

This guide is intended to assist small, start-up organizations in the formation and maintenance of a nonprofit entity. While accurate, information in this document is not intended to be comprehensive, so it is important to consult with a legal or tax professional if questions arise. (See [disclaimer](#)).

## Chapter 3: 501(c)(3) Status and Fundraising Issues

### *How do you apply for 501(c)(3) status? What are the legal implications?*

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## I. Non-Profit Status: A Check List [Return](#)

How will you gain and keep tax exempt status? How will you fund your organization?

### Applying for 501(c)(3) Status

- \_\_\_ Complete all necessary steps to formalize the organization..
- \_\_\_ Determine if you want a private foundation or a public charity.
- \_\_\_ Elect the governing board and draft bylaws for the corporation.
- \_\_\_ Apply for EIN.
- \_\_\_ Apply for tax-exempt status through the IRS. Ensure that the mission of the organization and all substantial activities fulfill the requirements of §501(c)(3).

### State Tax Exemptions for Nonprofit Organizations

- \_\_\_ Maintain proper documentation of 501(c)(3) exempt status.
- \_\_\_ Meet the exemption requirements set forth by the state laws and constitution.

If organization meets Virginia nonprofit tax-exempt law requirements, specific exemptions include:

- a. **Retail sales and use tax exemption.** Organizations must meet the requirements set forth in Virginia Code Section 58.1-609.11(B) to be exempt from taxes collected on purchases made by the organization, as well as sales the organization makes to others.
- b. **Property tax exemption.** Organizations must propose the exemption for public hearing to the local governing body in which the property is located.
- c. **Sale or lease tax exemption.** Once organizations qualify for the retail sales and use tax exemption, they will be eligible for sales and lease tax exemptions.

- \_\_\_ Review applicable state statutes to see if the nonprofit qualifies for more exemptions. In some jurisdictions, organizations may ask for exemptions.

### Maintaining Tax-Exempt Status

- \_\_\_ Make sure that Board Members and Staff Members do not campaign for a political candidate as representatives of the nonprofit.

(Lobbying for legislation is permissible within prescribed limits.)

- \_\_\_\_\_ If your organization engages in business unrelated to agency mission, make sure to pay Unrelated Business Income Tax on that income.
- \_\_\_\_\_ Avoid the Excess Benefits penalty by making sure not to compensate your Executive Director or other key staff in excess of market standards.
- \_\_\_\_\_ File annual returns – Form 990 or 990-EZ.

### **Fundraising**

- \_\_\_\_\_ Formulate fundraising strategy with board and staff members.
- \_\_\_\_\_ Ensure that board is actively involved in primary fundraising responsibilities.
- \_\_\_\_\_ Properly register and obtain permission from state and local governments to solicit funds in the specific localities.
- \_\_\_\_\_ Ensure that all fundraising professionals are properly registered with the state and localities before solicitations begin.
- \_\_\_\_\_ Initiate annual giving campaign first to ensure that operational budget is covered.
- \_\_\_\_\_ Identify and apply for grants from government agencies, foundations, and organizations that are applicable to the mission of the organization.
- \_\_\_\_\_ Solicit major gifts from individuals.
- \_\_\_\_\_ Formulate capital campaign strategies when needed.
- \_\_\_\_\_ Standardize estate planning procedures for individuals who are interested in supporting the organization upon their death.
- \_\_\_\_\_ Implement the “Thank You” process to ensure that every donor receives a receipt or acknowledgement of the date and amount of their donation for tax purposes.

## **II. Applying for 501(c)(3) status [Return](#)**

### **A. The Benefits of 501(c)(3) status**

An organization whose primary purpose does not include profit will want to consider applying for a 501(c)(3) status. Legally, a nonprofit organization is one that does not declare a profit, but instead allocates all net revenue (after normal operating expenses) to the public interest furthered by the organization. The 501(c) status relieves such organizations from federal income taxes. This status includes many different categories, including the broadest and most well-known, 501(c)(3) category for organizations dedicated to a charitable purpose. The other popular tax-exempt category, Section 501(c)(4), is dedicated to organizations whose primary aims are

political advocacy and lobbying activities. Our LINC organization, on the surface, leans towards the 501(c)(3) classification rather than (c)(4), but will practice lobbying as an insubstantial part of its activities. In Section III, we will discuss how much lobbying a 501(c)(3) can undertake. Other categories are extremely specific (example: 501(c)(5), Labor, Agricultural, and Horticultural Organizations; 501(c)(6), Business Leagues, Chambers of Commerce, Real Estate Boards, Etc.; 501(c)(7), Social and Recreation Clubs, ...). Most organizations that do not meet the specifics of one of those categories file for exemption under 501(c)(3).

The main advantages of forming a 501(c)(3) nonprofit organization include the following:

1. The organization is qualified for tax-exempt status. The nonprofit organization will not pay taxes on the profit of its activities. However, if this profit is not directly related to the activity of the organization, it will not be exempt from taxes. Typically, the organization will not only be exempt from income taxes, but also from property taxes on real estate and other property.
2. The organization may be eligible for public or private grant money. Being a nonprofit charitable organization may ensure easier access to public and private grants, which often require 501(c)(3) status for eligibility.
3. The organization may solicit tax-deductible contributions. Individuals and organizations are encouraged to donate to charitable organizations, because tax law permits such donors to deduct their contributions from taxable income.
4. Personal liability of the members is limited. Usually, incorporating a nonprofit organization protects the directors, officers, and members of the nonprofit from personal liability for the organization's debts and other obligations. If the nonprofit is sued, the general rule is that only the assets of the nonstock corporation are at risk *unless* there is willful misconduct or self-dealing. However, directors and officers are subject to the duties of diligence, obedience, and loyalty and can be sued for negligence in the performance of those duties.

Once an organization has been granted the 501(c)(3) status, it must adhere to certain duties and restrictions posed by federal and state law. The primary focus of the requirements is to ensure that substantially all its activities relate to its tax exempt purpose outlined in the articles of incorporation. An organization can participate in activities that are remote to its tax exempt purpose, but can only do so as an insubstantial part of its overall operation.

Regular responsibilities of the organization maintaining 501(c)(3) status include:

- Recordkeeping to meet annual IRS requirements for financial and non-financial transparency, as well as to report a summary of funding sources.
- Various filing requirements for lobbying, fundraising, and tax exempt status.
- Disclosure of the initial application for 501(c)(3) status upon request (Form 1023).
- Annual returns through Form 990.
- Allow public to access Bylaws and annual returns.

