an organization organized and operated exclusively for testing for public safety.
- f 509(a)(1) and 170(b)(1)(A)(iv) – an organization operated for the benefit of a college or university that is owned or operated by a governmental unit.
- g 509(a)(1) and 170(b)(1)(A)(ix) – an agricultural research organization directly engaged in the continuous active conduct of agricultural research in conjunction with a college or university.
- h 509(a)(1) and 170(b)(1)(A)(vi) – an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.
- i 509(a)(2) – an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions).
- j A publicly supported organization, but unsure if it is described in 5h or 5i. You would like the IRS to decide the correct status.



6 If you checked box h, i, or j in question 5 above, and you have been in existence more than 5 years, you must confirm your public support status. Answer line 6a if you checked box h in line 5 above. Answer line 6b if you checked box i in line 5 above. If you checked box j in line 5 above, answer both lines 6a and 6b.

- a (i) Enter 2% of line 8, column (e) on Part IX-A Statement of Revenues and Expenses _____
- (ii) Attach a list showing the name and amount contributed by each person, company, or organization whose gifts totaled more than the 2% amount. If the answer is "None," state this.
- b (i) For each year amounts are included on lines 1, 2, and 9 of Part IX-A Statement of Revenues and Expenses, attach a list showing the name and amount received from each **disqualified person**. If the answer is "None," state this.
- (ii) For each year amounts were included on line 9 of Part IX-A Statement of Revenues and Expenses, attach a list showing the name of and amount received from each payer, other than a disqualified person, whose payments were more than the larger of (1) 1% of Line 10, Part IX-A Statement of Revenues and Expenses, or (2) \$5,000. If the answer is "None," state this.



7 Did you receive any unusual grants during any of the years shown on Part IX-A Statement of Revenues and Expenses? If "Yes," attach a list including the name of the contributor, the date and amount of the grant, a brief description of the grant, and explain why it is unusual. Yes No

Part XI User Fee Information and Signature

You must include the correct user fee payment with this application. If you do not submit the correct user fee, we will not process the application and we will return it to you. Your check or money order must be made payable to the United States Treasury. User fees are subject to change. Check our website at www.irs.gov and type "Exempt Organizations User Fee" in the search box, or call Customer Account Services at 1-877-829-5500 for current information.

Enter the amount of the user fee paid: _____

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please Sign Here

(Signature of Officer, Director, Trustee, or other authorized official)

(Type or print name of signer)

(Date)

(Type or print title or authority of signer)

Schedule A Part I: How does the Organization Qualify as Publicly Supported? 4 Categories:

1. Organizations that are considered publicly supported **by virtue of the code section** in which they are described:
 - Church – 170(b)(1)(A)(i)
 - School - 170(b)(1)(A)(ii)
 - Hospital or Medical Research Organization - 170(b)(1)(A)(iii)
 - Government - 170(b)(1)(A)(v)

2. Organizations that meet the Support Test under Part II:



- The “donative public charity” – receives at least 1/3 of its support from the general public or governmental units in the form of **gifts, grants, contributions** - 170(b)(1)(A)(vi)
- Organization Operated for the benefit of a college or university owned or operated by governmental entity - 170(b)(1)(A)(iv)
- Community Trust - 170(b)(1)(A)(vi)

3. Organizations that meet the Support Test under Part III

- The “Operating Public Charity” – Organization that receives 1/3 of its support from program service revenue and NOT more than 1/3 of its support from investment income.



4. Support Organization 509(a)(3), Part IV

- Organizations that are organized and operated exclusively for the benefit of one or more other publicly supported organizations under 509(a)(1) or 509(a)(2)
 - Type 1: operated, supervised, or controlled by its supported organization(s)
 - Type II: A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s)
 - Type III: operated in connection with its supported organization; either functionally integrated or not functionally integrated, completes also **Part V** (Must meet Notification requirement, responsiveness, and integral part tests)
- **Complete Line 12g in Part I**
 - Details support provided to supported organizations and others

Schedule A testing Part II - 509(a)(1)

