

Starting Off Right: What New Non-501(c)(3) Organizations Need to Know

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Webinar

Starting Off Right: What New Non-501(c)(3) Organizations Need to Know



Tax Exempt/Government Entities
Exempt Organizations
February 24, 2011

Welcome to our webinar – ***“Starting Off Right: What New Non-501c (3) Organizations Need to Know.”***

Before we start, we want to welcome all the new tax-exempt organizations. You're now part of a 117-year American tradition. Since 1894, Federal tax policy has provided tax-exempt status, recognizing the role of nonprofits in the life of the nation.

In 2009, tax-exempt organizations filed 1.13 million returns. Public charities covered by section 501(c)(3) filed most of those returns, but 451,000 returns were from organizations covered in this webinar.

We want to talk about what tax-exempt organizations other than 501(c)(3)s need to know in order to meet their federal tax compliance responsibilities. At the end of this webinar, we'll point you to other resources so you can find out more on your own as your organization grows. We also encourage you to look at the resources listed on the webinar's Web page.

Starting Off Right: What New Non-501(c)(3) Organizations Need to Know

This webinar covers:

- 501(c)(4) - Social Welfare groups
- 501(c)(5) - Labor, Agricultural & Horticultural
- 501(c)(6) – Business Leagues
- 501(c)(7) – Social Clubs
- 501(c)(8) – Fraternal Beneficiary Societies
- 501(c)(10) – Domestic Fraternal Societies



We're going to start with 501(c)4's - social welfare groups, (c)5's - labor, agricultural and horticultural organizations, and (c)6's – associations and other business leagues. Then we'll move on to 501(c)7's - social clubs, (c)8's - fraternal beneficiary societies, and (c)10's, - domestic fraternal societies.

Much of what we'll touch on applies to all tax exempts, so this has value for everyone.

By the way, several thousand of you registered for this webinar and are watching us now. Because of the large size of the audience we won't be able to take live, real-time questions from you. We did, however, ask you to send us any questions in advance when you registered and we received many good ones.

We've incorporated several of the questions and answers to them in our presentation today – and we thank you for sending them in.

Starting Off Right: What New Non-501(c)(3)
Organizations Need to Know

“Determination” Letter

IRS recognizes your tax-exempt status

Includes:

*Compliance Guide for Tax-Exempt
Organizations* (Publication 4221-NC)



You’ve worked hard to get through the application process and you’ve finally received a letter from the IRS recognizing your organization as tax-exempt. We call this your “determination letter.” Be sure to keep it in a safe place.

With your determination letter we also sent you a copy of IRS Publication 4221-NC, called “*Compliance Guide For Tax-Exempt Organizations*.” If you have your copy handy, good – we will be referring to it frequently during the next half-hour. If you don’t, you might want to find it later, or you can order a new one for future reference.

It’s not hard to keep your exempt status, but there are a few basic items you need to understand and keep in mind.

5 Areas to Watch

Private Benefit/Inurement
Lobbying/Legislation
Political Campaigns
Unrelated Business Income
Reporting Obligations



Your tax-exempt status is very valuable to your organization. It's critical to the continued existence of many types of organizations. So let's focus now on what to avoid – five ways an exempt organization can jeopardize its exempt status.

The rules differ depending on whether your organization is recognized as exempt under section 501(c)(4), (5) or (6). But they all deserve careful attention, and we'll explain the differences as we go along.

Here they are:

- Private benefit and/or inurement;
- Lobbying or legislative activities;
- Intervention in political campaigns;
- Unrelated Business Income activities and
- Failure to comply with reporting obligations

Basic Requirements

Organized and operated exclusively for exempt purposes.



We do need to cover those five topics. But first, let's review something all of our viewers likely learned during the application process – the basic requirements necessary to be recognized as a 501(c) tax-exempt organization.

To be exempt from federal income tax under section 501 of the Internal Revenue Code, most non-profit organizations must be organized and operated for exclusively exempt purposes. So, all prospective 501 organizations have to pass two tests – the organizational test and the operational test.

The organizational test may require that certain language appear in your articles of incorporation or comparable governing document. The fact that IRS sent you a determination letter means you've passed the organizational test.

Now, about the operational test: An organization is regarded as operating for one or more non-charitable exempt purposes as long as it engages primarily in activities that accomplish those purposes.

In their day-to-day operations, many non-501(c)(3) exempt organizations may engage in non-exempt activity, but only if the activities are not the primary activities of the organization. We'll talk more later about what kinds of activities are okay, and at what levels.

So, the operational test concerns the organization's activities, the specific work the organization proposes to undertake. You told us about your prospective activities in your applications and, again, because you received a determination letter from us, it means you've passed the test.

But remember, not only did you have to *tell* us how you *will* meet it, you have to *continue* to meet it once your organization is up and running, and as it grows and matures.

