

**DESCRIPTION OF PRESENT LAW RELATING TO SECTION 501(C)(3)  
ORGANIZATIONS AND SUMMARY OF SECTION 501(C)(3)-RELATED  
PROVISIONS OF THE PENSION PROTECTION ACT OF 2006 AND  
PROPOSED LEGISLATIVE PROPOSALS**

Scheduled for a Public Hearing  
Before the  
HOUSE COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT  
on July 24, 2007

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The House Committee on Ways and Means, Subcommittee on Oversight, has scheduled a public hearing for July 24, 2007, regarding an overview of tax-exempt charitable organizations. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a brief description of present law provisions relating to organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”), and provides a summary description of the section 501(c)(3) organization-related provisions of the Pension Protection Act of 2006 and related proposed legislative proposals.

In general, tax-exempt status is available under the Code to a wide variety of organizations. The list of organizations under section 501(c) alone covers more than 28 types of tax-exempt organizations, including instrumentalities of the Federal government, title holding companies, social clubs, fraternal benefit organizations, benevolent life insurance associations, cemetery companies, credit unions, and veterans’ organizations. Exemptions under other Code provisions also are provided for qualified pension plans, apostolic and religious organizations, certain farmers’ cooperatives, and political organizations, among others. The chart in Part III of this document lists each type of tax-exempt organization described in section 501(c), provides general information about tax treatment, and indicates the number of each type of organization in fiscal year 2006.

For the tax year 2003, over 263,000 section 501(c)(3) organizations (not including churches, private foundations, or small organizations) filed returns with the Internal Revenue Service. These organizations held \$1.9 trillion in assets and reported \$1.1 trillion in revenues, 70 percent of which came from program service revenue.<sup>2</sup> For the tax year 2003, over 76,000 private foundations filed returns, and held almost \$475 billion in assets.<sup>3</sup>

Organizations described in section 501(c)(3) constitute the bulk of the tax-exempt sector. Other numerous exempt organizations filing returns for 2003 include social welfare organizations (section 501(c)(4) – over 25,000 returns), labor, agricultural, and horticultural organizations (section 501(c)(5) – over 19,000 returns), trade associations (section 501(c)(6) over 30,000 returns), and social clubs (section 501(c)(7) – over 20,000 returns). Among section 501(c)(3) organizations not including churches or private foundations, the largest categories of organizations are hospitals and post-secondary educational organizations. In 2004, hospitals held 29 percent of total assets and collected 42 percent of total revenues in the charitable sector. Colleges and universities held 21 percent of the total assets and collected 12 percent of total

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of Present Law Relating to Section 501(c)(3) Organizations and Summary of Section 501(c)(3)-Related Provisions of the Pension Protection Act of 2006 and Proposed Legislative Proposals*, (JCX-53-07), July 19, 2007. This document also is available on the web at [www.house.gov/jct](http://www.house.gov/jct).

<sup>2</sup> Paul Arnsberger, “Charities and Other Tax-Exempt Organizations, 2003,” *Statistics of Income Bulletin*, Fall 2006, Volume 26, No. 2, at 231.

<sup>3</sup> Melissa Ludlum, “Private Foundations, Tax Year 2003,” *Statistics of Income Bulletin*, Fall 2006, Volume 26, No. 2, at 192.

revenue. Combined, hospitals, colleges, and universities accounted for 50 percent of total assets and 54 percent of total revenue of section 501(c)(3) organizations in 2004.<sup>4</sup>

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<sup>4</sup> Computations of Joint Committee on Taxation staff, based on 2004 data from the IRS Statistics of Income Sample of Form 990 information returns.