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
 (Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support						
Calendar year (or fiscal year beginning in)	(a) 2019	(b) 2020	(c) 2021	(d) 2022	(e) 2023	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 Total. Add lines 1 through 3						
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f).						
6 Public support. Subtract line 5 from line 4						
Section B. Total Support						
Calendar year (or fiscal year beginning in)	(a) 2019	(b) 2020	(c) 2021	(d) 2022	(e) 2023	(f) Total
7 Amounts from line 4						
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources						
9 Net income from unrelated business activities, whether or not the business is regularly carried on						
10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
11 Total support. Add lines 7 through 10						
12 Gross receipts from related activities, etc. (see instructions)					12	
13 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here	<input type="checkbox"/>					
Section C. Computation of Public Support Percentage						
14 Public support percentage for 2023 (line 6, column (f), divided by line 11, column (f))					14	%
15 Public support percentage from 2022 Schedule A, Part II, line 14					15	%
16a 33¹/₃% support test—2023. If the organization did not check the box on line 13, and line 14 is 33 ¹ / ₃ % or more, check this box and stop here. The organization qualifies as a publicly supported organization	<input type="checkbox"/>					
b 33¹/₃% support test—2022. If the organization did not check a box on line 13 or 16a, and line 15 is 33 ¹ / ₃ % or more, check this box and stop here. The organization qualifies as a publicly supported organization	<input type="checkbox"/>					
17a 10%-facts-and-circumstances test—2023. If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the facts-and-circumstances test, check this box and stop here. Explain in Part VI how the organization meets the facts-and-circumstances test. The organization qualifies as a publicly supported organization	<input type="checkbox"/>					
b 10%-facts-and-circumstances test—2022. If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the facts-and-circumstances test, check this box and stop here. Explain in Part VI how the organization meets the facts-and-circumstances test. The organization qualifies as a publicly supported organization	<input type="checkbox"/>					
18 Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions	<input type="checkbox"/>					

Schedule A testing Part II - 509(a)(1)

- 509(a)(1): emphasis on contribution revenue; excludes program service revenue from public support calculation
 - Public support, as a percentage of total support, must be at least 33 1/3 %
 - Facts and circumstance testing, public support at least 10% or more
 - Unusual grants may be excluded from the total contributions reported, required to list by year at Part IV
- **Excess Contributors** – see Part II line 5 (lowers contributions numerator)
- The portion of total contributions by each person that exceeds 2% of total support

Schedule A testing Part II – 509(a)(1)

Across the five-year “test period” must add together donations (\$) from all those who are not excepted from the 2% limitation and “back them out” of total contributions in computing this test’s numerator

Who is not excepted?

- Organizations qualifying under section 170(b)(1)(A)(vi)
- Governmental units described in 170(b)(1)(A)(v)
- Other organizations (such as the following) **but only if they also would qualify** under this same test
 - Churches described in section 170(b)(1)(A)(i)
 - Educational institutions described in section 170(b)(1)(A)(ii)
 - Hospitals described in section 170(b)(1)(A)(iii)
 - Organizations operated for the benefit of a college or university owned by or operated by a governmental unit (and thus) described in section 170(b)(1)(A)(iv)

“Donative” Public Charity

- Substantial part of its support from
 - US or state government and
 - Direct or indirect contributions from the general public
- Will not qualify if receives “almost all” of its support from program revenue

Schedule A testing Part II – 509(a)(1)

Aggregated 2% limit applies to certain persons per section 4946(a)(1)(C)-(G):

- Family members [spouse, ancestors, children through great grandchildren and spouses of children through great grandchildren —note no siblings]
- >20% owner of total combined voting power of a corporation; >20% owner of profits interests of a partnership; >20% owner of beneficial interest of a trust or unincorporated enterprise
- Corporations or partnerships in which persons described previously are >35% owners of total combined voting power, or have >35% profits interest, respectively [or in case of trust/estate, have >35% of beneficial interest]



Sources of Revenue

- Why does classification matter?

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

		(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants, and Other Similar Amounts	1a Federated campaigns					
	1b Membership dues					
	1c Fundraising events					
	1d Related organizations					
	1e Government grants (contributions)					
	1f All other contributions, gifts, grants, and similar amounts not included above					
	1g Noncash contributions included in lines 1a-1f	\$				
	1g Total. Add lines 1a-1f					
Program Service Revenue	2a _____ Business Code _____					
	b _____					
	c _____					
	d _____					
	e _____					
	f All other program service revenue					
	g Total. Add lines 2a-2f					
Other Revenue	3 Investment income (including dividends, interest, and other similar amounts)					
	4 Income from investment of tax-exempt bond proceeds					
	5 Royalties					
	6a Gross rents	(i) Real				
		(ii) Personal				
		6b Less: rental expenses				
	6c Rental income or (loss)					
	6d Net rental income or (loss)					
	7a Gross amount from sales of assets other than inventory	(i) Securities				
		(ii) Other				
		7b Less: cost or other basis and sales expenses				
	7c Gain or (loss)					
	7d Net gain or (loss)					
	8a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18	8a				
	8b Less: direct expenses	8b				
	8c Net income or (loss) from fundraising events					
	9a Gross income from gaming activities. See Part IV, line 19	9a				
9b Less: direct expenses	9b					
9c Net income or (loss) from gaming activities						
10a Gross sales of inventory, less returns and allowances	10a					
10b Less: cost of goods sold	10b					
10c Net income or (loss) from sales of inventory						
Miscellaneous Revenue	11a _____ Business Code _____					
	b _____					
	c _____					
	d All other revenue					
	e Total. Add lines 11a-11d					
12 Total revenue. See instructions						

