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Legal Developments Affecting Charitable Organizations and 990 Reporting

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Agenda

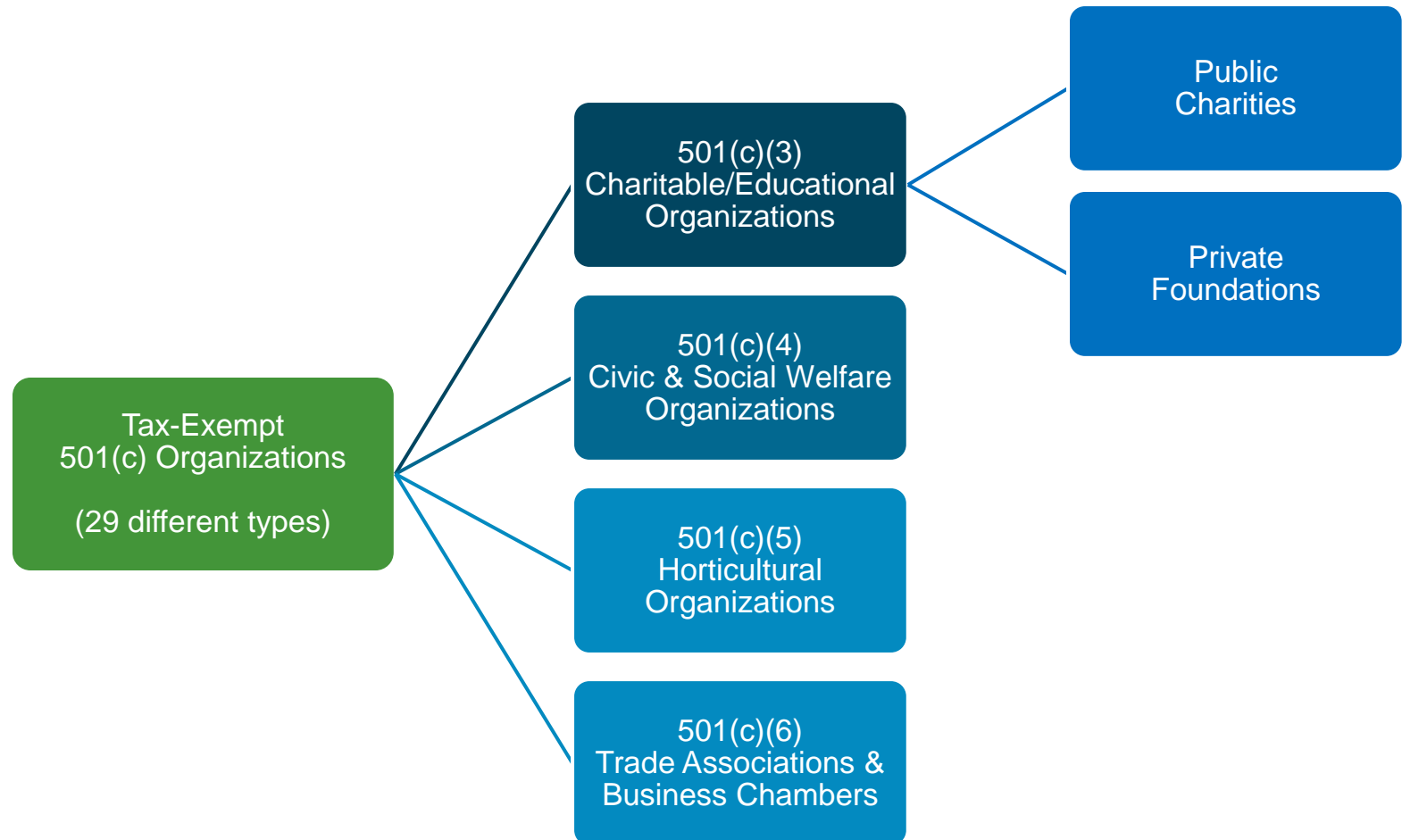
1. Overview of Landscape
2. Type III Supporting Organizations
3. Program-Related Investments (“PRIs”)
4. Public Support Tests
5. Other Moving Targets
6. Conclusion