**I. GENERAL DESCRIPTION OF PRESENT-LAW BENEFITS AND  
REQUIREMENTS OF FEDERAL INCOME TAX EXEMPTION  
FOR SECTION 501(C)(3) ORGANIZATIONS**

**A. Eligibility for Exemption, Classification, Tax Treatment,  
and Charitable Contributions**

**Eligibility for exemption**

In general

Organizations described in section 501(c)(3) generally are exempt from Federal income tax and are eligible to receive tax deductible contributions.<sup>5</sup> A section 501(c)(3) organization must operate primarily in pursuance of one or more tax-exempt purposes constituting the basis of its tax exemption.<sup>6</sup> The Code specifies such purposes as religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

Exempt purposes

Many activities fit within the rubric of section 501(c)(3).<sup>7</sup> In general, the term charitable includes “[r]elief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.”<sup>8</sup> Examples of organizations that have been recognized as charitable include hospitals, elder care facilities, credit counseling organizations, low-income housing organizations, environmental organizations, college sports organizations, organizations providing legal services to the poor,<sup>9</sup>

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<sup>5</sup> Certain organizations described elsewhere within section 501, namely cooperative hospital service organizations (sec. 501(e)), cooperative service organizations of operating educational organizations (sec. 501(f)), child care organizations (sec. 501(k)), and charitable risk pools (sec. 501(n)), are treated as charitable organizations described within section 501(c)(3). Such organizations generally are subject to their own organizational and operational requirements specified in the relevant Code provision.

<sup>6</sup> Treas. Reg. sec. 1.501(c)(3)-1(c)(1).

<sup>7</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(2).

<sup>8</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(2). The regulations provide that the exempt purposes listed in section 501(c)(3) are independent bases for exemption. Treas. Reg. sec. 1.501(c)(3)-1(d)(1)(iii) (“Since each of the [listed] purposes . . . is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.”).

<sup>9</sup> Rev. Rul. 78-428, 1978-2 C.B. 177.

and organizations carrying on all or a substantial part of their otherwise charitable activities in a foreign country.<sup>10</sup> The term “educational” relates to the “instruction or training of the individual for the purpose of improving or developing his capabilities” and “the instruction of the public on subjects useful to the individual and beneficial to the community.”<sup>11</sup> Educational organizations include schools, colleges, and universities; an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs, including programs on radio or television; an organization which presents a course of instruction by means of correspondence or through the utilization of television or radio; museums, zoos, planetariums, symphony orchestras, and other similar organizations. Educational organizations also include a wide variety of other organizations; for example, organizations that provide vocational training to improve employment prospects,<sup>12</sup> operate community correctional centers for the rehabilitation of prisoners,<sup>13</sup> provide dancing classes,<sup>14</sup> or provide marriage counseling.<sup>15</sup> A tax-exempt scientific purpose hinges on the performance of basic or fundamental research in the public interest.<sup>16</sup> Scientific research does not include activities of a type ordinarily carried on as incidental to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment or buildings.<sup>17</sup>

#### Operating requirements

In order to qualify as operating primarily for a purpose described in section 501(c)(3), an organization must satisfy the following operational requirements: (1) the net earnings of the organization may not inure to the benefit of any person in a position to influence the activities of the organization; (2) the organization must operate to provide a public benefit, not a private benefit;<sup>18</sup> (3) the organization may not be operated primarily to conduct an unrelated trade or business;<sup>19</sup> (4) the organization may not engage in substantial legislative lobbying; and (5) the organization may not participate or intervene in any political campaign.

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<sup>10</sup> Rev. Rul. 71-460, 1971-2 C.B. 231.

<sup>11</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(3).

<sup>12</sup> Rev. Rul. 73-128, 1973-1 C.B. 222.

<sup>13</sup> Rev. Rul. 70-583, 1970-2 C.B. 114.

<sup>14</sup> Rev. Rul. 65-270, 1965-2 C.B. 160.

<sup>15</sup> Rev. Rul. 70-640, 1970-2 C.B. 117.

<sup>16</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(5)(i).

<sup>17</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(5)(ii).

<sup>18</sup> Treas. Reg. sec. 1.501(c)(3)-1(d)(1)(ii).