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

				(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns	1a		One-way support General public is the direct and immediate beneficiary of the payment		
	b	Membership dues	1b				
	c	Fundraising events	1c				
	d	Related organizations	1d				
	e	Government grants (contributions)	1e				
	f	All other contributions, gifts, grants, and similar amounts not included above	1f				
	g	Noncash contributions included in lines 1a-1f: \$					
	h	Total. Add lines 1a-1f ▶					
Program Service Revenue				Business Code	Two-way support Grantor is the direct and immediate beneficiary of the payment		
	2a	.....				
	b	.....				
	c	.....				
	d	.....				
	e	.....				
	f	All other program service revenue					
g	Total. Add lines 2a-2f ▶						
3	Investment income (including dividends, interest, and other similar amounts) ▶				Income from program activities should NOT be on lines 3 - 11 e.g. interest on student loans, or program-related rentals (with		
4	Income from investment of tax-exempt bond proceeds ▶						
5	Royalties ▶						
6	Gross rents		(i) Real	(ii) Personal			
	Less: Rental expenses						

provide specific

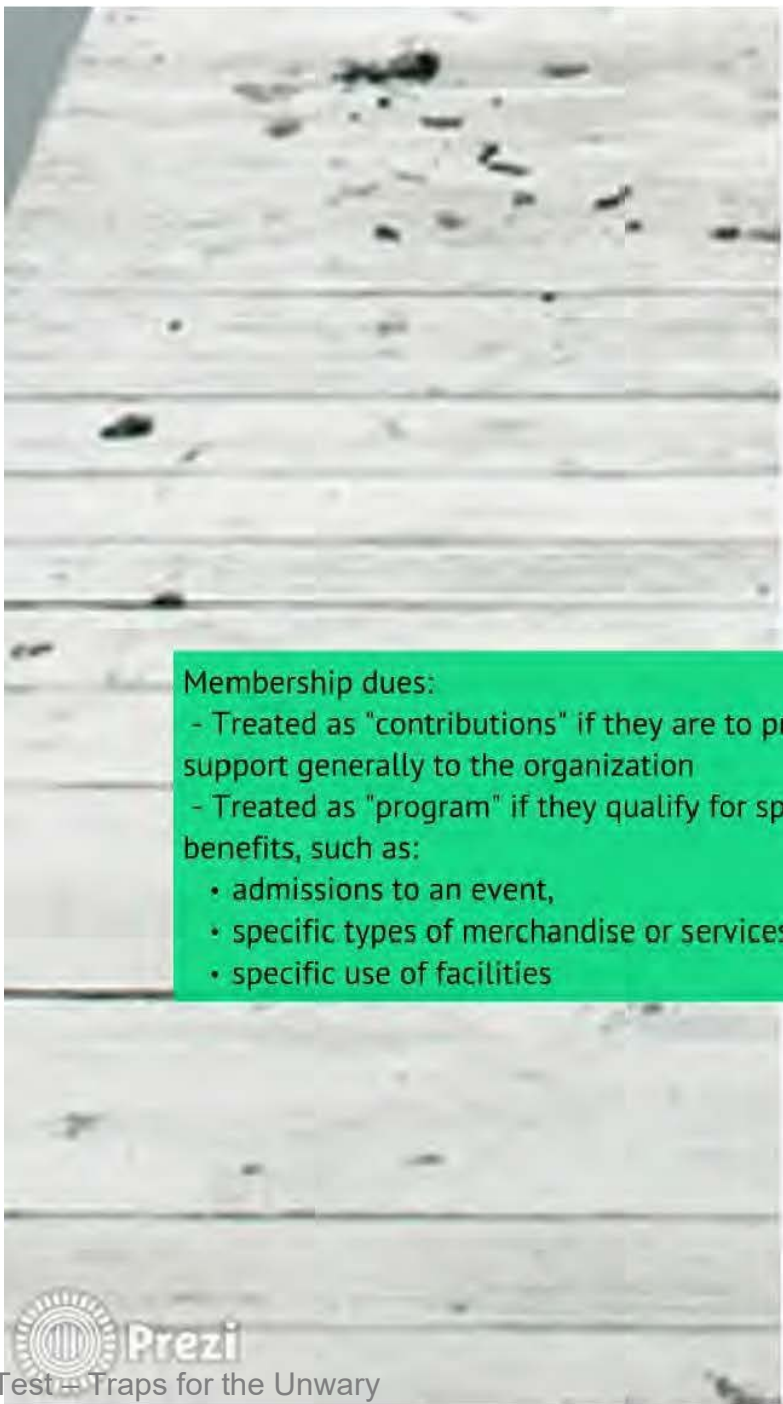
Other Revenue

3	Investment income (including dividends, interest, and other similar amounts) ▶				
4	Income from investment of tax-exempt bond proceeds ▶				
5	Royalties ▶				
		(i) Real	(ii) Personal		
6a	Gross rents				
b	Less: rental expenses				
c	Rental income or (loss)				
d	Net rental income or (loss) ▶				
7a	Gross amount from sales of assets other than inventory	(i) Securities	(ii) Other		
b	Less: cost or other basis and sales expenses				
c	Gain or (loss)				
d	Net gain or (loss) ▶				
8a	Gross income from fundraising events (not including \$ of contributions reported on line 1c). See Part IV, line 18 a				
b	Less: direct expenses b				
c	Net income or (loss) from fundraising events ▶				
9a	Gross income from gaming activities. See Part IV, line 19 a				
b	Less: direct expenses b				
c	Net income or (loss) from gaming activities ▶				
10a	Gross sales of inventory, less returns and allowances a				
b	Less: cost of goods sold b				
c	Net income or (loss) from sales of inventory ▶				
	Miscellaneous Revenue	Business Code			
11a	-----				
b	-----				
c	-----				
d	All other revenue				
e	Total. Add lines 11a-11d ▶				
12	Total revenue. See instructions. ▶				

Income from program activities should NOT be on lines 3 - 11 e.g. interest on student loans, or program-related rentals (with limited exceptions).

Part VIII Statement of Revenue

Check if Schedule O contains a response to this question



Membership dues:
 - Treated as "contributions" if they are to provide support generally to the organization
 - Treated as "program" if they qualify for specific benefits, such as:
 • admissions to an event,
 • specific types of merchandise or services
 • specific use of facilities



Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns	1a
	b	Membership dues	1b
	c	Fundraising events	1c
	d	Related organizations	1d
