



1999 Income Tax School

FORM 990

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I. INTRODUCTION

A. WHAT IS A TAX-EXEMPT OR NONPROFIT ORGANIZATION?

Nonprofit organizations make up one of three major sectors of our economy. (The other two are the governmental sector and the for-profit sector.)

A for-profit organization is in business to benefit its owners. Most business and commercial activity is in the for-profit sector.

The government sector includes agencies and bureaus of federal, state and local governments.

The nonprofit sector includes churches, universities, hospitals, and other organizations that exist to accomplish a public or charitable mission. Qualifying criteria are established by state and federal laws.

Practitioner Note. Sometimes the term “not-for-profit” is used interchangeably with “nonprofit.” This can lead to confusion. The proper legal term is “nonprofit.” The legal term “not-for-profit” actually applies to an activity rather than to an entity. A not-for-profit business is a hobby.

The major difference between a nonprofit and a for-profit organization is ownership structure. No one owns a nonprofit organization, as the shareholders do in a corporation or as the partners do in a partnership. Rather, the assets are used in accomplishing the organizational mission.

Both nonprofit and for-profit organizations are allowed to earn profits. A for-profit organization can pass its profit along to the ownership level. There is not really an ownership level with a nonprofit organization. The profit must stay at the entity level. Nonprofit organizations use their profits to carry out program activities (referred to as the organization's “exempt function”). Profits cannot be passed along to those who control the organization. There can be no private inurement (distributions of assets or profits to individuals for their personal purposes).

B. ORGANIZATION STRUCTURE

A nonprofit organization can be a corporation, an unincorporated association, or a trust. Most nonprofits are corporations, due in part to increasing concern about liability. All nonprofits must have a **legal structure** of some sort and must have an **organization document**.

Note that although an organization is established and approved as a nonprofit organization under state law, it is not automatically tax exempt. To be tax exempt under federal law, the organization must complete the appropriate forms, pay a fee, and obtain IRS approval.

C. CONTROL OF THE NONPROFIT ORGANIZATION

The governing body of a nonprofit organization is normally a board of directors or board of trustees. The board may be self-perpetuating or, in some cases, elected by the membership. The organization's bylaws must prescribe the details.

II. NONPROFIT OR TAX-EXEMPT ORGANIZATION BASICS

A. TYPES OF NONPROFIT ORGANIZATIONS

I.R.C. §501(a) provides exemptions from federal income tax for qualified organizations.

The statute includes numerous types of exempt organizations. Each category is subject to specific criteria and restrictions on activity. Some types of exempt organizations have more latitude than others. For instance, charities [§501(c)(3)] may not participate in political campaigns and may participate in only a very limited amount of lobbying. On the other hand, civic leagues and social welfare organizations [§501(c)(4)] may engage in substantial lobbying as long as lobbying is not their sole purpose. Although they may be taxed on the expenditures, these organizations also may participate in political campaigns.

The most valuable type of exemption is §501(c)(3). It covers charitable, religious, educational, scientific, and literary organizations. Contributions to §501(c)(3) organizations normally are deductible as charitable contributions on the donor's federal income tax return.

Organizations that practitioners are most likely to encounter are:

§501(c)(3)	Charitable, educational
§501(c)(4)	Civic leagues and social welfare organizations
§501(c)(5)	Labor, agricultural and horticultural organizations
§501(c)(6)	Business leagues, etc.
§501(c)(7)	Social and recreational clubs
§501(c)(8)	Fraternal beneficiary societies
§501(c)(9)	Employees' association
§501(c)(10)	Domestic fraternal societies
§501(c)(12)	Local benevolent life insurance associations, mutual irrigation and telephone companies, and like organizations
§501(c)(13)	Cemetery companies
§501(c)(17)	Supplemental unemployment benefit trusts
§501(c)(19)	Veterans organizations

Practitioner Note. Most homeowners' associations do not qualify as tax-exempt. If the association maintains roads or parks that are open to the general public, it may qualify under §501(c)(4). Other homeowners' associations may elect to exclude exempt function income under §528 by filing Form 1120-H.