Overview of Landscape

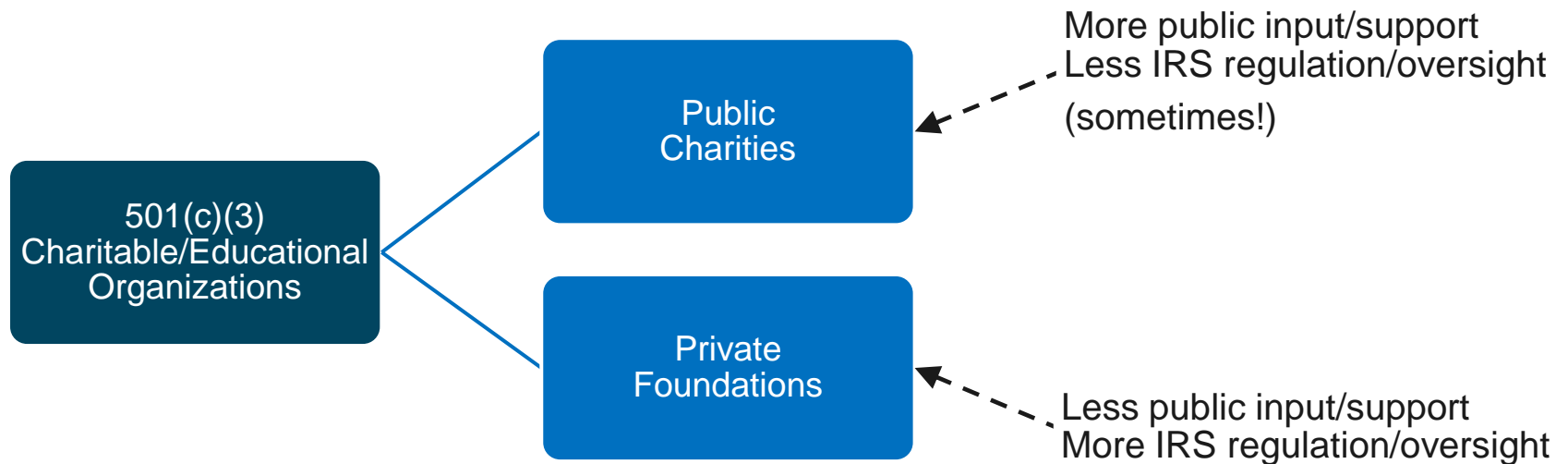


Overview of Landscape





Overview of Landscape





Overview of Landscape

■ Public Charities

- Institutional charities (e.g., churches, schools, hospitals)
- Publicly supported charities (two different tests)
- Supporting organizations

■ Private Foundations

- Non-operating foundations (e.g., grantmakers)
- Operating foundations
- Pass-thrus, pooled-income funds, split-interest trusts



Overview of Landscape

■ Reporting requirements

- Form 990: Public charities and other exempt organizations over threshold
 - Gross receipts at or over \$200K or assets at or over \$500K
- Form 990-EZ: Public charities and other exempt organizations below threshold
 - Gross receipts under \$200K and assets under \$500K
- Form 990-N: Small public charities and other exempt organizations
 - Gross receipts at or under \$50,000
- Form 990-PF: private foundations of all sizes



Agenda

1. Overview of Landscape
2. Type III Supporting Organizations
3. Program-Related Investments (“PRIs”)
4. Public Support Tests
5. Other Moving Targets
6. Conclusion



Supporting Organizations



Supporting Organizations

- **General Background**
 - Public charities under Section 509(a)(3)
 - Public charity status comes from relationship and accountability to another public charity



Supporting Organizations

- **Background and History**
 - Used as private foundation alternative
 - Avoided complications of public support tests (discussed later!)
 - But stories of abuses (especially with Type IIIs) abounded, and increased regulation ensued
 - Pension Protection Act (2006)
 - Proposed regulations (2009)
 - (Mostly) final regulations (2012)