	e	Government grants (contributions)	1e
	f	All other contributions, gifts, grants, and similar amounts not included above	1f
	g	Noncash contributions included in lines 1a-1f: \$	
	h	Total. Add lines 1a-1f	
Program Service Revenue	2a	.....
	b	.....
	c	.....
	d	.....
	e	.....
	f	All other program service revenue .	
	g	Total. Add lines 2a-2f	
3	Investment income (including dividends and other similar amounts)		



Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in)	(a) 2019	(b) 2020	(c) 2021	(d) 2022	(e) 2023	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 Total. Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b						
8 Public support. (Subtract line 7c from line 6.)						

Section B. Total Support

Calendar year (or fiscal year beginning in)	(a) 2019	(b) 2020	(c) 2021	(d) 2022	(e) 2023	(f) Total
9 Amounts from line 6						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						
c Add lines 10a and 10b						
11 Net income from unrelated business activities not included on line 10b, whether or not the business is regularly carried on						
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13 Total support. (Add lines 9, 10c, 11, and 12.)						
14 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here <input type="checkbox"/>						

Section C. Computation of Public Support Percentage

15 Public support percentage for 2023 (line 8, column (f), divided by line 13, column (f))	15	%
16 Public support percentage from 2022 Schedule A, Part III, line 15	16	%

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2023 (line 10c, column (f), divided by line 13, column (f))	17	%
18 Investment income percentage from 2022 Schedule A, Part III, line 17	18	%
19a 33 1/3% support tests—2023. If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/>		
b 33 1/3% support tests—2022. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3%, and line 18 is not more than 33 1/3%, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/>		
20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions <input type="checkbox"/>		

509(a)(2)

Schedule A testing Part III 509(a)(2)

- 509(a)(2): emphasis on program service revenue as opposed to contribution revenue for organizations that receive more support from program services than contributions
 - Includes both contribution revenue & program service revenue in calculation of public support; limits support from gross investment income and unrelated business income.
 - Public support, as a percentage of total support, must be at least 33 1/3 %; AND Investment Income, as a percentage of total support, must be less than 33 1/3%.
- **Disqualified Persons – Part III, line 7a subtraction, reduces numerator**
 - As defined in IRC section 4946 (substantial contributors, ODT, family members, 35% controlled entities, owner of >20% entity that is a substantial contributor or org)
 - Gifts, grants, contributions, membership fees (line 1), program service revenue (line 2), and gross receipts from activities **from disqualified persons** are excluded from numerator of public support calculation

