

# 2012

## Instructions for Form 990-EZ

Short Form Return of Organization Exempt  
From Income Tax Under Section 501(c),  
527, or 4947(a)(1) of the Internal Revenue  
Code (except black lung benefit trust or  
private foundation)

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**Volume 3 of 3**





## **Appendix D: Public Inspection of Returns**

Some members of the public rely on Form 990 or 990-EZ as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its returns.

An organization's completed Form 990 or 990-EZ is available for public inspection as required by section 6104. Schedule B (Form 990, 990-EZ, or 990-PF), Schedule of Contributors is open for public inspection for section 527 organizations filing Form 990 or 990-EZ, and for organizations filing Form 990-PF. For other organizations that file Form 990 or 990-EZ, the names and addresses of contributors listed on Schedule B are not required to be made available for public inspection. All other information reported on Schedule B, including the amount of contributions, the description of noncash contributions, and any other information, is required to be made available for public inspection unless it clearly identifies the

contributor. Form 990-T filed after August 17, 2006, by a section 501(c)(3) organization to report any unrelated business income, is also available for public inspection and disclosure.

## **Through the IRS**

Use Form 4506-A to request:

- A copy of an exempt or political organization's return, report, notice, or exemption application; or
- An inspection of a return, report, notice, or exemption application at an IRS office.

The IRS can provide copies of exempt organization returns on a compact disc (CD). Requesters can order the complete set (all Forms 990 and 990-EZ or all Forms 990-PF filed for a year) or a partial set by state or by month. For more information on the cost and how to order CD-ROMs, call the TE/GE Customer Account Services toll-free number (1-877-829-5500) or write to the IRS:

Internal Revenue Service  
Mail Stop 6716  
Ogden, UT 84201

The IRS generally cannot disclose portions of an exemption application relating to trade secrets, etc. Additionally, the IRS cannot disclose the names and addresses of contributors. See the Instructions for Schedule B (Form 990, 990-EZ, or 990-PF) for more information about the disclosure of that schedule.

Form 990-T must be made available for public inspection by both the IRS and section 501(c)(3) organizations under Notice 2008-49, 2008-20 I.R.B. 979.

A section 527 organization's Form 990 or 990-EZ can only be requested for tax years beginning after June 30, 2000.

A private foundation's Form 990-PF can only be requested for tax years beginning after March 13, 2000.

A return, report, notice, or exemption application can be inspected at an IRS office free of charge. Copies of these items can also be obtained through the organization as discussed in the following section.

## Through the Organization

**Public inspection and distribution of certain returns of un-related business income.** Section 501(c)(3) organizations that are required to file Form 990-T after August 17, 2006, must make Form 990-T available for public inspection under section 6104(d)(1)(A)(ii).

**Public inspection and distribution of returns and reports for a political organization.** Section 527 political organizations required to file Form 990 or 990-EZ, must, in general, make their Form 8871, 8872, 990, or 990-EZ available for public inspection in the same manner as annual information returns of section 501(c) organizations. See *Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations*, later. Generally, Form 8871 and 8872 are available for inspection and printing in the Charities & Nonprofits section of the IRS website (IRS.gov).



*Note that a section 527 political organization (and an organization*

*filing Form 990-PF) must disclose their Schedule B (Form 990, 990-EZ, or 990-PF). See the Instructions for Schedule B. The penalties discussed in General Instruction H also apply to section 527 political organizations (Rev. Rul. 2003-49, 2003-20 I.R.B. 903).*

**Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.** Under Regulations sections 301.6104(d)-1 through 3, a tax-exempt organization must:

- Make its application for recognition of exemption and its annual information returns available for public inspection without charge at its principal, regional and district offices during regular business hours;
- Make each annual information return available for a period of 3 years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later; and

- Provide a copy without charge (for Form 990-T, this requirement applies only to Forms 990-T filed after August 17, 2006), other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection to any individual who makes a request for such copy in person or in writing (except as provided in Regulations sections 301.6104(d)-2 and (d)-3).

## **Definitions**

***Tax-exempt organization*** is any organization that is described in section 501(c) or (d) and is exempt from taxation under section 501(a). The term tax-exempt organization also includes any section 4947(a)(1) nonexempt charitable trust or nonexempt private foundation that is subject to the reporting requirements of section 6033.

***Application for tax exemption*** includes:

- Any prescribed application form (such as Form 1023 or 1024),



- All documents and statements the IRS requires an applicant to file with the form,
- Any statement or other supporting document submitted in support of the application, and
- Any letter or other document issued by the IRS concerning the application.

***Application for tax exemption*** does not include:

- Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987;
- In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or
- Any material that is not available for public inspection under section 6104.



*If there is no prescribed application form, see Regulations section 301.6104(d)-1(b)(3)(ii).*

***Annual information return*** includes:

- An exact copy of the Form 990 or 990-EZ filed by a tax-exempt organization as required by section 6033,
- Any amended return the organization files with the IRS after the date the original return is filed, and
- An exact copy of Form 990-T if one is filed by a 501(c)(3) organization.

The copy must include all information furnished to the IRS on Form 990, 990-EZ, or 990-T as well as all schedules, attachments and supporting documents, except for the name and address of any contributor to the organization. See the Instructions for Schedule B (Form 990, 990-EZ, or 990-PF). However, schedules, attachments, and supporting documents filed with Form 990-T that do not relate to the imposition of unrelated business income tax are not required to be made available for public inspection and copying. See Notice 2008-49.

***Annual returns more than 3 years old.*** An annual information return does not include

any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later.

If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the IRS.

***Local or subordinate organizations.*** For rules relating to annual information returns of local or subordinate organizations, see Regulations section 301.6104(d)-1(f)(2).

***Regional or district offices.*** A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

A site is not considered a regional or district office, however, if:

- The only services provided at the site further exempt purposes (such as day

care, health care or scientific or medical research); and

- The site does not serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

## **Special Rules Relating to Public Inspection**

***Permissible conditions on public inspection.*** A tax-exempt organization:

- Can have an employee present in the room during an inspection,
- Must allow the individual conducting the inspection to take notes freely during the inspection, and
- Must allow the individual to photocopy the document at no charge, if the individual provides photocopying equipment at the place of inspection.

***Organizations that do not maintain permanent offices.*** A tax-exempt organization with no permanent office:

- Must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice,
- 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,
- Can mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester instead of allowing an inspection, and
- 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.

## **Special Rules Relating to Copies**

***Time and place for providing copies in response to requests made in-person.*** A tax-exempt organization must:

- Provide copies of required documents under section 6104(d) in response to a request made in person at its principal, regional and district offices during regular business hours, and
- Provide such copies to a requester on the day the request is made, except for unusual circumstances (see below).