Supporting Organizations

- **Four Supporting Organization Requirements**
 1. ***Organizational Test***: governing instrument must specify supported organization(s), and limit purposes to supporting that organization
 - Instrument cannot expressly empower other activities, or support of other organizations
 2. ***Operational Test***: must engage solely in activities that support or benefit supported organization(s)

(*Treas. Reg. 1.509(a)-4(c); 1.509(a)-4(e)*)



Supporting Organizations

- **Four Supporting Organization Requirements**
 - 3. *Relationship Test*:** supporting org must have close relationship with supported org
 - This test is basis for Type I, Type II and Type III classification
 - 4. *Disqualified Person Test*:** disqualified persons cannot directly or indirectly control supporting org
 - Disqualified persons: includes substantial contributors, but excludes foundation managers, institutional and public charities for this purpose

(Treas. Reg. 1.509(a)-4(f); I.R.C. 509(a)(3)(C))



Supporting Organizations

■ Three Classifications / Types

- **Type I:** majority of supporting organization's board appointed by supported organization
- **Type II:** common supervision/control between supporting and supported organizations
- **Type III:** supporting organization is responsive to needs of and significantly involved in operations of supported organization

(Treas. Reg. 1.509(a)-4(f)(2), -4(g)-(i))



Supporting Organizations

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.

OMB No. 1545-0047

2012

**Open to Public
Inspection**

Name of the organization

Employer identification number

- 11 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2). See **section 509(a)(3)**. Check the box that describes the type of supporting organization and complete lines 11e through 11h.
- a Type I b Type II c Type III-Functionally integrated d Type III-Non-functionally integrated



Supporting Organizations

- **Type III Supporting Organizations**
 - Needs to be “operated in connection with” its supported organization(s)
 - Least formal connection and relationship with supported organizations, so additional requirements must be met:
 - Responsiveness test
 - ***Integral part test***

(Treas. Reg. 1.509(a)-4(f)(2); 1.509(a)-4(i))



Supporting Organizations

■ Type III Supporting Organizations

- ***Responsiveness test:*** supporting org can show it is responsive to needs of supported org(s) if:
 - At least one officer or director elected or appointed by supported org;
 - At least one board member overlaps; or
 - Its officers, directors or trustees have a “close and continuous” working relationship with supporting org
 - Also, supported org must have significant voice in directing use of income/assets of supporting org

(*Treas. Reg. 1.509(a)-4(i)(3)*)



Supporting Organizations

- **Type III Supporting Organizations**
 - ***Integral part test:*** supporting org must maintain significant involvement in supported org(s) operations, and provide necessary support, by qualifying as:
 - Functionally integrated or
 - Non-functionally integrated

(Treas. Reg. 1.509(a)-4(i)(1)(iii))



Supporting Organizations

- **Why Does Classification Matter?**
 - Private foundation disincentives for grants to non-functionally integrated Type IIIs
 - Must exercise expenditure responsibility
 - Cannot count toward foundation payout requirement
 - Prohibition on excess business holdings for non-functionally integrated Type IIIs
 - Type IIIs cannot support foreign organizations

*(I.R.C. 4945(d)(4)(A)(ii); 4942(g)(4)(A);
Treas. Reg. 1.509(a)-4(i)(10))*



Supporting Organizations

- **Functionally Integrated Type III**
 - *Supporting* org must demonstrate either that:
 - Substantially all of its activities directly further the exempt purposes of the *supported* org, and which would normally be engaged by the *supported* org but for the involvement of the *supporting* org; or
 - It is the parent of each of its *supported* organization or
 - It supports a governmental organization (subject to certain requirements, still to be fleshed out)

(Treas. Reg. 1.509(a)-4(i)(4)(i)(A)-(C))



Supporting Organizations

- **Functionally Integrated Type III**
 - ***Parent:*** supporting org must:
 - Exercise substantial direction over the policies, programs and activities of the supported org and
 - Appoint or elect a majority of the officers, directors, or trustees of the supported org
 - ***Substantially all:*** new regulations do not define; facts and circumstances test

