

II. ESTABLISHING TAX-EXEMPT STATUS WITH THE IRS

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II. ESTABLISHING TAX EXEMPT STATUS WITH THE IRS

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A nonprofit organization client walks into your office. The organization has been properly incorporated under state law. Now the client wants to know how to obtain tax exempt status with the IRS. Attorneys counseling nonprofit clients on establishing tax exempt status with the IRS are well advised to review several sources.²

A. Nonprofit vs. Tax-Exempt

1. Nonprofit. The term “nonprofit” applies at the state level where state statutes govern and determine qualification requirements for a nonprofit status. These criteria vary from state to state.³
2. Tax exempt. The term “tax exempt” applies at the federal level. Tax exempt organizations are exempt from paying federal income tax.⁴
3. Distinctions. Not all nonprofit organizations are tax exempt. A nonprofit organization under state law must meet federal criteria to obtain a tax exempt status.⁵

The IRS imposes two requirements upon organizations seeking tax exempt status. First, the organization’s activities and business pursuits must be nonprofit in character, satisfying the Tax Code’s organizational and operational tests, and not seeking private inurement of benefits to individual members or the organization.⁶ Second, the organization’s purpose or goal or type must fit within prescribed classifications under the IRS Code.⁷ Congress has defined certain activities and business pursuits it deems worthy of being exempt from federal income taxes. If an organization has nonprofit motives and means of achieving those motives which fit within one of

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² See Bruce R. Hopkins, *The Law of Tax-Exempt Organizations* (Wiley, 10th ed., 2011 and 2013 Supp.); see Marilyn E. Phelan, *Nonprofit Organizations: Law and Taxation* (West, 2013); see Lesley Rosenthal, *Good Counsel: Meeting the Legal Needs of Nonprofits* (Wiley, 2012) and the IRS website (www.irs.gov) and publications.

³ See Charles J. Andres and Stephen M. Johnson, “Incorporating Nonprofit Organizations in Kansas and Missouri,” Part I of this seminar.

⁴ See Hopkins, *Tax-Exempt Organizations*, 733, n.4; see Phelan, *Nonprofit Organizations*, §7:40.

⁵ See Hopkins, *Tax-Exempt Organizations*, Ch. 25.

⁶ Inurement is a “benefit” to an individual. See Bryan A. Garner, ed., *Black’s Law Dictionary* (West, 8th, 2004), 842. See IRS Reg. §1.501(a)-1(a)(1) (organizational and operational tests). Private inurement means “personal benefits” “gravitat[ing] toward or flow[ing] to” “any private shareholder or individual.” Rosenthal, *Good Counsel*, 31. Private inurement describes “transactions whose benefits flow to private individuals, to the detriment of the organization and its charitable purposes.” *Id.*, 32. Federal law prohibits private inurement in a tax exempt organization. Private inurement can come from a business transaction, low or no interest rate loan, or excessive salaries above fair market value. *Id.* The private inurement doctrine comes from an old tax law formulation, requiring tax exempt organizations to be organized and operate so “no part of ... [the organization’s] net earnings ... inures to the benefit of any private shareholder or individual.” Hopkins, *Tax-Exempt Organizations*, 506, and Ch. 20.

⁷ See IRS Code §§ 501(c), 526-529; see also Hopkins, *Tax-Exempt Organizations*, 733.

the tax exempt categories, the organization stands a good chance of being granted tax exempt status by the IRS.

The IRS grants tax exempt status via a determination letter or ruling.⁸ Once tax exempt status is achieved, it must be maintained. Indeed, “one of the organization’s most solemn duties is to make sure that it maintains its tax exempt status in good standing.”⁹ Later presentations will cover maintaining tax exempt status in detail, but good maintenance hallmarks include (1) making required public disclosures, (2) avoiding private inurement, (3) limited private benefit transactions, and (4) limiting lobbying activity and avoiding prohibited political activity.¹⁰

B. Determining the Tax Exempt Organization Type Under the IRS Code

IRS Code §§ 501(c), (d), (e), (f), 521, 527, 528, and 529 all describe different types of nonprofit organizations eligible for tax exempt status.¹¹

i. 501(c)s. Most tax exempt organizations fit under 501(c), which is this seminar’s primary focus.¹² 501(c) organizations that are eligible for tax exempt status include:

1. 501(c)(1) – Organizations exempt from Federal income tax under any Act of Congress as amended or supplemented before July 18, 1984

501(c)(1) exempts legacy organizations that were tax exempt before the current IRS Code was enacted.¹³

2. 501(c)(2) - Title holding corporations

501(c)(2) title holding corporations hearken back to an era where state laws often prohibited nonprofits from owning property, so the nonprofit would have a subsidiary title holding corporation to hold title to its real or personal property.¹⁴ A single parent title holding corporation transfers all “its income, less expenses, to a tax-exempt parent” organization.¹⁵ Renting real estate is an acceptable source of income, but renting personal property is conducting an unrelated business.¹⁶ Title holding corporations apply for tax exempt status using Forms 1024 and 8718.¹⁷ In 1986, the IRS Code added multiple parent title holding organizations (IRS Code 501(c)(25)), which are discussed below.

⁸ See Hopkins, Tax-Exempt Organizations, §25.1, 734.

⁹ See Rosenthal, Good Counsel, 31.

¹⁰ See id., 31-34; see Hopkins, Tax-Exempt Organizations, Ch. 27.

¹¹ See Phelan, Nonprofit Organizations, §7:1.

¹² See Hopkins, Tax-Exempt Organizations, App. C (74 categories of tax exempt organizations).

¹³ See id., §19.1.

¹⁴ See id., §19.2, 455; see Phelan, Nonprofit Organizations, §7:31.

¹⁵ See Hopkins, Tax-Exempt Organizations, §19.2(a), 455.

¹⁶ See id., §19.2(a), 456 (internal citations omitted).

¹⁷ See Phelan, Nonprofit Organizations, §7:31.