***Unusual circumstances.*** In the case of an in-person request, where unusual circumstances exist so that fulfilling the request on the same business day causes an unreasonable burden to the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist, or the 5th business day after the date of the request, whichever occurs first.

Unusual circumstances include:

- Requests received that exceed the organization's daily capacity to make copies;
- Requests received shortly before the end of regular business hours that require an extensive amount of copying; or
- Requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student registration or attending an off-site meeting or convention, rather than its regular administrative duties.

***Agents for providing copies.*** For rules relating to use of agents to provide copies, see Regulations sections 301.6104(d)-1(d)(1)(iii) and 1(d)(2)(ii)(C).

***Request for copies in writing.*** A tax-exempt organization must honor a written request for a copy of documents (or the requested part) required under section 6104(d) if the request:

1. Is addressed to, and delivered by mail, electronic mail, facsimile, or a private

delivery service, as defined in section 7502(f), to a principal, regional, or district office of the organization; and

2. Sets forth the address to which the copy of the documents should be sent.



## Time and manner of fulfilling written requests

IF the organization	THEN the organization
Receives a written request for a copy,	Must mail the copy of the requested documents (or the requested parts) within 30 days from the date it receives the request.
Mails the copy of the requested document,	Is deemed to have provided the copy on the postmark date or private delivery mark (if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt).
Requires payment in advance,	Is required to provide the copies within 30 days from the date it receives payment.
Receives a request or payment by mail,	Is deemed to have received it 7 days after the date of the postmark, absent evidence to the contrary.
Receives a request transmitted by electronic mail or facsimile,	Is deemed to have received it the day the request is transmitted successfully.
Receives a written request without payment or with an insufficient payment, when payment in advance is required,	Must notify the requester of the prepayment policy and the amount due within 7 days from the date of the request's receipt.
Receives consent from an individual making a request,	Can provide a copy of the requested document exclusively by electronic mail (the material is provided on the date the organization successfully transmits the electronic mail).

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***Request for a copy of parts of a document.*** A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

***Fees for copies.*** A tax-exempt organization can charge a reasonable fee for providing copies. Before the organization provides the documents, it can require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization can disregard the request.

***Form of payment—(A) Request made in person.*** If a tax-exempt organization charges a fee for copying, it must accept payment by

cash and money order for requests made in person. The organization can accept other forms of payment, such as credit cards and personal checks.

***(B) Request made in writing.*** If a tax-exempt organization charges a fee for copying and postage, it must accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization can accept other forms of payment.

***Avoidance of unexpected fees.*** Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds \$20.

***Documents to be provided by regional and district offices.*** Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office about allowing public inspection and providing copies of its

application for tax exemption and annual information returns.

A regional or district office is not required, however, 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 extension of time that is granted for filing such return) or is actually filed, whichever is later.

## **Documents Provided by Local and Subordinate Organizations**

***Applications for tax exemption.*** Except as otherwise provided, a tax-exempt organization that did not file its own application for tax exemption (because it is a local or subordinate organization covered by a group exemption letter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the IRS by the central or parent organization to obtain the group exemption letter and 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. See Regulations section 301.6104(d)-1(f) for further information.

***Annual information returns.*** A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return) must, upon 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 a case where the requester seeks inspection, the local or subordinate organization can mail a copy of the applicable documents to the requester within the same time period instead of allowing an inspection. In such a 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 in *Request for copies in writing*, 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 in *Special Rules Relating to Public Inspection* and *Special Rules Relating to Copies*, earlier.

***Failure to comply.*** Any person who does not comply with the public inspection requirements will be assessed a penalty of \$20 for each day that inspection was not permitted, up to a maximum of \$10,000 for each return. The penalties for failure to comply with the public inspection requirements for applications are the same as those for annual returns, except that the \$10,000 limitation does not apply (sections



6652(c)(1)(C) and (D)). Any person who willfully fails to comply with the public inspection requirements for annual returns or exemption applications will be subject to an additional penalty of \$5,000 (section 6685).

## **Making Applications and Returns Widely Available**

A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return if the organization has made the requested document widely available (see below).

An organization that makes its application for tax exemption and/or annual information return widely available must nevertheless make the document available for public inspection as required under Regulations section 301.6104(d)-1(a).

A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization complies with the Internet

posting requirements and the notice requirements given below.

***Internet posting.*** A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. The document will be considered widely available only if:

- The World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;
- The document is posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the IRS, except

for any information permitted by statute to be withheld from public disclosure; and

- Any individual with access to the Internet can access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

***Reliability and accuracy.*** In order for the document to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the document that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed or lost, the entity must correct or replace the document.

***Notice requirement.*** If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available, it must notify any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization must provide such notice to the individual immediately. If the request is made in writing, the notice must be provided within 7 days of receiving the request.

## **Tax-Exempt Organization Subject to Harassment Campaign**

If the Exempt Organizations (EO) Technical office determines that the organization is being harassed, a tax-exempt organization is not required to comply with any request for copies that it reasonably believes is part of a harassment campaign.

Whether a group of requests constitutes a harassment campaign depends on the relevant facts and circumstances such as:

- A sudden increase in requests;

- An extraordinary number of requests by form letters or similarly worded correspondence;
- Hostile requests;
- Evidence showing bad faith or deterrence of the organization's exempt purpose;
- Prior provision of the requested documents to the purported harassing group; and
- A demonstration that the organization routinely provides copies of its documents upon request.

A tax-exempt organization can disregard any request for copies of all or part of any document beyond the first two received within any 30-day period or the first four received within any 1-year period from the same individual or the same address, regardless of whether the EO Technical office has determined that the organization is subject to a harassment campaign.

A tax-exempt organization can apply for a determination that it is the subject of a

harassment campaign and that compliance with requests that are part of the campaign would not be in the public interest by submitting a signed application to the EO Technical office. See Rev. Proc. 2012-4, 2012-1 I.R.B. 125, and Rev. Proc. 2012-8, 2012-1 I.R.B. 235.

In addition, the organization can suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a harassment campaign determination. However, if the EO Technical office determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the officer, director, trustee, employee, or other responsible individual of the organization remains liable for any penalties for not providing the copies in a timely fashion. See Regulations section 301.6104(d)-3.

## **Appendix E: Section 4958 Excess Benefit Transactions**

The intermediate sanction regulations are important to the exempt organization community as a whole, and for ensuring compliance in this area. The rules provide a roadmap by which an organization can steer clear of situations that may give rise to inurement.

Under section 4958, any disqualified person who benefits from an excess benefit transaction with an applicable tax-exempt organization is liable for a 25% tax on the excess benefit. The disqualified person is also liable for a 200% tax on the excess benefit if the excess benefit is not corrected by a certain date. Also, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause are liable for a 10% tax on the excess benefit, not to exceed \$20,000 for all participating managers on each transaction.

