

Public Charities: Income Tax Compliance

Once a charitable entity is formed successfully and its tax-exempt status is obtained, those in positions of responsibility for the entity begin to face the ever-present challenges of maintaining that status. Aside from the many operational limitations which must be observed, there are a number of tax compliance issues that must be addressed as well.

Public Inspection of Determination Letter and Application for Exemption. Section 6104(d) of the Internal Revenue Code (the “Code”) requires a charitable entity to retain a copy of its tax-exempt determination letter, Form 1023 (Application for Tax-Exempt Status), with all attachments, and any related correspondence with the IRS in its permanent records. The charity must also make all of the foregoing documents available for inspection at its principal office to anyone who makes a request to see them.

Charities must provide a copy of these documents to any person who so requests. An immediate copy must be provided to anyone who asks in person, and a copy must be mailed within 30 days to anyone who so requests in writing. The charity may charge \$1.00 for copying the first page of any document, plus \$.15 for each additional page. It may also charge postage if the copies must be mailed.

Documentation of Revenue. Code Section 501(c)(3) organizations have two subsets: (1) private foundations, such as family and corporate foundations, and (2) public charities. If the organization is classified as a “public charity,” it must keep detailed records of each contribution and payment it receives, as well as all other income, to ensure that it will have the data required to demonstrate that it is a publicly supported organization. The charity must submit this data to the IRS annually on Form 990 Return of Organization Exempt from Income Tax, and as of the end of its fifth fiscal year on Form 8734 Support Schedule for Advance Ruling Period (covering the first five fiscal years).

Income Tax Returns. Public charities must file IRS Form 990 or 990-EZ, including Schedule A, for each year in which its average annual gross receipts are at least \$25,000. For this purpose, average annual gross receipts are calculated on the basis of a three-year rolling average, taking into account the current year and the two preceding years.

Form 990-EZ may be filed for any year in which the charity’s gross receipts are less than \$100,000 and its total assets at the end of the year are less than \$250,000. Otherwise, the organization must file Form 990. If a public charity is in its start-up year, it must file Form

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990 or 990-EZ only if its gross receipts in its initial year are at least \$37,500. For the second year, it must file Form 990 or 990-EZ only if its average annual gross receipts (for the first two years) are at least \$30,000. For any year in which a public charity is not required to file Form 990 or 990-EZ, it must file the Form 990-N, which is an electronic notice. Regardless of which tax return it is required to file, it must be filed by May 15th of each year. An extension of time to file may be requested by filing Form 2758 no later than May 15th.

Each tax return filed by a public charity must be made available for public inspection for three years after the date of filing, under the same terms as the determination letter and application for exemption. Each Form 990 or 990-EZ that is subject to public inspection is also subject to the requirement that copies be provided, as discussed above with respect to the application for exemption.

Receipts for Contributions. The Code imposes several substantiation requirements with respect to providing receipts for charitable contributions. The most common of these apply to gifts of at least \$250, and to “quid pro quo contributions” of at least \$75. Additional requirements apply with respect to non-cash gifts of property whose value is at least \$500.

State Registration. While most states automatically grant state income tax exemption upon determination of federal tax-exempt status from the IRS, most states also require charities to file additional forms to receive state sales tax, use tax, and property tax exemptions, although, these requirements vary from state to state.

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