3. 501(c)(3) - Organizations operating exclusively for religious, charitable, educational, and other specific purposes

501(c)(3) or charitable organizations are the most well known and most common type of tax exempt organization.¹⁸ Their tax exempt status comes from their exclusive operational focus on religious, charitable, educational, or similar purposes.¹⁹ The charitable organization umbrella includes religious, charitable, educational, and other purposes.²⁰ Donors to charitable organizations receive a federal income tax charitable contribution deduction.²¹ Charitable organizations can focus on relief of poor or distressed people, credit counseling, housing provision, down payment assistance, promotion of health, lessening governmental burdens, advancing education, science, or religion, promoting social welfare or the arts, or other initiatives.²² Charitable trusts and split interest trusts can also be charitable organizations.²³

4. 501(c)(4) - Civic leagues, social welfare organizations, local associations of employees limited in membership with the net earnings used exclusively for charitable, educational, or recreational purposes

501(c)(4) social welfare organizations overlap with 501(c)(3) charitable organizations but are distinctly focused on social welfare and require a community benefit or improvement.²⁴ Social welfare encompasses promoting the “common good and general welfare,” “civic betterments and social improvements,” but excludes conducting business for a profit with the general public or political campaign activities.²⁵

5. 501(c)(5) - Labor, agricultural, or horticultural organizations

501(c)(5) encompasses labor, agricultural, or horticultural organizations.²⁶ 501(c)(5)s cannot provide net earnings to members and the organization must “have as its principal object the betterment of the conditions of those engaged in the exempt pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in the particular occupation.”²⁷ An agricultural organization must prove its agricultural mission for tax purposes, although the term “agriculture” is liberally construed.²⁸ Horticultural organizations, such as

¹⁸ See Phelan, Nonprofit Organizations, §7:5 and Chs. 8-10.

¹⁹ See Hopkins, Tax-Exempt Organizations, Ch 6.

²⁰ See id., Ch. 10 (religious), Ch. 7 (charitable), Ch. 8 (educational), Chs. 9 and 11 (other specific purposes).

²¹ See id., §6.1(c), 152 (citing IRS Code §170(c)(2)(B)). Donations to other tax exempt organization types - like civic or business leagues, chambers of commerce, and social or recreational clubs – are usually not tax deductible for donors. See Rosenthal, Good Counsel, 28; see also Phelan, Nonprofit Organizations, §§7:1, 7:14.

²² See Hopkins, Tax-Exempt Organizations, Ch. 7.

²³ See Phelan, Nonprofit Organizations, §§7:9 (charitable trusts) and 7:10 (split interest trusts).

²⁴ See id., §7:15; see Hopkins, Tax-Exempt Organizations, Ch. 13.

²⁵ See Hopkins, Tax-Exempt Organizations, §13.1(a), 351. 501(c)(3) and (4) organizations should avoid the penalty tax for “excess benefit transactions.” See Phelan, Nonprofit Organizations, §7:16.

²⁶ See Phelan, Nonprofit Organizations, §7:11; see Hopkins, Tax-Exempt Organizations, Ch. 13 (social welfare organizations), Ch. 16.

²⁷ See Hopkins, Tax-Exempt Organizations, 405 (internal citations omitted).

²⁸ See id., §16.2, 411.

garden clubs, focus on improving the art and science of cultivating fruits, flowers, and vegetables.²⁹

6. 501(c)(6) - Business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues

501(c)(6) organizations have a common business pursuit that often spills over into for profit activities, such as chambers of commerce, boards of trade, real estate boards, and professional football leagues.³⁰ Tax exempt business leagues have 6 defining characteristics: “an association of (1) persons having a common business interest; (2) ... to promote that common business interest; (3) ... not organized for profit; (4) that does not engage ... in a business ordinarily conducted for profit; (5) [with] activities ... directed to the improvement of business conditions in one or more lines of business ... and (6) [similar to] a chamber of commerce, board of trade, or the like.”³¹ The IRS hones in the distinction between activities directed towards “improvement of business conditions” vis-à-vis “performance of particular services for individual persons.”³² An organization that improves business conditions may be tax exempt, while an organization that performs particular services for individuals cannot be tax exempt under 501(c)(6).

Tax exempt professional organizations – for attorneys, accountants, engineers, physicians, or other professions – fit within the 501(c)(6) category.³³ Business leagues may fail to qualify for tax exempt status for 4 reasons: (1) if they do not represent an entire line of business, including various “competitors within a trade, industry, or profession,” (2) if they engage in for-profit business activities except incidentally, (3) if they perform particular services, conveniences, or economies for individuals or members, or (4) private inurement, e.g. “income or assets of an exempt business league ... [cannot] directly or indirectly benefit an individual or other person who has a close relationship with the organization, when they are in a position to exercise a significant degree of control over it.”³⁴ In contrast to a business league, which “promote[s] the common business interests of persons within a line of business,” a chamber of commerce “promote[s] the common business interests of persons within a community” or “defined geographic area.”³⁵ Tightening the focus on the chamber of commerce designation, a board of trade promotes “one or more lines of business in a particular geographic area.”³⁶ Real estate boards were included as tax exempt organizations in response to a 1929 7th Circuit Court decision.³⁷ Professional football leagues were added as a tax exempt organization category to

²⁹ See Hopkins, Tax-Exempt Organizations, §16.3, 414.

³⁰ See Phelan, Nonprofit Organizations, §7:18; see Hopkins, Tax-Exempt Organizations, Ch. 14, §14.1, 365.

³¹ See Hopkins, Tax-Exempt Organizations, §14.1(a)(i), 366.

³² See id., §16.2(a)(i), 366.

³³ See id., §16.2(e), 373-374.

³⁴ See id., §14.1(c)(i), 369 (Reason 1); see id., §14.2(b), 378-379 (Reason 2); see id., §14.2(c), 379-386 (Reason 3); see id., §14.2(d), 386 (Reason 4).

³⁵ See id., §14.3, 386-387.

³⁶ See id., §14.4, 387-388.

³⁷ See id., §14.5, 388.

prevent pension plans from being construed as “a means of conferring private inurement to individuals.”³⁸

7. 501(c)(7) - Social and recreation clubs

501(c)(7) organizations include social, recreational, and country clubs.³⁹ Social clubs receive tax exempt status because “no part of the net earnings” “inures to the benefit of any private shareholder [or member],” although the organization exists for members’ “pleasure, recreation, and other nonprofitable purposes.”⁴⁰ In crafting the IRS Code, Congress focused on income shifting from one person or business to another. Since social clubs do not shift income from one member to another member, they can be tax exempt organizations.⁴¹ Tax exempt social clubs “must meet an organizational test and an operational test,” including “commingling” of members “play[ing] a material part” in the organization’s life.⁴² Country clubs, dinner clubs, swim, golf, and tennis clubs are the archetype social clubs, but the concept may be stretched more broadly within the IRS’ good graces.⁴³

8. 501(c)(8) - Fraternal beneficiary societies, orders, or associations

501(c)(8) organizations operate under the lodge system and provide payment of life, sick, accident, and other benefits to members or their dependents, or fraternal beneficiary societies that channel net earnings to religious, charitable, scientific, literary, educational, and fraternal purposes.⁴⁴ 501(c)(8) fraternal beneficiary societies file a Form 1024 for tax exempt status.⁴⁵

9. 501(c)(9) - Voluntary employees’ beneficiary associations providing benefits to members or their dependents

501(c)(9) organizations (VEBAs) provide payment of life, sick, accident, and other benefits to association members or their dependents.⁴⁶ Most VEBAs must follow the 27 month rule: notifying the IRS of their tax exempt application within 27 months of incorporation or formation under state law.⁴⁷

³⁸ See Hopkins, Tax-Exempt Organizations, §19.20, 492. Professional football leagues may partly owe their tax exempt status to Lamar Hunt (1932-2006), the founder and late owner of the Kansas City Chiefs.