## **Applicable Tax-Exempt Organization**

These rules only apply to certain applicable section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. 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 does not include:

- A private foundation as defined in section 509(a),
- A governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) or relieved from filing an annual return under Regulations section 1.6033-2(g)(6), and
- Certain foreign organizations.

An organization is not 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 was not tax-exempt under section 501(a), so long as the determination was not based on private inurement or one or more excess benefit transactions.

## **Disqualified Person**

The vast majority of section 501(c)(3), 501(c)(4), or 501(c)(29) organization employees and independent contractors will not be affected by these rules. Only the few influential persons within these organizations are covered by these rules when they receive benefits, such as compensation, fringe benefits, or contract payments. The IRS calls this class of covered individuals disqualified persons.

*A disqualified person*, regarding any transaction, is any person who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during a 5-year period ending on the date of the transaction. Persons who hold certain powers, responsibilities, or interests are among those who are in a position to exercise substantial

influence over the affairs of the organization. This would include, for example, voting members of the governing body, and persons holding the power of:

- Presidents, chief executive officers, or chief operating officers, and
- Treasurers and chief financial officers.

A disqualified person also includes certain family members of a disqualified person, and 35% controlled entities of a disqualified person.

The following persons are considered disqualified persons for the following organizations, along with certain family members and 35% controlled entities associated with them:

- For a transaction involving a donor advised fund, a donor or donor advisor of that donor advised fund,
- A donor advised fund sponsoring organization, an investment advisor of the sponsoring organization, and

- A supported organization of a section 509(a)(3) supporting organization, the disqualified persons of the section 509(a)(3) supporting organization.

See the Instructions for Form 4720, Schedule I for more information regarding these disqualified persons.

**Who is not a disqualified person?** The rules also clarify which persons are not considered to be in a position to exercise substantial influence over the affairs of an organization. They include:

- An employee who receives benefits that total less than the highly compensated amount (\$100,000 in 2007, \$105,000 in 2008, \$110,000 in 2009–2011, \$115,000 in 2012 ) and who does not hold the executive or voting powers just mentioned; is not a family member of a disqualified person; and is not a substantial contributor;
- Tax-exempt organizations described in section 501(c)(3); and

- Section 501(c)(4) organizations engaging in transactions with other section 501(c)(4) organizations.

**Who else can be considered a disqualified person?** Other persons not described above can also be considered disqualified persons, depending on all the relevant facts and circumstances.

***Facts and circumstances tending to show substantial influence.***

- 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 no substantial influence.***

- The person is an independent contractor whose sole relationship to the organization is providing professional advice (without having decision-making authority) for transactions from which the independent contractor will not economically benefit.

- The person has taken a vow of poverty.
- 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 is not a disqualified person.
- The person does not 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.

**What about persons who staff affiliated organizations?** In the case of multiple affiliated organizations, the determination of whether a person has substantial influence is made separately for each applicable tax-exempt organization. A person can be a disqualified person for more than one organization in the same transaction.

## **Excess Benefit Transaction**

An *excess benefit transaction* generally 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 applicable tax-exempt organization exceeds the value of the consideration (including the performance of services) received for providing such benefit, but see the special rules below for donor advised funds and supporting organizations. An excess benefit transaction also can occur when a disqualified person embezzles from the exempt 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 (FMV). FMV 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 funds.** For a donor advised fund, an excess benefit transaction includes a grant, loan, compensation, or 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.

For these transactions, the excess benefit is defined as the amount of the grant, loan, compensation, or similar payment. For additional information, see the Instructions for Form 4720.



**Supporting organizations.** For any supporting organization defined in section 509(a)(3), an excess benefit transaction includes grants, loans, compensation, or similar payment provided by the supporting organization to a:

- Substantial contributor,
- Family member of a substantial contributor,
- 35% controlled entity of a substantial contributor, and
- 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)).

A substantial contributor is 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

organization before the end of the tax year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, a substantial contributor also means the creator of the trust.

The excess benefit for substantial contributors and parties related to those contributors includes the amount of the grant, loan, compensation, or similar payment. For additional information, see the Instructions for Form 4720.

**When does an excess benefit transaction usually occur?** 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 payments or other payments to a disqualified person during the disqualified person's tax year, any excess benefit transaction for these payments occurs on the last day of the taxpayer's tax year.

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, is not 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.

***Section 4958 applies only to post-September 1995 transactions.*** Section 4958 applies the general rules to excess benefit transactions occurring on or after September 14, 1995. Section 4958 does not apply to any transaction occurring under a written contract that was binding on September 13, 1995, and at all times thereafter before the transaction occurs. The special rules relevant to transactions with donor advised funds and supporting organizations apply to transactions occurring after August 17, 2006, except that taxes on

certain transactions between supporting organizations and their substantial contributors apply to transactions occurring on or after July 25, 2006.

## **What is Reasonable Compensation?**

*Reasonable compensation* is the valuation standard that is used to determine if there is an excess benefit in the exchange of a disqualified person's services for compensation.

*Reasonable compensation* is the value that would ordinarily be paid for like services by like enterprises under like circumstances. This is the section 162 standard that 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 the reasonableness of compensation.

For determining the reasonableness of compensation, all items of compensation provided by an applicable tax-exempt organization in exchange for the performance of services are taken into account in

determining the value of compensation (except for certain economic benefits that are disregarded, as discussed later in *What benefits are disregarded*, later). Items of compensation include:

- All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred and noncash compensation;
- The payment of liability insurance premiums for, or the payment or reimbursement by the organization of taxes or certain expenses under section 4958, unless excludable from income as a *de minimis* fringe benefit under section 132(a)(4). (A similar rule applies in the private foundation area.) Inclusion in compensation for purposes of determining reasonableness under section 4958 does not control inclusion in income for income tax purposes;
- 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.

***Written intent required to treat benefits as compensation.*** An economic benefit is not 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, 1099, 990, or 990-EZ, or on an amended form filed before the start of an IRS examination; or
- The disqualified person reports the benefit as income on the person's original Form 1040 or on an amended form filed before the start of an IRS examination.

***Exception.*** To the extent the economic benefit is excluded from the disqualified person's gross income for income tax purposes, the applicable tax-exempt organization is not required to indicate its intent to provide an economic benefit as compensation for services. (For example, employer provided health benefits, and contributions to qualified plans under section 401(a).)

**What benefits are disregarded?** The following economic benefits are disregarded for purposes of section 4958.

- Nontaxable fringe benefits, for example, an economic benefit that is excluded from income under section 132.
- Benefits to volunteers, for example, an economic benefit 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 per year.
- Benefits to members or donors, for example, an economic benefit 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 nondisqualified persons make similar payments or contributions and are offered a similar economic benefit.
- Benefits to a charitable beneficiary, for example, an economic benefit 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.



- Benefits to a governmental unit, for example, 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.

