



Exempt Organization: Public Charity or Private Foundation

IRS Nationwide

2008

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Why is Foundation Status Important?

- Private Foundations
 - single or few contributors
 - more regulation
 - donations treated less favorably
- Public Charities
 - solicits many contributors
 - less regulation
 - donations treated more favorably

Types of Public Charities

- Established by Statute
 - churches, schools, hospitals, medical research
- Supported by contributions from general public, governmental units
- Supported by contributions & exempt function income
- Maintain special relationship with another public charity

Support Test: Public Support

- Include in numerator gifts, grants, and contributions
- Exclude from numerator donations in excess of 2% of public support from single donor or related parties (such as husband & wife)

Support Test: Total Support

- Include gifts, grants, contributions, membership fees, investment income, income from unrelated business activity
- Exclude exempt function income
- Exclude unusual grants from public support and total support
- “Facts and Circumstances Test”

Public Support

- 509(a)(1)/ 170(b)(1)(A)(vi)
 - Exempt function income excluded
 - 2% limitation on contributions
- 509(a)(2)
 - Exempt function income included
 - Limitation on contributions: 1%/\$5000
 - Gross investment and net unrelated business income cannot exceed 33 $\frac{1}{3}$ % of total support

New Rules...

- Advance rulings abolished
- “Normal” public support: rolling 5 year period
- No showing of actual public support or 4940 liability until 6th tax year
- Reliance on foundation classification

509(a)(3) Status

Relationship Tests:

- Type I: “operated, supervised or controlled by” (parent-child)
- Type II: “supervised or controlled in connection with” (brother-sister)
- Type III: “operated in connection with” (functionally integrated or non-functionally integrated)

Type III Tests

- Responsiveness Test
 - Significant Voice Test
 - Alternative Test for Charitable Trusts
- Integral Part Test
 - “But for” Test
 - “Attentiveness” Test
- Addressing Abuses
 - PPA Changes & Anticipated Regulations

Other 509(a)(3) Requirements

- Organizational Test
- Operational Test
- Control Test
- New excess benefit transactions & excess business holdings tax liability

Filing Requirement

- 509(a)(3) Organizations
 - Must file paper or electronic Forms 990 or 990-EZ, regardless of gross receipts
 - Exception: 509(a)(3) organizations that support religious organizations and have gross receipts < \$5,000 may file the Form 990-N, e-Postcard

More Information

- IRS Charities & Nonprofits Website

www.irs.gov/eo

- TE/GE Customer Account Services

(877) 829-5500 (toll-free)

- Subscribe to EO Update

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