(Treas. Reg. 1.509(a)-4(i)(4)(ii)(B); 1.509(a)-4(i)(4)(iii))



Supporting Organizations

- **Functionally Integrated Type III**
 - Activities that ***“directly further”***:
 - Holding title to and managing exempt-use property
 - Directly conducting activities related to the supported org’s exempt purpose (e.g., operating food pantries for churches)
 - Activities that do not ***“directly further”***:
 - Fundraising for supported org
 - Managing / investing non-exempt use property (endowment)
 - Making grants to supported org

(Treas. Reg. 1.509(a)-4(i)(4)(ii)(C); 1.509(a)-4(i)(4)(v), Ex. 3)



Supporting Organizations

- **Non-functionally Integrated Type III**
 - Essentially, any Type III that can't meet functionally integrated requirements must meet:
 - Mandatory annual payout and
 - Attentiveness test

(Treas. Reg. 1.509(a)-4(i)(5)(i)(A))



Supporting Organizations

- **Non-functionally Integrated Type III**
 - ***Mandatory annual payout:*** supporting org must distribute the greater of:
 - 85 percent of adjusted net income or
 - 3.5 percent of the fair market value of the supporting organization's non-exempt use assets
 - Less onerous than 5 percent of non-exempt use assets (in earlier proposed regulations)
 - This portion of regulations is not final

(Treas. Reg. 1.509(a)-4T(i)(5)(ii)(B))



Supporting Organizations

- **Non-functionally Integrated Type III**
 - ***Attentiveness test:*** supporting org must distribute at least one-third of annual payout to org(s) attentive to supporting org; this requires supporting org to provide:
 - At least 10 percent of the supported org's total support;
 - Support necessary to avoid interrupting the carrying on of a particular activity or function of the supported org; or
 - A sufficient amount of a supported org's total support, based on all the facts and circumstances

(Treas. Reg. 1.509(a)-4T(i)(5)(iii))



Supporting Organizations

■ How to Report

■ Form 990, Schedule A

- Self-identify as Type I, Type II, Type III-functionally integrated or Type III non-functionally integrated
- Provide information re supported org(s)
- Provide certification re lack of prohibited control
- Check box if it has received written determination (currently available via Form 8940 process)



Supporting Organizations

11 An organization organized and operated exclusively to test for public safety; see section 509(a)(7).
 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2). See section 509(a)(3). Check the box that describes the type of supporting organization and complete lines 11e through 11h.

a Type I **b** Type II **c** Type III–Functionally integrated **d** Type III–Non-functionally integrated

e By checking this box, I certify that the organization is not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2).

f If the organization received a written determination from the IRS that it is a Type I, Type II, or Type III supporting organization, check this box

g Since August 17, 2006, has the organization accepted any gift or contribution from any of the following persons?

	Yes	No
(i) A person who directly or indirectly controls, either alone or together with persons described in (ii) and (iii) below, the governing body of the supported organization?	11g(i)	
(ii) A family member of a person described in (i) above?	11g(ii)	
(iii) A 35% controlled entity of a person described in (i) or (ii) above?	11g(iii)	

h Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1–9 above or IRC section (see instructions))	(iv) Is the organization in col. (i) listed in your governing document?		(v) Did you notify the organization in col. (i) of your support?		(vi) Is the organization in col. (i) organized in the U.S.?		(vii) Amount of monetary support
			Yes	No	Yes	No	Yes	No	
(A)									
(B)									
(C)									
(D)									
(E)									
Total									



Supporting Organizations

- **Why Does Classification Matter?**
 - Private foundation disincentives for grants to non-functionally integrated Type IIIs
 - Must exercise expenditure responsibility
 - Cannot count toward foundation payout requirement
 - Prohibition on excess business holdings for non-functionally integrated Type IIIs
 - Type IIIs cannot support foreign organizations

*(I.R.C. 4945(d)(4)(A)(ii); 4942(g)(4)(A);
Treas. Reg. 1.509(a)-4(i)(10))*



Supporting Organizations

■ What to do Next?