³⁹ See id., Ch. 15; see Phelan, Nonprofit Organizations, §7:19.

⁴⁰ See Hopkins, Tax-Exempt Organizations, §15.1, 389. The organization’s provision of pleasure or recreation to members is “paramount” to tax exempt status. Id., 391. Ironically for more democratic readers of the Tax Code, opening a social club’s facilities to the “general public” for pleasure or recreation forfeits tax exempt status since the general public using the social club “may be considered as engaging in business,” which is prohibited. Id., 392, 394.

⁴¹ See id., §15.1(a), 389.

⁴² See id., §15.1(b), 390.

⁴³ See id., §15.1(b), 391.

⁴⁴ See id., §19.4; see id., §19.4(a), 461 (lodge system); see id., §19.4(b), 464 (fraternal beneficiary societies); see Phelan, Nonprofit Organizations, §7:20.

⁴⁵ See Phelan, Nonprofit Organizations, §7:20.

⁴⁶ See Hopkins, Tax-Exempt Organizations, §§18.3, 25.5; see Phelan, Nonprofit Organizations, §7:21.

⁴⁷ See Hopkins, Tax-Exempt Organizations, §25.5, 755.

10. 501(c)(10) - Domestic fraternal societies, orders, or associations operating under the lodge system with net earnings devoted exclusively to religious, charitable, scientific, literary, educational, or fraternal purposes

501(c)(10) organizations operate under the lodge system and channel net earnings to religious, charitable, scientific, literary, educational, and fraternal purposes.⁴⁸ 501(c)(10) organizations combine some elements of 501(c)(3) and 501(c)(8) organizations. 501(c)(10) domestic fraternal societies file a Form 1024 for tax exempt status.⁴⁹

11. 501(c)(11) - Local teachers' retirement fund associations

501(c)(11) organizations are another employee benefit fund type, specifically focused on (1) local geography and (2) occupation – e.g. local teachers' retirement funding.⁵⁰ 501(c)(11) organizations combine some elements of 501(c)(6) and 501(c)(9) organizations.

12. 501(c)(12) - Local benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or similar organizations

501(c)(12) organizations are a type of benefit or mutual organization, usually focused on local geography and often requiring 85% or more of the organization's income from members for meeting losses and expenses.⁵¹ 501(c)(12) organizations use Forms 1024 and 8718 to apply for tax exempt status.⁵²

13. 501(c)(13) - Cemetery companies operated exclusively for their members or not operated for profit

501(c)(13) organizations (1) own a cemetery, (2) sell plots for burial, and (3) maintain plots for burial and cremation uses, but that do not conduct business outside of those parameters.⁵³

14. 501(c)(14) - Credit unions, corporations, or associations operated for mutual purposes and without profit

501(c)(14) organizations operate as nonprofits for members' benefit under the Federal Credit Union Act (1934) as United States instrumentalities.⁵⁴ A credit union must be “democratically controlled, cooperative, nonprofit society organized for the purpose of encouraging thrift and self-reliance among its members by creating a source of credit at a fair and reasonable rate of

⁴⁸ See Hopkins, Tax-Exempt Organizations, §19.4(b), 464; see Phelan, Nonprofit Organizations, §7:20.

⁴⁹ See Phelan, Nonprofit Organizations, §7:20.

⁵⁰ See Hopkins, Tax-Exempt Organizations, §18.7; see Phelan, Nonprofit Organizations, §7:31.

⁵¹ See Hopkins, Tax-Exempt Organizations, §19.5, 465-470; see Phelan, Nonprofit Organizations, §7:22.

⁵² See Phelan, Nonprofit Organizations, §7:22.

⁵³ See Hopkins, Tax-Exempt Organizations, §19.6, 470; see Phelan, Nonprofit Organizations, §7:23.

⁵⁴ See Hopkins, Tax-Exempt Organizations, §19.7; see Phelan, Nonprofit Organizations, §7:31.

interest ... to improve the economic and social conditions of its members.”⁵⁵ Credit unions use a special form to apply for tax exempt status.⁵⁶

15. 501(c)(15) - Small non-life insurance companies

501(c)(15) organizations include interinsurers and reciprocal underwriters that handle less than \$150,000 annually in receipts and premiums for insurance policies.⁵⁷

16. 501(c)(16) - Crop financing organizations

501(c)(16) organizations are farmers’ co-ops and may finance members’ crop operations.⁵⁸ Crop financing organizations and farmer’s cooperative organizations are closely related.⁵⁹

17. 501(c)(17) - Supplemental unemployment benefit trusts

501(c)(17) organizations pay supplemental unemployment compensation benefits (SUB) to laid off or ill employees that supplement state unemployment benefits.⁶⁰ A SUB is a type of welfare benefit fund, cannot discriminate in favor or supervisory or highly paid employees, and all SUB corpus and income must be used exclusively for supplementary unemployment benefits.⁶¹ A SUB files for tax exempt status using Forms 1024 and 8718.⁶²

18. 501(c)(18) - Pre-1959 employee-funded pension trusts

501(c)(18) organizations are legacy employee-funded pension trusts, started before 1959.⁶³

19. 501(c)(19) - A post, organization, or auxiliary unit, comprised of present and past members of the Armed Forces and their family members

501(c)(19) organizations provide benefits to war veterans and their spouses and family members.⁶⁴ War veterans’ organizations file Form 1024 to apply for tax exempt status and contributions are tax deductible.⁶⁵

20. 501(c)(20) - Organizations or trusts established to provide qualified group legal services plans

501(c)(20) organizations have been moved under the 501(c)(9) umbrella since 1992.⁶⁶

⁵⁵ See Hopkins, Tax-Exempt Organizations, §19.7, 473 (internal citation omitted).