### ***Classification***

In order to avoid automatic classification as a private foundation by the IRS, a 501(c)(3) must be prepared to distinguish itself as a public charity. Private foundations are subject to a 2% income tax on net investment income and additional tax if they fail to distribute a percentage of their assets for exempt purposes. Other organizations which qualify as public charities include, but are not limited to, churches, schools, organizations formed for the benefit of colleges and universities, hospitals and cooperative hospital organizations, and governmental units. In addition, a nonprofit organization may also qualify as a public charity if the organization meets the 1/3 test. An organization will qualify if the total amount of support that the organization receives, excluding amounts received for services rendered and gross receipts from either governmental units or the general public, is *at least* one third of the total support received by the organization.

## **B. The Application Procedure**

### ***For Federal Exemption***

The IRS explains tax information for charitable organizations on its web site: <http://www.irs.gov/charities/charitable/index.html>. Publication 557 of the IRS gives a detailed explanation of the application process and other miscellaneous questions. You can find it online at: <http://www.irs.gov/pub/irs-pdf/p557.pdf>

- **Charitable Organizations**

Section 501(c)(3) includes organizations with exempt purposes that are “charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged [...]”<sup>1</sup>

In order to obtain the 501(c)(3) status, an organization must be classified into one of the exempt purposes listed above. Large common groups of organizations, such as churches, educational organizations, health centers, and others have officially been recognized as fulfilling the requirements of the exempt purposes and are mentioned in statutes or case law. Organizations which do not fall into one of those categories can also qualify under a more general requirement of “charitable”. Different tests, developed through time, help to determine if an organization falls within an exempt category.<sup>2</sup>

For the most part, charitable organizations must have been established over time to promote the general welfare of the public.<sup>3</sup> The activities of the organization must benefit people who

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<sup>1</sup> IRS web site, *Tax Information for Charitable Organizations, Exemption requirements* at <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

<sup>2</sup> 26 U.S.C.A. § 501, IRC § 501; *St. David’s Health Care System v. U.S.*, 349 F. 3d 232, 235 (2003).

<sup>3</sup> “Generally, a charitable organization has been defined as being devoted to charitable purposes and organized for the purpose of promoting the general welfare of the public, a community, or a class of an indefinite number of individuals.” 1A William Meade Fletcher, *Fletcher Cyc Corps.* § 79 (2002)

are in need of the specific assistance provided by the nonprofit.<sup>4</sup> Section 501(c)(3) “encompasses a wide range of activities”, and the text of the code should not be read restrictively.<sup>5</sup>

The purpose stated in the articles of incorporation and the mission of the organization are used by the IRS to determine if the organization falls under Section 501(c)(3)<sup>6</sup>, a.k.a the “organizational test”.<sup>7</sup> “The articles of corporation *must* limit the organization’s purposes to one or more of those described at the beginning of this chapter, and *must not* expressly empower to engage, other than in an unsubstantial part of its activities, in activities that do not further one or more of those purposes.”<sup>8</sup> Therefore, it is very important to draft articles to reflect the charitable purpose of the organization. All organizing documents should state the exempt purpose, in an unequivocal manner. It is also imperative to make sure that, if provisions are made in such documents regarding the dissolution of the organization, they respect the interdiction of distribution of funds to the shareholders, members or other individuals. If this were to occur, it would go against the main principle of “nonprofit” organizations. In addition, to qualify for the exemption, the organization must be primarily involved in activities that promote the exempt purpose, a.k.a the “operational test”.

For example, LINC’s primary purpose is “helping people with the business side of cancer.” This statement demonstrates dedication to a general public purpose that is beneficial to the community.<sup>9</sup> “In a legal sense, a charity may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.”<sup>10</sup> The legal assistance offered by the organization targets a specific group (cancer patients) with a specific need (legal assistance), without being selective or discriminatory. The IRS recognizes the “relief to the poor, the distressed or the underprivileged” as an exempt purpose, and our LINC organization can be classified into this category.

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<sup>4</sup> Allison v. Mennonite Publications Board, 123 F Supp 23, 27 (1954), held that “A charitable organization is defined as: “One whose principal aim is to give of its material substance or time to benefit those who are in need of such assistance [...]”.

<sup>5</sup> “The word “charitable” encompasses a wide range of activities beneficial to the public” 1A William Meade Fletcher, Fletcher Cyc Corps. § 79 (2002); Stockton Civil Theatre v. Board of Sup’rs of San Joaquin County, 66 Cal 2d 13, 20 (1967); Springfield YMCA v. Board of Assessors of City of Springfield, 284 Mass 1, 7 (1933); Burnham’s Estate, 112 Misc 560, 565 (1920).

<sup>6</sup> Therefore, the categories may include a large number of different organizations. Although a organization created under a statute authorizing the incorporation of charitable institutions may be entitled either to the presumption that it is such an institution, or judicial notice that it is a charitable organization, other factors, such as a statement of charitable purpose in the articles of incorporation, are considered in determining its true charitable character, 1A William Meade Fletcher, Fletcher Cyc Corps. § 79 (2002).

<sup>7</sup> IRS Publication 557, *Tax-Exempt Status for Your Organization*, at 19.

<sup>8</sup> Id.

<sup>9</sup> See *supra* note 4;

<sup>10</sup> *In re Estate of Merchant*, 143 Cal. 537, 577.

Before You Fill Out the IRS Application:

The organization needs to be a corporation, limited liability corporation (LLC), unincorporated association, or trust. Differences in set-up procedures, registration, and management exist between these various structures. The establishment of a corporation is the most common model because it has many advantages, including its flexible structure. The LLC is a new model and is more difficult to manage as a charity. As for the unincorporated association, the lack of corporate structure makes it less reliable. Finally, the trust must be a charitable trust but the downside is that the structure is less flexible than a corporation. In any case, all the steps necessary to gain such statuses must have been taken.

1. You must choose your governing board.
  2. You must draft your by-laws.
  3. You must complete all necessary registration steps no matter which structure you choose. Articles of Incorporation must be drafted and presented with the application.
  4. You need to apply for an **EIN** (Employer Identification Number) even if you will not have employees. In order to do so, the organization needs to fill out Form SS-4 before the 501(c)(3) application is completed and attach a copy to the exemption application.
- Application for the Exempt Status

**N.B.:** You need only file the application if the organization's annual gross receipts are more than \$5,000.

**N.B.2:** You must file within 15 months after the organization is created. However, an automatic extension of 12 months is available.

For a 501(c)(3) organization, Form 1023 needs to be filed. Other organizations under other sections of 501(c) typically need to fill out Form 1024, but are sometimes not required to fill out any form. Form 1023 has recently been revised and now includes all documents necessary for the application, simplifying the burden of the paperwork. The form must be filled out thoroughly, with attached copies of all requested documents.

