



**Good Governance Makes
Good Sense for
Exempt Organizations**



Preliminaries

- Presentation information is current, but is not official guidance.
- This program is being recorded.
- You must have registered on website to receive a certificate of completion for Continuing Education credits.
- No live Q&A. Send your questions to email address tege.eo.ceo@irs.gov.
- Use slide deck to follow presenters.



Today's Speakers

- **Cheryl Teser** is a senior program analyst in the Compliance Strategies Unit of Exempt Organizations. She received her CPA certificate in Nebraska in 1998 and earned a BS degree from the University of Nebraska.
- **Peter Holiat** is a tax law specialist with the Exempt Organizations, Ruling and Agreements office in Washington D.C. He began his IRS career in 2007. Prior to joining the IRS, Peter was an attorney in private practice in New York City.



Topics

- Public trust is a charity's greatest asset
- Importance of having knowledgeable/engaged governing boards
- Effective self-policing policies
- Avoiding conflicts of interest
- Importance of implementing a code of ethics policy
- Financial statements and Form 990 reporting
- What you need to know about Unrelated Business Taxable Income (UBIT)
- Useful IRS resources for your organization



Public Trust

- The concept of “public trust” originated around the same time as the beginning of our democracy. It is the idea the public is the true power of any society and that their trust must be respected by public officials
- “Trust” and “charitable giving” are inseparable
- The IRS is focused on exempt organizations practicing good governance



What is Good Governance?

- Just as there is no single model for a charity, there is no single model for good governance. Instead, there are practices charities should consider when looking for an effective governance structure.
- The IRS promotes good governance practices to the tax-exempt community. A well-governed organization is more likely to comply with the tax laws.



Sarbanes-Oxley Act

- Two provisions of the Sarbanes-Oxley Act apply to non-profit organizations:
 - Whistle blower protection
 - Document destruction
- California enacted the California Nonprofit Integrity Act of 2004. It applies to foreign (out-of-state) charitable corporations that do business in California, or hold property in California for charitable purposes.



Governance & Form 990

Governance questions added to the
2008 Form 990

Information sought:

- Composition and independence of the governing body
- Governance policies and procedures
- How governance and financial information is made available to the public



Organizational Documents

- A tax exempt organization must have organizational documents that provide the framework for its governance and management.
- State law often prescribes the type of and content of organizational documents.
- The IRS reviews these documents in applications for exemption.



Organizational Needs

- Knowledge
- Size
- Independence
- Mission Statement



Internal Controls

- Segregation of duties
- Personnel
- Assets
- Control
- Execution of transactions
- Recordkeeping



Recordkeeping

Good records allow organizations to track expenses

- How much did each activity cost?
- How did your organization spend its money?

Tracking volunteers' hours allow organizations to:

- Know who did what
- How long it took
- Which programs or activities were successful
- Formalize lessons learned
- Verify items on the IRS and state returns



Due Diligence

Acting consistently with a duty of care:

- Care that ordinary prudent person in like circumstances would exercise
- In good faith
- In an organization's best interest:
 - Reviewing and approving strategic and operating plans
 - Evaluating senior leadership performance
 - Evaluating and approving senior leadership compensation
 - Overseeing the financial reporting and audit process
 - Overseeing legal compliance



Duty of Loyalty – Conflict of Interest

Conflict of interest policy should:

- Require officers/directors/employees act for the benefit of the charity without regard for personal interest
- Include written procedures for determining whether a relationship, financial interest or business affiliation is or could be a conflict of interest
- Prescribe a course of action in the event a conflict is identified
- Require annual disclosure of any known interest in an entity that transacts business with charity



Private Inurement

- Applies to insiders of the organization
 - officers, Board members, key employees
- Examples: Payment of unreasonable compensation to insiders, the transfer of property to insiders for less than fair market value, or business transactions that provide greater benefit to insiders than to the charity.
- Prohibition against inurement to insiders is absolute.
- Any amount of inurement is grounds for loss of tax-exempt status.
- An insider involved in inurement—and any managers that approved the transaction--may be subject to an excise tax.

