

# Instructions for Form 990

## 2022

### Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Volume 8 of 9



Department of the Treasury  
**Internal Revenue Service**

Instructions for Form 990 (Rev. 2022) Catalog Number 47733E  
Department of the Treasury **Internal Revenue Service** [www.irs.gov](http://www.irs.gov)



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## Appendix G. 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 isn't 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 an organization at any time during a 5-year period ending on the day of the **excess benefit transaction**.

An **applicable tax-exempt organization** doesn't include:

- 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 isn't treated as a section 501(c)(3), 501(c)(4), or 501(c)(29) organization for any period covered by a final determination that the organization wasn't tax exempt under section 501(a), so long as the determination wasn't based on private inurement or one or more excess benefit transactions.

## **Disqualified Person**

Most section 501(c)(3), 501(c)(4), or 501(c)(29) organization **employees** and **independent contractors** won't 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 the following.

- Presidents, **CEOs**, or chief operating officers.
  - 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.
- For a **donor advised fund** sponsoring organization, an investment advisor of
- the **sponsoring organization**.
- For 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 isn't a disqualified person?** The rules also clarify which persons aren't 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 (\$120,000 in 2015–2018, \$125,000 in 2019, \$130,000 in 2020–2021, and \$135,000 in 2022) and who doesn't hold the executive or voting powers just mentioned, isn't a family member of a disqualified person, and isn't a substantial contributor;
- Tax-exempt organizations described in section 501(c)(3); and
- Section 501(c)(4) organizations for transactions engaged in 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 the 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 won't 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 isn't a disqualified person.
- The person doesn't participate in any management decisions affecting the organization as a whole or a discrete segment of the organization that represents a substantial portion of the activities, assets, income, or expenses

of the organization, as compared to the organization as a whole.

**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 may be a disqualified person for more than one organization in the same transaction.

## **Excess Benefit Transaction**

An **excess benefit transaction** is generally 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 the benefit,

but see the special rules below for **donor advised funds** and **supporting organizations**. An excess benefit transaction can also 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 **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, or
- 35% controlled entity of a family member of a substantial contributor. Additionally, an excess benefit transaction includes any loans provided by the supporting organization to a disqualified person (other than an organization described in section 509(a) (1), (2), or (4)).

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 the person. A substantial contributor includes the grantor of a 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?** For federal income tax purposes, an excess benefit transaction occurs on the date the disqualified person receives the economic benefit from the organization. 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 disqualified person'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, isn't subject to a substantial risk of forfeiture. Where the disqualified person elects to include an amount in gross income in the tax year of transfer under section 83(b), the excess benefit transaction occurs on the date the disqualified person receives the economic benefit for federal income tax purposes.

**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 doesn't apply to any transaction occurring pursuant to 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 in *What benefits are disregarded?* in this Appendix, later). Items of compensation include the following.

- 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 doesn't 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.
- Foregone interest on loans.

**Written intent required to treat benefits as compensation.** An economic benefit isn't treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid.

An applicable tax-exempt organization (or entity that it controls) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefits under consideration. Ways to provide contemporaneous written substantiation of its intent to provide an economic benefit as compensation include the following.

- The organization produces a signed written employment contract.
- The organization reports the benefit as compensation on an original Form W-2, Form 1099, or Form 990, or on an amended form filed before the start of an IRS examination.
- The disqualified person reports the benefit as income on the person's original Form 1040 or 1040-SR or on

an amended form filed before 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 isn't 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. An economic benefit that is excluded from income under section 132.
- Benefits to volunteers. 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. 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 non-disqualified persons make similar payments or contributions and are offered a similar economic benefit.
- Benefits to a charitable beneficiary. 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. 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 doesn't apply to any fixed payment made to a person pursuant to an **initial contract**. This is a very important exception, because 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 wasn't 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 nonperformance) 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 would thus 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 don't have a conflict of interest concerning the transaction.
2. Before making its determination, the authorized body obtained and relied

upon appropriate data as to comparability. There is a special safe harbor for small organizations. If the organization has gross receipts of less than \$1 million, appropriate comparability data includes data on compensation paid by three comparable organizations in the same or similar communities for similar services.