**Is there an exception for initial contracts?** Section 4958 does not apply to any fixed payment made to a person under an initial contract. This is a very important exception, since it would potentially apply, for example, to all initial contracts with new, previously unrelated officers and contractors.

An *initial contract* is a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person immediately before entering into the 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, in general, 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).

***Treatment as new contract.*** A binding written contract providing that it can be terminated or canceled by the applicable tax-exempt organization without the other party's consent (except as a result of substantial non-performance) and without substantial penalty, is treated as a new contract, as of the earliest date that any termination or cancellation would be effective. Also, a contract in which there is a material change, 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, is treated as a new contract as of the effective date of the material change. Treatment as a new contract can cause the contract to fall outside the initial contract exception, and it thus would be

tested under the FMV standards of section 4958.

## **Rebuttable Presumption of Reasonableness**

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 FMV, if the following three conditions are met.

1. The transaction is approved by an authorized body of the organization (or an entity it controls) which is composed of individuals who do not 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 a conflict of interest; and
  - e) Documentation of the basis for 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.

**Special rebuttable presumption rule for non-fixed payments.** As a general rule, in the case of a non-fixed payment, no rebuttable presumption arises until the exact amount of the payment is determined, or a fixed formula for calculating the payment is specified, and the three requirements creating the presumption have been satisfied.

However, if the authorized body approves an employment contract with a disqualified person that includes a non-fixed payment (for example, discretionary bonus) with a specified cap on the amount, the authorized body can establish a rebuttable presumption as to the non-fixed payment when the employment contract is entered into by, in effect, assuming that the maximum amount payable under the contract will be paid, and satisfying the requirements giving rise to the

rebuttable presumption for that maximum amount.

**An IRS challenge to the presumption of reasonableness.** The IRS can refute the presumption of reasonableness only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. This provision gives taxpayers added protection if they faithfully find and use contemporaneous persuasive comparability data when they provide the benefits.

**Organizations that do not establish a presumption of reasonableness.** An organization can still comply with section 4958 even if it did not establish a presumption of reasonableness. In some cases, an organization may find it impossible or impracticable to fully implement each step of the rebuttable presumption process described above. In such cases, the organization should try to implement as many steps as possible, in whole or in part, to substantiate the reasonableness of benefits as timely and as well as possible. If an

organization does not satisfy the requirements of the rebuttable presumption of reasonableness, a facts and circumstances approach will be followed, using established rules for determining reasonableness of compensation and benefit deductions in a manner similar to the established procedures for section 162 business expenses.

## **Section 4958 Taxes**

**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. If the 25% tax is imposed and the excess benefit transaction is not corrected within the tax period, an additional excise tax equal to 200% of the excess benefit is imposed.

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 imposition of the 200% tax, a disqualified person must correct the excess benefit transaction during the tax period. The tax period begins on the date the transaction occurs and ends on the earlier of the date the statutory notice of deficiency is issued or the section 4958 taxes are assessed. This 200% tax can be abated if the excess benefit transaction subsequently is corrected during a 90-day correction period.

**Tax on organization managers.** An excise tax equal to 10% of the excess benefit may be imposed on the participation of an organization manager in an excess benefit transaction between an applicable tax-exempt organization and a disqualified person. This tax, which cannot exceed \$20,000 for any single transaction, is only imposed if the 25% tax is imposed on the disqualified person, the organization manager knowingly participated in the transaction, and the manager's participation was willful and not due to



reasonable cause. There is also joint and several liability for this tax. An organization manager may be liable for both the tax on disqualified persons and on organization managers in appropriate circumstances.

*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 is not 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 this tax.

A person participates in a transaction knowingly if the person has actual knowledge of sufficient facts so that, based solely upon such facts, the transaction would be an excess benefit transaction. Knowing does not mean having reason to know. The

organization manager ordinarily will not 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.

## **Correcting an Excess Benefit Transaction**

A disqualified person corrects an excess benefit transaction 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 that in which it would be if the disqualified person were dealing under the

highest fiduciary standards. The organization is not required to rescind the underlying agreement; however, the parties may need to modify an ongoing contract for future payments.

A disqualified person corrects an excess benefit by making a payment in cash or cash equivalents 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. There is an anti-abuse rule to prevent the disqualified person from effectively transferring property other than cash or cash equivalents.

***Exception.*** For a correction of an excess benefit transaction described in *Donor advised funds* (discussed earlier), no amount repaid in a manner prescribed by the Secretary can be held in a donor advised fund.

**Property.** With the agreement of the applicable tax-exempt organization, a

disqualified person can make a payment by returning the specific property previously transferred in the excess benefit transaction. The return of the property is considered a payment of cash (or cash equivalent) equal to the lesser of:

- The FMV of the property on the date the property is returned to the organization, or
- The FMV of the property on the date the excess benefit transaction occurred.

***Insufficient payment.*** If the payment resulting from the return of the property is less than the correction amount, the disqualified person must make an additional cash payment to the organization equal to the difference.

***Excess payment.*** 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.

## **Churches and Section 4958**

The regulations make it clear that the IRS will apply the procedures of section 7611 when initiating and conducting any inquiry or examination into whether an excess benefit transaction has occurred between a church and a disqualified person.

## **Revenue Sharing Transactions**

Proposed intermediate sanction regulations were issued in 1998. The proposed regulations had special provisions covering “any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of one or more activities of the organization. . .” — so-called revenue-sharing transactions. Rather than setting forth additional rules on revenue-sharing transactions, the final regulations reserve this section. Consequently, until the Service issues new regulations for this reserved section on revenue-sharing transactions, these transactions will be evaluated under the general rules (for

example, the FMV standards) that apply to all contractual arrangements between applicable tax-exempt organizations and their disqualified persons.

## **Revocation of Exemption and Section 4958**

Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3), 501(c)(4), or 501(c)(29), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. The legislative history indicates that in most instances, the imposition of this intermediate sanction will be in lieu of revocation. The IRS has indicated that the following factors will be considered (among other facts and circumstances) in determining whether to revoke an applicable tax-exempt organization's exemption status where an excess benefit transaction has occurred.

- The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred.
- The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes.
- Whether the organization has been involved in multiple excess benefit transactions with one or more persons.

Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions.