Good Governance Makes Good Sense for Exempt Organizations



Inurement/Private Benefit

A “private benefit” to someone who is not an insider must be substantial in order for the organization’s exempt status to be in jeopardy. Below are two situations to contrast when private benefit to non-insiders is insubstantial versus substantial:

1. A non-profit develops a community center in a residential neighborhood. Although some homes will be very close in proximity, the community center is open to the public and therefore provides insubstantial, incidental private benefit to the surrounding homes.
2. Facts similar to the above example, except the residential neighborhood is exclusive and private; only residents of the neighborhood will have access to the community center. This is an example of a substantial private benefit that is prohibited.



Code of Ethics/Whistleblower Policy

- The board should adopt and regularly evaluate code of ethics reflecting behavior it wants to encourage and discourage
- A code of ethics can be used to communicate to all personnel a strong culture of legal compliance and ethical integrity
- Whistleblower policy: procedures for employees to report in confidence suspected improprieties



Compensation Practices

- Establish reasonable compensation
- Only independent board members should make decisions involving compensation
 - understand steps to establish a presumption that compensation is reasonable (IRC 4958)
- Keep records of how compensation was determined
- Establish procedures to properly classify and distinguish between employees and independent contractors



Transparency

- Consider making information about organization's mission, activities, and finances publicly available.
- Ensure charity's annual reports, Form 990s, financial statements, and board meeting minutes are complete and accurate.
 - Forms 990 are publicly disclosable



Disclosure Statement

- A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution in excess of \$75.
- A *quid pro quo contribution* is a payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity.
- Example: donor gives charity \$100 and receives a \$40 concert ticket
 - report \$60 contribution on disclosure statement



Disclosure Statement

- Inform the donor the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money contributed by the donor over the value of goods or services provided by the charity.
- Provide the donor with a good faith estimate of the value of the goods or services that the donor received.



When Disclosure Statement is not required

- The goods or services given to a donor meet the standards for *insubstantial value* set out in Revenue Procedure 90-12, 1990-1 C.B. 471, and Revenue Procedure 92-49, 1992-1 C.B. 987 (as updated)
- No donative element involved
- Only an intangible religious benefit provided donor
 - Intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes



Disclosure Statement (penalty)

- \$10 per contribution, not to exceed \$5,000
- Charity can avoid the penalty if it can show failure was due to reasonable cause.
- Donor must obtain and keep a bank record or a written communication.
 - Bank records include bank or credit union statements, canceled checks, or credit card statements.
 - Donor prepared written records are not valid.



Payroll Deduction

Taxpayers who claim charitable contributions made by payroll deductions can satisfy the recordkeeping requirement if the donor has:

- A pay stub, W-2, or other document furnished by the employer that states the amount withheld for payment to charity.
- A pledge card other document prepared by or at the direction of the charity that shows the name of a donee.



Written Acknowledgement

- Donor claiming a \$250-plus deduction must keep a contemporaneous written acknowledgment.
- Written acknowledgment must be obtained no later than the date the donor files the return.
- Written acknowledgment must state whether the donee provides any goods or services in consideration for the contribution.
- Donor is responsible for requesting and obtaining the written acknowledgement.
- For more information, see Publication 1771, *Charitable Organizations: Substantiation and Disclosure Requirements*.



Written Acknowledgement (more info)

- The contemporaneous written acknowledgment may be contained in the same document as the written communication from the donee.
- Donor must obtain a qualified appraiser for claimed contributions more than \$5,000.
- For appraisals prepared in connection with returns or submissions, see Notice 2006-96.
- Household items and clothing contributed to charity must be in at least good condition.



Financial Statements & Form 990

- Charities should use professionals to prepare financial statements.
- The board may establish an independent audit committee to select a certified public accountant to conduct an audit.
- Organizations that file Form 990 will find that Part XII, Line 2, asks whether the organization's financial statements were complied or reviewed by an independent accountant.



Form 990-Series Filing Requirements

Who is required to file?

- Most 501(c) organizations are required to file a Form 990-series return annually.
- Failure to file a required Form 990, Form 990-EZ, or Form 990-N for three consecutive years will result in automatic revocation of the organization's federal tax-exemption.



Exceptions to Rule

- Churches, associations of churches, and integrated auxiliaries of churches do not have to file the Forms 990, 990-EZ or 990-N
- They must file Form 990-T to report unrelated business income if they have over \$1K of gross UBI in a given tax year.
- Form 990 and 990-EZ instructions list all the exceptions to Form 990-series filing requirements.