Prohibition on Private Benefit/ Inurement

Activities benefitting the private interests
of any insider.

See Publication 4221-NC



Let's get back to those five caveats I mentioned a minute ago. These are five activities that, depending on your organization do not, or might not, accomplish an exempt purpose.

Under IRS rules, intent is not a factor here. Activity that breaks the rule accidentally or unintentionally can still jeopardize your exempt status.

Let's talk about them one at a time, starting with Private Benefit and Inurement, which are also covered on pages 2 and 3 of Publication 4221-NC.

An organization is not operated exclusively for exempt purposes if its activities benefit the private interests, or private benefit, of any insider. This is known as the prohibition on "inurement," and it applies to many of the categories of non-501(c)(3) organizations I mentioned earlier.

Law dictionaries define "inurement" as a benefit or something useful or beneficial.

Section 501 of the Internal Revenue Code states that no part of an organization's net earnings may *inure* to the benefit of a private shareholder or individual. Where applicable, this means that the organization may not allow its income or assets to benefit or be used to the advantage of insiders. An insider is a person who has a personal and private interest in the activities of the organization. Examples of typical insiders are officers, directors, key employees and founders of the organization.

Prohibition on Private Benefit/ Inurement

Examples:

- dividends
- unreasonable compensation
- property transferred at below fair market value.



Examples of prohibited inurement include the payment of dividends, the payment of unreasonable compensation and the transfer of property for less than fair market value. This does not mean that directors, officers and/or employees cannot be compensated for their services. They can be paid, but any compensation paid for services rendered must be reasonable.

Examples of payments that would not be considered prohibited inurement or private benefit include payments that further tax-exempt purposes and payments made for the fair market value of real or personal property.

Prohibition on Private Benefit/ Inurement

Inurement can differ for different types of organizations, depending on their exempt purposes.

Check www.irs.gov/eo



The types of activities that may be considered to constitute prohibited inurement of earnings may differ from one Code section to another depending on the specified exempt purposes of the organization. Accordingly, an activity that will be considered to result in inurement of earnings to a member of a labor organization may not result in inurement of earnings to a member of an agricultural organization or a social welfare organization because the organizations are organized and operated for different exempt purposes.

Intermediate Sanctions (Excise taxes)

Applies to:

- -501(c)(4) organizations
- -Person receiving benefit
- -Organization managers who participated



Conceptually, the prohibition against inurement is absolute – meaning that any amount of inurement is grounds for loss of tax-exempt status. However, for 501(c)(4) organizations, also called social welfare organizations, the law provides something short of revoking tax-exempt status when that may be too harsh a punishment, or doesn't punish the persons who made the decision to provide the benefit.

This “intermediate sanction” is an excise tax on the person receiving the benefit AND on the organization managers who participated in the transaction, knowing that it provided a prohibited benefit. Intermediate sanctions apply only to 501(c)(3) public charities and 501(c)(4) social welfare organizations. Intermediate sanctions can be imposed in addition to or instead of revocation.

Let's spend a couple more minutes explaining intermediate sanctions.

Intermediate Sanctions Excess Benefit Transaction

- Insider must return the benefit w/ interest
- Pay excise tax using Form 4720
- Managers who knowingly participate also pay excise tax
- Organization must report on Form 990



When a 501(c)(4) social welfare organization provides a direct or indirect excess economic benefit to an insider, or what the Regulations call a “disqualified person,” both the organization and the insider have engaged in an *excess benefit transaction*.

Any insider who receives an excess benefit must return the excess benefit to the organization and pay excise taxes on it. The insider must file a Form 4720 to report and pay the excise taxes. In addition, the organization needs to disclose the transaction on its Form 990.

Organization managers who participate in an excess benefit transaction, knowing that it is improper, must pay excise taxes as well.

If the excess benefit transaction is not properly disclosed on the Form 990 and/or Form 4720, the IRS may assess the tax and apply additional penalties. The rules governing these excise taxes are detailed.

To learn more about the terms “inurement,” “disqualified persons,” and “excess benefit transactions,” Appendix G in the instructions for Form 990, *Return of Organization Exempt from Income Tax*, is recommended.

Ask the Audience

Inurement



Consider the following scenario:

Jane Doe is founder and President of XYZ, a 501(c)(4, 5 or 6) organization. As president, Jane is a voting member of the board of directors. She and her husband, Jim, also own J&J Advertising, a for-profit company. Jane signs a \$200,000 contract with the company to coordinate the advertising campaign for the organization's annual appeal. She signs it without bringing it to the organization's Board of Directors for discussion and action. Since Jim knows that there will be no competitive bidding for the contract, he decides that J&J Advertising will bill at a rate of about 120% of the fair market value of the work.

