

What disclosures must a 501(c)(3) organization make?

There are a number of disclosure requirements for 501(c)(3) organizations as noted below. Detailed information on federal tax law disclosure requirements for 501(c)(3) tax-exempt organizations can be found in Publication 557, on the IRS Web site at www.irs.gov, and in the final regulations (Treasury Decision 8818 published in the Internal Revenue Bulletin 1999-17 (April 26, 1999)).

NOTE: PENALTIES

Penalties apply to organizations that do not comply with disclosure requirements, and to persons responsible for the failure to comply.

Public Inspection of Annual Returns and Exemption Applications

A 501(c)(3) organization must make certain documents available for public inspection and copying upon request and without charge (except a reasonable charge for copying). The organization must disclose its exemption application (Form 1023) along with all supporting documents and a copy of the exemption ruling letter issued by the IRS. The IRS makes these documents available for public inspection and copying. Private foundation returns filed on or after March 13, 2000, are also subject to these disclosure rules.

Annual Information Return – An organization must disclose its annual information return (Form 990 series), with schedules, attachments, and supporting documents filed with the IRS. However, the organization does not have to disclose Schedule B of Form 990 or Form 990-T *and* does not need to identify its contributors. Returns need to be available for disclosure for only three years after the due date or filing date of the return, whichever is later.

Exemption Application – An organization must disclose its exemption application (Form 1023) along with each of the following documents:

- all documents submitted with Form 1023
- all documents the IRS requires the organization to submit in support of its application
- the exemption ruling letter issued by the IRS

Certain information may be withheld from public inspection. Organizations may place reasonable restrictions on the time, place, and manner of in-person inspection and copying. Organizations may charge a reasonable fee for providing copies. For details on public inspection rules and procedures for 501(c)(3) organizations, see Publication 557 and the instructions to Forms 990 and 1023.

Sale of Free Government Information

If an exempt organization offers to sell goods or services that are available free from the federal government, the organization must disclose that fact in a conspicuous and easily recognized format. An organization that intentionally disregards this requirement is subject to a penalty.

made for tuition for education leading to a recognized degree, travel services, or consumer goods.

4. The donor makes a payment of \$75 or less per year and receives only annual membership benefits that consist of:
 - a. Any rights or privileges (other than the right to purchase tickets for college athletic events) that the taxpayer can exercise often during the membership period, such as free or discounted admissions or parking or preferred access to goods or services, or
 - b. Admission to events that are open only to members and the cost per person of which is within the limits for low-cost articles described in Revenue Procedure 90-12 (as adjusted for inflation).

Good faith estimate of fair market value.

An organization may use any reasonable method to estimate the fair market value (FMV) of goods or services it provided to a donor, as long as it applies the method in good faith.

The organization may estimate the FMV of goods or services that generally are not commercially available by using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they do not have the unique qualities of the goods or services being valued.

Example 1. A charity provides a one-hour tennis lesson with a tennis professional for the first \$500 payment it receives. The tennis professional provides one-hour lessons on a commercial basis for \$100. A good faith estimate of the lesson's FMV is \$100.

Example 2. For a payment of \$50,000, a museum allows a donor to hold a private event in a room of the museum. A good faith estimate of the FMV of the right to hold the event in the museum can be made by using the cost of renting a hotel ballroom with a capacity, amenities, and atmosphere comparable to the museum room, even though the hotel ballroom lacks the unique art displayed in the museum room. If the hotel ballroom rents for \$2,500, a good faith estimate of the FMV of the right to hold the event in the museum is \$2,500.

Example 3. For a payment of \$1,000, a charity provides an evening tour of a museum conducted by a well-known artist. The artist does not provide tours on a commercial basis. Tours of the museum normally are free to the public. A good faith estimate of the FMV of the evening museum tour is \$0 even though it is conducted by the artist.

Penalty for failure to disclose. A penalty is imposed on a charity that does not make the required disclosure of a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Acknowledgement of Charitable Contributions of \$250 or More

A donor can deduct a charitable contribution of \$250 or more only if the donor has a written acknowledgement from the charitable organization. The donor must get the acknowledgement by the earlier of:

1. The date the donor files the original return for the year the contribution is made, or
2. The due date, including extensions, for filing the return.

The donor is responsible for requesting and obtaining the written acknowledgement from the donee.