Be sure not to forget the following, or the application will not be complete:

1. The user fee. Form 8718, *User Fee for Exempt Organization Determination Letter Request*, has been included in Form 1023 and covers registration costs. Each paragraph of section 501(c) has a different fee which is specified in the Form.
2. All organization's organizing documents (Articles of Incorporation or named Articles of Corporation and Certificate of Incorporation)

3. A description of the organization's activities, which will be used by the IRS to determine if the purpose is an exempt one.
4. Financial statement of the current year and the budget for the next 2 years, or 3 years of financial statements.
5. Form 2848, *Power of Attorney and Declaration of Representative*, must be filled out if an attorney is representing your organization.

*You may want to consult an attorney to ensure the application is filled out correctly and thoroughly, and that all mandatory steps are taken. He/She may be able to offer advice regarding other organizational documents. Moreover, he/she may also help out with tax-related matters during the life of the nonprofit. While the cost of the attorney is generally a drawback, some attorneys may perform this work pro-bono. Lawyers should give 50 hours per year of their time for pro-bono work. Therefore, you might be able to find a lawyer willing to allocate some of these hours to nonprofit work. Ask lawyers you know or find out about potential programs in your community which provide lawyers for assistance in setting up nonprofits. For example, your local bar association may organize pro-bono programs.*

The IRS might require you to provide more information or more documents later in the process (example: contracts, lease the organization has entered into). In addition, the IRS might request a more detailed explanation of the purpose of the organization to reveal its exempt purpose more clearly.

Once the IRS has reviewed Form 1023/1025, if the purpose of the organization fits the general exempt purpose of Section 501(c)(3), the IRS issues a ruling or a determination letter recognizing exemption. When the letter is issued, it recognizes the organization retroactively, from the date it was formed. If the IRS refuses to recognize the organization, revision and appeal procedures can be undertaken.<sup>11</sup>

- Application for a Subordinate Organization

A central organization can ask the IRS to recognize a subordinate organization. Subordinate organizations must be affiliates of the central organization and must generally fulfill all the requirements of the central organization (organizing documents, exempt purpose, purposes and activities, accounting, time period of filing), although they need not be incorporated. The central organization must issue a group exemption letter for the subordinate organization to be covered by the exemption, rather than filing Form 1023, including the contact information for the subordinate organization. This information will be reviewed annually. The central organization must be in control of the subordinate and in position to certify that the subordinate organization's purposes are falling under the exempt category.

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<sup>11</sup> IRS Publication 557, *Tax-Exempt Status for Your Organization*, at 4-6.

### C. Annual Requirements for Nonprofit Organizations

Your nonprofit organization must file:

1. Annual Information Returns, Form 990 or 990-EZ. The returns must state specifically the items of gross income, receipts, and disbursements, and such other information in order to comply with the IRS requirements. Only certain types of organizations are exempted (Exceptions in General Instruction B of the 2004 Instructions for form 990 and 990-EZ of the IRS, and section 501(c)(3) organizations that have gross receipts of \$25,000 or less).
2. Unrelated Business Income Tax Returns, Form 990-T, if the organization is earning more than \$1,000 a year from unrelated trade business.

#### *You can obtain IRS Forms and Publications*

1. By visiting your local Federal IRS Building.
2. By calling 1-800-829-3676 (1-800-TAX-FORM). [TTY/TDD 1-800-829-4059]
3. By Fax. From a fax machine, dial (703) 487-4160 and follow voice prompts.
4. Over the Internet:
  - <http://www.irs.gov>
  - For Form 1023, read the IRS Publication 557, revised in March 2005, at <http://www.irs.gov/pub/irs-pdf/p557.pdf>

### III. State Tax Exemptions for Nonprofit Organizations [Return](#)

Nonprofit organizations do not automatically qualify for tax exemptions. The Internal Revenue Service must determine that the organization qualifies for the exemption and will issue a letter recognizing the organization's exempt status. While a 501(c)(3) organization which qualifies for a federal tax exemption will often qualify for a state law exemption, organizations must make sure that they also comply with state law.

#### **A. Filing for the Exemption and Types of Exemptions: Virginia Law**

After the 501(c)(3) organization acquires the proper documentation letter from the IRS for federal tax exemption, the organization must follow applicable state laws to qualify for state tax exemption.

1. Retail sales and use tax exemption. Va. Code Ann. §58.1-609.11 (2004) Sales tax applies to sales of tangible property or taxable services made in accordance to specified regulations under the Virginia Code Chapter on Retail Sales and Use Tax. The use tax applies to the "use, consumption, distribution and storage of tangible personal property." Depending on the nature and activities of the nonprofit organization, these taxes may apply to both purchases made by the organization and sales the organization makes to others. See also Va. Code Ann. §§58.1-602, 603 and 604 for more information on imposition of sales and use taxes.

2. Requirements for retail sales and use tax exemption. In order to qualify for the Virginia retail sales and use tax exemption, a nonprofit organization must meet the criteria set forth in §58.1-609.11(B):

- The organization must be exempt from federal income taxation under IRC Section 501(c)(3).
- The organization's annual gross receipts must be less than \$5,000 and must be organized for a purpose under Section 501(c)(3).
- The organization must comply with and provide verification of compliance with Virginia solicitation laws. For more specific information, organizations may contact the Department of Agriculture and Consumer Services at (804) 225.3924 (<http://www.tax.virginia.gov/site.cfm?alias=SUTExemption>)
- The organization's annual general administrative costs, including salaries and fundraising, may not exceed 40% in relation to the organization's annual gross revenue.
- If the organization's annual gross exceeded \$250,000 or more in the previous year, then the organization must provide a financial audit. The audit must have been performed by an independent certified public accountant. The Virginia Society of CPAs sponsors a volunteer program throughout the state in which trained tax experts offer help to nonprofits with non-professional management. For sound financial advice and appropriate record keeping, organizations may want to take advantage of this program.
- The organization must also file a copy of either the Federal 990 or 990 EZ tax form filed with the IRS to the Virginia Department of Taxation.
- If the organization filed neither of the previous documents, then the entity must also file the names and addresses of at least two members of the Board of Directors, and the location of the organization's financial records for public inspection.
- Excluding sales tax, the organization must also provide an estimate of its total taxable purchases for the following year, the current year and the previous year. Again, organizations should enlist the help of an accountant during this process.

***Where to Apply***

Organizations may now apply for the retail sales and use tax at Nonprofit Online by creating a user ID and password. Applying online may be more efficient, and organizations may update their information as it changes. They may also print their retail sales and use tax certificates for their own records.

Organizations which do not have online access may request an application by contacting the Nonprofit Exemption Team at (804) 377.3712. Complete applications should be mailed to:

Department of Taxation  
Nonprofit Exemption Team  
P.O. Box 27125  
Richmond, VA 23261-7125

3. Property tax exemption. Va. Code Ann. §58.1-3651 (2004). Pursuant to the Constitution of Virginia, “any county, city or town may by designation or classification be exempt from real or personal property taxes, or both, by ordinance... real or personal property owned by a nonprofit organization...” In order to qualify for this exemption, the organization must use the property for the specific purpose for which it is either classified or designated. This exemption applies to nonprofits that use such property for charitable purposes.