So, is this a case of prohibited inurement?

This scenario shows prohibited inurement to an insider. Jane uses her position with XYZ to steer the direct mail contract to J&J Advertising, in which she has a personal financial interest through herself and her husband. Also, under the excess benefit transaction rules, J&J Advertising is a disqualified person that has received an excess benefit.

The fact that Jane, as President of XYZ, signed a contract to do business with a company of which she is part owner, without competitive bidding or a search for alternative providers, is probably enough to show inurement.

Jim's decision to overcharge for the work J&J is doing for XYZ creates a situation where there is clearly impermissible inurement to Jane. And J&J Advertising receives an excess benefit equal to the 20 percent in excess of the fair market value of the services.

If a scenario such as this was discovered in an audit of a 501(c)(4), the IRS agent most likely would propose "intermediate sanctions" on the insider. Depending upon all the facts and circumstances, the agent also might propose the 10-percent intermediate sanctions on the manager and revocation of the organization's tax exempt status.

Before you are faced with such a situation, your organization might want to consider adopting a "conflict of interest" policy. The policy should require your leaders to recuse themselves from discussing or participating in any organizational activities where they or a family member have a personal financial interest.

Lobbying and Legislative Activities

501(c) 4, 5 and 6 – Unlimited lobbying as long as it's related to tax-exempt purpose



Let's move on to our second issue, **lobbying and legislative activities**. You'll find these discussed on pages 6 and 7 of Publication 4221-NC.

In general, (c)4, 5 and 6 organizations may engage in an unlimited amount of lobbying, provided that the lobbying is related to their tax-exempt purpose.

Let's take a minute to define our terms.

Lobbying and Legislative Activities

What is lobbying?

-Activities intended to influence legislation

What is legislation?

-Action by Congress, a state legislature or a local council, with respect to acts, bills, resolutions or similar items, including legislative confirmation of appointees.

-Includes action by the public in referenda, ballot initiatives, constitutional amendments or similar procedures.



Lobbying means activities intended to influence legislation. And what exactly does the IRS mean by “legislation”?

Legislation includes action by Congress, a state legislature or a local council, with respect to acts, bills, resolutions or similar items, including legislative confirmation of appointees.

It also includes action by the public in referenda, ballot initiatives, constitutional amendments or similar procedures. It does not mean actions by executive, judicial or administrative bodies, which do not legislate.

Lobbying and Legislative Activities

An organization is “lobbying” if it contacts, or urges the public to contact, members or employees of a legislative body to propose, support or oppose legislation.



If an organization attempts to influence legislation, it is lobbying.

It is lobbying if it contacts, or urges the public to contact, members or employees of a legislative body to propose, support or oppose legislation.

Here's another example:

Organization Z supports a research project on the use and effects of a pesticide. Z's study leads to the conclusion that the pesticide is extremely harmful. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of the pesticide, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned. Organization Z makes the study available on its website and describes it in its monthly member newsletter. A bill is pending in the U.S. Senate to ban the use of the pesticide.

Organization Z's activities, as described, do not constitute lobbying. However, if Organization Z were to identify undecided Senators on the committee considering the bill and urge the public to write those senators to request that they support the bill, Organization Z would be engaging in lobbying.

Lobbying and Legislative Activities

- 501(c)(4) social welfare organization,
- 501(c)(5) union,
- 501(c)(6) business league or association

permitted unlimited lobbying, related to the organization's exempt function, without jeopardizing its exempt status.



Unlike tax-exempt public charities, 501(c)(3) organizations, which can conduct only an insubstantial amount of lobbying – a c(4) social welfare organization, a c(5) union or a c(6) business league or association is permitted unlimited lobbying, as long as it is related to the organization's exempt function.

Some 501(c)(4) organizations are solely devoted to advocacy supporting or opposing various issues in the public discourse and in legislative bodies, and that's okay. According to the Code, a 501(c)(5) labor union's purpose is to better conditions, improve products and increase efficiency. Consequently, its ability to speak for its members on various legislative issues is part of its tax-exempt purpose.

And a c(6) business league, such as a chamber of commerce, may lobby on legislative issues that concern the common business interests of its members. In each case, the Internal Revenue Code and IRS regulations permit lobbying and/or legislative activity as long as it advances the organization's purpose in keeping with its tax-exempt status.

Lobbying and Membership Dues

- 501(c)(4), 501(c)(5), 501(c)(6) members
Portion of dues that paid for lobbying or political campaigns are **NOT DEDUCTIBLE** by members as a business expense.
- Organization must give member an estimate of portion of dues likely to be spent on these activities in the coming year.



As you probably know, 501(c) 4's, 5's and 6's typically get much of their revenue from some form of membership dues.