Quid pro quo contribution. If the donee provides goods or services to the donor in exchange for the contribution (a quid pro quo contribution), the acknowledgement must include a good faith estimate of the value of the goods or services. See *Disclosure of Quid Pro Quo Contributions*, earlier.

Form of acknowledgement. Although there is no prescribed format for the written acknowledgement, it must provide enough information to substantiate the amount of the contribution. For more information, get IRS Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*.

Report of Cash Received

An exempt organization that receives, in the course of its activities, more than \$10,000 cash in one transaction (or 2 or more related transactions) that is not a charitable contribution, must report the transaction to the IRS on **Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business**.

Public Inspection of Exemption Applications, Annual Returns, and Political Organization Reporting Forms

The following rules apply to private foundations as well as other tax-exempt organizations. Private foundations filing annual returns are subject to the public disclosure requirements under section 6104(d) of the Code.

Included in this section is a discussion on the public inspection requirements for political organizations filing Forms 8871 and 8872.

Annual return. An exempt organization must make available for public inspection, upon request and without charge, a copy of its original and amended annual information returns. Each

information return must be made available from the date it is required to be filed (determined without regard to any extensions), or is actually filed, whichever is later. An original return does not have to be made available if more than 3 years have passed from the date the return was required to be filed (including any extensions) or was filed, whichever is later. An amended return does not have to be made available if more than 3 years have passed from the date it was filed.

An annual information return includes an exact copy of the return (Form 990, 990-EZ, 990-BL, 990-PF, or 1065), and amended return if any, and all schedules, attachments, and supporting documents filed with the IRS. It does not include Schedule A of Form 990-BL, Form 990-T, Schedule K-1 of Form 1065, or Form 1120-POL. In the case of a tax-exempt organization other than a private foundation, an annual information return does not include the names and addresses of contributors to the organization.

Exemption application. An exempt organization must also make available for public inspection without charge its application for tax-exempt status. An application for tax exemption includes the application form (such as Form 1023 or 1024), all documents and statements the IRS requires the organization to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the IRS concerning the application.

The application for exemption does not include:

- Any application from an organization that is not yet recognized as exempt,
- Any material that is required to be withheld from public inspection, see *Material required to be withheld from public inspection*, next,
- In the case of a tax-exempt organization other than a private foundation, the names and addresses of contributors to the organization, or
- Any applications filed before July 15, 1987, if the organization did not have a copy of the application on July 15, 1987.

If there is no prescribed application form, see section 301.6104(d)-1(b)(3)(ii) of the regulations for a list of the documents that must be made available.

Material required to be withheld from public inspection. Material that is required to be withheld from public inspection includes:

- Trade secrets, patents, processes, styles of work, or apparatus for which withholding was requested and granted,
- National defense material,
- Unfavorable rulings or determination letters issued in response to applications for tax exemption,
- Rulings or determination letters revoking or modifying a favorable determination letter,
- Technical advice memoranda relating to a disapproved application for tax exemption

or the revocation or modification of a favorable determination letter,

- Any letter or document filed with or issued by the IRS relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503,
- Any letter or document filed with or issued by the IRS relating to an organization's status as an organization described in section 509(a) or 4942(j)(3), unless the letter or document relates to the organization's application for tax exemption, and
- Any other letter or document filed with or issued by the IRS which, although it relates to an organization's tax-exempt status as an organization described in section 501(c) or 501(d), does not relate to that organization's application for tax exemption.

Time, place, and manner restrictions. The annual returns and exemption application must be made available for inspection, without charge, at the organization's principal, regional, and district offices during regular business hours. The organization may have an employee present during inspection, but must allow the individual to take notes freely and to photocopy at no charge if the individual provides the photocopying equipment. Generally, regional and district offices are those that have paid employees who together are normally paid at least 120 hours a week.

If the organization does not maintain a permanent office, it must make its application for tax exemption and its annual information returns available for inspection at a reasonable location of its choice. It must permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At its option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge.

An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, must make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

Furnishing copies. An exempt organization also must provide a copy of all, or any specific part or schedule, of its three most recent annual information returns and/or exemption application to anyone who requests a copy either in person or in writing at its principal, regional or district office during regular business hours. If the individual made the request in person, the copy must be provided on the same business day the request is made unless there are unusual circumstances. Unusual circumstances are defined in section 301.6104(d)-1(d)(1)(ii) of the regulations.