- Potentially reorganize as Type I or Type II
- Try to qualify as publicly supported
- Get ruling to document functional integration
 - Use Form 8940, Request for Miscellaneous Determination



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Program-Related Investments



Program-Related Investments

- **PRIs are of significant consequence and interest to private foundations**
 - Compliance with private foundation rules
 - Avoidance of related penalties
 - 990-PF includes reporting on PRIs
- **But also highly relevant to public charities**
 - Guidance on how to approach
 - 990 includes reporting on PRIs



Program-Related Investments

Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation

Note. The foundation may be able to use a copy of this return to satisfy state reporting requirements.

OMB No. 1545-0052

2012

Open to Public Inspection

For calendar year 2012 or tax year beginning _____, 2012, and ending _____, 20__

Part IX-B Summary of Program-Related Investments (see instructions)

Describe the two largest program-related investments made by the foundation during the tax year on lines 1 and 2.	Amount
1 _____ _____ _____	
2 _____ _____ _____	
All other program-related investments. See instructions. 3 _____ _____	
Total. Add lines 1 through 3 ▶	

Form **990-PF** (2012)



Program-Related Investments

Form **990**

Return of Organization Exempt From Income Tax

OMB No. 1545-0047

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

2012

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

▶ The organization may have to use a copy of this return to satisfy state reporting requirements.

Part X Balance Sheet

13	Investments—program-related. See Part IV, line 11	13
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Part IV Checklist of Required Schedules

11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? <i>If "Yes," complete Schedule D, Part VI</i>		
b	Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VII</i>		
c	Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VIII</i>		



Program-Related Investments

■ Three Elements of a PRI

1. Investment is made primarily to further charitable purposes
2. No significant purpose of the investment is to produce income
3. No lobbying or political purpose for the investment

(Treas. Reg. 53.4944-3(a)(1))



Program-Related Investments

1. Made primarily to further charitable purposes

- Investment significantly furthers the accomplishment of the foundation's charitable activities; and
- Investment would not have been made but for the relationship between the investment and the charitable activities

(Treas. Reg. 54.4944-3(a)(2)(i))



Program-Related Investments

2. No significant purpose is to produce income

- Would private investor (motivated primarily by profit) be likely to make same investment?
- *Note:* investment can qualify as PRI even if investment has produced (or could produce) significant income or capital appreciation, if other factors indicate absence of significant income purpose

(Treas. Reg. 53.4944-3(a)(2)(iii))



Program-Related Investments

3. No lobbying or political purpose

- Ties in with private foundation restrictions on these activities

*(Treas. Reg. 53.4944-3(a)(2)(iv);
see generally 53.4945-2 and -3)*



Program-Related Investments

- **Private Foundation Rules and PRIs**
 - Imprudent, risky investments are prohibited
 - PRIs are exempt
 - Excess holdings in a business enterprise are prohibited (> 20 percent, less the holdings of insiders)
 - PRIs are exempt

*(I.R.C. 4944, 4943;
Treas. Reg. 53.4944-3(a), 53.4943-10(b))*



Program-Related Investments

- **Private Foundation Rules and PRIs**
 - Annual payout equal to 5 percent of value of investments is required
 - PRIs count toward payout requirement, and are not included in investment value
 - All non-charitable expenditures are prohibited
 - PRIs are subject to “expenditure responsibility,” and are subject to special reporting requirements

*(I.R.C. 4942, 4945;
Treas. Reg. 53.4942(a)-2(c)(3)(ii)(d), -3(a)(2)(i);
Treas. Reg. 53.4945-5(b)(4))*



Program-Related Investments

■ Key Investment Terms

- *Socially responsible investments*: motivated by return on investment, and general social/ethical objectives
- *Mission investments*: motivated by return on investment, and specific link to organization's mission
- *Program-related investments*: motivated primarily by organization's charitable purposes, with no significant investment motive (*more on this later!*)