B. IRS FORMS AND PUBLICATIONS

Publication 557	<i>Tax-Exempt Status for Your Organization:</i> Information about the procedure for applying for recognition of tax exemption, as well as the various categories of exempt organizations.
Form 1023	Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code.
Form 1024	Application for Recognition of Exemption under Section 501(a) of the Internal Revenue Code. This form is used by most organizations applying for an exemption under a provision other than §501(c)(3).
Form 8718	User Fee for Exempt Organization Determination Letter Request. You have to pay to file Form 1023 or 1024. This form tells you how much and is filed along with Form 1023 or 1024.
Form 990	Return of Organization Exempt from Income Tax. This is the annual information return.
Form 990-EZ	Short Form Return of Organization Exempt from Income Tax: A simplified annual information return that certain tax-exempt organizations can file instead of Form 990.
Schedule A	Attached to Form 990 or 990-EZ for supplemental information, it is usually applicable only to an I.R.C. §501(c)(3) organization.
Form 990-T	Exempt Organization Business Income Tax Return: Must be filed by organizations subject to the tax on unrelated business income. You'll also want to read the instructions and Form 990-W, the worksheet for calculating estimated tax on unrelated business taxable income.
Publication 526	<i>Charitable Contributions:</i> Written for individuals trying to figure out what they can deduct as charitable contributions. Also valuable reading for charities.
Publication 561	<i>Determining the Value of Donated Property:</i> Written for individuals who need to determine the value of property they've contributed to charity.
Form 8283	Noncash Charitable Contributions: Used by donors to charities to report contributions of property (not cash) worth more than \$500.
Form 8282	Donee Information: Used by charities to report the sale or other disposition of donated property.
Publication 598	<i>Tax on Unrelated Business Income of Exempt Organizations:</i> Specifies which organizations must pay the tax, what income is taxable.
Form 5768	Lobbying Election Statement: Used by I.R.C. §501(c)(3) organizations to elect to make lobbying expenditures within the limits of I.R.C. §501(h).

III. OBTAINING TAX-EXEMPT STATUS

A. I.R.C. §501(C)(3)(FORM 1023)

A §501(c)(3) organization will be considered exempt from the date of organization if the application is filed within 15 months after the end of the month in which it was formed. Treas. Reg. §301.9100-2 allows a 12 month extension.

To be considered for exempt status, the organization must have been assigned an employer identification number.

A conformed copy of the organization's articles of incorporation, articles of association, trust indenture, constitution, or other enabling documents must be included with the application.

Observation. A "conformed copy" is a copy that has all of the provisions and amendments to the original documents. It must be signed if the original documents required a signature.

Part II of Form 1023 calls for a full description of the purposes and activities of the organization. The description should list all past, present, and planned activities and indicate their relative importance. It must show how each activity furthers the organization's exempt purpose. The narrative must be specific enough to allow the IRS to make a determination regarding the exemption.

Sources of financial support must be listed in order of size, and a description of the organization's fund-raising program must be given. This includes planned events, mailings, and the use of volunteers. Information regarding the officers and their planned salaries and fees is also required.

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The form includes nine special schedules to attach. Some organizations will need one or more of these. There are special schedules for churches, schools, hospitals and medical research organizations, supporting organizations, and others.

Part III of the form deals with the timeliness of the application and whether the organization expects to qualify as a public charity or operating foundation. Part IV requests financial information for four years. New organizations must project budgets for two years.

B. ORGANIZATIONS NOT REQUIRED TO FILE FORM 1023

Some organizations are exempt automatically if they meet the requirements of §501(c)(3), and are not required to file Form 1023. Among these are:

- Churches; interchurch organizations of local units of a church, conventions or associations of churches or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group
- Any organization (other than a private foundation) normally having annual gross receipts of not more than \$5,000

Gross Receipts Test

For purposes of the gross receipts test, an organization normally does not have more than \$5,000 annually in gross receipts if:

1. During its first tax year the organization received gross receipts of \$7,500 or less,
2. During its first 2 years the organization had a total of \$12,000 or less in gross receipts, and
3. In the case of an organization that has been in existence for at least three years, the total gross receipts received by the organization during the immediately preceding two years, plus the current year, are \$15,000 or less.