3. The authorized body adequately documents the basis for its determination concurrently with making that determination. The documentation should include:
  - a. The terms of the approved transaction and the date approved;
  - b. The members of the authorized body who were present during debate on the transaction that

was approved and those who voted on it;

- c. The comparability data obtained and relied upon by the authorized body and how the data was obtained;
- d. Any actions by a member of the authorized body having 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 nonfixed payments.** As a general rule, in the case of a nonfixed 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 nonfixed payment (for example, discretionary bonus) with a specified cap on the amount, the authorized body can establish a rebuttable presumption as to the nonfixed 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 don't establish a presumption of reasonableness.** An organization can still comply with section 4958 even if it didn't 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. In those cases, the organization should try to implement as many steps as possible, in whole or in part, in order to substantiate the reasonableness of benefits as timely and as

well as possible. If an organization doesn't 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 isn't 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 the 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 is subsequently corrected during a 90-day correction period.

**Tax on organization managers.** An excise tax equal to 10% of the excess benefit can 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 can't 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 can 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 isn't considered to have participated in an excess benefit transaction where the manager has opposed the transaction in a manner

consistent with the fulfillment of the manager's responsibilities to the organization. For example, a director who votes against giving an excess benefit would ordinarily not be subject to this tax.

A person participates in a transaction knowingly if the person has actual knowledge of sufficient facts so that, based solely upon the facts, the transaction would be an excess benefit transaction. Knowing doesn't mean having reason to know. The organization manager won't ordinarily 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 isn't 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 under *Donor advised funds*, earlier, no amount repaid in a manner prescribed by the IRS 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 that 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 IRS 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 doesn't 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.

## **Appendix H. Forms and Publications To File or Use**

### **How To Get Forms and Publications**



**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; and
- Sign up to receive local and national tax news by email.

## **How To Get Tax Help**

**Coronavirus.** Go to [IRS.gov/Coronavirus](https://www.irs.gov/Coronavirus) for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

### **Getting answers to your tax questions.**

On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- [IRS.gov/Help](#): A variety of tools to help you get answers to some of the most common tax questions.
- [IRS.gov/ITA](#): The Interactive Tax Assistant, a tool that will ask you questions and, based on your input, provide answers on a number of tax law topics.
- [IRS.gov/Forms](#): Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.
- The [Online EIN Application \(IRS.gov/EIN\)](#) helps you get an employer identification number (EIN) at no cost.
- You may also be able to access tax law information in your electronic filing software.

**Getting tax forms and publications.** Go to [IRS.gov/Forms](https://www.irs.gov/Forms) to view, download, or print all of the forms, instructions, and publications you may need. Or, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to place an order.

**Getting tax publications and instructions in eBook format.** You can also download and view popular tax publications and instructions (including the Instructions for Form 1040) on mobile devices as eBooks at [IRS.gov/eBooks](https://www.irs.gov/eBooks).

**Note.** IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

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

## **Other Forms That May Be Required**

**Schedule A (Form 990).** Public Charity Status and Public Support.

**Schedule B (Form 990).** Schedule of Contributors.

**Schedule C (Form 990).** Political Campaign and Lobbying Activities.

**Schedule D (Form 990).** Supplemental Financial Statements.

**Schedule E (Form 990).** Schools.

**Schedule F (Form 990).** Statement of Activities Outside the United States.

**Schedule G (Form 990).** Supplemental Information Regarding Fundraising or Gaming Activities.

**Schedule H (Form 990).** Hospitals.

**Schedule I (Form 990).** Grants and Other Assistance to Organizations, Governments, and Individuals in the United States.

**Schedule J (Form 990).** Compensation Information.

**Schedule K (Form 990).** Supplemental Information on Tax-Exempt Bonds.

**Schedule L (Form 990).** Transactions With Interested Persons.

**Schedule M (Form 990).** Noncash Contributions.

**Schedule N (Form 990).** Liquidation, Termination, Dissolution, or Significant

**Schedule O (Form 990).** Supplemental Information to Form 990 or 990-EZ.

**Schedule R (Form 990).** Related Organizations and Unrelated Partnerships.

**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.



*The Patient-Centered Outcomes Research fee is imposed on issuers of specified health insurance policies (section 4375) and plan sponsors of applicable self-insured health plans (section 4376) for policy and plan years ending on or after October 1, 2012. See Form 720 and section 4376 for more information.*