⁵⁶ See Phelan, Nonprofit Organizations, §7:32.

⁵⁷ See id., §7:31; see Hopkins, Tax-Exempt Organizations, §19.9, 475.

⁵⁸ See Phelan, Nonprofit Organizations, §§7:25, 7:31; see Hopkins, Tax-Exempt Organizations, §19.10, 476.

⁵⁹ See Phelan, Nonprofit Organizations, §7:25, 7:31.

⁶⁰ See Hopkins, Tax-Exempt Organizations, §§ 18.4, 25.5; see Phelan, Nonprofit Organizations, §7:31.

⁶¹ See Hopkins, Tax-Exempt Organizations, §18.4, 447-448.

⁶² See Phelan, Nonprofit Organizations, §7:31.

⁶³ See Hopkins, Tax-Exempt Organizations, §18.6.

⁶⁴ See id., §19.11, 476-478; see Phelan, Nonprofit Organizations, §7:24.

⁶⁵ See Phelan, Nonprofit Organizations, §7:24.

21. 501(c)(21) - Black lung benefit trusts

501(c)(21) trusts are recognized in connection with the Federal Coal Mine Health and Safety Act (1969) and state laws.⁶⁷ Black lung trusts apply for tax exempt status via letter with a copy of the trust instrument, file a Form 990-BL return annually, and contributions are tax deductible.⁶⁸

22. 501(c)(22) – Some ERISA trusts

501(c)(22) trusts include some, but not all, trusts under ERISA.⁶⁹ Because of the complexity of ERISA and employee benefits law, experienced professionals should be consulted.

23. 501(c)(23) - Pre-1880 veterans organizations providing benefits to veterans or their dependents

501(c)(23) organizations are a specific type of veterans' organization, established before 1880.⁷⁰

24. 501(c)(24) - Some single-employer benefit trusts under ERISA §4049

501(c)(24) trusts are a carve out exception to the ERISA trusts under 501(c)(22), in this case, created by ERISA §4049. Again, because of ERISA and employee benefit law nuances, experienced professionals must be consulted.

25. 501(c)(25) - Title holding corporations or trusts for multiple exempt parent organizations

501(c)(25) organizations have *multiple* tax exempt parent organizations, vis-à-vis *one* tax exempt parent organization for 501(c)(2) organizations, but must own property directly and not as tenants in common or a similar form of concurrent or joint tenancy.⁷¹ 501(c)(25) organizations use a Form 1024 to apply for tax exempt status.⁷²

26. 501(c)(26) - State-sponsored high-risk health coverage organizations

501(c)(26) organizations are state sponsored health insurance providers to high risk individuals.⁷³ How the Affordable Care Act's (2010) individual mandate, state health insurance exchanges, and mandate to insure high risk individuals with pre-existing conditions on financial par with low risk or healthy individuals will affect 501(c)(26) organizations remains to be seen.

⁶⁶ See IRS website (http://www.irs.gov/publications/p557/ch04.html#en_US_2011_publink1000200399), accessed 16 October 2013.

⁶⁷ See Hopkins, *Tax-Exempt Organizations*, §18.5, 448, n.100.

⁶⁸ See Phelan, *Nonprofit Organizations*, §7:31.

⁶⁹ See Hopkins, *Tax-Exempt Organizations*, §18.7; see also Employee Retirement Income Security Act (ERISA) (1974), 29 U.S.C. §1001 et seq.

⁷⁰ See Hopkins, *Tax-Exempt Organizations*, §19.11(b).

⁷¹ See Hopkins, *Tax-Exempt Organizations*, §19.2(b); see Phelan, *Nonprofit Organizations*, §7:31.

⁷² See Phelan, *Nonprofit Organizations*, §7:31.

⁷³ See Hopkins, *Tax-Exempt Organizations*, §19.15.

27. 501(c)(27) - State-sponsored workers' compensation organizations

501(c)(27) affects legacy organizations (pre June 1, 1996) that provide state-sponsored workers' compensation reinsurance for claims within the state.⁷⁴

28. 501(c)(28) - National railroad retirement investment trusts

501(c)(28) investment trusts were enacted as part of the Railroad Retirement Act (1974) to provide retirement benefits to railroad workers.⁷⁵

29. 501(c)(29) – Qualified Nonprofit Health Insurance Issuers (NHIIs)

NHIIs are a new IRS Code addition, courtesy of the Affordable Care Act §1322(h)(1), providing tax exempt status to entities receiving a grant or loan under the Centers for Medicare and Medicaid Services co-op program.⁷⁶ NHIIs are nonprofit, member corporations whose substantial activity is issuing qualified health plans in each state's individual and small group and an NHI: (a) was not a health insurance issuer as of July 16, 2009, (b) is not sponsored by a state or local government, (c) uses any profits to lower member premiums, improve benefits, or health care quality, (d) meets all state law requirements for issuing qualified health plans, and (e) does not offer a health plan in a state without market reforms required by the Public Health Service Act (1944) and the Affordable Care Act.⁷⁷

b. 501(c)(3): Public Charity or Private Foundation?⁷⁸

Many tax issues hinge on whether a 501(c)(3) charitable organization is a public charity or a private foundation.⁷⁹ A private foundation under 501(c)(3) should be distinguished from a public charity under 509(a).⁸⁰ Federal law defines private foundations by an exclusionary process, listing “types of charitable organizations that are not private foundations.”⁸¹ Public charities include “churches, educational institutions, hospitals, medical research organizations, publicly supported organizations assisting governmental educational institutions, governmental units, other publicly supported charitable organizations, certain supporting organizations, and entities

⁷⁴ See *id.*, §§1.2, 19.16.

⁷⁵ See *id.*, §19.17

⁷⁶ See Phelan, *Nonprofit Organizations*, §7:31; see IRS Notice 2011-23 (NHI tax exemption requirements) and the IRS website ([http://www.irs.gov/Charities-&-Non-Profits/New-Guidance-for-IRC-501\(c\)\(29\)-Qualified-Nonprofit-Health-Insurance-Issuers](http://www.irs.gov/Charities-&-Non-Profits/New-Guidance-for-IRC-501(c)(29)-Qualified-Nonprofit-Health-Insurance-Issuers)) (accessed 7 October 2013); see Hopkins, *Tax-Exempt Organizations*, §25.5.

⁷⁷ See Phelan, *Nonprofit Organizations*, §7:31.