Membership dues would typically be a deductible business expense for the business paying the dues. However, a business may not deduct federal or state legislative lobbying expenses that it incurs on its own. (This is also true for political campaign expenditures, which we will cover more thoroughly in just a minute.)

This means that the portion of dues that paid for lobbying or political campaign expenditures by a 501(c)(4), (5) or (6) organization is not deductible by the member as a business expense. In fact, the law requires that the organization give its members a reasonable estimate every year of how much of their dues are likely to be spent on these activities in the year ahead. This way, the member knows how much of its membership dues it may not deduct as a business expense on its own tax return.

Lobbying and Membership Dues

“Proxy Tax” Alternative

Organization may choose to not notify its members and pay a “proxy tax” – currently 35% - on its lobbying and political campaign expenditures – up to the amount of dues and other similar payments received – during the taxable year.



The 501(c)(4), (5) or (6) organization has an alternative to providing the lobbying and political campaign expense estimate: It may choose to not provide its members with the estimate I just described and simply pay a “proxy tax,” currently 35 percent, on its lobbying and political campaign expenditures during the taxable year, up to the amount of dues and other similar payments received.

If the organization provides the notices to its members but underestimates the actual amount of lobbying and political campaign expenditures, the organization is subject to the proxy tax. The tax is on the excess lobbying expenditures paid during the year that were not included in the notices. However, this tax may be waived if the organization agrees to include the excess lobbying and political campaign expenditures in the following year’s notices.

In practice, many organizations solve the issue for themselves and their members by simply paying the proxy tax. That allows members to deduct their dues or other such payments as a business expense and the organizations avoid further disclosure to their members and further adjustments in deductibility.

Lobbying and Membership Dues

Exceptions

- de minimis lobbying or political activities
- substantially all dues from members not entitled to a deduction



Finally, if an organization does little lobbying or political activity - if those activities are *de minimis* - the rules about disclosing and notifying the membership don't apply, nor does the proxy tax.

Likewise, if an organization can show the IRS that "substantially" all of its dues come from members who are not entitled to a deduction anyway, then the rules and the proxy tax do not come into play.

Political Activity

Permitted for 501(c) 4, 5 and 6
within certain rules



The third way to put your tax-exempt status in jeopardy is **political activity, or intervention in political campaigns**. Publication 4221-NC covers this topic on pages 3 through 6.

Tax-exempt public charities – 501(c)(c)(3) organizations – are absolutely barred from political activity. Not so a 501c(4), (5) or (6).

Your organizations are permitted to engage in political campaign activities. But there are rules to follow and there are tax implications you want to be aware of. Political campaign activities are defined by the Code as those that influence or try to influence the selection, nomination, election or appointment of an individual to a federal, state or local public office.

Political Activity

- May not be organization's primary activity
- Spending subject to tax



To keep your tax-exempt status, your political campaign activities may not be your organization's primary activity - and there are tax ramifications. Spending to intervene in political campaigns is subject to a specific excise tax. And, as we noted in the earlier section, the portion of any membership dues used by the organization for political campaigns will not be deductible by the dues-paying member as a business expense.

This begs the question – what is campaign intervention and what is simply issue advocacy? The IRS considers a number of factors in making that determination. The factors are spelled out in some detail on pages 4 and 5 of the Compliance Guide. Your organization will want to be alert to what constitutes taxable campaign actions.

By comparison, a tax exempt **public charity** (a 501(c)(3)) can carry out only limited lobbying and is barred from political campaign activity altogether. A c(4), (5) or (6) may engage in both lobbying and political activity. The trade-off is that political campaign spending is subject to an excise tax. And, an estimate of lobbying and political campaign expenses to be paid by membership dues must be reported to the members. The organization may also elect to pay a "proxy tax" on its lobbying and political expenditures and avoid reporting to members.

We received a question about whether the staff, board members or volunteers of an exempt organization can participate in political campaigns in their individual capacities. The rules governing political activity by exempt organizations are not intended to restrict free expression on political matters by leaders of exempt organizations speaking for themselves **as individuals**. Nor are these leaders prohibited from speaking about important issues of public policy. However, individuals cannot make partisan comments in official organization publications or at official organization functions. If they do, the activities might be attributed to the exempt organization and the excise tax would apply.

Leaders of exempt organizations who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization with which they are associated.

Unrelated Business Income (UBI)

Generates taxable income



Moving on now: The **fourth area** where tax-exempt organizations can go astray involves so-called **Unrelated Business Income**, or “UBI.”

One of the most common types of non-exempt activity conducted by an exempt organization is operating an unrelated trade or business. This activity can generate taxable income for the organization.

Unrelated Business Income (UBI)

Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*



Help in understanding the rules about when an activity generates unrelated business taxable income and the calculation of the tax can be found in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*.