An organization with gross receipts more than the amounts in the gross receipts, unless otherwise exempt from filing Form 1023, must file a Form 1023 within 90 days after the end of the period in which the amounts are exceeded. For example, say an organization's gross receipts for its first tax year were less than \$7,500, but at the end of its second tax year its gross receipts for the two-year period were more than \$12,000. The organization must file Form 1023 within 90 days after the end of its second tax year.

If the organization had existed for at least three tax years and had met the gross receipts test for all prior tax year but fails to meet the requirement for the current tax year, its tax exempt status for the prior years will not be lost even if Form 1023 is not filed within 90 days after the close of the current tax year. However, the organization will not be treated as a Section 501(c)(3) organization for the period beginning with the current tax year and ending with the filing of Form 1023.

Example. An organization is organized and operated exclusively for charitable purposes and is not a private foundation. It was incorporated on January 1, 1996, and files returns on a calendar-year basis. It did not file a Form 1023. The organization's gross receipts during the years 1996 through 1999 were as follows:

1996	\$ 3,600
1997	2,900
1998	400
1999	12,600

The organization's total gross receipts for 1996, 1997, and 1998 were \$6,900. Therefore, it did not have to file Form 1023 and is exempt for those years. However, for 1997, 1998, and 1999, the total gross receipts were \$15,900. Therefore, the organization must file Form 1023 within 90 days after the end of its 1999 tax year. If it does not file within this time period, it will not be exempt under §501(c)(3)

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for the period beginning with tax years 1999 and ending when the Form 1023 is received by the IRS. The organization, however, will not lose its exempt status for the tax year ending before January 1, 1999.

C. ORGANIZATIONS OTHER THAN §501(C)(3)(FORM 1024)

Form 1024 is very similar to Form 1023. However there is no 15-month rule. A conformed copy of the organization's bylaws must be included, and a full description of the organization's purposes and activities must be provided. Financial statements showing receipts and expenditures for the current and three preceding years must be included.

If prior-year income tax returns have been filed, the organization must provide details of the form number, years, and the IRS office where the returns were filed.

Much of Form 1024 involves specific sections for the various types of nonprofit organizations.

D. GROUP EXEMPTION

A central organization with subordinates under its supervision or control can apply for a group exemption. First the central organization must obtain its own exemption, for which it submits the regular form.

There is no specific form for the group exemption. Rather, the organization applies by letter over the signature of a principal officer. The content of the letter is similar to Forms 1023 and 1024.

E. USER FEES

Form 8718 must accompany either Form 1023 or Form 1024. This is the transmittal document for the user fees.

The fee is \$150 if the organization's average gross receipts do not exceed \$10,000 during the preceding four years. New organizations that expect to average less than \$10,000 during the first four years in existence also qualify for the \$150 fee.

The fee is \$500 if these limits are exceeded. A group exemption fee also is \$500.

F. THE ORGANIZATIONAL TEST

The organizational test applies only to §501(c)(3) organizations.

The articles of organization **must** limit the organization's purpose to one or more of those described under I.R.C. §501(c)(3) and **must not** expressly empower it to engage, other than as an insubstantial part of its activities, in activities that do not further one or more of those purposes. These conditions for exemption are referred to as the **organizational test**.

The test may be met if the purposes stated in the articles of organization are limited in some way by reference to §501(c)(3).

The requirement that the organization's purposes and powers must be limited by the articles of organization is **not satisfied** if the limit is contained only in the bylaws or other rules or regulations. Moreover, the organizational test is **not satisfied** by statements of the organization's officers that they intend to operate only for exempt purposes. It also is not satisfied by the fact that the actual operations are for exempt purposes.