Program-Related Investments

Socially Responsible/
Mission Investments



Program-Related
Investments





Program-Related Investments

■ **Brief History**

- PRIs have been recognized as appropriate investments for private foundations since 1969
- PRIs have not been widely used due to lack of clarity and potential for penalties
- However, PRIs have been used since early on by more established private foundations, e.g., Ford Foundation



Program-Related Investments

■ Renewed Focus

- Growing in popularity with rise of social enterprise
- Gaining momentum as philanthropy shifts from traditional grant-making to more innovative methods
- Both investor and investee win with PRIs in a struggling economy
- PRI purposes wide-ranging (housing, media, environment, child care)



Program-Related Investments

- **Some Past Examples Recognized by IRS**
 - Below-market loan to small business in deteriorated urban area, owned by economically disadvantaged minorities
 - Below-market loan to publicly traded, profitable company to build new factory in deteriorated neighborhood

(Treas. Reg. 53.4944-3(b) Examples 1 and 5)



Program-Related Investments

- **Concerns with Past Examples**
 - *Nature of investment:* focus on below market loans and leases, what about other types?
 - *Nature of activities:* focus on urban blight and economically disadvantaged people, what about other charitable activities?



Program-Related Investments

- **New Proposed IRS Regulations**
 - Foreign activities can be considered charitable
 - PRIs are not limited to situations involving urban blight or economically disadvantaged groups
 - PRI recipients need not be in charitable class, if they are instruments for furthering charitable purpose
 - PRIs can be made to variety of recipients, including individuals, nonprofits, for-profit businesses
(Notice of Proposed Rulemaking, 77 Fed. Reg. 23,429 (4.19.12))



Program-Related Investments

■ **New Proposed IRS Examples**

- Include vehicles such as equity investments, below-market loans, combinations, guarantees, deposits
- Involve investments made to 501(c)(4), foreign companies, individuals, child care organizations
- Include purposes such as environmental, arts, educational/training, assisting impoverished

Can be relied on although not yet final!

(Prop. Reg. 53.4944-3(b), Examples 11 through 19)



Program-Related Investments

■ Why Foundations Use Them

- Help prove credit-worthiness of organization, and open up additional capital
- Help build management expertise
- Shift grantmaking goals and efficiency of process
- Extend financial resources
- As a “first step” in mission investing



Program-Related Investments

■ How to Report

■ Private Foundations, Form 990-PF

- Part I, Line 11, columns (a) and (b): report PRI income
- Part II, Line 15: report PRIs
- Part IX-B: description of two largest PRIs made during tax year, as well as other PRIs
- Part XII, line 1b: total from Part IX-B as qualifying distributions
- Don't include in Part X, Minimum Investment Return



Program-Related Investments

■ How to Report

- Public Charities, Form 990
 - Part VIII, Line 2: include PRI income as program service revenue
 - Part X, Line 13: list beginning and end-year value of PRIs
 - Schedule D, Part VIII: complete if value of PRIs is more than 5 percent of total asset value



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Public Support Tests



Public Support Tests

■ Two Alternative Tests

- Section 509(a)(1)/170(b)(1)(A)(vi) test
 - Organizations that rely primarily on gifts, grants and contributions
- Section 509(a)(2) test
 - Organizations that rely largely on exempt function income, with some gifts, grants and contributions



Public Support Tests

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.

OMB No. 1545-0047

2012

**Open to Public
Inspection**

Name of the organization

Employer identification number

- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 8 A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 9 An organization that normally receives: (1) more than 33 $\frac{1}{3}$ % of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 $\frac{1}{3}$ % of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2)**. (Complete Part III.)