⁷⁸ See Hopkins, *Tax-Exempt Organizations*, Ch. 12; see Phelan, *Nonprofit Organizations*, Chs. 9 and 10.

⁷⁹ See Phelan, *Nonprofit Organizations*, §7:6.

⁸⁰ For the law of private foundations see Bruce R. Hopkins, *Private Foundations: Tax Law and Compliance* (Wiley, 4th ed., 2014).

⁸¹ See Hopkins, *Tax-Exempt Organizations*, §12.1(a) (citing IRS Code §509(a)); see Phelan, *Nonprofit Organizations*, §7:7.

engaged in testing for public safety.”⁸² Charitable organizations are presumed to be private foundations unless the organization can be demonstrated to be a public charity.⁸³

A public charity is “[1] an institution (such as a university or hospital), [2] an organization that has broad public support,” or [3] an organization that has a “supporting relationship” with “one or more institutions or publicly supported entities.”⁸⁴ A public charity receives more than one-third of its support from the public, and up to one-third of its support from gross investment income.⁸⁵ Since a public charity receives most of its funding from the public, a public charity can be differentiated from a private foundation by a glance at the funding sources. A public charity can also support another public charity. Four types of public charities exist: (1) institutions, (2) publicly supported charities, (3) supporting organizations, and (4) public safety organizations.⁸⁶

In contrast to a public charity, a private foundation has four defining characteristics: (1) it is a charitable organization, (2) it has one private funding source, (3) its ongoing funding comes from investment income (not contributions and/or grants), and (4) it makes charitable grants to others (it does not have its own programs).⁸⁷ A private operating foundation must meet 4 additional tests to qualify for tax-exempt status: (1) an income test, (2) an assets test, (3) an endowment test, and (4) a support test.⁸⁸ The income test requires the private operating foundation spend substantially all of the lesser of its (a) adjusted net income or its (b) minimum investment return directly for its exempt charitable activities.⁸⁹ The assets test is satisfied if “substantially more than one half” of assets are (a) spent directly for its charitable activities, to functionally related business, or a combination, (b) corporate stock controlled by the foundation and substantially all the assets spent on its charitable activities, or (c) a mixture of assets in the first two categories.⁹⁰ The private operating foundation’s endowment test is satisfied by spending at least two-thirds of its minimum investment return on its charitable activities.⁹¹ And the private operating foundation’s support test is satisfied if (1) substantially all its support comes from the general public, (2) up to 25% of its support comes from other tax exempt organizations, and (3) up to 50% of its support comes from gross investment income.⁹²

⁸² See Phelan, Nonprofit Organizations, §7:6 and Ch. 9.

⁸³ See Hopkins, Tax-Exempt Organizations, §12.1(a) (internal citations omitted).

⁸⁴ See id., §12.1(a) (internal citations omitted).

⁸⁵ See id., 322ff.

⁸⁶ See id., §12.3.

⁸⁷ See id., §12.1(a).

⁸⁸ See IRS Code §4942(j)(3); see Hopkins, Tax-Exempt Organizations, §12.1(b) (internal citations omitted); see Phelan, Nonprofit Organizations, §§7:8, 10:23.

⁸⁹ See Hopkins, Tax-Exempt Organizations, §12.1(b), 310 (internal citations omitted).

⁹⁰ See Hopkins, Tax-Exempt Organizations, §12.1(b), 311 (internal citations omitted).

⁹¹ See id., §12.1(b), 311 (internal citations omitted).

⁹² See id., §12.1(b), 312 (internal citations omitted).

c. IRS Application Process for 501(c)(3) – Form 1023⁹³
i. The Importance of the Narrative Description of Activities

An organization must provide a thorough description of its past, present and planned activity that answers the following questions:

- What is the activity?
- Who conducts the activity?
- When is the activity conducted?
- Where is the activity conducted?
- How does the activity further the organization's exempt purposes?
- What percentage of the organization's time is allocated to the activity?
- How is the activity funded?⁹⁴

An organization may also provide additional supporting information, including copies of newsletters, brochures, websites or other documents. Although some flexibility in answering the form questions is allowed, the information cannot be vague or unclear, and it has to reflect those activities that determine the tax-exempt status of an organization.⁹⁵

ii. Submitting the Budget: What You Need to Know

Form 1023 requires that an organization provide financial information for the most recent four tax years, or if the information is not available, provide a reasonable good faith estimate of future finances for the next three years. In making pro-forma financial projections, an organization should carefully balance long-term sustainability with its tax-exempt purpose.⁹⁶

iii. Other Traps for the Unwary

The nonprofit organization must balance between allowing flexibility for future activity the organization may want to conduct, which might cause the IRS to reject the application as hypothetical, and specifically naming the activities it will currently perform.

⁹³ See also Rev. Proc. 2013-9 and see Hopkins, Tax-Exempt Organizations, 734, n.8 (2013 Supp.). See also Rosenthal, Good Counsel, 29 (filling out and submitting an IRS tax exempt application works best on a 3-9 month time frame and the organization should retain an accountant or attorney to file for tax exempt status). The 27 month rule holds that tax exempt status is retroactive to an organization's formation under state law if the application is filed within 27 months of the organization's date of incorporation, including retroactive tax deductions for donors. Rosenthal, Good Counsel, 30. While the Form 1023 tax exemption application cannot be filed electronically (or interactively), the IRS website has a host of helpful materials to guide prospective tax exempt organizations and their counsel through the tax exemption process. See the IRS' Stay Exempt website (<http://www.stayexempt.irs.gov>) (accessed 7 October 2013). See Phelan, Nonprofit Organizations, §7:3.

⁹⁴ See Phelan, Nonprofit Organizations, §7:11.

⁹⁵ See Hopkins, Tax-Exempt Organizations, 736-738

⁹⁶ See Phelan, Nonprofit Organizations, §7:13.

iv. Retroactive Tax Exempt Applications for Existing Organizations

If an organization files Form 1023 within 27 months of formation, its exemption under Section 501(c)(3) will be effective from the date it was legally formed. If an organization does not file Form 1023 within 27 months of formation, Schedule E on Form 1023 provides some exceptions that, if met, would allow retroactive application to the date of formation. If an organization accepts contributions while its 1023 Form is pending approval, those contributions will be deemed tax deductible only if the tax-exempt status of an organization is approved. An organization must communicate to its donors that it offers no guarantee on the final approval of its tax-exempt status, and while donors may claim deductions in the interim, these deductions can be lost should the application later be rejected.

d. IRS Application Process for Other 501(c) Categories

Organizations that qualify for exemption under any Tax Code section other than 501(c)(3), may file Form 1024 to apply for recognition of exemption under Section 501(a). Those organizations include the following types: 501(c)(2), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(9), 501(c)(10), 501(c)(13), 501(c)(15), 501(c)(17), 501(c)(19), and 501(c)(25).