“Operating” public charity =

- More than 1/3 of support from:
 - Gifts, grants, contributions, or membership fees, and
 - Gross receipts from programs
- Not more than 1/3 of support from
 - Gross investment income, and
 - Excess of UBTI over UBTI tax paid

Numerator includes:

- Similar to §509(a)(1) test:
 - Gifts, grants, and contributions
 - Exclude unusual grants
 - Tax revenues levied on behalf of the organization
 - Value of donated services or facilities from a governmental unit
- Gross receipts from programs, limited to greater of \$5,000 or 1% of support for the year per source
- Gross receipts from volunteer activities, convenience of members, and donated merchandise
- Exclude all revenue from disqualified persons, §509(a)(2) and (3) organizations

Denominator includes:

- All one-way grants, contributions, and membership fees
- Gross receipts from program activities
- Net income from unrelated business activities, whether or not regularly carried on
- Gross investment income (rent, royalties, interest, dividends, etc.)
- Tax revenues levied on behalf of the organization
- Value of donated services and facilities from a governmental unit
- Do not include:
 - Unusual grants
 - Gain from sale of capital assets
 - Donated services, except as noted above

Watch for Revenue from:

- Disqualified persons, which include:
 - ODT
 - Family members of ODT
 - Affiliated corporations, partnerships, and trusts of ODTs and their family members
 - Substantial contributors = aggregate donations of more than \$5,000 if the amount is >\$2% of total contributions **since inception**
 - Does **not** include charitable orgs or governmental units
- Earmarking grants from §509(a)(1) orgs

Special Issues for Schedule A, cont'd:

- **Unpermitted Sources, Part III, line 7a, reduces numerator**
 - Amounts received by 509(a)(2) and 509(a)(3) organizations
 - Amounts received by Private Foundations
- **Excess Fees for Service Revenue from Single Payor**– see Part III line 7b
 - Amounts on lines 2 and 3 from a single payor that exceed the greater of \$5,000 or 1% of total support for the year (line 13) are excluded from public support
 - Governmental entities and publicly supported organizations are generally included in excess fees for service. Exceptions e.g. Medicare payments for benefit of named patients

“Good” public support under the two public support tests’ disparate definitions/limits affecting parties’ remittances

Both public support tests exclude specific parties’ remittances from “good” [i.e. “public”] support

- Sections 509(a)(1)/170(b)(1)(A)(vi) test: omits > 2% amounts of dollars contributed over the five-year test period by large donors [individuals, corporations including non-501(c)(3) exempt organizations, private foundations, and even some public charities]
- Section 509(a)(2) test: omits remittances for both contributions and fees for services from all persons who would be “disqualified persons” within the meaning of section 4946 were the filer a private foundation. Also excludes receipts from any person in any tax year to the extent that such receipts exceed the greater of \$5,000 or 1% of the organization’s total support for that tax year

Section 509(a)(2)'s total exclusion - both contributions and fee-for-service remittances

Private foundation Chapter 42 excise tax scheme section is embraced under the section 509(a)(2) public support test, carrying over from section 4946 five categories of “disqualified persons”:

- 1) Substantial contributors;
- 2) Foundation managers;
- 3) Owners of more than 20% of entities that are substantial contributors;
- 4) Family members. *Note: no siblings - only spouse, ancestors, children, grandchildren, great-grandchildren, and the spouses of children, grandchildren, and great-grandchildren of any natural persons in (1)-(3) above; and*
- 5) Greater than 35% controlled entities of those captured in (1)-(4) above



Section 509(a)(2)'s total exclusion of both contributions and fee-for-service remittances

- Each of those five categories are fully set out in the Form 990 instructions' Glossary [see point "B" under "disqualified person"]. It recites section 4946, and then goes on to state:
- *"For purposes of section 509(a)(2), as referenced in Schedule A (Form 990 or 990-EZ), Public Charity Status and Public Support, a disqualified person is defined in section 4946, except that it does not include an organization described in section 509(a)(1)."*
- That underlined phrase means that any organization holding public charity status under 509(a)(1)'s cross-reference of sections 170(b)(1)(A)(i)-(vi) [as of 2017, Section 170(b)(1)(A)(ix)] is excluded from DP status

Questions in completing public support test under section 509(a)(2):

- 1) Who comprises the entirety of the filer's disqualified persons in place for this filing year?
- 2) Has the filer been maintaining a list of substantial contributors?