- Whether the excess benefit transaction has been corrected, or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

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# Appendix F: Forms and Publications To File or Use

## Other Forms That May Be Required

Schedule A (Form 990 or 990-EZ)	Public Charity Status and Public Support
Schedule B (Form 990, 990-EZ, or 990-PF)	Schedule of Contributors
Schedule C (Form 990 or 990-EZ)	Political Campaign and Lobbying Activities
Schedule E (Form 990 or 990-EZ)	Schools
Schedule G (Form 990 or 990-EZ)	Supplemental Information Regarding Fundraising or Gaming Activities
Schedule L (Form 990 or 990-EZ)	Transactions with Interested Persons
Schedule N (Form 990 or 990-EZ)	Liquidation, Termination, Dissolution, or Significant Disposition of Assets
Schedule O (Form 990 or 990-EZ)	Supplemental Information to Form 990 or 990-EZ
Forms W-2 and W-3	Wage and Tax Statement; and Transmittal of Wage and Tax Statements
Form W-9	Request for Taxpayer Identification Number and Certification
Form 720	Quarterly Federal Excise Tax Return
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation
Form 940	Employer's Annual Federal Unemployment (FUTA) Tax Return
Form 941	Employer's QUARTERLY Federal Tax Return. Used to report social security, Medicare, and income taxes withheld by an employer and social security and Medicare taxes paid by an employer
Form 943	Employer's Annual Tax Return for Agricultural Employees
Form 990-T	Exempt Organization Business Income Tax Return. Filed separately for organizations with gross income of \$1,000 or more from business unrelated to the organization's exempt purpose. The Form 990-T is also filed to pay the section 6033(e)(2) proxy tax. For Form 990, see Part V, line 3 and its instructions; for Form 990-EZ, see Part V, line 35 and its instructions
Form 990-W	Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations
Form 1023	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
Form 1024	Application for Recognition of Exemption Under Section 501(a)
Form 1040	U.S. Individual Income Tax Return
Form 1041	U.S. Income Tax Return for Estates and Trusts. Required of section 4947(a)(1) nonexempt charitable trusts that also file Form 990 or 990-EZ. However, if such a trust does not have any taxable income under Subtitle A of the Code, it can file Form 990 or 990-EZ, and does not have to file Form 1041 to meet its section 6012 filing requirement. If this condition is met, complete Form 990 or 990-EZ, and do not file Form 1041
Form 1096	Annual Summary and Transmittal of U.S. Information Returns
Form 1098 series	Information returns to report mortgage interest, student loan interest, qualified tuition and related expenses received, and a contribution of a qualified vehicle that has a claimed value of more than \$500
Form 1099 series	Information returns to report acquisitions or abandonments of secured property, proceeds from broker and barter exchange transactions, cancellation of debt, dividends and distributions, certain government and state qualified tuition program payments, taxable distributions from cooperatives, interest payments, payments of long-term care and accelerated death benefits, miscellaneous income payments, distributions from an HSA, Archer MSA or Medicare Advantage MSA, original issue discount, distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc., and proceeds from real estate transactions. Also, use certain of these returns to report amounts that were received as a nominee on behalf of another person

Form 1120-POL	U.S. Income Tax Return for Certain Political Organizations
Form 1128	Application To Adopt, Change, or Retain a Tax Year
Form 2848	Power of Attorney and Declaration of Representative
Form 3115	Application for Change in Accounting Method
Form 3520	Annual Return To Report Transaction With Foreign Trusts and Receipt of Certain Foreign Gifts
Form 4506	Request for Copy of Tax Return
Form 4506-A	Request for Public Inspection or Copy of Exempt or Political Organization IRS Form
Form 4562	Depreciation and Amortization
Form 4720	Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations
Form 5500	Annual Return/Report of Employee Benefit Plan. Employers who maintain pension, profit-sharing, or other funded deferred compensation plans are generally required to file the Form 5500. This requirement applies whether or not the plan is qualified under the Internal Revenue Code and whether or not a deduction is claimed for the current tax year. Available at: <a href="http://www.efast.dol.gov/welcome.html">www.efast.dol.gov/welcome.html</a> .
Form 5578	Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax
Form 5768	Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation
Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns
Form 8038	Information Return for Tax-Exempt Private Activity Bond Issues
Form 8282	Donee Information Return. Required of the donee of charitable deduction property who sells, exchanges, or otherwise disposes of donated property within 3 years after receiving it. The form is also required of any successor donee who disposes of charitable deduction property within 3 years after the date that the donor gave the property to the original donee. It does not matter who gave the property to the successor donee. It may have been the original donee or another successor donee
Form 8274	Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employer Social Security and Medicare Taxes
Form 8283	Noncash Charitable Contributions
Form 8300	Report of Cash Payments Over \$10,000 Received in a Trade or Business. Used to report cash amounts in excess of \$10,000 that were received in a single transaction (or in two or more related transactions) in the course of a trade or business (as defined in section 162). However, if the organization receives a charitable cash contribution in excess of \$10,000, it is not subject to the reporting requirement since the funds were not received in the course of a trade or business
Form 8328	Carryforward Election of Unused Private Activity Bond Volume Cap
Form 8718	User Fee for Exempt Organization Determination Letter Request
Form 8821	Tax Information Authorization
Form 8822-B	Change of Address—Business. Used to notify the IRS of a change in mailing address that occurs after the return is filed
Form 8868	Application for Extension of Time to File an Exempt Organization Return
Form 8871	Political Organization Notice of Section 527 Status
Form 8872	Political Organization Report of Contributions and Expenditures
Form 8886	Reportable Transaction Disclosure Statement
Form 8886-T	Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction
Form 8899	Notice of Income from Donated Intellectual Property. Used to report net income from qualified intellectual property to the IRS and the donor
Form SS-4	Application for Employer Identification Number
Form TD F 90-22.1	Report of Foreign Bank and Financial Accounts

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### Helpful Publications

Publication 15	(Circular E), Employer's Tax Guide
Publication 15-A	Employer's Supplemental Tax Guide
Publication 463	Travel, Entertainment, Gift, and Car Expenses
Publication 525	Taxable and Nontaxable Income
Publication 526	Charitable Contributions
Publication 538	Accounting Periods and Methods
Publication 557	Tax-Exempt Status for Your Organization
Publication 561	Determining the Value of Donated Property
Publication 598	Tax on Unrelated Business Income of Exempt Organizations
Publication 892	How to Appeal an IRS Decision on Tax-Exempt Status
Publication 910	IRS Guide to Free Tax Services
Publication 946	How To Depreciate Property
Publication 947	Practice Before the IRS and Power of Attorney
Publication 1771	Charitable Contributions—Substantiation and Disclosure Requirements
Publication 1779	Independent Contractor or Employee Brochure
Publication 1828	Tax Guide for Churches and Religious Organizations
Publication 3079	Tax-Exempt Organizations and Gaming
Publication 3386	Tax Guide for Veterans' Organizations
Publication 3833	Disaster Relief, Providing Assistance through Charitable Organizations
Publication 4220	Applying for 501(c)(3) Tax-Exempt Status
Publication 4221-PC	Compliance Guide for 501(c)(3) Public Charities
Publication 4221-PF	Compliance Guide for 501(c)(3) Private Foundations
Publication 4302	A Charity's Guide to Vehicle Donations
Publication 4303	A Donor's Guide to Vehicle Donations
Publication 4630	Exempt Organizations Products and Services Navigator

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## **Appendix G: Use of Form 990 or 990-EZ To Satisfy State Reporting Requirements**

Some states and local government units will accept a copy of Form 990 or 990-EZ in place of all or part of their own financial report forms. The substitution applies primarily to section 501(c)(3) organizations, but some of the other types of section 501(c) organizations are also affected. If the organization uses Form 990 or 990-EZ to satisfy state or local filing requirements, such as those under state charitable solicitation acts, note the following discussions.