990-N (e-Postcard)

Filing is easy

- Obtain a password on IRS.gov

Provide basic information:

- Legal name
- Address
- Employer Identification Number
- Web site address (if any)
- Principal officer's name and address
- Confirmation the organization's annual gross receipts are normally \$50,000 or less



Form 990 (Part VI)

- **Section A** asks question about the governing body composition, director independence, and insider transactions with one another and the organization.
- **Section B** asks questions about written policies and procedures regarding conflict of interest, record retention, whistleblowing, compensation, and joint ventures.
- **Section C** asks questions about disclosure of the organization's Form 1023/1024, Forms 990 or 990-EZ, and other financial and governance information.



Unrelated Business Taxable Income

- If an exempt organization regularly carries on a trade or business not substantially related to its exempt purpose, it may be subject to tax on its income from that unrelated trade or business.
- All tax-exempt organizations with over \$1,000 of gross unrelated business income ("UBI") in a tax year must file Form 990-T, in addition to their Form 990 or Form 990-EZ, and may be liable for UBI tax.
- UBI, if substantial, will jeopardize exempt status.




Resources

- **Publication 526, *Charitable Contributions*,**
(www.irs.gov/pub/irs-pdf/p526.pdf)
- **Publication 1771, *Charitable Organizations: Substantiation and Disclosure Requirements*,**
(www.irs.gov/pub/irs-pdf/p1771.pdf)
- **Publication 598, *Tax on Unrelated Business Income of Exempt Organization***
(www.irs.gov/pub/irs-pdf/p598.pdf)




IRS Website





Subscriptions ▾ Language ▾ Information For... ▾


Search [Advanced](#)

Filing Payments Refunds Credits & Deductions News & Events Forms & Pubs Help & Resources for Tax Pros

**File Your Tax Return**

**Get Your Refund Status**

**Pay Your Tax Bill**

**IRS.gov En Español**

Forms and Pubs

- 1040 1040EZ
- 2290 2848
- 341 Pub 15
- SS-4 W-4
- 4506-T W-9
- More ...

Hot Topics

- Renew or Obtain a PTIN for 2014
- About Your 1099-K
- Pay Your Tax Bill
- Earned Income Tax Credit
- Affordable Care Act Tax Provisions
- More ...

Tools

- Request an Electronic Filing PIN
- Order a Return or Account Transcript
- Use the Interactive Tax Assistant
- Apply for an EIN Online
- First Time Homebuyer Credit Look-up
- More ...

Filing & Payment

where's **refund?**

freefile


e-file

EFTPS

News

- 2014 PTIN Renewal Period Underway
- Standard Mileage Rates for 2014
- Legal Same-Sex Marriages Recognized For Federal Tax Purposes
- More ...

Get Ready for Filing Season Scams Help for Tax Exempts Identity Theft Premium Tax Credit



IRS Warns of Telephone Scam

Consumers are warned about a phone scam targeting taxpayers, including recent immigrants.

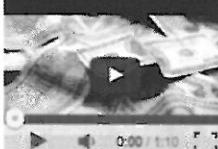
IRS Advierte de Estafa Telefónica

Una estafa telefónica está dirigida a los contribuyentes, incluyendo nuevos inmigrantes.

Schemes Using the IRS Name


Beware of schemes that use the IRS name, logo or website clone to gain access to your information.

Social Media



0:00 / 1:10

Choosing a Tax Preparer



34



Subscriptions Language Information For...

Search

Advanced

Filing Payments Refunds Credits & Deductions News & Events Forms & Pubs Help & Resources for Tax Pros

Charities & Non-Profits

Charitable Organizations
Churches & Religious Organizations
Political Organizations
Private Foundations
Other Non-Profits
Contributors

Charities & Non-Profits Topics

- A-Z Index
- Search for Charities
- Calendar of Events
- Charity and Nonprofit Audits
- Free e-Newsletter
- Online Training
- Life Cycle

Tax Information for Charities & Other Non-Profits

How to Apply to Be Tax-Exempt

Information about how to apply for IRS recognition of tax-exempt status.