<sup>19</sup> Treas. Reg. sec. 1.501(c)(3)-1(e)(1). Conducting a certain level of unrelated trade or business activity will not jeopardize tax-exempt status.

### Private inurement/private benefit

Section 501(c)(3) provides that an organization may be exempt only if no part of a charitable organization's net earnings may inure to the benefit of any private shareholder or individual.<sup>20</sup> For this purpose, "private shareholder or individual" means persons having a personal and private interest in the activities of the organization.<sup>21</sup> This generally includes founders, trustees, directors, officers, key employees, and related family and organizations of these persons. There is no de minimis or incidental exception to the private inurement prohibition. Violation of the private inurement prohibition means that an organization does not qualify for exemption from Federal income tax as a charitable organization, and the IRS may seek revocation of the organization's exemption.<sup>22</sup>

An organization cannot qualify as an exempt charitable organization if it violates the private benefit doctrine. This doctrine generally provides that the exempt organization cannot operate to confer a benefit on private parties. The private benefit doctrine differs from the private inurement prohibition in that it is not limited in its application to providing benefits to insiders. In addition, the private benefit doctrine does not prohibit all private benefit. Incidental private benefit will not cause an otherwise exempt organization to fail to qualify or to lose its exempt status. The IRS and the courts generally look to whether the private benefit is incidental in both a quantitative and a qualitative sense.

### Organized and operated for a nonexempt purpose

An organization is described in section 501(c)(3) only if it is organized and operated exclusively for exempt purposes.

Satisfaction of the organizational test may be achieved by adopting certain formal requirements in the founding documents of the organization. For example, an organization must limit its purposes to one or more exempt purposes and must not be permitted to engage in activities that do not further exempt purposes (except to an insubstantial extent). In addition, the organizational documents generally must prohibit violation of the lobbying and legislative prohibitions, and must provide that the organization's assets are dedicated to an exempt purpose in perpetuity.<sup>23</sup> An organization's assets are considered dedicated to an exempt purpose if, for example, upon dissolution, such assets are distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.<sup>24</sup> An organization

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<sup>20</sup> The private inurement prohibition also applies to organizations described in sections 501(c)(4), 501(c)(5), and 501(c)(6).

<sup>21</sup> Treas. Reg. sec. 1.501(a)-1(c).

<sup>22</sup> As an alternative to revocation of tax exemption, the IRS may assert intermediate sanctions to the extent that the inurement results in an "excess benefit transaction," as described below.

<sup>23</sup> See Treas. Reg. sec. 1.501(c)(3)-1(b)(3) and (4).

<sup>24</sup> Treas. Reg. sec. 1.501-1(b)(4).

fails the organizational test if its articles of organization empower it to engage in activities that characterize it as an “action” organization, e.g., if its primary purpose may be accomplished only by legislation and it advocates for such aim.

The operational test generally requires that an organization operate consistent with the requirements of the Code; otherwise, the organization is not operated exclusively for charitable purposes, and would lose tax-exempt status.<sup>25</sup> Under Treasury regulations, an organization is regarded as operating exclusively for exempt purposes “only if it engages primarily in activities which accomplish” exempt purposes.<sup>26</sup> “An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.”<sup>27</sup> Thus, “exclusively” is not given its common sense meaning of “solely” but rather is construed as “primarily,” with the result that an organization may to a certain extent be operated for nonexempt purposes.<sup>28</sup> In other words, a section 501(c)(3) organization may conduct activities that do not accomplish exempt purposes, so long as such activities are not substantial.<sup>29</sup> If an organization conducts a trade or business that is not related to exempt purposes, the question under the operational test is whether such activity is substantial. If so, then the organization would lose exempt status under what generally is known as the commerciality doctrine.<sup>30</sup>

### Political activities

Section 501(c)(3) organizations may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.<sup>31</sup> The prohibition on such political campaign activity is absolute and, in general, includes activities such as making contributions to a candidate’s political campaign, endorsements of a candidate, lending employees to work in a political campaign, or providing facilities for use by a candidate. Many other activities may constitute political campaign activity, depending on the facts and circumstances. The sanction for a violation of the prohibition is loss of the organization’s tax-exempt status.