Organizations that are not required to file a federal income tax exemption application may still do so and obtain certain incidental benefits, including public recognition of tax exempt status, state tax exemption, donor assurance and other benefits. These organizations include: churches, including synagogues, temples, and mosques; integrated auxiliaries of churches and conventions or associations of churches.⁹⁷

e. Required Annual or Periodic Federal/State/Local Filings

i. Federal Filings⁹⁸

1. Annual Information Return. The tax exempt organization's annual information return, the Form 990, is discussed later in this CLE. The tax exempt organization must make its Form 990s for the last 3 years available to the public.⁹⁹
2. Employer's Federal Tax Return to report:¹⁰⁰
 - a. Income tax withheld and paid for an employee;¹⁰¹
 - b. FICA taxes withheld and paid on behalf of an employee: Social Security and Medicare taxes;¹⁰²
 - c. Use Form 941 if quarterly, or Form 940 if annual;
3. Unemployment – FUTA tax;¹⁰³

⁹⁷ See *id.*, §7:1.

⁹⁸ See Hopkins, *Tax-Exempt Organizations*, Ch. 27.

⁹⁹ See Phelan, *Nonprofit Organizations*, §7:2; see Hopkins, *Tax-Exempt Organizations*, 809ff.

¹⁰⁰ While a tax exempt organization is exempt from federal income tax, its employees are not exempt from income, FICA, Social Security, Medicare, and related federal, state, and local taxes. See Rosenthal, *Good Counsel*, 30.

¹⁰¹ See IRS Code §§3401-3406.

¹⁰² See IRS Code §3101 et seq (Federal Insurance Contributions Act or FICA (1935), which includes Social Security and Medicare taxes).

¹⁰³ See IRS Code §3301 et seq (Federal Unemployment Tax Act or FUTA (1935)).

ii. State Filings¹⁰⁴

1. Annual Report with the Secretary of State;¹⁰⁵
2. Employer's State Tax Return;

iii. Local Filings

1. Withholding taxes, if any for the city, county, or district
2. Occupational taxes, such as licenses or permits

¹⁰⁴ State or local governments may require applications for exemption from sales, use, and property taxes. See Rosenthal, *Good Counsel*, 30.

¹⁰⁵ See the Kansas and Missouri Secretary of States' websites, (<https://www.kansas.gov/annual-reports/index.do>) and (<https://www.sos.mo.gov/BusinessEntity/annualreport/reportstart.asp>), respectively, visited 20 October 2013.

★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
3. Meet Tim	00:08	
4. Go to www.irs....	00:39	
5. Applying for Ta...	00:26	
6. Organizing Doc...	00:23	
7. Organizing Doc...	00:14	
8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	
10. Go to www.irs...	00:10	
11. By-Laws	00:06	
12. By-Laws	00:16	
13. By-Laws	00:04	
14. Go to www.irs...	00:10	
15. Employer Iden...	00:18	
16. Ways To Get a...	00:53	
17. Q: Is There An...	00:05	
18. Charitable Soli...	00:29	
19. Governance	00:48	
20. Go to www.irs...	00:15	
21. File a complet...	00:37	
22. Application Pr...	00:03	
23. User Fees	00:37	
24. Application Pr...	00:03	
25. Application Pr...	00:29	
26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	



Applying for Tax Exemption An Overview

- Steps you need to take before you apply
- The application process
- Responsibilities that accompany tax-exempt status

Find 00:19 / 16:55 Minutes Clear [Navigation icons: Play, Stop, Previous, Next, Volume, Full Screen, Close]

Go to www.irs.gov/charities
 Click on "Other Non-Profits"
 Click on "Life Cycle of an Exempt Organization"
 Click on "Private Foundations"

Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
3. Meet Tim	00:08	✓
4. Go to www.Irs....	00:39	
5. Applying for Ta...	00:26	
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26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

The screenshot shows the IRS website's navigation menu with 'Charities & Non-Profits' selected. Under this menu, 'Other Non-Profits' is highlighted with a red arrow. The main content area is titled 'Life Cycle of an Exempt Organization' and contains text explaining that organizations meeting Internal Revenue Code section 501(a) are exempt from federal income taxation. It lists five stages: Starting Out, Applying for Exemption, Required Filings, Ongoing Compliance, and Significant Events. A list of organization types is provided, with 'Private foundations' highlighted in yellow.

4

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★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
3. Meet Tim	00:08	✓
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5. Applying for Ta...	00:26	
6. Organizing Doc...	00:23	
7. Organizing Doc...	00:14	
8. Organizing Doc...	00:46	
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17. Q: Is There An...	00:05	
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24. Application Pr...	00:03	
25. Application Pr...	00:29	
26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Applying for Tax Exemption An Overview

A section 501(c)(3) organization is one that is organized and operated exclusively for the following purposes:

- Religious
- Charitable
- Scientific
- Testing for public safety
- Literary or educational
- Foster national or international amateur sports competition
- Prevention of cruelty to children or animals



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1. Applying for Ta...	00:07	✓
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23. User Fees	00:37	
24. Application Pr...	00:03	
25. Application Pr...	00:29	
26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Organizing Document

- Creates your organization
- Non-profit organizations may be created as a:
 - Corporation
 - Trust
 - Unincorporated association

6

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★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
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25. Application Pr...	00:29	
26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Organizing Document

Organizing documents include:

- A corporate charter
- Articles of incorporation
- Articles of association
- A trust instrument
- Other instrument by which the organization is created under state law

7

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★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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3. Meet Tim	00:08	✓
4. Go to www.irs....	00:39	
5. Applying for Ta...	00:26	
6. Organizing Doc...	00:23	
7. Organizing Doc...	00:14	
8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	
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12. By-Laws	00:16	
13. By-Laws	00:04	
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15. Employer Iden...	00:18	
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17. Q: Is There An...	00:05	
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26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Organizing Document

To qualify for exemption, the organizing document must:

- Limit the organization’s purposes to one or more of the exempt purposes set forth in section 501(c)(3)
- Not expressly empower the organization to engage in activities that are not in furtherance of its purposes
- Permanently dedicate assets of the organization to an exempt purpose described under section 501(c)(3)

Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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5. Applying for Ta...	00:26	
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7. Organizing Doc...	00:14	
8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	✓
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26. Application Pr...	00:10	
27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Go to www.irs.gov/charities
 Click on "Life Cycle"
 Click "Public Charities"
 Click "Organizing Documents"

The screenshot shows the IRS website interface. At the top, there is a navigation bar with links for Home, Change Text Size, Contact IRS, About IRS, Site Map, Español, and Help. Below this is a search bar and a menu with categories: Individuals, Businesses, Charities & Non-Profits, Government Entities, Tax Professionals, Retirement Plans Community, and Tax Exempt Bond Community. The main content area is titled 'Organizing Documents - Charity'. It features a sidebar with 'IRS Resources' including Compliance & Enforcement, Contact My Local Office, e-file, Forms and Publications, Newsroom, Frequently Asked Questions, Taxpayer Advocate Service, and Where To File. The main text explains that to qualify for exemption under section 501(c)(3), an organization must be organized exclusively for purposes described in that section, and its organizing documents must contain certain provisions. It mentions that the IRS provides sample organizing documents. A red arrow points to the word 'sample'. Below this, it discusses good governance and provides a link to 'Return to Life Cycle of a Public Charity'. The footer of the page states 'Page Last Reviewed or Updated: March 28, 2011'.



★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

By-Laws

- An organization's internal operating rules
- No specific language for federal tax purposes
- Contact your state to find out its requirements

12

Find 03:46 / 16:55 Minutes Clear [Navigation icons: Play, Pause, Previous, Next, Volume, Full Screen, Close]

Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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3. Meet Tim	00:08	✓
4. Go to www.Irs....	00:39	
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8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	✓
10. Go to www.Irs...	00:10	✓
11. By-Laws	00:06	
12. By-Laws	00:16	
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29. Application Pr...	00:20	

Go to www.irs.gov/charities
 Click on "Life Cycle"
 Click on "Public Charities"
 Click on "By-Laws"

The screenshot shows the IRS website's 'Charities & Non-Profits' section. The main heading is 'Exempt Organization - Bylaws'. Below this, there is a section for 'IRS Resources' with links to Compliance & Enforcement, Contact My Local Office, e-file, Forms and Publications, Newsroom, Frequently Asked Questions, Taxpayer Advocate Service, and Where To File. The main content area includes:

- Bylaws**: A paragraph explaining that bylaws are internal operating rules and that state law may require them.
- State Law Requirements for Bylaws**: A section advising to contact state officials for more information.
- Annual Accounting Period**: A section explaining that exempt organizations must keep books based on an annual accounting period (tax year), which can be either a calendar year or a fiscal year.
- Required Provisions**: A section stating that federal tax law does not require specific language in the bylaws of most organizations.

 The page number '14' is visible in the bottom right corner of the screenshot.



★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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9. Organizing Doc...	00:04	✓
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28. Q: When Shou...	00:06	
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Ways To Get an EIN

- Complete Form SS-4, *Application for Employer Identification Number*, and mail it to the IRS.
- Go to the IRS website or call a toll-free number and get an EIN immediately.
- Fax Form SS-4 to the IRS and get an EIN within 4 days.
- For details on these methods, go to www.irs.gov/businesses and click on “Employer ID Numbers” or see the instructions for Form SS-4.



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9. Organizing Doc...	00:04	✓
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27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Charitable Solicitation

States have laws regulating the solicitation of funds including:

- Registering before soliciting for contributions
- Adhering to additional requirements when fundraising activities involve paid solicitors and fundraising counsel
- Filing financial reports

Check with each state for its requirements



★ Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
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8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	✓
10. Go to www.irs...	00:10	✓
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27. Application Pr...	00:19	
28. Q: When Shou...	00:06	
29. Application Pr...	00:20	

Governance

An organization is more likely to operate effectively and consistently with tax law requirements if it:

- Clearly articulates its purposes
- Has a knowledgeable and committed governing body and management team
- Has sound management practices

IRS asks about an organization’s governance on the application for tax exemption and annually on the information return most organizations must file

Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
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13. By-Laws	00:04	
14. Go to www.Irs...	00:10	
15. Employer Iden...	00:18	
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Go to www.irs.gov/charities
 Click on "Life Cycle"
 Click on "Public Charities"
 Click on "Governance and related topics"

The screenshot shows the IRS website's navigation menu with 'Charities & Non-Profits' selected. The main content area is titled 'Life Cycle of a Public Charity'. It includes a section for 'Starting Out' with a list of links. A yellow highlight and a mouse cursor are positioned over the 'Governance and related topics' link under the 'Organizing Documents' category.



File a complete Form 1023 and include the required user fee.

Slide Title	Duration	Status
1. Applying for Ta...	00:07	✓
2. Applying for Ta...	00:30	
3. Meet Tim	00:08	✓
4. Go to www.irs....	00:39	
5. Applying for Ta...	00:26	
6. Organizing Doc...	00:23	
7. Organizing Doc...	00:14	
8. Organizing Doc...	00:46	
9. Organizing Doc...	00:04	✓
10. Go to www.irs...	00:10	✓
11. By-Laws	00:06	
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Form 1023
(Rev. June 2006)
Department of the Treasury
Internal Revenue Service

**Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

OMB No. 1545-0056
Note: If exempt status is approved, this application will be open for public inspection.

Use the instructions to complete this application and for a definition of all bold items. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500. Visit our website at www.irs.gov for forms and publications. If the required information and documents are not submitted with payment of the appropriate user fee, the application may be returned to you.

Attach additional sheets to this application if you need more space to answer fully. Put your name and EIN on each sheet and identify each answer by Part and line number. Complete Parts I - XI of Form 1023 and submit only those Schedules (A through H) that apply to you.

Part I Identification of Applicant

1 Full name of organization (exactly as it appears in your organizing document)	2 c/o Name (if applicable)
3 Mailing address (Number and street) (see instructions)	Room/Suite
4 Employer Identification Number (EIN)	
City or town, state or country, and ZIP + 4	
5 Month the annual accounting period ends (01 - 12)	
6 Primary contact (officer, director, trustee, or authorized representative)	
a Name:	b Phone:
	c Fax: (optional)
7 Are you represented by an authorized representative, such as an attorney or accountant? If "Yes," provide the authorized representative's name, and the name and address of the authorized representative's firm. Include a completed Form 2848, <i>Power of Attorney and Declaration of Representative</i> , with your application if you would like us to communicate with your representative.	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

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tp://www.stayexempt.irs.gov/Mini-Courses/Applying_for_Tax_Exempt-An_Overview/applying-for-tax-exempt-organizations.aspx

Page 1 of

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User Fees

- The user fee is based on the organization’s average annual gross receipts over a four-year period
 - Exceeds or will exceed \$10,000 - \$750
 - Has not or will not exceed \$10,000 - \$300
- Group exemption - \$900
- Amounts are subject to change – check www.irs.gov, keyword “user fee” for updates

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Navigation controls including play/pause, stop, and volume buttons.