Annual Reporting & Filing

990-series forms, requirements, and filing tips

Revoked? Reinstated? Learn More

Information about the automatic revocation process and how to be reinstated.

EO Select Check

Search for a tax-exempt's status.

Education, Workshops, Seminars

IRS programs and materials for non-profit organizations.

How to Stay Exempt

Resources for tax-exempt nonprofit organizations.

StayExempt.IRS.gov

Tax basics for exempt organizations

About Us

General information and how to contact us.



News

- › Proposed 501(c)(4) Guidance
- › IRS Warns Consumers of Possible Scams Relating to Relief of Typhoon Victims
- › Charting Path Forward - August 24 Update
- › Streamlined Option for Some (c)(4)s



How to Stay Exempt

Sign up for a free phone forum

Reserve Your Spot





A-Z Site Index

Filing Payments Refunds Credits & Deductions News & Events Forms & Publications Help & Resources for Tax

Charitable Organizations

Churches & Religious Organizations

Political Organizations

Private Foundations

Other Non-Profits

Contributors

Charities & Non-Profits Topics

- A-Z Index
- Search for Charities
- Calendar of Events
- Charity and Nonprofit Audits
- Free e-Newsletter
- Online Training
- Life Cycle

Charities and Nonprofits A-Z Site Index



(A-E)	(F-J)	(K-O)	(P-T)	(U-Z)
-------	-------	-------	-------	-------

A

- [Abusive Tax Avoidance Transactions](#)
- [Academic Institutions Initiative](#)
- [Accountable Care Organizations \(ACOs\) and the Medicare Shared Savings Program \(MSSP\)](#)
- [Action Organizations](#)
- [Advance Approval of Grantmaking Procedures](#)
- [Advance Ruling Process Elimination](#)
- [Advisory Committee on Tax-Exempt and Government Entities \(ACT\) Records](#)
- [Affirmation Letters](#)
- [Affordable Care Act of 2010 \(ACA\)](#)
 - [Affordable Care Act Tax Provisions](#)
 - [Affordable Care Act Information for Exempt Organizations](#)
 - [New Requirements for 501\(c\)\(3\) Hospitals](#)
 - [News Releases, Multimedia, Published Guidance](#)
 - [Small Business Health Care Tax Credit](#)
- [Agricultural and Horticultural Organizations - 501\(c\)\(5\)](#)
- [Annual Electronic Filing Requirement of Small Exempt Organizations \(ePostcard\) see e-Postcard](#)

Good Governance Makes Good Sense for Exempt Organizations



EO Select Check

Filing Payments Refunds Credits & Deductions News & Events Forms & Pubs Help & Resources for

Charitable Organizations

Churches & Religious Organizations

Political Organizations

Private Foundations

Other Non-Profits

Contributors

EO Select Check



Exempt Organizations Select Check is an on-line search tool that allows users to search for and select an exempt organization and check certain information about its federal tax status and filings. It consolidates three former search sites into one, providing expanded search capability and a more efficient way to search for organizations that:

- Are eligible to receive tax-deductible charitable contributions (Publication 78 data). Users may rely on this list in determining deductibility of their contributions (just as they did when Publication 78 was a separate electronic publication rather than part of Select Check).
Updated data posting date: 12-09-2013
- Have had their tax-exempt status automatically revoked under the law because they have not filed Form 990 series returns or notices annually as required for three consecutive years (Auto-Revocation List).
Updated data posting date: 12-09-2013
- Have filed a Form 990-N (e-Postcard) annual electronic notice. (Most small exempt organizations whose annual gross receipts are normally \$50,000 or less are required to electronically submit Form 990-N, unless they choose instead to file a completed Form 990 or Form 990-EZ.)
Updated data posting date: 12-16-2013

[A tip for organizations and donors about the timing of data updates.](#)

In addition to searching for a particular organization, users may download a complete list of each of the three types of organizations through *Exempt Organizations Select Check*.



EO Select Check

Exempt Organizations Select Check

[Exempt Organizations Select Check Home](#)

Click on one of the buttons below to search for:

1. Organizations eligible to receive tax-deductible contributions (Pub 78 data),
2. Organizations whose federal tax exemption was automatically revoked for not filing a Form 990-series return or notice for three consecutive years, or
3. Form 990-N (e-Postcard) filers and filings.