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<sup>25</sup> See Treas. Reg. sec. 1.501(c)(3)-1(c).

<sup>26</sup> Treas. Reg. sec. 1.501(c)(3)-1(c)(1).

<sup>27</sup> Treas. Reg. sec. 1.501(c)(3)-1(c)(1).

<sup>28</sup> As a practical matter, if “exclusively” were construed by regulations in its ordinary sense, an organization would not be permitted to engage in unrelated business income tax activities, rendering the unrelated business income tax rules moot.

<sup>29</sup> In addition, as held by the U.S. Supreme Court, “the presence of a single [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes.” *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279, 283 (1945).

<sup>30</sup> This doctrine originated in 1924 in the U.S. Supreme Court decision *Trinidad v. Sagrada Orden de Predicadores*, 263 U.S. 578 (1924).

<sup>31</sup> Sec. 501(c)(3).



Nonetheless, activities that are educational are permitted. An organization may advocate a particular position or conduct an educational activity that is related to the political process, but the advocacy or activity must be unbiased and nonpartisan. The IRS will look to the method used by the organization in advocating a position to determine whether educational purposes are met.<sup>32</sup> Public charities generally may provide a forum for debates by candidates, so long as the forum is fair and neutral and all qualified candidates are given equal time for debate.<sup>33</sup> Voter registration and get-out-the-vote projects by public charities generally are permitted so long as the activity is conducted in a nonpartisan and fair manner.<sup>34</sup> Other forms of voter education, such as publication of voter guides, also may be permissible if certain guidelines are followed.<sup>35</sup> The prohibition on political campaign activity is not intended to restrict free expression on political matters by persons speaking for themselves as individuals and not as representatives of a charitable organization.

For organizations that engage in prohibited political campaign activity, the Code provides three penalties that may be applied either as alternatives to revocation of tax exemption or in addition to loss of tax-exempt status: an excise tax on political expenditures,<sup>36</sup> termination assessment of all taxes due,<sup>37</sup> and an injunction against further political expenditures.<sup>38</sup>

### Lobbying activities

An organization does not qualify as a section 501(c)(3) organization unless “no substantial part” of its activities constitutes “carrying on propaganda, or otherwise attempting, to influence legislation” (commonly referred to as “lobbying”).<sup>39</sup> Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to the restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.<sup>40</sup> For purposes of determining whether

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<sup>32</sup> “[T]he method used by an organization in advocating its position, rather than the position itself, is the standard for determining whether an organization has educational purposes.” Rev. Proc. 86-43, 1986-2 C.B. 729.

<sup>33</sup> See Rev. Rul. 86-95, 1986-2 C.B. 73.

<sup>34</sup> Special rules apply to the conduct of political activities by private foundations, such as voter registration drives. See secs. 4945(d)(2) and 4945(f).

<sup>35</sup> Rev. Rul. 78-248, 1978-1 C.B. 154; Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007).

<sup>36</sup> Sec. 4955.

<sup>37</sup> Sec. 6852(a)(1).

<sup>38</sup> Sec. 7409.

<sup>39</sup> Sec. 501(c)(3).

<sup>40</sup> Sec. 4945(d)(1).

lobbying activities are a substantial part of a public charity's overall functions, a public charity may choose between two standards, the "substantial part" test or the "expenditure" test.<sup>41</sup>

The substantial part test derives from the statutory language quoted above and uses a facts and circumstances approach to measure the permissible level of lobbying activities. If public charities exceed the substantial part standard, they risk losing their tax exemption. In addition, excise taxes may be imposed if a public charity (other than a church) ceases to qualify for tax-exempt status under section 501(c)(3) due to its substantial lobbying activities.<sup>42</sup>