To obtain the designation or classification, the nonprofit organization must submit a proposal to the local governing body of the location of the real property. The local governing body will then publish a notice of public hearing in the location of the real property. The organization must pay the governing body for the publication. The notice will include the assessed value of real and tangible property for which the organization requests an exemption and the property taxes normally assessed against the property. If feasible, nonprofit organizations should consult an accountant or an appraiser to obtain their own record of the real and tangible property values.

The public hearing will be held at least five (5) days after publication, and citizens will have the opportunity to comment on the real property at issue. The governing body will consider, among other things; whether the organization is exempt under Internal Revenue Code Section 501(c), whether the property has obtained the appropriate licenses for activity on the property and whether any part of the net earnings has inured to the benefit of any individual. The governing body will also examine the source of the funds generated by the organization, the services the organization provides and the organization’s activities, and the revenue impact on the locality and the taxpayers. See also Va. Code. Ann. §58.1-609.1 (2004) (governmental and commodities exemptions) In order to retain the exemption, the nonprofit organization must continue to use the property in accordance with the specified purpose under the classification or designation.

4. Sale or lease tax exemption. Va. Code Ann. §58.1-623 (2004) (sales or leases presumed subject to tax, exemption certificates) Lease taxes apply to the leasing or renting of tangible personal property. If a nonprofit organization has qualified for retail sales and use tax exemption under Section 58.1-609.11 then the organization will also be exempt from the collection of tax on sales or leases related to tangible personal property, unless the Tax Commissioner notifies them otherwise. See also Va. Code Ann. §58.1-602.
5. Miscellaneous exemptions. Organizations should review their activities in relation to applicable state statutes to see if they qualify for any additional exemptions. Depending on the local government’s policies, nonprofit organizations may be able to request exemptions if

they provide adequate justification for their requests. See Va. Code. Ann. §58.1-609.10 (2004).

### **B. Duration of Exemptions**

Va. Code Ann. §58.1-609.11 (2004) Each exemption will last no less than five (5) years and no more than seven (7) years. However, if an organization fails at any time to comply with any of the criteria set forth under Section 58.1-609.11(C), the Department of Taxation may revoke the exemption. Organizations must provide the all of the same information required to obtain the initial exemption, making sure they maintain or renew the appropriate exemptions on time. Organizations must also continue to meet the applicable criteria required for exemption.

### **C. The Donor Tax Exemption**

Va. Code. Ann. §58.1-609.10 (2004). The Virginia Code and the Revenue Reconciliation Act of 1993, both discuss the exemption for charitable donations by donors to organizations exempt under IRS Section 501(c)(3). Donors may claim a deduction for a contribution, in cash or non-cash, of \$250 or more, but the donor must obtain written acknowledgement of the donation from the nonprofit organization. It is the donor's responsibility to obtain the proper documentation, not the organization's responsibility. However, it would be good practice for nonprofit organizations to provide receipts to donors as soon as the organization receives the donation.

### **D. Exemptions Summarized**

While nonprofit organizations enjoy the privilege of federal and state tax exempt status, these organizations must continually review their activities and keep proper documentation to retain their status. Organizations should keep proper records of IRS and state recognition of their tax exempt status, specifically the letter stating their exemption, in addition to the articles of incorporation and by-laws. For continuity of existence and efficiency, organizations should also seek the help of professionals such as certified public accountants and lawyers to help maintain documents and accounting records.

## **IV. Maintaining Tax-Exempt Status: Restrictions** [Return](#)

The nonprofit sector of our economy has grown tremendously in part because of the liberal tax policies of the Federal Government. (State governments and municipalities have followed the federal model and have provided their own exemptions for income tax, property and sales taxes). The Federal Tax Code enables §501(c)(3) organizations to operate as tax exempt operations and permits the nonprofit's donors to claim charitable deductions.

In return for this generosity, the Internal Revenue Service requires nonprofits to operate according to their own charters and by-laws and to follow some simple rules as described below. A nonprofit Executive Director and Board President must educate all paid staff and volunteers about these rules so that the nonprofit organization's tax exemption will be secure.

### **A. Endorsing Candidates for Public Office: Strictly Prohibited**

Under no circumstances may members of the nonprofit's Board of Directors or staff campaign in the nonprofit's name for a political candidate. This rule was challenged by Branch Ministries, a tax exempt church, which urged Christians not to vote for Bill Clinton because of his position on certain moral issues. As a result of this political activity, the IRS revoked the church's tax exemption and required it to pay back taxes for an extended time period. The Branch Ministries Church appealed the IRS ruling (*Branch Ministries v. Rossotti*, D.C. Circuit, 2000), claiming that the First Amendment protected free speech which would include political advocacy. The Court clarified that a church in its official capacity could exercise its free speech and support whatever candidates it desired, but it would lose its tax exempt status. The Constitutional right was Free Speech and not the right to a tax exemption.

Does this prohibition mean that a community member upon joining a nonprofit's Board of Directors can no longer support political candidates? No, this refers only in their capacity as Board members of the nonprofit. Any Board Member in his private capacity can contribute financially to a political campaign, speak on behalf of candidates, attend political rallies, and function exactly as he had prior to joining the Board of the nonprofit. The Board Member simply must separate his personal advocacy of candidates from his activity as a Board Member.

### **B. Lobbying for Causes: Permitted Under Certain Circumstances**

Congress made some key decisions in designing the Internal Revenue Service Code. Under the §501(c) statutory section, Congress established different subsections governing different kinds of nonprofits. Hence there are nonprofits that are chiefly advocacy organizations. Such organizations should apply for §501(c)(4) status, which will give the board and staff of these organizations maximum flexibility regarding lobbying. §501(c)(3) organizations in contrast, are service-oriented organizations and deliver social service, health-related, educational, and religious programs as their primary purpose. These organizations are permitted to engage in some advocacy for legislative causes but are restricted in terms of the financial resources that they may devote to this activity. This is a reasonable distinction, since a nonprofit is given a choice from the start how to define its primary objective and the IRS has the right to assign the lobbying privilege accordingly.