Limit search to organizations that (select only one):

☐ Are eligible to receive tax-deductible contributions ☐ Were automatically revoked ☐ Have filed Form 990-N (e-Postcard)

Note: To search for other information on the IRS website, please use the site search located on the top right of your screen.



Calendar of Events

Calendar of Events



Upcoming Events

IRS Exempt Organizations offers specialized education programs to help exempt organizations understand their tax responsibilities. The list below provides information about events on exempt organizations topics, and links to detailed information, including registration websites, for scheduled programs.

[Webinars](#) - EO tax law programs from your computer

[Phone forums](#) - Free phone forums featuring IRS employees discussing exempt organizations topics.

[Workshops](#) - Small and Medium-Sized Exempt Organizations - face-to-face programs on exempt organizations tax issues

[Nationwide Tax Forums](#) - the latest word from IRS leadership and other experts in the exempt organizations tax law field



Charity and Nonprofit Audits

Charity and Nonprofit Audits



This web page will explain the IRS audit process for charities and other nonprofit organizations. IRS Exempt Organizations is continuously exploring how to improve our service to charities and other nonprofit organizations, and we hope you will find the information on this page useful.

You've probably reached this page because your charity or other nonprofit organization received a letter or phone call from IRS [Exempt Organizations \(EO\) Examinations](#) saying it had been selected for a review of its returns. The type of review is one of the following:

- **Audits:** The IRS conducts two types of audits—
 - **Field audit (or examination):** If the initial contact letter sets up an appointment for an IRS agent to visit the organization's premises, the IRS is conducting a field audit.
 - **Office/correspondence audit (or examination):** If the letter asks you to deliver documents to an IRS office by mail, the IRS is conducting a correspondence audit.
- **Non-audits:** If the letter indicates the IRS is conducting a [compliance check](#), then you're not being audited.

Note: The IRS also sometimes asks organizations to complete questionnaires to help us better understand how organizations satisfy federal tax law requirements. Neither compliance checks nor compliance check questionnaires are audits.

Organizations are [selected for reviews](#) for a variety of reasons, and the [scope of the audit or compliance check](#) will vary based on the type of review.

Good Governance Makes Sense for Exempt Organizations



EO Update (Free electronic newsletter)

Current Edition of Exempt Organizations Update



EO Update is a periodic newsletter with information for tax-exempt organizations and tax practitioners - attorneys, accountants, and others - who represent them, from Exempt Organizations (Tax-Exempt and Government Entities) at the IRS.

Issue	Highlights	Release Date
<u>2013-25</u>	<ol style="list-style-type: none">1. IRS to employers: Hire veterans by December 31 and save on taxes2. 2014 standard mileage rates for business, medical and moving announced3. Register for the phone forum: ABCs of charitable contributions for 501(c)(3) organizations4. Copies of scanned EO returns available5. Don't fall for charity scams following disasters	12/16/2013

Good Governance Makes Sense for Exempt Organizations



Stay Exempt



IRS Stay Exempt Tax Basics for Exempt Organizations

[Home](#) [Starting Out](#) [Existing Organizations](#) [In-depth Topics](#) [Resource Library](#)

Welcome to Stay Exempt

an IRS site created especially
for 501(c)(3) organizations

How to apply for
tax-exempt status

[Starting Out](#)

Maintaining your
tax-exempt status

[Existing Organizations](#)

Expand your exempt
organization knowledge

[In-depth Topics](#)

News

Stay Exempt News

- We've updated two courses, [Starting for 501\(c\)\(3\) Status](#) and [Maintaining Tax-Exempt Status](#).





IRS Video Portal

IRS Video 

Individuals

Businesses

Tax Professionals

Government's

Non-Profits

Español

TOPIC AREAS

- ▶ Churches
- ▶ Disability Awareness
- ▶ Disaster Information
- ▶ Filing Returns
- ▶ Fundraising & Donations
- ▶ Gaming
- ▶ Help & Resources
- ▶ International Activities
- ▶ New Non-Profits
- ▶ State Tuition Orgs

Information for Non-Profits

Use the buttons on the left to view all presentations in a specific category



Good Governance Makes Good Sense for Exempt Organizations



Exempt Organizations email

tege.eo.ceo@irs.gov