Schedule A – Challenging Issues

What to do when an organization is about to fail the 33 1/3% public support test:

- 10% facts and circumstances test? *[for 170(b)(1)(A)(vi) organizations]*
- Are there any unusual grants that could be excluded?
- Does organization qualify as any other type of public charity?

Avoiding “almost all support from gross receipts from related activities” and “insignificant amount of support from government units and general public” traps for 170(b)(1)(A)(vi) organizations

1% threshold for inclusion of receipts from single source for 509(a)(2) organizations

5 year test:

- At least 33 1/3% or
- 10% facts and circumstances (see §1.170A-9(f)(3))
- Failure for a 2nd 5-year period may result in PF status

	2008	2009	2010	2011	2012	2013	2014	
2012 test	PASS							pass for 2012 and 2013
2013 test		FAIL						pass for 2013
2014 test			FAIL					fail for 2014

Unusual Grants

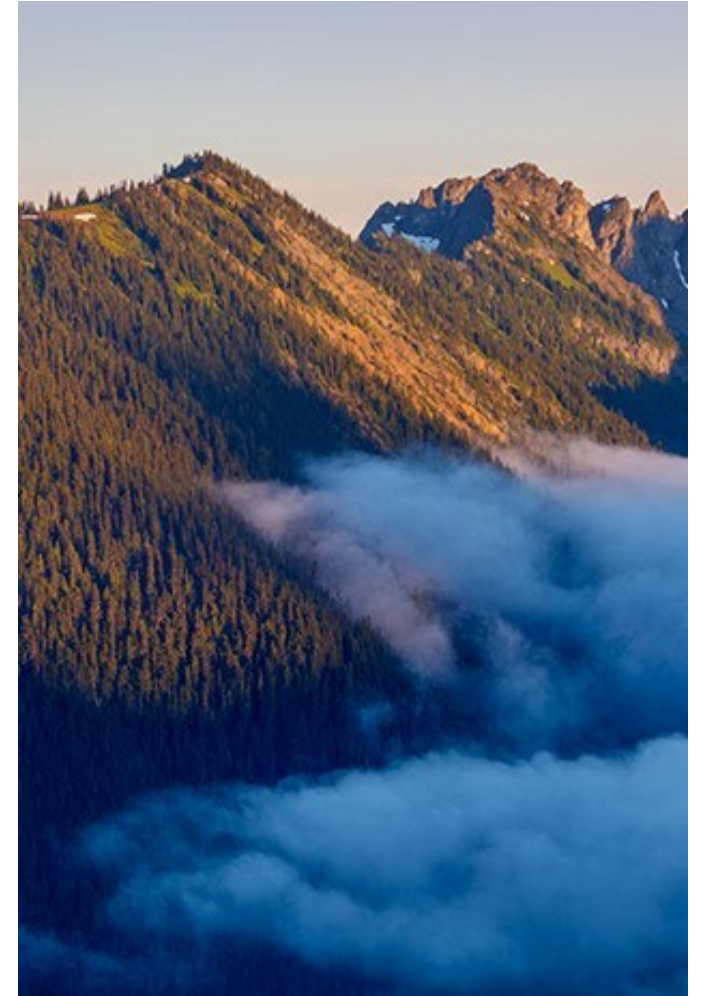
- Grant or bequest attracted by the publicly supported nature of the organization
- Grant or bequest is unusual or unexpected with respect to the amount thereof; and
- By reason of size, adversely affects the public support test

Can request a determination for unusual grant status, but this is not required. See Regs. §§1.509(a)-3(c)(3) and 1.170A-9(f)(6)(ii)

10% Facts & Circumstances Test

10% of its support from the public or governmental sources

- Must be in the nature of a publicly supported organization
 - Meaning that its directors or trustees must be a representative of the general public and its services must be offered to and available to the general public
 - Organization must describe on Part VI of Schedule A the facts and circumstances which establish that the organization is in the nature of an organization that is publicly supported.



Changing Classification

- Schedule A part I classification doesn't have to match the EO Business Master File
- IRS Form 8940 + \$400 user fee

Supporting Organizations

- Significance of Schedule A supporting organization reporting
 - Parts IV and V: 509(a)(3) compliance checklist contain a one-to-one correspondence with 509(a)(3) and regulations
 - The IRS has begun using more advanced data analytics, including a master query of Form 990 reporting data, to mine Form 990 for indicators of tax noncompliance or strong potential non-compliance
- Organizational test: are all supported organizations specified in articles of incorporation?
- Operational test: is all support provided limited to supported organizations, their individual beneficiaries, or beneficiaries operated, supervised, or controlled by or in connection with supported organizations?
- Relationship test: does the SO meet the requisite relationship test with all supported organizations?
- Can a Supporting Organization be reclassified as a 509(a)(1) or 509(a)(2) entity?