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27. Application Pr...	00:19	
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Application Process

- A group exemption is used when a group of organizations are affiliated with a central organization.
- Each organization does not need to apply individually.
- A group exemption letter has same effect as individual letters.
- For more information, get Publication 4573, *Group Exemptions*.

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Application Process

- Churches, including synagogues, temples, and mosques, don't have to file Form 1023
- Many do in order to receive a determination letter that specifies that contributions to them are tax deductible

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Application Process

- Generally, you must file Form 1023 within 27 months from the end of the month in which your organization was organized
- The deadline can be extended
- See the instructions for Form 1023 for more information

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36. Responsibilitie...	00:37	
37. For informatio...	00:21	
38. Annual Filing ...	00:44	
39. Disclosure Req...	00:48	
40. More Informat...	01:54	
41. Thank You	00:17	
42. Feedback and ...	00:03	

Application Process

Three categories of applications:

1. Processed immediately, no additional information needed
2. Minor additional information needed
3. Additional development required

•If 1 or 2 apply, normally you'll get a determination letter or request for additional information within 60 days

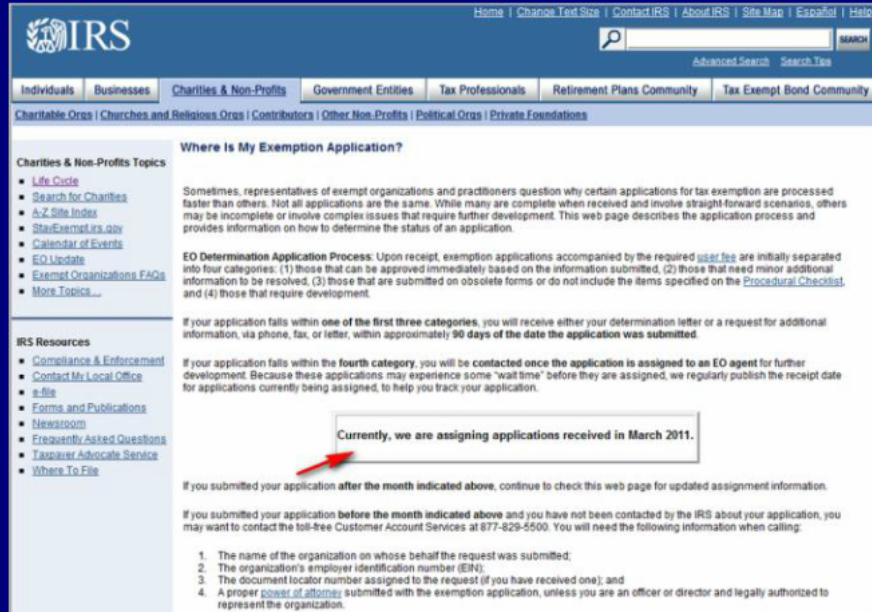
•If 3 applies, you'll be contacted after your application is assigned to an EO specialist

•Keep your determination letter in your organization's permanent records

Find 10:09 / 16:55 Minutes Clear [Navigation icons: Home, Play, Previous, Next, Volume, Full Screen, Close]

To find out what cases are being assigned, go to www.irs.gov/charities and click on "Where Is My Exemption Application?"

Slide Title	Duration	Status
14. Go to www.irs...	00:10	
15. Employer Iden...	00:18	
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The screenshot shows the IRS website's "Charities & Non-Profits" section. The main heading is "Where Is My Exemption Application?". Below the heading, there is a paragraph explaining that sometimes representatives of exempt organizations question why certain applications for tax exemption are processed faster than others. It then lists four categories of applications: (1) those that can be approved immediately, (2) those that need minor additional information, (3) those submitted on obsolete forms, and (4) those requiring development. A red arrow points to a text box that states: "Currently, we are assigning applications received in March 2011." Below this, there are instructions for what to do if an application was submitted after or before the indicated month. At the bottom, there is a list of four items of information needed to contact Customer Account Services: 1. The name of the organization, 2. The organization's employer identification number (EIN), 3. The document locator number assigned to the request, and 4. A proper power of attorney.

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You can operate as a tax-exempt organization while you are awaiting approval, but donors will have no assurance that contributions to your organization are tax-deductible until your application is approved.

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Find 12:01 / 16:55 Minutes Clear

Media player controls including play/pause, stop, next, previous, volume, and close buttons.

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14. Go to www.irs...	00:10	
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Responsibilities of Tax-Exempt Status

Responsibilities include:

- Recordkeeping
- Annual filing requirements
- Disclosure requirements

Find 12:17 / 16:55 Minutes Clear [Navigation icons: Play, Pause, Previous, Next, Volume, Full Screen, Close]

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14. Go to www.irs...	00:10	
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For information on why you need to keep records, what records to keep, and how long to keep them, see Publications 4221-PC.



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Annual Filing Requirement

Annual information returns include:

- Form 990
- Form 990-EZ

Annual electronic notice:

- Form 990-N, also known as the e-Postcard, must be filed by most small organization that are not required to file Form 990 .

See the Charities and Non-Profits page of IRS.gov for information on filing any of these forms.



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Disclosure Requirement

501(c)(3) organizations must make available to the public:

- Application for tax exemption (Form 1023)
- The annual information returns (Form 990 or 990-EZ) filed during the three most recent tax years
- Form 990-T if applicable

Documents must be made available upon request and without charge (except for a reasonable charge for copying).

For details on disclosure requirements, see *Publication 557, Tax-Exempt Status for Your Organization.*



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More Information

- At www.irs.gov/charities
 - Life Cycle of a Public Charity
 - Subscribe to *EO Update* a free email newsletter
- Publications:
 - 4220, *Applying for 501(c)(3) Tax-Exempt Status*
 - 4221-PC, *Compliance Guide for 501(c)(3) Public Charities*
 - 557, *Tax-Exempt Status for Your Organization*
- Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and its instructions
- To download forms and publications, go to IRS.gov
- To order forms and publications, call 1-800-829-3676
- Stay Exempt web-based training course at StayExempt.org

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