A church association challenged this limitation on lobbying on the grounds that the First Amendment, that protected free speech, also protected advocacy of legislation. In the 1972 case of *Christian Echoes National Ministry, Inc. v. United States*, the Tenth Circuit Court of Appeals affirmed the IRS revocation of the association's tax exemption based on its periodical's advocacy to "maintain the McCarran-Walters Immigration Act," "discourage support for the World Court," and "cut off diplomatic relations with Communist countries." The Court concluded that "a substantial part of [the nonprofit's] activities consisted of carrying on propaganda, or otherwise attempting to influence legislation." The Court, in explaining the IRS ruling, advised that "tax exemption is a privilege, a matter of grace rather than right." Free speech, including advocacy for legislation, was a First Amendment right but the government was not compelled to financially underwrite lobbying by means of a tax exemption.

### ***How Much Lobbying is Too Much?***

To begin, a nonprofit may promote awareness of legislative issues as much and as often as it likes if its approach is non-partisan in nature. For example, when the League of Women Voters holds a debate and invites candidates of all points of view to participate, that activity is not considered lobbying by the IRS. Lobbying, by definition, is a partisan activity, meaning that the organization is advocating a particular stance or position on prospective legislation.

Lobbying will only be limited if it is institutional rather than personal. An individual in her private capacity has an unlimited right to lobby. She may phone her legislator or governor and advocate for a specific piece of legislation at any time. It is only if she does her advocacy under the nonprofit's banner that her advocacy will be considered lobbying and measured by IRS standards.

Turning now to the organization, at what point does a nonprofit's lobbying exceed the permissible limit set by the IRS? The limitation on §501(c)(3) organizations is not quantified but articulated as "not a substantial part of the nonprofit's activities." This very vague standard can be troubling to a nonprofit which wants to lobby without jeopardizing its tax exempt status. The Executive Director, in order to monitor the amount of resources devoted to lobbying, should keep track not only of such material costs as pamphlets and advertising, but should also keep timesheets for his time and that of other staff and volunteers devoted to advocacy.

Organizations that are worried by the vagueness of this statutory language and fear exceeding the IRS limit may elect §501(h) status which does provide quantifiable standards for lobbying. Under this statutory subsection, a nonprofit that has exempt purpose expenditures not exceeding \$500,000 can devote up to 20% of its exempt purpose income to lobbying. Of that amount spent on lobbying, up to 25% can be earmarked for "grass roots" lobbying. Although the §501(h) election seems to be an attractive alternative, in reality few nonprofit organizations choose to go this route because of the additional paperwork that is required.

### ***Setting a Policy for Lobbying Restriction***

#### **1. Initial Stage of Operation**

When founders establish a §501(c)(3) charitable organization, such as a nonprofit that provides legal and business advice for persons undergoing cancer treatment, they should focus their initial efforts on hiring a staff (or if no staff, organizing volunteers to assume "service roles"), determine what programs will be offered, and establishing basic operational policies. This will involve such matters as setting fees or fee scales for services and determining how funds are to be generated to subsidize operations of the nonprofit. Lobbying should therefore be on hold until the organization is viable as a service provider.

This does not mean, however, that the organization need be silent on the matter of legislative issues. This would be a good time for the Board President to appoint a board committee to track legislative bills and report to the Board what issues are before the General Assembly so that individual Board members in their private capacity may "lobby" their representatives.

## 2. Intermediate Stage of Operation

Once the nonprofit is providing quality services and generating sufficient funds to cover agency costs, it may expand its activities to include legislative advocacy. The committee that had served initially as an information vehicle for Board Members regarding legislative issues might readily be transformed into a Legislative Advocacy Committee. Since the nonprofit at this point should be sufficiently advanced to support a paid Executive Director, that person or a senior staff designee could work with the Board to design and implement lobbying efforts. The Executive Director, who in a small organization will have taken on risk management activities in any event, will serve as the watchdog to be sure that IRS limits on lobbying are not violated.

## 3. Advanced Stage of Operation

After a few years in existence, the Board of Directors may come to look upon its Legislative Advocacy Committee as a key contributor to the welfare of the community. Following a legislative victory, perhaps adoption by the General Assembly of a statutory requirement that health insurance policies issued in the Commonwealth provide certain benefits for cancer survivors, the committee may be ready to become even more aggressive on the state or national level. There are several options available at this point. The nonprofit may elect the §501(h) status which will enable the organization to fund more lobbying activities than it had up to that point or it may decide at this juncture to spin off a separate nonprofit specifically devoted to advocacy with §501(c) (4) exempt status. The major restriction on operating two entities will be that funds from one organization must not finance activities of the other. A third alternative may be to join forces with another nonprofit that has a similar focus, like the American Cancer Society, and jointly operate an advocacy organization. As the nonprofit matures, it will consider the wisdom of hiring designated staff to carry on lobbying activities. Hiring such staff means conforming to additional federal and state regulations which the Executive Director should research before any hiring takes place.

### **C. Restrictions on Business Activities: Unrelated Business Income Tax**

The IRS will hold the nonprofit to activities that conform to its enumerated purposes. Charters and by-laws may, of course, be amended by the Board of Directors. Are there other permissible ways for a nonprofit to add activities that are not “substantially related” to the charitable purpose defined in the original charter of incorporation? Yes, it may undertake these new business activities that are unrelated to the original purpose, providing that it pays tax to the federal government, the Unrelated Business Income Tax. If the nonprofit fails to pay the tax, the IRS may penalize the organization through monetary penalties or even the loss of its tax exemption.

A nonprofit, therefore, has a choice regarding business unrelated to its original purpose, much as it does with regard to lobbying. If a nonprofit wishes to engage in an unrelated business activity, it must pay tax on this activity. It may wish to split off such ventures into for-profit subsidiaries for which it will not claim a tax exemption but pay the corporate income tax. The after tax income of these subsidiaries continue to support the tax exempt organization. The advantage of creating the taxable subsidiary is that it will prevent IRS concern regarding the tax exempt status of the original nonprofit organization.

Nonprofits must be careful to test their own programs, especially as they expand in new and creative ways, to be certain that they have not unwittingly generated Unrelated Business Income.

### ***Setting a Policy with Regard to Unrelated Business Income***

#### **1. Initial Stage of Operation**

New nonprofit organizations generally will not undertake unrelated business at the beginning. Initially, it will want to carry on only those activities clearly related to the Mission of the organization as established by the founding members and articulated in its charter.

#### **2. Middle Stage of Operation**

Successful nonprofits will identify opportunities for service expansion as their tenure in the community lengthens and their reputation grows, especially when they are called upon to expand services. The organization may need more funds to operate and come to regard auxiliary business ventures as a means of generating revenue to subsidize low-income recipients of their primary services. Whether the organization creatively develops new opportunities or is offered these opportunities, it is vital that the Executive Director review possibilities for program or fund-raising expansion with regard to the IRS regulations governing Unrelated Business Income. So, for example, what if the annual bake sale, which was so successful that it is now held four times a year, leads to a plan for establishing a bakery? Operation of a bakery will be an activity that is a business or trade, not substantially related to providing information to the charitable purpose, and it will be regularly carried on. The nonprofit will have to pay Unrelated Business Income Tax on its profits from this activity.