Public Support Tests

- **Two Alternative Tests**
 - Both tests use rolling five-year period
 - Current tax year plus four preceding tax years
 - Special rules apply for new organizations
 - Both tests use public support fraction
 - Numerator is good/public support
 - Denominator is total support
 - But tests define support very differently



Public Support Tests

■ Background and History

- Until 2008, test was calculated for current year using four past years' support data
 - Only historical data used, but a bit less cushion
- 2008 temporary regulations presented changes
 - Five-year period
 - Elimination of advance ruling process
- Regulations became effective in late 2011



Public Support Tests

■ New Organizations

- No longer apply for advance ruling
- Instead, demonstrate likelihood of public support on Form 1023
- Treated as publicly supported for first five years
 - Must demonstrate public support in year 6, using either years 1 through 5 or 2 through 6
 - If organization fails, no retroactive excise taxes; treated as private foundation at beginning of year 6 year only for purposes of sections 507,4940 and 6033

(Treas. Reg. 1.170A-9(f)(4)(v), (vii)(A))



Public Support Tests

■ Existing Organizations

- Meeting either test means organization considered publicly supported for current and next tax years
- Failure to meet either test for two consecutive years means conversion to private foundation status
 - Organization could try to qualify under other section (e.g., supporting organization)
 - Final regs clarify that organization will be treated as private foundation at beginning of second year only for purposes of sections 507, 4940 and 6033

(Treas. Reg. 1.170A-9(f)(4)(i), (vii)(B))



Public Support Tests

- **Section 509(a)(1) / 170(b)(1)(A)(vi) test**
 - Normally must get substantial support from governmental units or the general public
 - Normally: rolling five-year measuring period
 - Substantial support: 33 1/3 percent test or 10 percent facts-and circumstances test
 - General public: essentially, certain contributions won't be counted in full as public support

(Treas. Reg. 1.170A-9(f))



Public Support Tests

- **Section 509(a)(1) / 170(b)(1)(A)(vi) test**
 - Good or public support (numerator)
 - Grants from government and other 509(a)(1) / 170(b)(1)(A)(vi) organizations
 - Other grants to the extent they don't exceed 2 percent of total support for testing period
 - Total support (denominator)
 - All gifts, grants and contributions
 - Investment income (other than capital gains)
 - Net income from unrelated business activities
- (Treas. Reg. 1.170A-9(f)(6)(i))*



Public Support Tests

- **Section 509(a)(1) / 170(b)(1)(A)(vi) test**
 - Excluded from both numerator and denominator
 - Unusual grants
 - In-kind contributions of services
 - ***Exempt function income (can include dues or government payments in certain cases)***

(Treas. Reg. 1.170A-9(f)(6)(ii), (7))



Public Support Tests

- **Section 509(a)(1) / 170(b)(1)(A)(vi) test**
 - 33 1/3 percent test
 - Organization that meets this test for tax year can rest easy
 - No discretion on part of IRS
 - 10 percent facts-and circumstances test
 - This test involves discretion on part of IRS
 - Requires continuous, bona fide fundraising program
 - Must otherwise demonstrate it is publicly supported (e.g., broad sources of support, representative board, services)
- (Treas. Reg. 1.170A-9(f)(3))*



Public Support Tests

- **Section 509(a)(2) test**
 - Normally must get more than one-third of total support from combination of gifts, grants and contributions and exempt function income
 - No more than one-third of total support normally can come from gross investment income and unrelated business taxable income

(Treas. Reg. 1.509(a)-3(a)(1)-(3))



Public Support Tests

- **Section 509(a)(2) test**
 - Good or public support (numerator)
 - Grants from government, institutional charities and 509(a)(1) / 170(b)(1)(A)(vi) organizations
 - Other grants to the extent they aren't from substantial contributors (someone whose aggregated contributions exceed \$5,000, if such amount also exceeds 2 percent of all contributions since exception)
 - Gross receipts from any one source to the extent they don't exceed \$5,000 or, if larger, 1 percent of total support for year

(I.R.C. 509(a)(2); Treas. Reg. 1.509(a)-3(b)(1), -3(f)(1))



Public Support Tests

■ Section 509(a)(2) test

- Total support (denominator)
 - All gifts, grants and contributions
 - Investment income (other than capital gains)
 - Net income from unrelated business activities
 - All exempt function income

(Treas. Reg. 1.509(a)-3(a))



Public Support Tests

- **Section 509(a)(2) test**
 - Excluded from both numerator and denominator
 - Unusual grants
 - In-kind contributions of services