### **Determine State Filing Requirements**

The organization can consult the appropriate officials of all states and other jurisdictions in which it does business to determine their specific filing requirements. Doing business in a jurisdiction can include any of the following: (a) soliciting contributions or grants by mail or otherwise from individuals, businesses, or other charitable organizations; (b) conducting programs; (c) having employees within that



jurisdiction; (d) maintaining a checking account; or (e) owning or renting property there.

## **Monetary Tests May Differ**

Some or all of the dollar limitations applicable to Form 990 or 990-EZ when filed with the IRS may not apply when using Form 990 or 990-EZ in place of state or local report forms. Examples of the IRS dollar limitations that do not meet some state requirements are the normally \$50,000 gross receipts minimum that creates an obligation to file with the IRS and the \$100,000 minimum for listing independent contractors in Form 990, Part VII, Section B, or Form 990-EZ, Part VI, line 51.

## **Additional Information May Be Required**

State or local filing requirements may require the organization to attach to Form 990 or 990-EZ one or more of the following: (a) additional financial statements, such as a complete analysis of functional expenses or a statement of changes in net assets; (b) notes

to financial statements; (c) additional financial schedules; (d) a report on the financial statements by an independent accountant; and (e) answers to additional questions and other information. Each jurisdiction may require the additional material to be presented on forms they provide. The additional information does not have to be submitted with the Form 990 or 990-EZ filed with the IRS.

Even if the Form 990 or 990-EZ that the organization files with the IRS is accepted by the IRS as complete, a copy of the same return filed with a state will not fully satisfy that state's filing requirement if (1) required information is not provided, including any of the additional information discussed above, or (2) the state determines that the form was not completed by following the applicable Form 990 or 990-EZ instructions or supplemental state instructions. In such case, the state may ask the organization to provide the missing information or to submit an amended return.

## **Use Of Audit Guides May Be Required**

To ensure that all organizations report similar transactions uniformly, many states require that contributions, gifts, grants, similar amounts, and functional expenses be reported according to the AICPA industry audit and accounting guide, Not-for-Profit Organizations (New York, NY, AICPA, 2003), supplemented , as applicable, by Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (Washington, DC, National Health Council, Inc., 1998, 4th edition).

## **Donated Services And Facilities**

Even though donated services and facilities may be reported as items of revenue and expense in certain circumstances, many states and the IRS do not permit the inclusion of those amounts in Form 990, Parts VIII and IX, Form 990-EZ, Part I, or (except for such donations by a governmental unit) in Schedule A (Form 990 or 990-EZ). The optional reporting of donated services and



facilities is discussed in the instructions for Part III for Forms 990 and 990-EZ.

## **Amended Returns**

If the organization submits supplemental information or files an amended Form 990 or 990-EZ with the IRS, it must also send a copy of the information or amended return to any state with which it filed a copy of Form 990 or 990-EZ originally to meet that state's filing requirement. If a state requires the organization to file an amended Form 990 or 990-EZ to correct conflicts with the Form 990 or 990-EZ instructions, the organization must also file an amended return with the IRS.

## **Method of Accounting**

Most states require that all amounts be reported based on the accrual method of accounting. See also *General Instruction D*.

## **Appendix H. Contributions**

This Appendix discusses certain federal tax rules that apply to exempt organizations and donors for contributions. See also Pub. 526, Charitable Contributions, and Pub. 1771,

Charitable Contributions: Substantiation and Disclosure Requirements.

**Schedule B (Form 990, 990-EZ, or 990-PF).** Many organizations that file Form 990, 990-EZ, or 990-PF must file Schedule B to report on tax-deductible and non-tax-deductible contributions. See Schedule B and its instructions to determine whether Schedule B must be filed. See also the Schedule B instructions for the public inspection rules applicable to that form.

### **Solicitation of Nondeductible**

**Contribution.** See the instructions to Form 990, Part V, line 6 for rules on public notice of non-deductibility when soliciting nondeductible contributions.

**Keeping Fundraising Records for Tax-Deductible Contributions.** A section 501(c) organization that is eligible to receive tax-deductible contributions under section 170(c) must keep sample copies of its fundraising materials, such as:

- Dues statements,
- Fundraising solicitations,

- Tickets,
- Receipts, or
- Other evidence of payments received in connection with fundraising activities.

IF....	THEN....
The organization advertises its fundraising events,	It must keep samples of the advertising copy.
The organization uses radio, television, or Internet to solicit contributions,	It must keep samples of scripts, transcripts, printouts of e-mails and Web pages, or other evidence of solicitations in such media.
The organization uses outside fundraisers,	It must keep samples of the fundraising materials used by the outside fundraisers.

For each fundraising event, the organization must keep records to show the portion of any payment received from patrons that is not deductible; that is, the retail value of the goods or services received by the patrons. See *Disclosure statement for quid pro quo contributions*, later.

## **Noncash Contributions**

***Form 990 Schedules.*** An organization may be required to file Schedule M to report certain noncash (property) contributions; see the instructions for Schedule M on who must file. Also, an organization that files Schedule B must report certain information on noncash contributions.

***Dispositions of donated property.*** If an organization receives a charitable contribution of property and within three years sells, exchanges, or otherwise disposes of the property, the organization may need to file Form 8282, Donee Information Return. See Form 990, Part V, lines 7c and 7d.

***Donated property over \$5,000.*** If the organization received from a donor a partially completed Form 8283, Noncash Charitable Contributions, the donee organization generally should complete the Form 8283 and return it so the donor can get a charitable contribution deduction. The organization should keep a copy for its records. See Form 8283 for more details.

***Qualified intellectual property.*** An organization described in section 170(c) (except a private foundation) that receives or accrues net income from a qualified intellectual property contribution must file Form 8899, Notice of Income From Donated Intellectual Property. See Form 990, Part V, line 7g. The organization must file the return for any tax year that includes any part of the 10-year period beginning on the date of contribution but not for any tax years in which the legal life of the qualified intellectual property has expired or the property failed to produce net income.

A donee organization reports all income from donated qualified intellectual property as income other than contributions (for example, royalty income from a patent). A donee is not required to report as contributions on Form 990 (including schedules) any of the additional deductions claimed by donors under section 170(m)(1). See Pub. 526.

***Motor vehicles, boats, and airplanes.***

Special rules apply to charitable contributions of motor vehicles, boats, or airplanes with a

claimed value of more than \$500. See Form 990, Part V, line 7h; section 170(f)(12); Pub. 4302, A Charity's Guide to Vehicle Donations; and the Instructions for Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes.