#### **3. Advanced Stage of Operation**

When unrelated business activities have become so profitable that their proportion of an agency's income becomes sufficiently large, it would be prudent for the nonprofit to split off the activity into a separate for-profit subsidiary to proactively guard against an IRS questioning of the nonprofit entity's tax exempt status. So, building on our example, once the nonprofit's bakery is up and running and is generating 25% or more of the nonprofit's revenue, it would be time to consider splitting off the enterprise into a separate for-profit, taxable subsidiary, one whose after-tax profits will go to the support of the tax exempt organization. Another reason for spinning off the bakery enterprise is that the bakery may be taking up so much of the Executive Director's time and concentration that it a detriment to the effective operation of the nonprofit. The new for-profit subsidiary will have its own director and designated staff and its own Board of Directors.

### **D. Other Restrictions on Nonprofits**

#### **1. Excess Benefits**

The corporate world has been rocked with scandals over the past two decades with such spectacular debacles as Enron that destroyed companies and harmed innocent stockholders and

employees. The nonprofit world also had its “Enron” in a United Way scandal that involved a lavishly paid Executive Director who took leisure vacations with his mistress at donor expense. In the nonprofit world, this led to a heightened scrutiny of the salaries and benefits provided for nonprofit executives with penalties assessed for what were deemed to be “excess benefits.”

The penalty, termed “Intermediate Sanctions,” forces the excessively paid nonprofit executive to pay a 25% fine on the amount over a reasonable salary based on the size and scope of the agency he directed. If the problem is not quickly corrected by an adjustment downward in salary and benefits, a 200% fine is imposed. In addition, Directors who approve such excessive compensation will be fined 10% of the excess sum paid, up to a ceiling of \$10,000.

A beginning nonprofit is more likely to struggle with how to pay its Executive Director a livable wage rather than with “excess benefits.” Nevertheless, even from the beginning, the new nonprofit should follow good practice, setting salaries in the proper way, which requires that the Board’s Compensation Committee or Executive Committee obtain comparables for Executive Directors of similar size agencies. Should the nonprofit ever be questioned about its compensation of the Executive Director, it would have the data on file to prove compliance with the statute. Although this discussion has been solely of the Executive Director’s compensation, the mature nonprofit may have several highly-compensated employees for whom it should set salaries within a market range as dictated by comparables from similar size agencies.

## 2. Licenses and Permits

Less serious miscues on the part of a nonprofit may not result in the loss of a tax exemption, but they should also be avoided since they could result in fines and adverse publicity for the organization. For these reasons, it is always prudent for the staff director or the Board President to question whether a particular activity, especially in the area of fund-raising, is permitted, and if so, whether it requires a license.

A nonprofit that is registered with the State authority to fund-raise may still be liable to reprimand or fine if it serves alcoholic beverages to attendees at the annual event without a license to sell liquor or if it sponsors a form of gambling that is not permitted by law. Prior to a gala fund-raising dinner or launching bingo games to generate funds for the agency, the nonprofit staff or board must research these matters and obtain the requisite licenses. In Virginia, a nonprofit organization may serve alcoholic beverages at an event providing it applies for a one-day banquet license from the Virginia Department of Alcohol Beverage Control.

While many forms of gambling are illegal in Virginia, even for charities, the Commonwealth permits nonprofits to sponsor bingo and raffles providing that the Department of Charitable Gaming has granted a permit. Interestingly, betting on “duck races” sponsored by nonprofits is permitted as a type of raffle. At bingo and raffles, many rules must be observed, including the posting of the phone number of “Gambler’s Anonymous” at such events. See Virginia Code § 18.2-340.15 for particulars.

## E. Restrictions: A Summary

A nonprofit's Board and Staff must adhere to IRS and other governmental restrictions in order to retain the nonprofit's tax exemption which the IRS has defined as a privilege and not a right. The only absolute prohibition is that the nonprofit, through its staff or Board, must not campaign for political candidates. The restrictions with regard to lobbying and unrelated business income do not prevent these activities but do limit how they may be carried out. Since the IRS provides alternatives, every nonprofit should be able to carry out activities important to its constituency without violating the law. As with other matters, thorough orientation for new staff, Board members, and volunteers and ongoing training is essential so that uninformed persons will not jeopardize a nonprofit's tax exempt status.

## V. Fundraising: Where should You Start? [Return](#)

Fundraising for charitable organizations is simply the activity of soliciting money or pledges for the operational benefit of the organization. Solicitation of funds is the critical element to the success in achieving the organization's mission and vision. Given this importance, Charitable Solicitation Laws have been created to minimize abuse of nonprofit status, protect donors from fraud and misrepresentation, and reduce waste of charitable money.

Charitable contributions can come in various forms, including cash, securities, personal property, and real estate. All fundraising begins with an "Ask". "Asks" are done in various forms, whether directly or indirectly, by board members, staff, and/or hired fundraising professionals. However, before "Asks" can begin, it is paramount that nonprofit organizations form a fundraising strategy, as well as take certain preliminary legal steps.

### A. Formulating Your Fundraising Strategy

The following steps should be followed in order to identify and formulate the fundraising strategy for any charitable organization. Particular attention should be paid to the demographics of the city, as well as the companies, wealthy individuals, and foundations that already exist in the area. In addition, the organization must do extensive research on other nonprofits in the area and the particular fundraising methods that are used by these charities.

1. Clearly define target audiences that will support the organization's mission. The key target audiences are those foundations, organizations, government agencies, individuals, and other nonprofits that will donate the initial gifts to the organization.
2. Formalize a plan for securing annual operational revenues. These typically come from Annual Giving campaigns in various forms, so an analysis of the most efficient and effective means of solicitation must be completed. (Methods are discussed later in this manual.)
3. Incorporate other solicitation methods. These might include major gifts, capital campaigns, grant requests, and estate planning. Similar to Annual Giving, an analysis of the most efficient and effective means of solicitation must be completed. (Methods are discussed later in this manual.)

4. Decide who should do the asking.
5. Board Members: Primary fundraising responsibilities should always be in the hands of the board. If necessary, the board should form a Fundraising subcommittee nominating particularly influential members to this committee in order to help orchestrate the fundraising process. The following is a list of board member fundraising duties and rules that each charitable organization should implement.
6. Each board member should make a personal commitment to the organization.
7. Board members ask other board members for a personal commitment. Staff members should not be involved in these one-on-one asks.
8. Board members must assist in developing key prospects, including contributing to the mailing list and identifying valuable donors, wealthy individuals, organizations, and foundations.
9. All board members must actively participate in soliciting donations, including annual and capital campaigns, introductions to staff, support letters, and “Thank you” follow-ups.