Unrelated Business Income (UBI)

Income from:

- Trade or business
- Regularly carried on
- Not substantially related to exempt purpose



We'll touch briefly on a few key points about unrelated business income that are good to keep in mind. First, this is income from:

- a trade or business
- that is regularly carried on
- not substantially related to the organization's tax-exempt purpose or function

Note that how the organization uses the money is not a factor. Whether the **activity** generating the income is directly related to your organization's exempt purpose is the key. There are some exceptions, but if the income comes from an unrelated activity, it's generally taxable.

To explain further:

"Trade or business" generally refers to activities that produce income – usually from the sale of goods or services.

"Regularly carried on" means that the business operates continuously or frequently. An infrequent activity such as an annual fundraiser is not considered regularly carried on.

And again, the fact that an activity generates income used to support your on-going tax-exempt activities does not make the activity substantially related to your organization's exempt purpose.

The activity must contribute "importantly" to the organization's exempt purpose or function to avoid taxation.

Unrelated Business Income (UBI)

Common UBI activities:

- Advertising
- Sale of merchandise
- Services



Some of the most common unrelated business income-generating activities include:

- the sale of advertising space in weekly bulletins, magazines, journals or on an organization's website
- the sale of merchandise and publications when those items do not have a substantial relationship to the exempt purpose of an organization
- providing management or other similar services
- some types of fundraising activities

Publication 598 provides numerous examples on pages 3 through 5 for further guidance. It also spells out in detail some of the exceptions to the rules on related and unrelated income.

Unrelated Business Income (UBI)

Common Exceptions:

- Volunteer activities
- Activities for organization members, students, employees, officers
- Selling donated articles
- Traditional bingo



Some typical exceptions include:

- activities conducted by substantially all volunteer labor
- activities conducted primarily for the convenience of an organization's members, students, patients, employees, or officers
- selling articles donated to the organization
- income derived from traditional bingo games

So, if an income-generating activity meets the three-part test we just went over and doesn't meet one of these exceptions, you may have taxable income to report. We'll discuss the rules for reporting taxable income to the IRS and paying the tax in just a minute.

Filing Requirements



The fifth and final area to pay close attention to is **filing requirements**.

Most 501c 4's, 5's and 6's have information-reporting obligations under the Code to ensure that they continue to be recognized as tax-exempt.

Filing Requirements

Depends on revenue and assets

- Form 990
- Form 990-EZ
- Form 990-N (the “e-postcard”)



Different reporting forms are required depending on the size of your organization’s revenue and assets.

Use Form 990 if the organization’s gross receipts are more than \$200,000 or if its assets are more than \$500,000.

Use Form 990-EZ for tax years beginning in 2010 and after, if the organization’s gross receipts are normally more than \$50,000 but less than \$200,000, and its total assets are less than \$500,000 at the end of the year.

The Form 990 instructions show how to compute an organization’s “normal” gross receipts.

Form 990-N, known as *the e-Postcard*, can be filed for tax years beginning in 2010 and later, if an organization’s gross receipts are generally \$50,000 or less.

Also, and this is important, organizations with unrelated business income of \$1,000 or more are also required to file Form 990-T. This is in addition to the other required forms. You have to file Form 990-T even if you won’t owe tax, after taking all the expenses into account. If you do owe tax, you will pay it when filing the Form 990-T.

It is critical that exempt organizations file the appropriate forms, filled out completely. Information returns, the 990, 990-EZ and 990-N, as well as the Form 990-T income tax return, have different due dates than the income tax returns that individuals and businesses file.

Filing Requirements

Returns Due...

15th day ...

of the 5th month...

after the close of the tax year



An exempt organization's annual information return is due on the fifteenth day of the fifth month after the close of the organization's tax year. So, if an organization's tax year ends on December 31, its information return is due the following May 15. For tax years ending on January 31, the return is due June 15, and so on.

Filing Requirements

Failure to file for 3 consecutive years leads to AUTOMATIC revocation of tax-exempt status.



Here's another very important point to remember: any tax-exempt organization that fails to file a required annual return for three consecutive years will AUTOMATICALLY lose its tax-exempt status. And losing tax-exempt status has serious consequences.

As a result, any income the organization receives may be taxable. The organization may have to file a Form 1120, *Corporate Income Tax Return*, or a Form 1041, *Return for Estates and Trusts*, to report and possibly pay tax on the income.

To regain tax-exempt status, a revoked organization must reapply to the IRS. That means filing Form 1024 all over again and paying the application fee. In the meantime, income the organization receives between the revocation and the reinstatement dates may be taxable.

Neither you nor we want these things to happen. So please make sure you file.

Starting Off Right: What New Non-501(c)(3) Organizations Need to Know

Membership Organizations

501(c)(7) – Social Clubs

501(c)(8) – Fraternal Beneficiary Societies

501(c)(10) – Domestic Fraternal Societies



Now let's turn to our second group of tax-exempts. These are all membership organizations in one form or another.