The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.<sup>43</sup> The test establishes two expenditure limits: one restricts the total amount of lobbying expenditures the public charity can make, the other restricts grass roots lobbying expenditures as a subset of total lobbying expenditures. A public charity's total lobbying expenditures for a year are the sum of its expenditures for direct lobbying and its expenditures for grass roots lobbying. The allowable amount of lobbying expenditures that can be made for any tax year is determined under a sliding-scale formula. In no event can the allowable amount of lobbying for a section 501(c)(3) organization electing the expenditure test exceed \$1 million for any year.<sup>44</sup> A section 501(c)(3) organization wishing to be subject to the expenditure test must affirmatively elect to do so (the "section 501(h) election"); charities that do not file an election (and churches) are subject to the substantial part test.

### **Classification**

Section 501(c)(3) organizations are classified either as "public charities" or "private foundations."<sup>45</sup> Private foundations are defined under section 509(a) as all organizations described in section 501(c)(3) other than an organization granted public charity status by reason of: (1) being a specified type of organization (i.e., churches, schools, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation. In contrast to public charities, private

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<sup>41</sup> Secs. 501(c)(3), 501(h), and 4911. Churches and certain church-related entities may not choose the expenditure test. Sec. 501(h)(5).

<sup>42</sup> Sec. 4912.

<sup>43</sup> Secs. 501(h) and 4911.

<sup>44</sup> Sec. 4911(c)(2).

<sup>45</sup> Sec. 509(a). Private foundations are either private operating foundations or private nonoperating foundations. In general, private operating foundations operate their own charitable programs. In contrast, private non-operating foundations generally are grant-making organizations. Most private foundations are nonoperating foundations.

foundations generally are funded from a limited number of sources (e.g., an individual, a family, or a corporation).

Because private foundations receive support from, and typically are controlled by, a small number of supporters, private foundations are subject to a number of anti-abuse rules not generally applicable to public charities.<sup>46</sup> For example, private foundations are required to make a minimum amount of charitable distributions each year, are prohibited from retaining excess holdings in a business, may not make jeopardizing business investments, and may not make certain expenditures (including expenditures for lobbying, political activities, grants to individuals without prior IRS approval, grants to organizations other than public charities and certain foundations unless special procedures are followed, and expenditures for noncharitable purposes). Violations result in excise taxes on the foundation and, in the case of jeopardizing business investments and taxable expenditures, the management of the foundation.

In addition, both public charities and private foundations generally are prohibited from engaging in certain transactions with disqualified persons. For public charities, an excise tax applies to organization managers and to disqualified persons with respect to an “excess benefit” transaction;<sup>47</sup> for private foundations, foundation managers and disqualified persons are subject to an excise tax for acts of self-dealing.<sup>48</sup> The applicable transactions, the definition of “disqualified person,” and the tax structure relating to the excess benefit and self-dealing rules differ significantly.

Section 501(c)(3) organizations, and other entities exempt from taxation, also are subject to excise taxes for being a party to a prohibited tax shelter transaction.<sup>49</sup>

## **Federal income tax treatment**

### **In general**

Section 501(c)(3) organizations generally are not subject to Federal income tax on contributions received, on income from activities that are substantially related to the purpose of the organization’s tax exemption, or on investment income. Private foundations, however, are subject to an excise tax on their net investment income.<sup>50</sup> An exempt organization generally must withhold federal income tax from its employees’ wages, and must remit such taxes together with the employees’ and employer’s portions of FICA taxes (Social Security and Medicare) to an authorized depository for Federal taxes. Section 501(c)(3) organizations (though generally not

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<sup>46</sup> Secs. 4940 - 4945.

<sup>47</sup> Sec. 4958.

<sup>48</sup> Secs. 4941 - 4945.

<sup>49</sup> Sec. 4965.

<sup>50</sup> Sec. 4940.

other tax-exempt organizations) are exempt from Federal unemployment compensation tax (FUTA).