In interpreting an organization's articles, the law of the state where the organization was created is controlling. If an organization contends that the terms of its articles have a different meaning under state law than their generally accepted meaning, such meaning must be established by a clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other appropriate state authorities.

The following are **examples** illustrating the organizational test.

Example 1. Articles of organization state that an organization is formed exclusively for literary and scientific purposes within the meaning §501(c)(3) of the Internal Revenue Code. These articles appropriately limit the organization's purposes. The organization meets the organizational test.

Example 2. An organization, by the terms of its articles, is formed to engage in research without any further description or limitation. The organization will not be properly limited as to its purposes since all research is not scientific. The organization does not meet the organizational test.

Example 3. An organization's articles state that its purpose is to receive contributions and pay them over to organizations that are described in §501(c)(3) and exempt from taxation under §501(a). The organization meets the organizational test.

Example 4. If a stated purpose in the articles is the conduct of a school of adult education and its manner of operation is described in detail, such a purpose will be satisfactorily limited.

Example 5. If the articles state the organization is formed for charitable purposes, without any further description, such language ordinarily will be sufficient since the term charitable has a generally accepted legal meaning. On the other hand, if the purposes are stated to be charitable, philanthropic, and benevolent, the organizational requirement will **not** be met since the terms *philanthropic* and *benevolent* have no generally accepted legal meaning and, therefore, the stated purposes may, under the laws of the state, permit activities that are broader than those intended by the exemption law.

Example 6. If the articles state an organization is formed to promote American ideals, or to foster the best interests of the people, or to further the common welfare and well-being of the community, without any limitation or provision restricting such purposes to accomplishment only in a charitable manner, the purposes will not be sufficiently limited. Such purposes are vague and may be accomplished other than in an exempt manner.

Example 7. A stated purpose to operate a hospital does not meet the organizational test since it is not necessarily charitable. A hospital may or may not be exempt depending on the manner in which it is operated.

Example 8. An organization that is expressly empowered by its articles to carry on social activities will **not** be sufficiently limited as to its power, even if its articles state that it is organized and will be operated exclusively for charitable purposes.

G. DEDICATION AND DISTRIBUTION OF ASSETS

Assets of an organization must be permanently **dedicated** to an exempt purpose. This means that should an organization dissolve, its assets must be **distributed** for an exempt purpose, or to the federal government or to a state or local government for a public purpose. If the assets could be distributed to members or private individuals or for any other purpose, the organizational test is not met.

Dedication. To establish that your organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision ensuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application probably can be processed much more rapidly if its articles of organization include a provision ensuring permanent dedication of assets for exempt purposes.

Distribution. Rev. Proc. 82-2, 1982-1 C.B. 367, identifies the states and circumstances in which the IRS will not require an express provision for the distribution of assets upon dissolution in the articles of organization. The procedure also provides a sample of an acceptable dissolution provision of organizations required to have one.

If a **named beneficiary** is to be the distributee, it must be one that would qualify and would be exempt within the meaning of §501(c)(3) at the time the dissolution takes place. Since the named beneficiary at the time of dissolution may not be qualified, may not be in existence, or may be unwilling or unable to accept the assets of the dissolving organization, a provision should be made for the distribution of the assets for one or more of the purposes specified in this chapter in the event of any such contingency.

IV. ANNUAL INFORMATION RETURNS

A. EXEMPTION FROM FILING ANNUAL RETURNS

Every exempt organization must file an annual information return (Form 990 or Form 990 EZ) except:

1. A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church.
2. A church-affiliated organization that is exclusively engaged in managing funds or maintaining retirement programs.
3. A school below college level affiliated with a church or operated by a religious order, even though it is not an integrated auxiliary of a church.
4. A mission society sponsored by or affiliated with one more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in foreign countries.
5. An exclusively religious activity of any religious order.
6. A state institution, the income of which is excluded from gross income under §115.
7. A corporation described in §501(c)(1)(a) (a corporation that is organized under an Act of Congress and is:
 - a. An instrumentality of the United States, and
 - b. Exempt from federal income taxes.
8. A black lung benefit trust described in §501(c)(21) required to file Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.
9. A stock bonus, pension, or profit-sharing trust that qualifies under §401.
10. A religious or apostolic organization described in §501(d). (Required to file Form 1065, U.S. Partnership Return of Income).
11. A foreign organization described in §501(a) (other than a private foundation) that normally does not have more than \$25,000 in annual gross receipts from sources within the United States and has no significant activity in the United States. For further information, see Rev. Proc. 94-17, 1994-1 C.B. 579.
12. A governmental unit or an affiliate of a governmental unit that meets the requirements of Rev. Proc. 95-48, 1995-2 C.B. 418.
13. An exempt organization other than a private foundation, having gross receipts in each tax year that normally are not more than \$25,000. (See the instructions for Form 990 for more information about what constitutes annual gross receipts that are normally not more than \$25,000.)

B. 990 AND 990-EZ—THE ANNUAL RETURN

Exempt organizations, other than private foundations, must file their annual information return on Form 990, Return of Organization Exempt from Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt from Income Tax.

Form 990-EZ. This is a shortened version of Form 990. It is designed for use by small exempt organizations and nonexempt charitable trusts.

An organization may file Form 990-EZ, instead of Form 990, if it meets **both** of the following requirements:

1. Its gross receipts during the year were less than \$100,000.
2. Its total assets (line 25, column B of Form 990-EZ) at the end of the year were less than \$250,000.

If the organization does not meet either of these conditions, it **cannot** file Form 990-EZ. Instead it must file Form 990.

C. DUE DATE FOR ANNUAL RETURN

Forms 990 and 990-EZ (and 990-PF for private foundations) must be filed by the 15th day of the fifth month after the end of the organization's accounting period.

D. PENALTIES FOR FAILURE TO FILE

An exempt organization that fails to file a required return is subject to a penalty of \$20 a day for each day the failure continues. The same penalty will apply if the organization does not give all the information required on the return or does not give the correct information. The maximum penalty for any one return is the smaller of \$10,000 or 5% of the organization's gross receipts for the year. For an organization with gross receipts of over \$1 million for the year, the penalty is \$100 a day, up to a maximum of \$50,000.

No penalty will be imposed if reasonable cause for failure to file timely can be shown.

V. UNRELATED BUSINESS INCOME (I.R.C. §§511, 512, 513)

Unrelated business income has been a problem for exempt organizations as well as for the IRS. It accounts for more problems than any other area of nonprofit or tax-exempt organizations.

Generally, if an organization engages in an unrelated business activity and makes a profit, it will have unrelated business income and may be subject to tax on that income. Any domestic or foreign organization exempt under §501(a) must file Form 990T if it has gross income of \$1,000 or more from an unrelated trade or business.

Observation. An IRA or pension plan may have unrelated business income if it is invested in partnerships.

A. TRADE OR BUSINESS

The term "unrelated trade or business" means any trade or business regularly carried on by an exempt organization, the conduct of which is not substantially related to the organization's exempt purpose.

Practitioner Note. The fact that the organization needs the income or will utilize the income for an exempt purpose does not make the conduct of a trade or business substantially related. Use is relevant with regard to exemption, but it is not relevant with regard to unrelated business income.

The reason for this rule is to eliminate unfair competition by putting a tax-exempt or nonprofit organization on the same level as a nonexempt business when they are in competition. The rationale is that for-profit businesses must charge enough to cover tax liability, whereas exempt organizations theoretically could charge less if they had no tax to pay.

The statutory definition uses the terms "regularly carried on" and "substantially related." These are the basis for taxing unrelated business income (UBIT). If the element of substantial relatedness is not present (i.e., the activity is unrelated), then the activity will be taxable.

B. "REGULARLY CARRIED ON"

This concept relates to the frequency and continuity of activities.

If a local hospital auxiliary sets up and operates a sandwich stand at the fairgrounds for a week while the county fair is going on, it would be exempt since the activity is intermittent.