*In addition to various federal excise taxes that are paid with the filing of Form 720, the Patient-Centered Outcomes Research fee that is imposed on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans is payable annually and reported on the Form 720 that is filed for the second quarter of each year, which is due no later than July 31 of the calendar year immediately following the last day of the policy year or plan year to which the fee applies.*

**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 Federal Tax Return for Agricultural Employees.

**Form 990-T.** Exempt Organization Business Income Tax Return. Filed separately for organizations subject to UBTI that have total gross income from all of their **unrelated trades or businesses** of \$1,000 or more for the tax year. 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 1023-EZ.** Streamlined 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 1024-A.** Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.

**Form 1040.** U.S. Individual Income Tax Return.

**Form 1040-SR.** U.S. Tax Return for Seniors.

**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 the trust doesn't have any taxable income under subtitle A of the Code, it can file Form 990 or 990-EZ, and doesn't have to file Form 1041 to meet its section 6012 filing requirement. If this condition is met, complete Form 990 or 990-EZ, and don't 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 Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

**Form 4506.** Request for Copy of Tax Return.

**Form 4506-A.** Request for a 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 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.

**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 series.** Tax-exempt bonds.

**Form 8274.** Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes.

**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 the charitable deduction property within 3 years after the date that the donor gave the property to the original donee. It doesn't matter who gave the property to the successor donee. It may have been the original donee or another successor donee.

**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 isn't subject to the reporting

requirement since the funds weren't 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 or Responsible Party—Business. Used to notify the IRS of a change in mailing address that occurs after the return is filed.

**Form 8868.** Application for Automatic Extension of Time To File an Exempt Organization Return.

**Form 8870.** Information Return for Transfers Associated With Certain Personal Benefit Contracts. Used to identify those personal benefit contracts for which funds were transferred to the organization, directly or

indirectly, as well as the transferors for, and beneficiaries of, those contracts.

**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 8940.** Request for Miscellaneous Determination.

**Form 8963.** Report of Health Insurance Provider Information.



**Form 8976.** Notice of Intent to Operate Under Section 501(c)(4).

**Form SS-4.** Application for Employer Identification Number.

**FinCEN Form 114.** Report of Foreign Bank and Financial Accounts.

## **Helpful Publications**

**Pub. 15.** (Circular E), Employer's Tax Guide.



***Trust Fund Recovery Penalty.*** *If certain excise, income, social security, and Medicare taxes that must be collected or withheld aren't collected or withheld, or these taxes aren't paid to the IRS, the trust fund recovery penalty can apply. The trust fund recovery penalty can be imposed on all persons (including volunteers) who the IRS determines were responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so.*

*This penalty doesn't apply to volunteer unpaid members of any board of trustees or directors of a tax-exempt organization, if these members are solely serving in an honorary capacity, don't participate in the day-to-day or financial activities of the organization, and don't have actual knowledge of the failure to collect, account for, and pay over these taxes. However, the preceding sentence doesn't apply if it results in no person being liable for the penalty.*

*The penalty is equal to the unpaid trust fund tax. See Pub. 15 (Circular E) for more details, including the definition of responsible persons.*