They are:

- 501c(7's), Social Clubs: country clubs, fishing and hunting clubs and the like, and to a lesser extent fraternities and sororities
- 501c(8's), Fraternal Beneficiary Societies: provide various types of insurance to their members
- And 501c(10's), Domestic Fraternal Societies: operate in a lodge system and devote their net earnings entirely to religious, charitable or other exempt purposes

Membership Organizations

Basic Requirements

- Exclusively exempt purpose
- Private benefit/Inurement prohibited



The general rules and limits that we discussed at the start of this program also apply here.

(c)7's, (c)8's and (c)10's must organize and operate exclusively for exempt purposes, and continue to do so as they grow and mature. They also are subject to the same prohibitions regarding private benefit and inurement. They must pursue their exempt purposes and not benefit insiders or so-called disqualified persons. Violators face taxation and possibly other sanctions.

They differ from the social welfare groups, unions and chambers of commerce in other ways.

Membership Organizations

501(c)(7) Social and Recreational



(c)(7) organizations, for example, are social and recreational in nature. Most are country clubs or fishing, hunting and sailing clubs. Others are fraternities and sororities. The recreational clubs account for the majority of the assets and revenue reported to the IRS by c(7) filers – 88 percent and 87 percent respectively in 2007, the latest annualized figures.

To be recognized as tax exempt, c(7's) must meet three requirements:

- Their membership must be limited (they cannot offer corporate memberships)
- There must be personal contact and social “commingling” and fellowship among the members
- They must be supported by membership dues, fees and assessments

In addition, your organization will not be recognized as tax exempt if its charter, bylaws, or other governing instrument or any written policy statement provides for discrimination against any person on the basis of race, color, or religion.

However, a club that in good faith limits its membership to the members of a particular religion to further the teachings or principles of that religion and not to exclude individuals of a particular race or color will not be considered as discriminating on the basis of religion.

Membership Organizations

501(c)(7) Social and Recreational

- Donations not deductible
- Investment income taxable
- 35% limit on gross receipts from outside



Donations to tax exempt C(7) organizations are not deductible as a charitable contribution, and any investment income is taxable as unrelated business income. Also, investment gains are excluded from taxation for most 501(c) organizations, but that exception is not available to social clubs.

Furthermore, no more than 35 percent of a (c)(7)'s gross receipts can come from sources outside the membership. And of that 35 percent, no more than 15 percent can derive from use of the club's facilities and services by the public.

So generally, this means that any non-member source of income of a 501(c)(7) – either from investment income or from use of its facilities or services by the general public – is taxable income for the organization.

In addition to being taxable, if non-member income exceeds the percentage limits I just mentioned, the organization's tax-exempt status may be at risk.

Let me mention one more aspect about (c)(7)s and their investment income. There are certain "set-aside" rules an organization may follow if it wants to identify and use some or all of its investment income for a charitable purpose. When the income is properly "set aside," it is not subject to the tax on unrelated business income but must be reported on Forms 990 and 990-T.

Membership Organizations

501(c)(8) Fraternal Beneficiary Society



A c(8) fraternal beneficiary society on the other hand is a different species altogether.

Federal courts have ruled that these organizations, which date to the mid-19th century, must be, as the name implies, both fraternal and beneficial.

They must:

- Organize and operate as a fraternal organization
- Operate under a lodge system or for the exclusive benefit of the members of a fraternal lodge system. (A lodge system has a parent organization and subordinate chapters, or lodges.)
- And provide for life, health or accident insurance or other benefits only for the members and their dependents – no outsiders allowed

In a 1926 legal case, a federal court rejected a group's claim for (c)(8) exempt status saying the organization's "motive is mercenary. It has neither lodges, rituals, ceremony or regalia." The group offered a benefit to members, but it did not fit the definition of "fraternal" for tax-exempt purposes. To maintain a (c)(8) tax exemption, organizations must do both.

Most of the members, but not all, must be covered by these benefits in order to maintain exempt status.

Membership Organizations

501(c)(8) Fraternal Beneficiary Society

- Investment income tax exempt
- Contributions deductible



For qualified fraternal societies, the income from investments is also tax exempt. As we said earlier, this is a benefit that social clubs do not enjoy.

Individual contributions to (c)(8) organizations also are deductible, as long as the gift is used exclusively for religious, charitable, scientific, literary or educational purposes.

Membership Organizations

501(c)(8) Fraternal Beneficiary Society

- Political activity OK
- Political spending taxable



And a (c)(8) organization may involve itself in political activity, as long as its fraternal and benefit activities remain primary. Political spending is subject to the excise tax we've already discussed.