Supporting Organizations

Part I, line 12g: list all supported organizations that the supporting organization is organized to support, regardless of whether they actually received support during the year

- This can be a challenge if the supported organizations are designated by class or purpose, though this can be overcome by adding/removing organizations and disclosing in Part IV, Section A, Line 5
- List only organizations that the supporting organization was organized to support

Supporting Organizations

Part IV, Section A

- Line 1: All supported organizations are not required to be listed by name in a supporting organization's governing documents, so answering "no" should not be a compliance issue. The associated Part VI disclosure should be carefully worded, particularly for Type III organizations
- Line 6: The wording of the form and instructions are narrower than what is permitted under the regulations, so a "yes" answer does not necessarily suggest noncompliance
 - If so, the part VI disclosure should explain why the activities benefit the supported organization

For example: providing support to other entities within a system that are "operated, supervised, or controlled directly by or in connection with" the supported organizations

Supporting Organizations

Part IV, Section B

- Line 1: The Type I relationship can be satisfied in other ways, so answering “no” should not be a compliance issue; however, the associated Part VI disclosure should be carefully worded

For example: type I relationship can also be met if the officers, directors or trustees of the supporting organization are appointed by officers of a supported organization

Part IV, Section C

- Line 1: The Type II relationship can be satisfied in other ways; a majority board overlap is not required. Therefore, answering “no” may not be a compliance issue, but the associated Part VI disclosure should be carefully worded to demonstrate that the same individuals control or manage the supported and supporting organizations.

For example: all officers of the supporting organization are also officers of the supported organization

Supporting Organizations

Line 1: *Do Type III Supporting Organizations meet notification requirements?*

- Particularly in systems experiencing organizational change, the required notice may not have been sent to all supported organizations or it may be late *[i.e., the required date is not the same as the required filing date for Form 990]*
 - This would require checking “no” to Line 1 and is considered a compliance issue
 - The filing organization will likely want to disclose why this occurred and explain how it has corrected the issue



The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought.

Break

Lobbying, Campaign Activity and Private Benefit, Oh My!

Pitfalls for Section 501 (c) (3)s in Their Relationships with Section 501 (c) (4)s, 501 (c) (6)s and 527s

Polly Federico, Sentara Health System

March 27, 2024

Zac Kester, Charitable Allies

Lauren Mack, Law Office Of Lauren Mack

The Basics

Section 501(c)(3) Organizations

- ▶ Must be organized and operated primarily for specified exempt purposes, (including charitable, religious, educational, scientific, and literary purposes)
- ▶ None of its earnings may inure to any private shareholder or individual
- ▶ Must not be organized or operated for the benefit of private interests
- ▶ May not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities
- ▶ May not participate in any campaign activity for or against political candidates

The Basics

Section 501(c)(4) Social Welfare Organizations

- ▶ Must not be organized for profit
- ▶ Must operate primarily to further the common good and general welfare of the people of the community
- ▶ None of its earnings may inure to any private shareholder or individual
- ▶ May further its exempt purposes through lobbying as its primary activity without jeopardizing its exempt status
- ▶ May engage in some political activities, so long as that is not its primary activity.

The Basics

Section 501(c)(6) Trade Associations

- ▶ Must not be organized for profit
- ▶ None of its earnings may inure to any private shareholder or individual
- ▶ Must be devoted to improving business conditions of one or more lines of business as distinguished from performing particular services for individual persons
- ▶ May further its exempt purposes through lobbying activity without jeopardizing its exempt status
- ▶ May engage in some political activities, so long as that is not its primary activity

The Basics

Section 527 Organizations

- ▶ Must be organized and operated for the purpose of collecting contributions for or making expenditures to influence or attempt to influence the selection, nomination, election, or appointment of any individual to an office
- ▶ Section 501 (c) (4) and 501 (c) (6) organizations establish a “separate segregated fund” rather than a stand-alone PAC

Comparison of Key Characteristics

Federal tax law attributes of five common types of tax-exempt organizations	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive tax-deductible charitable contributions	YES	NO	NO	NO	NO
Receive contributions or fees deductible as a business expense	YES	YES	YES	YES	NO
Substantially related income exempt from federal income tax	YES	YES	YES	YES	YES
Investment income exempt from federal income tax	LTD*	YES	YES	YES	NO
Engage in legislative advocacy	LTD	YES	YES	YES	LTD
Engage in candidate election advocacy	NO	LTD	LTD	LTD	YES
Engage in public advocacy not related to legislation or election of candidates	YES	YES	YES	YES	LTD