## **Substantiation and Disclosure Requirements for Charitable Contributions.**

***Recordkeeping for cash, check, or other monetary charitable gifts.*** To deduct a contribution of a cash, 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. See section 170(f)(17). 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.

***Acknowledgment to substantiate charitable contributions.*** A donee organization should be aware that a donor of a charitable contribution of \$250 or more (including a contribution of unreimbursed expenses) cannot take an income tax deduction unless the donor obtains the organization's acknowledgment to substantiate the charitable contribution. See section 170(f)(8) and Regulations section 1.170A-13(f). 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.

The organization's acknowledgment must:

1. Be written.
2. Be contemporaneous.
3. State the amount of any cash it received.

4. State:
  - a) Whether the organization gave the donor any intangible religious benefits (no valuation needed).
  - b) Whether the organization gave the donor any goods or services in return for the donor's contribution (a quid pro quo contribution).
5. Describe goods or services the organization:
  - a) Received (no valuation needed).
  - b) Gave (good faith estimate of value needed).

If the organization accepts a contribution in the name of one of its activities or programs, then indicate the organization's name in the acknowledgment as well as the program's name. For example: "Thank you for your contribution of \$300 to (organization's name) made in the name of our Special Relief Fund program. No goods or services were provided in exchange for your contribution."



Similarly, if a domestic organization owns and controls a domestic disregarded entity, and the disregarded entity receives a contribution, then indicate the organization's name in the acknowledgment as well as the relationship with the disregarded entity. For example:

"Thank you for your contribution of \$300 to (organization's name) made in the name of (name of disregarded entity), which is treated as a disregarded entity of (organization's name) for federal tax purposes. No goods or services were provided in exchange for your contribution." See Notice 2012-52, 2012-35 IRB 317.

***Exception.*** The written acknowledgment need not include a good faith estimate of value for goods or services given to the donor if they are:

1. Goods or services with insubstantial value.
2. Certain membership benefits.
3. Goods or services described in (1) or (2) given to the employees of a donor

organization or the partners of a donor partnership.

4. Intangible religious benefits.

These exceptions are defined below.

**Disclosure statement for *quid pro quo* contributions.** If the organization receives a *quid pro quo* contribution of more than \$75, the organization must provide a disclosure statement to the donor. See section 6115.

The organization's disclosure statement must:

1. Be written.
2. Estimate in good faith the value of the organization's goods or services given in return for the donor's contribution.
3. Describe, but need not value, certain goods or services given to the donor's employees or partners.
4. Inform the donor that a charitable contribution deduction is limited as follows:

Donor's contribution

## **Less**

The organization's money, goods, and services given in return

## **Equals**

Donor's deductible charitable contribution.

***Exceptions:*** No disclosure statement is required if the organization gave only the following:

1. Goods or services with insubstantial value,
2. Certain membership benefits,
3. Goods or services described in (1) or (2) given to the employees of a donor organization or the partners of a donor partnership, or
4. Intangible religious benefits.

These exceptions are defined below. See also Regulations sections 1.170A-1, 1.170A-13, and 1.6115-1.

**Certain goods or services disregarded for substantiation and disclosure purposes.**

***Goods or services with insubstantial value.*** Generally, under section 170, the deductible amount of a contribution is determined by taking into account the FMV, not the cost to the charity, of any benefits that the donor received in return. However, the cost to the charity may be used in determining whether the benefits are insubstantial. See below.

***Cost basis.*** If a taxpayer makes a payment of \$49.50 or more to a charity and receives only token items in return, the items have insubstantial value if they:

- Bear the charity's name or logo, and
- Have an aggregate cost to the charity of \$9.90 or less (low-cost article amount of section 513(h)(2)).

***FMV basis.*** If a taxpayer makes a payment to a charitable organization in a fundraising campaign and receives benefits with a FMV of not more than 2% of the amount of the payment, or \$99, whichever is less, the benefits received have insubstantial value in determining the taxpayer's contribution.



*The dollar amounts given above are applicable to tax year 2012 under Rev. Proc. 2011-52, 2011-45 I.R.B. 701. They are adjusted annually for inflation .*

When a donee organization provides a donor only with goods or services having insubstantial value under Rev. Proc. 2011-52 (and any successor documents), the contemporaneous written acknowledgment may indicate that no goods or services were provided in exchange for the donor's payment.

***Certain membership benefits.*** Other goods or services that are disregarded for substantiation and disclosure purposes are annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of:

1. Any rights or privileges that the taxpayer can exercise frequently during the membership period such as:
  - a) Free or discounted admission to the organization's facilities or events,

- b) Free or discounted parking.
- 2. Admission to events that are:
  - a) Open only to members, and
  - b) Within the *low-cost article* limitation, per person.

**Example 1.** E offers a basic membership benefits package for \$75. The package gives members the right to buy tickets in advance, free parking, and a gift shop discount of 10%. E's \$150 preferred membership benefits package also includes a \$20 poster. Both the basic and preferred membership packages are for a 12-month period and include about 50 productions. E offers F, a patron of the arts, the preferred membership benefits in return for a payment of \$150 or more. F accepts the preferred membership benefits package for \$300. E's written acknowledgment satisfies the substantiation requirement if it describes the poster, gives a good faith estimate of its FMV (\$20), and disregards the remaining membership benefits.

**Example 2.** In *Example 1*, if F received only the basic membership package for its \$300

payment, E's acknowledgment need state only that no goods or services were provided.

**Example 3.** G Theater Group performs four plays. Each play is performed twice. Non-members can purchase a ticket for \$15. For a \$60 membership fee, however, members are offered free admission to any of the performances. H makes a payment of \$350 and accepts this membership benefit.

Because of the limited number of performances, the membership privilege cannot be exercised frequently. Therefore, G's acknowledgment must describe the free admission benefit and estimate its value in good faith.

***Certain goods or services provided to donor's employees or partners.*** Certain goods or services provided to employees of donor organizations or partners of donor partnerships may be disregarded for substantiation and disclosure purposes. Nevertheless, the donee organization's disclosure statement must describe such goods or services. A good faith estimate of value is not needed.

**Example.** Museum J offers a basic membership benefits package for \$40. It includes free admission and a 10% gift shop discount. Corporation K makes a \$50,000 payment to J and in return, J offers K's employees free admission, a t-shirt with J's logo that costs J \$4.50, and a 25% gift shop discount. Because the free admission is offered in both benefit packages and the value of the t-shirts is insubstantial, Museum J's disclosure statement need not value the free admission benefit or the t-shirts. However, because the 25% gift shop discount to K's employees differs from the 10% discount offered in the basic membership benefits package, J's disclosure statement must describe the 25% discount, but need not estimate its value.