If, however, seeing the number of people in town on Saturday morning, the hospital auxiliary decides to set up a stand on Main Street every Saturday morning to sell homemade bakery items and sandwiches for busy shoppers to take home for lunch, it could be a frequent and consistent activity—and would be taxable as unrelated business income.

C. "SUBSTANTIALLY RELATED"

This concept looks at the relationship between the business activities that generate income and the accomplishment of the organization's exempt purpose. If the only contribution to the purpose is the production of funds, it would not be substantially related.

Practitioner Note. Portfolio income (interests, dividends, etc.) generally is not unrelated business income. However, special rules apply to social clubs exempt under §501(c)(4), employee associations exempt under §501(c)(9), and supplemental unemployment benefit trusts exempt under §501(c)(17). These organizations are subject to the unrelated business income tax on their investment income

D. FORM 990T

Form 990T now has a dual purpose. It is used to report unrelated business income and, under the new lobbying rules, to report and pay the proxy tax associated with political and legislative activities.

For most organizations, Form 990T is due on the 15th day of the fifth month following the close of the normal business year. For an employee's trust pension plan and an individual retirement account, the date is the 15th day of the fourth month.

Penalties and interest are similar to other income tax returns. The failure-to-file penalty is 5% of the unpaid tax per month for each month or portion of a month the return is late. This tops out at 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. There is also a late payment penalty, which is one-half of 1% of the unpaid tax for each month. Reasonable-cause exceptions apply.

F. ESTIMATED TAX

An organization filing Form 990-T must make installment payments of estimated tax if its estimated tax is expected to be more than \$500. Both corporate and trust organizations use Form 990-W to figure the liability.

VI. LOBBYING AND POLITICAL ACTIVITY

A. FORM 1120-POL

Political organizations are partly tax exempt under I.R.C. §527. Exempt organizations that are not political organizations must file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, if they:

1. Expend any amount to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office, or office in a political organization, **and**
2. Have net investment income.

Form 1120-POL is due by the 15th day of the third month after the end of the exempt organization's tax year. However, Form 1120-POL is not required if the exempt organization's expenditures are for political purposes or its net investment income is not more than \$100 for the tax year.

Separate fund. If the political activities described in (1) above are carried out by a separate segregated fund, which is treated as a separate organization from the exempt organization maintaining the fund, the exempt organization is not liable for a tax on the expenditures. However, the separate fund is considered a political organization.

Practitioner Note. Code §501(c)(3) organizations are precluded from, and suffer loss of exemption for, engaging in any political campaign on behalf of, or in opposition to, an candidate for public office.

B. DISCLOSURE ON DUES STATEMENT: RELATION TO POLITICAL ACTIVITIES

Certain nonprofit organizations must disclose on member dues statements the portion of dues that are used for lobbying activity and are therefore not deductible as an ordinary and necessary business expense. (See question 85 on page 5 of Form 990 for guidance on organizations that must disclose this information.)

Example. Washington County Farm Bureau in Illinois has annual dues of \$50 for members who own farmland or have income from farming. They notify their members via the annual dues statement that **\$18 of the total dues is not deductible** as a business expense under I.R.C. §162. The statement also points out that **no part** of the dues amount is deductible as a charitable contribution.

C. ACTIVITY ALLOWED

A public charity (other than a church; an integrated auxiliary of a church, a convention, or an association of churches; or a member of an affiliated group of organizations that includes a church, etc.) is allowed to do a limited amount of lobbying. The public charity must elect to be subject to a limit on lobbying expenditures defined in terms of expenditures for influencing legislation. Private foundations cannot make this election.

If lobbying expenditures for an electing public charity exceeds its **lobbying nontaxable amount** (defined below), the charity must pay a **25% tax** on the excess lobbying expenditures. If lobbying expenditures for an electing public charity exceed 150% of the lobbying nontaxable amount, it will **lose its tax-exempt status** under I.R.C. §501(c)(3). If the public charity loses its tax-exempt status because of disqualifying lobbying expenditures, the charity will be liable for a tax of 5% on the lobbying expenditures. Managers may also be liable for a 5% tax on the lobbying expenditures that result in disqualification of the charity.