(Treas. Reg. 1.509(a)-3(c)(3))



Public Support Tests

■ Important Test Distinctions

- Tossed-out public support
 - 509(a)(1) / 170(b)(1)(A)(vi) test 2 percent limitation is ongoing
 - 509(a)(2) test substantial contributor limitation is permanent
- Public support threshold
 - No 10 percent facts-and-circumstances under 509(a)(2)
- Exempt function income
 - Cannot use 509(a)(1) / 170(b)(1)(A)(vi) test if almost all support is exempt function income (anti-abuse rule)

*(Treas. Reg. 1.170A-9(f)(1), -9(f)(6)(i), -9(f)(7)(iii);
I.R.C. 509(a)(2), Treas. Reg. 1.509(a)-3(a)(2))*



Public Support Tests

■ How to Report

■ Schedule A, Part I

- Check box as exempt under 170(b)(1)(A)(vi) or 509(a)(2)

■ Schedule A, Part II (170(b)(1)(A)(vi))

- Section A, Public Support: Include gifts, grants and contributions on line 1, subject to some toss-out on line 5
- Section B, Total Support: line 1 plus net unrelated business income, gross passive income, other income
- Section C, Computation: after first five years, organization must compute public support percentage



Public Support Tests

■ How to Report

- Schedule A, Part III (509(a)(2))
 - Section A, Public Support: include gifts, grants and contributions and gross receipts (total on line 6), subject to some toss-out on lines 7a and 7b
 - Section B, Total Support: Line 6 plus gross passive income, UBTI, net unrelated business income, other income
 - Section C, Computation: after first five years, organization must compute public support percentage
 - Section D, Investment income percentage: after first five years, also must compute this percentage



Public Support Tests

- **Selecting and Working the Tests**
 - Organizations could potentially meet both, and can switch between the two (subject to anti-abuse rule)
 - You don't necessarily have to go with section listed on determination letter, but give it some thought
 - Be aware of substantial contributor limitation under 509(a)(2)
 - **Red flag:** Organization receiving grants and using 509(a)(2) test, yet showing no exclusions on line 7a



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Other Moving Targets



Donor-Advised Funds

- **Supplementary Regulatory Guidance**
 - Regulations have been on priority list for several years; probably won't come this year
 - Pension Protection Act (2006) put DAF definition and excise tax regime in place, but still many unanswered questions
 - “Separately identified by reference to contributions of donor”
 - Prohibition on distributions to individuals cover payments to vendors?

(I.R.C. 4966)



Political Activity

- **Guidance on Measuring Primary Activity**
 - Hot-button issue; guidance for 501(c)(4) organizations added near top of EO Priority List for 2013-14
 - IRS already introduced expedited review process for new organizations
 - Could result in changes for reporting
 - Form 990, Schedule C



Charitable Hospitals

- **Regulations related to Section 501(r)**
 - 501(c)(3) hospitals must meet rules to keep status
 - Community health needs assessment: regulations proposed in April 2013 that specify what needs to be in CHNA, and flesh out definitions
 - Excise tax: charitable hospital liable for \$50,000 excise tax for failing to meet CHNA requirement must file Form 4720 (temporary and proposed regulation released in August 2013)

*(I.R.C. 501(r), 4959; Treas. Reg. 53.6011-1T, 53.6071-1T;
Proposed Rulemaking (04.05.13))*



Charitable Hospitals

- **Regulations related to Section 501(r)**
 - 501(c)(3) hospitals must meet rules to keep status
 - Financial assistance and emergency medical care policies, limitation on collections, and limitation on charges: regulations proposed in June 2012
- **Form 990 Reporting**
 - Schedule H
 - Part V, Lines 1-8c no longer optional (relating to CHNA)
 - Part V, Lines 9-22 address other requirements

(I.R.C. 501(r); Proposed Rulemaking (06.26.12))



Agenda

1. Overview of Landscape
2. Type III Supporting Organizations
3. Program-Related Investments (“PRIs”)
4. Public Support Tests
5. Other Moving Targets
6. Conclusion



Conclusion



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