Fundraising Professionals: Charitable organizations will often use fundraising professionals when a greater amount of help is needed to orchestrate the solicitation strategy. Their duties include acquiring new donors, renewing and upgrading existing donors, maximizing gifts from foundations, organizations, and individuals, and assisting in grant writing process. Fundraising professionals come in different capacities, including:

*Fundraising Development Officer* – a full time employee of the charitable organization that receives salary and benefits.

*Fundraising Consultant* – an outside consultant used to guide staff, board, and volunteers. Consultants will assist in conducting “Asks”, but will not do the “Ask” directly.

Professional Solicitor – an outside solicitor that is hired and paid a commission.

Organizations should be wary in using this type of fundraising professional. Although it is not illegal, this method could be perceived as unethical to the public.

## **B. Registering for Solicitation**

Most states within the U.S. have created Charitable Solicitation Acts in order to regulate solicitation activities. More than 30 states have adopted “comprehensive” charitable solicitation acts which help to simplify the fundraising regulations for those charitable organizations that solicit in numerous states. In general, Charitable Solicitation Acts require organizations to apply for and acquire permission from the state to commence fundraising activities. Organizations are subject to various fees throughout the registration process. If fundraising violations occur, the organization will lose its privileges to solicit charitable contributions.

Charitable organizations that solicit in more than one state must register separately with each state. If solicitation occurs statewide, the organization must also research if it needs to be registered with each locality within the state where fundraising occurs. With the increasing popularity of Internet solicitations, organizations must also research the requirements regarding registration within each state. Depending on the state, Internet solicitations may not be addressed specifically. In short, if the organization is receiving a considerable amount of donations via the Internet in states where permits for solicitation have not been granted, then the organization could be in violation of solicitation laws.

***Registration Steps for Solicitation by Charitable Organization in the Commonwealth of Virginia:***

- ***Step 1:*** Per § 57-49 of Virginia Code, every charitable organization which intends to solicit contributions or have funds solicited on its behalf in the Commonwealth must file an initial registration statement with the Commissioner prior to any solicitation activity. Each registration statement must be refiled on an annual basis as long as solicitation activity continues.

Section 57-49 of Virginia Code outlines a number of items that are needed for registration, including the following key items:

- A certified copy of the preceding year's fiscal balance sheet and income statement with an opinion from an independent accountant; a certified copy of previous year's fundraising activities, including kind and amount of funds raised, fundraising expenses and allocations of funds raised with an opinion from an independent accountant, or copy of IRS Form 990. Any organization with gross revenues of less than \$25,000 may submit a balance sheet and income statement verified under oath by the treasurer of the organization.
- A statement indicating whether the charitable organization intends to solicit contributions from the public directly or have the solicitation done on its behalf by others.
- An outline of the general purpose for solicitation, name(s) of the solicitors, name(s) of the individuals or officers who will take custody of the contributions, name(s) of the individuals or officers who are responsible for the final distribution of the funds, and types of solicitation that will be undertaken.
- A copy of the current articles of incorporation, bylaws, or other governing documents.

- All organizations must include the following language:

“No funds have been or will knowingly be used, directly or indirectly, to benefit or provide support, in cash or in kind, to terrorist, terrorist organizations, terrorist activities, or the family members of any terrorists.”

- **Step 2:** Every charitable organization must pay annual fees before being granted permission to solicit in Virginia. The fee structure is tiered, so payment is based on gross contributions of the preceding year. Charitable organizations filing for initial charitable solicitation registration that have no previous financial history must pay an initial fee of \$100. Charitable organizations filing for initial charitable solicitation registration that have previous financial history must pay an initial fee of \$100 in addition to the annual registration fee. Organizations that allow the registration to lapse must resubmit an initial registration.
- **Step 3:** Every charitable organization must maintain fiscal records that are in accordance with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations. A copy of the records must be on file in the office of the Commissioner and will be retained for a period of at least three years.
- **Step 4:** For charitable organizations with previous fundraising history, a report detailing the percentages of fundraising expenses compared to public donations from the preceding fiscal year must be filed annually.
- **Step 5:** If a charitable organization has a contract between charitable or civic organizations and professional fundraising counsel or professional solicitors, every contract must be in writing and filed with the Commissioner within ten days after the contract has been signed.

*\*\* If the charitable organization chooses to employ Professional Fundraisers for solicitation, there are certain requirements and steps that you must follow for registration purposes. Please see local code for the specific criteria.*

### ***Exemptions from Registration***

Per § 57-60 of Virginia Code, a number of persons are exempt from registering for charitable solicitation in the Commonwealth of Virginia. No charitable or civic organization shall be exempt unless it submits a statement explaining the reason for the claim to the Commissioner. If the organization is exempted, the Commissioner will issue a letter of exemption which may be exhibited to the public. A \$10 fee must be paid by every organization requesting an exemption.

The various exemptions include:

- Charitable organizations who do not intend to solicit or receive within one year, public contributions in excess of \$5,000 if all of solicitations and fundraising activities are executed by non-paid individuals. In addition, these individuals can have no part of their assets or income benefit or be paid to any officer or member of the organization. If solicitations reach in excess of \$5,000, the charitable organization must register for charitable solicitation within 30 days.

- Organizations that solicit only within the membership of the organization by the members themselves.
- Charitable organizations which confine solicitations in the Commonwealth to five or fewer contiguous cities and counties.

***Registration Steps for Solicitation by Professional Fundraising Counsels and Solicitors in the City or County***

In some cities, towns, or counties, a charitable or civic organization may be subject to regulations or require licensing before charitable solicitation can occur in the particular locality. The charitable organization is responsible for researching the Charitable Solicitation acts for each locality in which it wishes to solicit contributions.

For example, per § 28-3 of Roanoke City Code, any charitable organization undertaking charitable solicitation within Roanoke City, and is required to register with Commonwealth of Virginia, must register with the city manager.

**C. Implementing Your Fundraising Strategy**

Once a fundraising strategy is formulated and the charitable organization and any professional fundraising counsels or solicitors assisting the organization are registered with the state and other localities, the organization can commence its fundraising activities and campaigns. “Asks” can be categorized into three major forms: 1.) Annual Giving; 2.) Special Purpose; and 3.) Estate Planning.

***Annual Giving***

Annual giving campaigns are for the sole purpose of recruiting new donors and renewing existing donors. Every charitable organization must have annual donations in order to cover annual operating costs. Typically, an organization will use two or more forms of annual giving campaigns, some of which are more efficient and effective than others. Types of campaigns include the following:

- *Donor Acquisition Direct Mail Campaign* – This type of campaign is used solely for new donor acquisition. Charitable organizations send out a mass marketing mailer using third class, bulk mail rates. Although a satisfactory response rate is only 1% to 2%, organizations need to remember that the value of the donor does not rest within the first gift. The value of a donor equals the lifetime contributions to the organization.