Membership Organizations

501(c)(10) Domestic Fraternal Society



Lastly, (c)(10's), Domestic Fraternal Societies, are yet another variety of tax exempt organization.

This exemption was created by Congress in 1969 to accommodate fraternal organizations that do not offer insurance benefits to their members, but whose purposes are religious, charitable, educational and so on.

Membership Organizations

501(c)(10) Domestic Fraternal Society

- Must be organized in U.S.
- Earnings exclusively for exempt purpose
- Contributions deductible



Unlike a (c)(8) organization, a (c)(10) must be “domestic, that is, organized in the United States. And its net earnings must be devoted exclusively to its fraternal purposes. Also like a (c)(8), charitable contributions to a (c)(10) are deductible by the donor if they are used exclusively for religious, charitable, scientific, literary or educational purposes.

Both (c)(8) and (c)(10) fraternal groups are subject to tax on unrelated business income from rentals, food and beverage sales, gaming and other activities that are offered, within limits, to the public. However, they are not subject to the investment and non-member income percentage limits discussed earlier for 501(c)(7) organizations.

Here is another question that we received.

“I’ve heard that organizations such as the ones you are discussing today – 501(c) 4s, 5s, 6s, 7s, 8s, and 10s – are not actually required to complete and submit Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. In other words, an organization that believes it qualifies for exemption under one of these subsections can simply say it does and start to operate. Is that true?”

It is true the Tax Reform Act of 1969 requirement to “give notice,” (to apply for recognition of tax-exempt status) applies only to organizations wanting section 501(c)(3) status.

So, although other types of organizations are not required to file Form 1024, they may still wish to do so in order to receive a determination letter of IRS recognition of their status. Having the determination letter ensures public recognition of their status and may enable exemption from some state taxes.

Also, even though an organization may “self-proclaim” its tax-exempt status, it is still subject to the rules governing its particular sub-section. It is also subject to IRS examination to determine whether it meets the requirements for the exemption it is claiming.

Much of what we’ve covered today can be complex. We’re sure that you’re not thinking much about IRS rules and regulations while your organization goes about its tax-exempt purpose. When the time comes that you do have tax questions, we have resources that can help answer them and help you stay right.

We’ll start with our websites and online services.

EO Education & Outreach Resources

Internet Resources

IRS Exempt Organizations Web page

www.irs.gov/eo

Life Cycles of Exempt Organizations



IRS Exempt Organizations has its own pages on the IRS website. You can reach them by going to the IRS home page, www.irs.gov and clicking on the Charities and Non-profits tab. Or you can type www.irs.gov/eo directly into your browser.

On the charities and nonprofits Web pages, you'll find the most current topics important to tax-exempt organizations and links to more detailed articles explaining how the tax law affects organizations from universities and non-profit hospitals, to smaller organizations such as yours.

There is much more on this part of the site than we can possibly cover today. We highly recommend that you spend some time exploring our web pages. Here are a few suggestions on where to start:

In the left hand column of the EO page are links to some of the more requested topics. One popular resource is our "Life Cycles." We've constructed a number of these for different types of exempt organizations – social welfare, labor, business leagues and others.

The life cycles describe the five major life stages for each type of organization:

1. **Starting Out:** Creating an organization, acquiring an employer identification number, and identifying the appropriate federal tax classification.
2. **Applying for Exemption:** Acquiring, completing and submitting application forms; how the IRS processes applications; and getting help from the IRS during the application process. Since many of you have just recently gone through this process and are now experts on these topics, feel free to recommend this page to your friends.
3. **Required Filings:** Annual exempt organization returns, unrelated business income tax filings, and other returns and reports that an organization may have to file.
4. **Ongoing Compliance:** How an organization can avoid jeopardizing its tax-exempt status, disclosure requirements, employment taxes, and other ongoing compliance matters.
5. **Significant Events:** Audits, private letter rulings and termination procedures.

EO Education & Outreach Resources

Internet Resources

- IRS Exempt Organizations Web page
www.irs.gov/eo
- Frequently Asked Questions
- Calendar of Events



For answers to your general questions about exempt organizations as well as specific items about Form 990, we recommend you look at our page of FAQs, or Frequently Asked Questions about Tax-Exempt Organizations.

There are a number of different categories of questions, and we update this page regularly as we receive new questions.

In addition to webinars like this, we also sponsor a limited number of in-person workshops around the country. The Calendar of Events lists these one-day workshops that are designed for small and mid-sized 501(c) (3) organizations. But many of the topics are applicable to other types of organizations and they are taught by experienced IRS exempt organizations specialists.