## **Definitions.**

**Substantiation.** It is the responsibility of the donor:

- To value a donation, and



- To obtain an organization's written acknowledgment substantiating the donation.

There is no prescribed format for the organization's written acknowledgment of a donation. Letters, postcards, or computer generated forms may be acceptable. The acknowledgment must, however, provide sufficient information to substantiate the amount of the deductible contribution. The organization may either:

- Provide separate statements for each contribution of \$250 or more, or
- Furnish periodic statements substantiating contributions of \$250 or more.

Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a tax year equals \$250 or more.

***Contemporaneous.*** A written acknowledgment is contemporaneous if the donor obtains it on or before the earlier of:

- The date the donor files the original return for the tax year in which the contribution was made; or
- The due date (including extensions) for filing the donor's original return for that year.

***Substantiation of payroll contributions.***

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.

***Substantiation of payments to a college or university for the right to purchase tickets to athletic events.*** The right to purchase tickets for an athletic event is valued at 20% of the payment.

***Example.*** When a taxpayer pays \$312.50 for the right to purchase tickets for an athletic event, the right is valued at \$62.50. The remaining \$250 is a charitable contribution that the taxpayer must substantiate.

***Substantiation of matched payments.*** If a taxpayer's payment to a donee organization is matched by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

***Disclosure statement.*** An organization must provide a written disclosure statement to donors who make a "quid pro quo contribution" in excess of \$75 (section 6115). This requirement is separate from the written

substantiation acknowledgment a donor needs for deductibility purposes. While, in certain circumstances, an organization may be able to meet both requirements with the same written document, an organization must be careful to satisfy the section 6115 written disclosure statement requirement in a timely manner because of the penalties involved.

***Quid pro quo contribution.*** A *quid pro quo contribution* is a payment that is made both as a contribution and as a payment for goods or services provided by the donee organization.

***Example.*** A donor gives a charity \$100 in consideration for a concert ticket valued at \$40 (a *quid pro quo* contribution). In this example, \$60 would be deductible. Because the donor's payment exceeds \$75, the organization must furnish a disclosure statement even though the taxpayer's deductible amount does not exceed \$75. Separate payments of \$75 or less made at different times of the year for separate fundraising events will not be aggregated for purposes of the \$75 threshold.

***Good faith estimate.*** An organization may use any reasonable method in making a good faith estimate of the value of goods or services provided by that organization in consideration for a taxpayer's payment to that organization. A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

***Goods or services.*** Goods or services include:

- Cash,
- Property,
- Services,
- Benefits, and
- Privileges.

***In consideration for.*** A donee organization provides goods or services in consideration

for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives, or expects to receive, goods or services in exchange for that payment.

Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the donor makes the payment to the donee organization.

***Intangible religious benefits.*** Intangible religious benefits are provided only by organizations organized exclusively for religious purposes. Examples include:

- Admission to a religious ceremony, and
- *De minimis* tangible benefits, such as wine provided in connection with a religious ceremony.

***Penalties.*** A charity that knowingly provides a false substantiation acknowledgment to a donor may be subject to the penalties under section 6701 and/or section 7206(2) for

aiding and abetting an understatement of tax liability.

Charities that fail to provide the required disclosure statement for a quid pro quo contribution of more than \$75 will incur a penalty of \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. The charity may avoid the penalty if it can show that the failure was due to reasonable cause (section 6714).

## **Time For Filing May Differ**

The deadline for filing Form 990 or 990-EZ with the IRS differs from the time for filing reports with some states.

## **Public Inspection**

The Form 990 or 990-EZ information made available for public inspection by the IRS may differ from that made available by the states, such as Schedule B (Form 990, 990-EZ, or 990-PF).

# Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

## How to Get Tax Help



Internet. You can access the IRS website at [IRS.gov](https://www.irs.gov) 24 hours a day, 7 days a week to:

- Download forms, including talking tax forms, instructions and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, Regulations, or other official guidance.



- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Sign up to receive local and national tax news by email.



*Phone Help.* If you have questions and/or need help completing Form 990 or Form 990-EZ, please call 1-877-829-5500. This toll-free telephone service is available Monday through Friday.

- Ordering forms, instructions, and publications. Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.



*Mail.* You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service  
1201 N. Mitsubishi Motorway  
Bloomington, IL 61705-6613



DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet-based tax research materials.
- Fill-in, print, and save features for most tax forms.

- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
  - The first release will ship the beginning of January 2013.
  - The final release will ship the beginning of March 2013.

Purchase the DVD from National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).

## **Email Subscription**

The IRS has established a subscription-based email service for tax professional and representatives of tax-exempt organizations. Subscribers will receive periodic updates from the IRS regarding exempt organization tax law and regulations, available services, and other information. To subscribe, visit [www.irs.gov/eo](http://www.irs.gov/eo).

**Paperwork Reduction Act Notice.** We ask for the information on these instructions to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average times are:

<b>Form</b>	<b>Recordkeeping</b>	<b>Learning about the law or the form</b>	<b>Preparing the form</b>	<b>Copying, assembling, and sending the form to the IRS</b>
990-EZ	33 hr., 57 min.	11 hr., 33 min.	14 hr., 28 min.	32 min.
Schedule A (Form 990 or 990-EZ)	39 hr., 56 min.	6 hr., 51 min.	7 hr., 48 min.	-----
Schedule B (Form 990, 990-EZ, or 990-PF)	5 hr., 58 min.	1 hr., 35 min.	1 hr., 45 min.	-----
Schedule C (Form 990 or 990-EZ)	22 hr., 0 min.	42 min.	1 hr., 5 min.	-----
Schedule E (Form 990 or 990-EZ)	5 hr., 30 min.	53 min.	1 hr., 1 min.	-----
Schedule G (Form 990 or 990-EZ)	24 hr., 23 min.	24 min.	48 min.	-----
Schedule L (Form 990 or 990-EZ)	6 hr., 27 min.	1 hr., 17 min.	1 hr., 27 min.	-----
Schedule N (Form 990 or 990-EZ)	7 hr., 39 min.	42 min.	51 min.	-----
Schedule O (Form 990 or 990-EZ)	43 min.	-----	-----	-----

***Comments and suggestions.*** We welcome your comments about these instructions and your suggestions for future editions. You can write to us at the following address:

Internal Revenue Service  
Tax Products Coordinating Committee  
SE:W:CAR:MP:T:S  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at [taxforms@irs.gov](mailto:taxforms@irs.gov). Please put "Publications Comment" on the subject line. You can also send us comments from [www.irs.gov/formspubs/index](http://www.irs.gov/formspubs/index), select "Comment on Tax Forms and Publications" under "Information about."

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your

comments as we revise our tax products.

Do not send the form to this address.

Instead, see *When, Where, and How to File*,  
in *General Instruction D*.

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To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

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