Lobbying Nontaxable Amount. The lobbying non taxable amount for any organization for any tax year is the lesser of \$1,000,000 or

1. 20% of the **exempt-purpose expenditures** if the exempt-purpose expenditures are not over \$500,000,
2. \$100,000 plus 15% of the excess of the exempt-purpose expenditures over \$500,000 if the exempt-purpose expenditures are over \$500,000 but not over \$1,000,000,
3. \$175,000 plus 10% of the excess of the exempt-purpose expenditures over \$1,000,000 if the exempt-purpose expenditure are over \$1,000,000 but not over \$1,500,000, or
4. \$225,000 plus 5% of the excess of the exempt-purpose expenditures over \$1,500,000 if the exempt-purpose expenditures are over \$1,500,000.

Exempt-purpose expenditures include the total of the amounts paid or incurred (including depreciation and amortization, but not capital expenditures) by an organization for the tax year to accomplish its exempt purposes. In addition, they include:

1. Administrative expenses paid or incurred for the organization's exempt purposes, and
2. Amounts paid or incurred for the purpose of influencing legislation, whether or not the legislation promotes the organization's exempt purposes.

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Exempt-purpose expenditures do **not include** amounts paid or incurred to or for:

1. A separate fund-raising unit of the organization, or
2. One or more other organizations, if the amounts are paid or incurred primarily for fund raising.

VII. PUBLIC INSPECTION

Federal law requires most tax-exempt nonprofit organizations to allow public inspection of their federal annual information returns (IRS Forms 990 and 990-EZ, and 990 Schedule A) and their application for tax-exempt status (IRS Forms 1023 and 1024). Nearly all related material is included as well.

The materials must be available at the tax-exempt organization's offices during regular business hours. Copies must be provided upon written request. Minor fees for copying, postage, and other processing may be assessed.

The exception to these rules is to make the forms widely available. One of the easiest and least expensive methods in the long run is to place these documents on the Internet—preferably on the organization's own Web page.

Observation. A reasonable fee is up to \$1.00 for the first page, plus 15¢ for each additional page, plus actual postage costs (per IRS News Release 1999-53).

There also is a Form 990 Web site being developed as a "Provider Accountability Project."

VIII. SERVING AS A BOARD MEMBER

Responsible members of a community or organization are often asked to serve as board members. Most organizations provide board training, or at the least a booklet listing board member responsibilities and duties. In our litigious society, serving on the governing board of any organization must never be taken lightly.

There are several ways in which an organization can protect its board members from personal liability.

1. Although it is possible for an organization to obtain tax-exempt status even though it is not incorporated, most professionals recommend that a nonprofit organization be organized as a corporation. This helps to shield the board members from personal liability. In fact, most lawyers advise their individual clients not to sit on the board of directors of a nonprofit organization that is not incorporated.
2. The organization should have a provision in its articles or bylaws that it will indemnify directors and officers for any judgments and related expenses incurred as a result of something they do or something they do not do while serving the organization. (Note that the indemnification does extend to cover criminal acts.)
3. Most organizations carry insurance for errors and omissions for their directors and officers. The insurance can be expensive, but it is well worth the cost. Some policies contain a list of civil law actions that are excluded from coverage. These may include libel and slander, employee discrimination, and antitrust activities. For full protection, these items should not be excluded from coverage. Most attorneys will caution their clients not to serve on the board of a nonprofit organization that does not have adequate insurance coverage for the board member.
4. The final protection is immunity. In some states, state law provides that a class of individuals, under certain circumstances, is not liable for a particular act or set of acts or for failure to take a particular action. Several states have immunity laws for officers and directors of nonprofit orga-

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nizations, protecting them in case of asserted civil law violations, particularly where these individuals are serving as volunteers.