Importance of State Lobbying and Election Law

In determining what tax structure works best for your organization, state laws governing lobbying and political organizations should be part of the process

Laws are very state specific

- Identify the relevant states

- Identify the permissible ways to achieve your lobbying and political objectives

- They may include taxable entities

Common Transactions and Arrangements

Common transactions and arrangements (“Arrangements”) between a Section 501(c)(3) organization (“Charity”) and an affiliated Section 501(c)(4) or 501(c)(6) organization (an “Affiliate”) include:

- Loans to the Affiliate

- Grants to the Affiliate

- Shared offices, employees and services

- Other exchange of goods and services

Three Structural Areas of Risk

Separation between the Charity and the Affiliate

Avoid attribution or piercing the corporate veil by:

- Observing corporate formalities

- Limiting board overlap

- Maintaining independent financial records and bank accounts

- Separating fundraising and funding sources

- Limiting shared services and employees

Three Structural Areas of Risk

Subsidies

- ▶ The Charity **can** subsidize Affiliate activities that the Charity could conduct directly
- ▶ The Charity **cannot** subsidize Affiliate activities that Charity could not conduct directly

Control

- ▶ The Charity **should not** be involved in the day-to-day management of an Affiliate
- ▶ The Charity **may** subsidize coordinate with an Affiliate to facilitate each organization's furtherance of its exempt purposes and mission

Document, Document, Document

Key to managing the risk associated with Arrangements with Affiliates is to:

- Identify and comply with the applicable standard

- Document of the terms of the Arrangement, spelling out all the necessary elements of the standard

- Document the transactions under the Arrangement (payments, cost allocations, etc.)

- Document oversight of the transactions (reporting, expenditure responsibility, compliance with the terms of the arrangement)

Loans to an Affiliate

A loan to an Affiliate may result in private benefit and attribution of lobbying and/or political campaign activity to the Charity unless:

- The loan bears interest at a market rate

- The loan terms are commercially reasonable

- The loan proceeds are to be used for general support

The Charity should not make a loan to an Affiliate if it expects the Affiliate to use the funds for political campaign activity

Grants to an Affiliate

A Charity may make a grant to an Affiliate if:

- The terms of the grant prohibit use of the funds for political campaign activity

- The terms of the grant either prohibit use of the funds for lobbying or specify the amount that can be used for lobbying

- The Charity exercises expenditure responsibility

A grant should not be used to finance fundraising costs or general purposes

Shared Offices, Employees and Other Services

A Charity should not provide shared services to an Affiliate unless:

- The Charity is reimbursed for at least the Affiliate's share of its actual costs (may charge more but not less)

- The Charity is reimbursed for a proportionate amount of the Charity's overhead

- The Affiliate's share may be measured on any reasonable basis (net rentable space, employee time, etc.,).

- The share may differ depending on the specific direct and indirect costs being reimbursed

Other Transactions involving Goods and Services

A Charity should not provide goods or services to an Affiliate unless:

- The Affiliate is charged full fair market value

- The other terms of the Arrangement are commercially reasonable

A Charity should not purchase goods or services from an Affiliate unless:

- The Charity pays no more than fair market value

- The other terms of the Arrangement are commercially reasonable

Section 527 Separate Segregated Funds

90

Section 501(c)(4) and 501(c)(6) organizations may conduct their political activities by sponsoring separate segregated funds (“SSFs”) or through a stand-alone PAC

State law may impact the available options

Donors may contribute directly to the SSF

Payments made to the general funds of the sponsoring organization (“Sponsor”) may be transferred to a non-Federal SSF so long as the transfers are made promptly and directly

Such transferred funds must be sourced from dues and contributions cannot be made from investment income

Resources and Acknowledgements

IRS website: Publications, summaries of exemption requirements, Audit Guides, Internal Revenue Manual

BoulderAdvocacy's The Connection and other Guides

Publicly available Articles and Presentations by attorneys, such as materials prepared by Adler & Colvin, Weil Gotshal & Manshal, and bar associations such as the ABA and AHLA



Reception/Dinner sponsored by



6 p.m. – 9 p.m.

The City Club, located at 555 13th Street NW Washington, DC, 20004

Thank you for attending today's program.
We look forward to seeing you back here
tomorrow morning at 8 a.m.