The organization must honor a written request for a copy of documents or specific parts or schedules of documents that are required to

be disclosed. However, this rule only applies if the request:

- Is addressed to the exempt organization's principal, regional, or district office,
- Is sent to that address by mail, electronic mail (e-mail), facsimile (fax), or a private delivery service approved by the IRS, and
- Gives the address to where the copy of the document should be sent.

The organization must mail the copy within 30 days from the date it receives the request. The organization may request payment in advance and must then provide the copies within 30 days from the date it receives payment.

Fees for copies. The organization may charge a reasonable fee for providing copies. It can charge no more for the copies than the per page rate the IRS charges for providing copies. That rate is stated in section 601.702(f)(5)(iv)(B) of the regulations. (As of June 2001, the rate was \$1.00 for the first page and 15 cents for each additional page.) The organization can also charge the actual postage costs it pays to provide the copies.

Regional and district offices. Generally, the same rules regarding public inspection and providing copies of applications and annual returns that apply to a principal office of an exempt organization also apply to its regional and district offices. However, a regional or district office is not required to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extensions) or is actually filed, whichever is later.

Local and subordinate organizations. A local or subordinate organization is an exempt organization that did not file its own application for tax exemption because it is covered by a group exemption letter. Generally, a local or subordinate organization of an exempt organization must, upon request, make available for public inspection, or provide copies of:

1. The application submitted to the IRS by the central or parent organization to obtain the group exemption letter, and
2. Those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter.

However, if the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it.

The local or subordinate organization must permit public inspection or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In lieu of allowing an inspection, the local or subordinate organization may mail a copy of the applicable documents to the person requesting inspection within the same time period. In that case, the organization may charge the requester for copying and actual

postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its application for exemption, it must fulfill the request in the time and manner specified earlier.

The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central or parent organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the IRS a list or directory of local or subordinate organizations covered by the group exemption letter, it must make the list or directory available for public inspection, but it is required to provide copies only of those pages of the list or directory that refer to particular local or subordinate organizations specified by the requester. The central or parent organization must fulfill such requests in the time and manner specified earlier.

A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization. However, if the group return includes separate schedules for each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return. The local or subordinate organization must permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day.

In lieu of allowing an inspection, the local or subordinate organization may mail a copy of the applicable documents to the person requesting inspection within the same time period. In this case, the organization can charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified earlier. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified earlier.

If an organization fails to comply, it may be liable for a penalty. See *Penalties*, later.

Making applications and returns widely available. An exempt organization does not have to comply with requests for copies of its annual returns or exemption application if it makes them widely available. However, making these documents widely available does not relieve the organization from making its documents available for public inspection.

The organization can make its application and returns widely available by posting the application and returns on a World Wide Web page. For the rules to follow so that the Internet

posting will be considered widely available, see section 301.6104(d)-2(b) of the regulations.

If the organization has made its application for tax exemption and/or annual returns widely available, it must inform any individual requesting a copy where the documents are available, including the address on the World Wide Web, if applicable. If the request is made in person, the notice must be provided immediately. If the request is made in writing, the notice must be provided within 7 days.

Harassment campaign. If the tax-exempt organization is the subject of a harassment campaign, the organization may not have to fulfill requests for information. For more information, see section 301.6104(d)-3 of the regulations.

Political organization reporting forms. Forms 8871 and 8872 (discussed earlier under *Reporting Requirements for a Political Organization*) are open to public inspection.

Form 8871. Form 8871 (including any supporting papers) and any letter or other document the IRS issues with regard to Form 8871 is open to public inspection at the IRS in Washington, DC.

Copies of Form 8871 that have been filed will be made available on the IRS Internet web site (www.irs.gov/polorgs) 48 hours after the notice has been filed and are considered widely available as long as the organization provides the IRS web site address to the person making the request. In addition, the organization must make a copy of these materials available for public inspection during regular business hours at the organization's principal office and at each of its regional or district offices having at least 3 paid employees.

Form 8872. Form 8872 (including Schedules A and B) is open to public inspection. Copies of Form 8872 that are required to be filed electronically will be made available on the Internet web site (www.irs.gov/polorgs) within 48 hours after it has been filed.

An organization is required to file Form 8872 electronically if it has, or has reason to expect to have, contributions or expenditures exceeding \$50,000 for the tax year.

In addition, the organization is required to make a copy of this form available for public inspection during regular business hours at the organization's principal office and at each of its regional or district offices having at least 3 paid employees.