EO Education & Outreach Resources

“CPE” articles

The screenshot shows the IRS website interface. At the top, there are links for Home, Change Text Size, Contact IRS, About IRS, and Site Map. Below this is the IRS.gov logo and a search bar. A navigation menu includes categories like Individuals, Businesses, Charities & Non-Profits, Government Entities, Tax Professionals, Retirement Plans Community, and Tax Exempt. A sub-menu for Charitable Orgs is expanded, showing links for Churches and Religious Orgs, Contributors, Other Non-Profits, Political Orgs, and Private Foundations. The main content area is titled 'Exempt Organizations Continuing Professional Education Technical Instruction Program'. It contains a paragraph explaining that most articles published in the IRS continuing education program for exempt organizations specialists between 1979 and 2004 are available online through the provided links. A table lists the fiscal years from 1979 to 2004, organized in three columns. Below the table, there is a reference to the Exempt Organizations CPE Topical Index for a cumulative listing of available articles. On the left side, there is a vertical navigation bar with 'Charities & Non-Profits Topics' and 'IRS Resources' sections.

FY 1979	FY 1987	FY 1996
FY 1980	FY 1988	FY 1997
FY 1981	FY 1989	FY 1999
FY 1982	FY 1990	FY 2000
FY 1983	FY 1992	FY 2001
FY 1984	FY 1993	FY 2002
FY 1985	FY 1994	FY 2003
FY 1986	FY 1995	FY 2004

Another resource on the IRS website that takes a little digging, but is worthwhile, particularly for the practitioners in the audience, are the CPE Articles.

On that left side vertical navigation bar again, click “EO Tax Law Training.” On the next page you’ll see a link to the “Exempt Organizations Continuing Professional Education Technical Instruction Program.” Click that, and you will see a compendium of all of the articles written for this program from 1979 up through 2004. There is a link for a topical index on this page too, so whether you want to see what we had to say about Bingo in 1986 or Scholarships and Beauty Pageants in 2002, its all easy to find.

EO Education & Outreach Resources

Internet Resources

EO Update e-mail newsletter

Subscribe at www.irs.gov/eo



If you'd like to keep up to date on changes or additions to the Charities & Non-Profits section, we recommend subscribing to our electronic newsletter, *EO Update*.

Click the "EO Newsletter" link on the left hand side of this page and follow the directions. Don't worry, we won't spam you. And you can unsubscribe at any time. But once you see how helpful *EO Update* and our website are, I doubt that you will want to.

The Charities and Non-profits Web pages do have a lot of information. To help you find exactly what you need, try using the A-to-Z Site Index. It lists most of the webpage topics alphabetically.

EO Education & Outreach Resources

Internet Resources

www.stayexempt.irs.gov -- Online courses and workshops for tax-exempt organizations



IRS Exempt Organizations also has a second website that's devoted to EO-related online workshops and courses. It's called "Stay Exempt" and the Web address is www.stayexempt.irs.gov.

We created this site to make available to everyone the information we provide in face-to-face, in-person workshops. Newcomers to the world of tax-exempt organizations, as many of you probably are, might want to explore Stayexempt's Virtual Workshops. These are five interactive lessons covering the basics of 501(c)(3) organizations. But again, these basics apply to many other types of tax-exempt organizations, so the workshops may be worthwhile.

The Mini-Courses page offers 15 courses, most 15 minutes or less. The topics include how to complete the 990 and 990-EZ forms, deductibility issues for your supporters, a course on providing disaster relief, and more detail on something we discussed here earlier—political campaign intervention.

Don't overlook the main IRS homepage, www.irs.gov. From there you can view and download IRS forms and publications and apply for an Employer Identification Number.

EO Education & Outreach Resources

Internet Resources

Business Information – www.irs.gov/business



Just because your organization is exempt from federal income taxes doesn't mean it isn't run like a business. Clicking on the Business tab leads you to information on starting and operating a business, recordkeeping, and employment taxes, topics every well-managed tax exempt organization needs to know about.

EO Education & Outreach Resources

Toll-free assistance for tax-exempt organizations

877-829-5500



For those of you who want your tax questions answered in person, we still have phone lines. Our toll-free assistance number for exempt organizations is 1-877-829-5500.

A number of you had questions about a tool called "Cyber Assistant" that we had previously announced would be coming out. For those of you who aren't familiar, Cyber Assistant is Web-based software designed to assist organizations in preparing their application for recognition of exemption under § 501(c)(3) of the Internal Revenue Code (Form 1023). The Service does not expect Cyber Assistant to become available in 2011.

Starting Off Right: What New Non-501(c)(3) Organizations Need to Know

E-mail comments or program suggestions
to: tege.eo.ceo@irs.gov

Thank you



We value your comments and would appreciate your feedback on this Webinar. If you have Federal Tax topics for tax-exempt organizations that you would like to hear about on future webinars, please provide your comments tege.eo.ceo@irs.gov.

We hope this presentation has provided you with helpful information and we invite you to join us for future events.