**Pub. 15-A.** Employer's Supplemental Tax Guide.

**Pub. 463.** Travel, Gift, and Car Expenses.

**Pub. 525.** Taxable and Nontaxable Income.

**Pub. 526.** Charitable Contributions.

**Pub. 538.** Accounting Periods and Methods.

**Pub. 557.** Tax-Exempt Status for Your Organization.

**Pub. 561.** Determining the Value of Donated Property.

**Pub. 598.** Tax on Unrelated Business Income of Exempt Organizations.

**Pub. 892.** How to Appeal an IRS Decision on Tax-Exempt Status.

**Pub. 946.** How To Depreciate Property.

**Pub. 1771.** Charitable Contributions—Substantiation and Disclosure Requirements.

**Pub. 1828.** Tax Guide for Churches and Religious Organizations.

**Pub. 3079.** Tax-Exempt Organizations and Gaming.

**Pub. 3386.** Tax Guide for Veterans' Organizations.

**Pub. 3833.** Disaster Relief, Providing Assistance Through Charitable Organizations.

**Pub. 4220.** Applying for 501(c)(3) Tax-Exempt Status.

**Pub. 4221-PC.** Compliance Guide for 501(c)(3) Public Charities.

**Pub. 4221-PF.** Compliance Guide for 501(c)(3) Private Foundations.

**Pub. 4302.** A Charity's Guide to Vehicle Donation.

**Pub. 4303.** A Donor's Guide to Vehicle Donation.

**Pub. 4386.** Compliance Checks.

**Pub. 4573.** Group Exemptions.

# **Appendix I. Use of Form 990 or 990-EZ To Satisfy State Reporting**

## **Requirements**

Some states and local **governmental 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 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 requirement.** 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:

- Soliciting **contributions** or grants by mail or otherwise from individuals, businesses, or other charitable organizations;
- Conducting programs;
- Having **employees** within that jurisdiction;
- Maintaining a checking account; or
- Owning or renting property there.

**Monetary tests can 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 don't 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 on Form 990, Part VII, Section B.

**Additional information may be required.**

State or local filing requirements can require the organization to attach to Form 990 or 990-EZ one or more of the following.

- Additional financial statements, such as a complete analysis of functional expenses or a statement of changes in net assets.
- Notes to financial statements.
- Additional financial statements.
- A report on the financial statements by an independent accountant.
- Answers to additional questions and other information.

Each jurisdiction can require the additional material to be presented on forms they provide. The additional information shouldn't be submitted with the Form 990 or 990-EZ filed with the IRS, unless included on Schedule O (Form 990).

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 won't fully satisfy that state's filing requirement if (1) required information isn't provided, including any of the additional information discussed in this Appendix; or (2) the state determines that the form wasn't completed by following the applicable Form 990 or 990-EZ instructions or supplemental state instructions. In that 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 Audit and Accounting Guide, Not-for-Profit Entities (2018), supplemented, as applicable, by the



Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America (1998).

**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 don't permit the inclusion of those amounts in Parts VIII and IX of Form 990, Part I of Form 990-EZ, or (except for donations by a governmental unit) in Schedule A (Form 990). The optional reporting of donated services and facilities is discussed in the instructions for Part III of Form 990.

**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*, earlier.

**Time for filing can 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 can differ from that made available by the states.

## **Appendix J. 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).** 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, and for the public inspection rules applicable to that form.

**Solicitation of nondeductible contribution.** See the instructions for Form 990, Part V, lines 6a and 6b, 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.

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<b>IF...</b>	<b>THEN...</b>
the organization advertises its fundraising events	it must keep samples of the advertising copy.

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the organization uses radio, television, or Internet to solicit contributions	it must keep samples of scripts, transcripts, printouts of emails and web pages, or other evidence of solicitations in the media.
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the organization uses outside fundraisers	it must keep samples of the fundraising materials used by the outside fundraisers.
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For each fundraising event, the organization must keep records to show the portion of any payment received from patrons that isn't 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 3 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 should generally 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 Form 8899 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 isn't required to report as contributions on Form 990 (including statements) 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 Donation; 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) and Regulations section 1.170A-15 for more information. In the case of a text message contribution, the donor's phone bill meets the section 170(f)(17) recordkeeping requirement of a reliable written record if it shows the name of the donee organization and the date and amount of 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) can't 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), and
  - b. Whether the organization gave the donor any goods or services in return for the donor's contribution (a quid pro quo contribution); and
5. Describe goods or services the organization:

- a. Received (no valuation needed),  
and
- 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 I.R.B. 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, or
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; and
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:

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 *Cost basis* next.

**Cost basis.** If a taxpayer makes a payment of \$58.50 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 \$11.70 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 an **FMV** of not more than 2% of the amount of the payment, or \$117, 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 2022 under Rev. Proc. 2021-45, 2021-48 I.R.B.764, section 3.34. They are adjusted annually for inflation.*

When a donee organization provides a donor only with goods or services having insubstantial value under Rev. Proc. 2021-45 (and any successor documents), the contemporaneous written acknowledgment may indicate that no goods or services were provided in exchange for the donor's payment.