Penalties. The penalty for failure to allow public inspection of annual returns is \$20 for each day the failure continues. The maximum penalty on all persons for failures involving any one return is \$10,000.

The penalty for failure to allow public inspection of exemption applications is \$20 for each day the failure continues.

The penalty for willful failure to allow public inspection of a return or exemption application is \$5,000 for each return or application. The penalty also applies to a willful failure to provide copies.

The penalty for failure to allow public inspection of a political organization's section 527 notice (Form 8871) is \$20 for each day the failure continues.

The penalty for failure to allow public inspection of a section 527 organization's contributions

and expenditures report (Form 8872) is \$20 for each day the failure continues. The maximum penalty on all persons for failures involving any one report is \$10,000.

Required Disclosures

Certain exempt organizations must disclose to the IRS or the public certain information about their activities. Generally, an organization discloses this information by entering it on the appropriate lines of its annual return. In addition, there are disclosure requirements for:

- Solicitation of nondeductible contributions,
- Sales of information or services that are available free from the government, and
- Dues paid to the organization that are not deductible because they are used for lobbying or political activities.

Solicitation of Nondeductible Contributions

Solicitations for contributions or other payments by certain exempt organizations (including lobbying groups and political action committees) must include a statement that payments to those organizations are not deductible as charitable contributions for federal income tax purposes. The statement must be included in the fund-raising solicitation and be conspicuous and easily recognizable.

Organizations subject to requirements. An organization must follow these disclosure requirements if it is exempt under section 501(c), other than section 501(c)(1), or under section 501(d), unless the organization is eligible to receive tax deductible charitable contributions under section 170(c). These requirements must be followed by, among others:

1. Social welfare organizations (section 501(c)(4)),
2. Labor unions (section 501(c)(5)),
3. Trade associations (section 501(c)(6)),
4. Social clubs (section 501(c)(7)),
5. Fraternal organizations (section 501(c)(8) and 501(c)(10)) (however, fraternal organizations described in section 170(c)(4) must follow these requirements only for solicitations for funds that are to be used for noncharitable purposes not described in section 170(c)(4)),
6. Any political organization described in section 527(e), including political campaign committees and political action committees, and
7. Any organization not eligible to receive tax-deductible contributions if the organization or a predecessor organization was, at any time during the 5-year period ending on the date of the fund-raising solicitation, an organization of the type to which this disclosure requirement applies.

Fund-raising solicitation. This disclosure requirement applies to a fund-raising solicitation if all of the following are true.

1. The organization soliciting the funds normally has gross receipts over \$100,000 per year.
2. The solicitation is part of a coordinated fund-raising campaign that is soliciting more than 10 persons during the year.
3. The solicitation is made in written or printed form, by television or radio, or by telephone.

Penalties. Failure by an organization to make the required statement will result in a penalty of \$1,000 for each day the failure occurred, up to a maximum penalty of \$10,000 for a calendar year. No penalty will be imposed if it is shown that the failure was due to reasonable cause. If the failure was due to intentional disregard of the requirements, the penalty may be higher and is not subject to a maximum amount.

Sales of Information or Services Available Free From Government

Certain organizations that offer to sell to individuals (or solicit money for) information or routine services that could be readily obtained free (or for a nominal fee) from the federal government must include a statement that the information or service can be so obtained. The statement must be made in a conspicuous and easily recognized format when the organization makes an offer or solicitation to sell the information or service. Organizations affected are those exempt under section 501(c) or 501(d) and political organizations defined in section 527(e).

Penalty. A penalty is provided for failure to comply with this requirement if the failure is due to intentional disregard of the requirement. The penalty is the greater of \$1,000 for each day the failure occurred, or 50% of the total cost of all offers and solicitations that were made by the organization the same day that it fails to meet the requirement.

Dues Used for Lobbying or Political Activities

Certain exempt organizations must notify anyone paying dues to the organization whether any part of the dues is not deductible because it is related to lobbying or political activities.

An organization must provide the notice if it is exempt from tax under section 501(a) and is one of the following.

1. A social welfare organization described in section 501(c)(4) that is not a veterans' organization.
2. An agricultural or horticultural organization described in section 501(c)(5).
3. A business league, chamber of commerce, real estate board, or other organization described in section 501(c)(6).

However, an organization described in (1), (2), or (3) does not have to provide the notice if it establishes that substantially all the dues paid to