Steps for direct mail campaigns include the following:

***Step 1:*** Identifying target audiences that will respond to the mailer.

***Step 2:*** Formulating, purchasing, or leasing up-to-date mailing lists of the target audiences.

***Step 3:*** Preparing a comprehensive packet including brochure on the organization, letter, response form, and reply envelope.

**Step 4:** Assembling donor receipts and thank you notes from the organization.

- *Donor Renewal Direct Mail Campaign* – This type of campaign is used solely for renewing previous donor contributions. In contrast to donor acquisition direct mail campaigns, organizations can expect a 50% response rate.
- *Telephone and Television Campaigns* – This type of campaign allows the organization to create a verbal and/or visual dialogue with the donor. Organizations can expect 5-8% response rates from these types of campaigns. However, typically only 80% of the pledges are realized.
- *Benefit Events* – This type of annual giving event is the most expensive and least profitable for an organization. The majority of the proceeds will come from ticket sales and sponsorships. Although expensive, benefit events are perfect for public relations as well as providing volunteer opportunities that are often attractive to particular donors.
- *Other Annual Giving Methods* - Annual giving does not always have to be in the form of money. Annual donations can also come in the forms of gifts-in-kind, advertising, and volunteering, among many others.

Typically, an organization will form an Annual Giving Committee to organize and lead the various annual campaigns. The committee will then divide and conquer on annual solicitations from individuals, businesses, and corporate prospects.

#### **D. Special Purpose Programs**

Special Purpose Programs solicitations are one time gifts from governments, individuals, organizations, or foundations that are given for a specific need or project. Types of campaigns include the following:

- *Major Gifts from Individuals* – This type of campaign requires extensive research on potential individual donors including financial capabilities, enthusiasm for the charitable purpose, and attraction to the particular project. In addition, the organization should create a system of recognition for the donations through public advertisement of donation, naming opportunities, or board appointment.
- *Grants* – Grants come from government agencies, foundations, or organizations who want to provide support based on extensive applications that are submitted by the organization. Grant allocations are awarded competitively, so the applications must conform to the goals and mission of the grantors. Grants can be a substantial source of operating revenues for start-up charitable organizations. A few key websites that provide essential information regarding grants are the following:
  - **Guide Star ([www.guidestar.org](http://www.guidestar.org))** – The most comprehensive source of grant information available online. Organizations or individuals seeking grants can search for potential

funderson, review historical grant activity, and evaluate past funding for similar organizations

- [www.grant.gov](http://www.grant.gov) – A website providing capabilities to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. The site hosts all application procedures including the ability to check status of the application. A charitable organization can also register for email notification of grant opportunities.
- **The Foundation Center** (<http://fdncenter.org>) – A website dedicated to collecting, organizing, and communicating information on philanthropy in the United States. The organization conducts and facilitates research on trends in the field, provides education and training on the grant-seeking process, and ensures public access to necessary information.

The grant-seeking and grant-writing process is very time intensive. Charitable organizations benefit greatly if they have a member of their staff or board who is skilled at the grant process and has a wealth of knowledge about the types of agencies and foundations that could potentially help their organization. Each application is different, as they are very specific to the organization requesting funding as well as the donor’s mission.

- **Capital Campaigns** – This type of solicitation is a comprehensive campaign targeted towards a particular purpose. Major gifts from individuals and grants are also included in capital campaigns. Typically, organizations find capital campaigns to be the most effective, cost efficient and enjoyable as board members, staff, and general supporters of the organization work together in the fundraising effort.

**\*\* N.B.** Local governments can also allocate budgetary funds to charitable organizations outside of grant contributions. Charitable organizations with similar missions or goals will typically create coalitions and solicit extra funds from the government as a whole in order to make the cause more appealing in budgeting decisions.

### ***Estate Planning***

Estate planning solicitations are gifts made to a charitable organization that will be realized in the future. This type of donation allows donors who have a history of involvement and participation in the organization to benefit the future wherewithal of the nonprofit. Types of campaigns include the following:

- *Wills and Bequests* – Charitable organizations should template simple bequest language for donors to include in their wills.
- *Pooled Income Funds* – This type of donation comes from co-mingled funds of numerous donors. The interest earnings of the fund are allocated to various charities according to the pro rate shares of each donor. Each member of the co-mingled fund is required to execute a trust agreement. Upon the death of the donors, the value of the share is removed from the fund and transferred to the charity.

- *Other estate planning gifts* –Other estate planning gifts include charitable remainder gifts and life insurance trusts.

## **E. The Campaign Follow-Up**

Many charitable organizations have found that a proper follow-up to donations is the most frustrating, and often times the most misunderstood aspect of the “Asking” process. The follow-up does not merely entail a formal “Thank You”, but also a proper receipt that is recognizable by the IRS. As mentioned over and over, the beauty of the 501(c)(3) status is the ability of the individuals, organizations, and foundations to have a tax deduction for any funds contributed throughout a fiscal year. A charitable organization must have an understanding of the information needs of the donors for the tax purposes. Creating an efficient and effective follow-up process can easily make or break a donor’s decision to contribute next year.

The IRS does not require receipts for cash donations under \$250, but a charitable organization should treat each donor’s contributions in the same manner. The consistency of the process will make the internal operations of the organization more organized, as well as create a more respectful rapport with the donor. The IRS recommends that the donor keep a record of all donations, regardless of the size. If the donor were to be audited, then the process will be simplified because of the availability of necessary receipts.

Each receipt must contain certain information about the time and amount of the donation. The following is a list of requirements that each charitable organization should include in the receipts.

- Name of charitable organization.
- Name of donor.
- Amount of donation.
- Date of donation.
- Written acknowledgement from the organization of any property or services that may have been received in return for the donation, as well as an estimate of their value.

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IRS Publication 557

Va. Code Ann. § 58.1-609.11

§ 58.1-609.11. Exemptions for nonprofit entities

FLETCHER-CYC § 79 (Charitable and benevolent organizations)

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Internal Revenue Services, [www.irs.gov](http://www.irs.gov)

<http://www.irs.gov/charities/index.html>

<http://165.176.249.145/site.cfm?alias=SUTExemption#NewFiling>

<http://www.state.va.us/>

[www.findlaw.com](http://www.findlaw.com)

Virginia Department of Taxation, [www.tax.virginia.gov/site](http://www.tax.virginia.gov/site)

David A. Pruett, CPA, Income Tax Issues Affecting Small Nonprofit Organizations, [www.vscpa.com/PR/Nonprofit/income](http://www.vscpa.com/PR/Nonprofit/income)

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