#### Unrelated business income tax

Section 501(c)(3) organizations are subject to the unrelated business income tax on income derived from a trade or business regularly carried on by the organization that is not substantially related to the performance of the organization's tax-exempt functions. Certain types of income, however, are specifically exempt from the unrelated business income tax, such as dividends, interest, royalties, and certain rents, unless derived from debt-financed property or, in some cases, from certain 50-percent controlled subsidiaries. Other exemptions from the unrelated business income tax are provided for activities in which substantially all the work is performed by volunteers, for income from the sale of donated goods, and for certain activities carried on for the convenience of members, students, patients, officers, or employees of a section 501(c)(3) organization or college or university. In addition, special rules exempt from tax certain activities of trade shows and State fairs, income from bingo games, and income from the distribution of certain low-cost items incidental to the solicitation of charitable contributions. Organizations liable for tax on unrelated business taxable income may be liable for alternative minimum tax determined after taking into account adjustments and tax preference items.

#### Debt-financed property

In general, income of a tax-exempt organization that is produced by debt-financed property is treated as unrelated business income in proportion to the acquisition indebtedness on the income-producing property. Acquisition indebtedness generally means the amount of unpaid indebtedness incurred by an organization to acquire or improve the property and indebtedness that would not have been incurred but for the acquisition or improvement of the property. Acquisition indebtedness does not include, however, (1) certain indebtedness incurred in the performance or exercise of a purpose or function constituting the basis of the organization's exemption, (2) obligations to pay certain types of annuities, (3) an obligation, to the extent it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or (4) indebtedness incurred by qualified organizations (certain educational organizations, pension plans, and title holding companies) to acquire or improve real property. Special rules apply in the case of an exempt organization that owns a partnership interest in a partnership that holds debt-financed income-producing property.

#### Treatment of income from controlled entities

Section 512(b)(13) provides special rules regarding income derived by an exempt organization from a controlled subsidiary. In general, section 512(b)(13) treats otherwise excluded rent, royalty, annuity, and interest income as unrelated business income if such income is received from a taxable or tax-exempt subsidiary that is 50-percent controlled by the parent tax-exempt organization to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt). However, a special rule enacted as part of the Pension Protection Act of 2006 provides that, for payments made pursuant to certain contracts in effect on August 17, 2006, the general rule of

section 512(b)(13) applies only to the portion of payments received or accrued (before January 1, 2008) in a taxable year that exceeds the amount of the specified payment that would have been paid or accrued if the amount of such payment had been determined under the principles of section 482 (i.e., at arm's length).

In the case of a stock subsidiary, "control" means ownership by vote or value of more than 50 percent of the stock. In the case of a partnership or other entity, "control" means ownership of more than 50 percent of the profits, capital, or beneficial interests. In addition, present law applies the constructive ownership rules of section 318 for purposes of section 512(b)(13). Thus, a parent exempt organization is deemed to control any subsidiary in which it holds more than 50 percent of the voting power or value, directly (as in the case of a first-tier subsidiary) or indirectly (as in the case of a second-tier subsidiary).

### **Deductibility of contributions made to section 501(c)(3) organizations**

#### **In general**

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3).<sup>51</sup> The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of section 501(c)(3) organization to which the property is contributed, and the income of the taxpayer.<sup>52</sup> In general, more generous charitable contribution deduction rules apply to gifts made to public charities than to gifts made to private foundations. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes. By contrast, contributions to tax-exempt organizations not described in section 501(c)(3) generally are not deductible by the donor,<sup>53</sup> though such organizations are eligible for the exemption from Federal income tax with respect to such donations. Recipients of assistance from a section 501(c)(3) organization generally may exclude the assistance from income as a gift.<sup>54</sup>

In general, if a donor receives a benefit or quid pro quo in return for a contribution, any charitable contribution deduction is reduced by the amount of the benefit received. Pursuant to

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<sup>51</sup> The deduction also is allowed for purposes of calculating alternative minimum taxable income.

<sup>52</sup> Secs. 170(b) and (e).

<sup>53</sup> Charitable contributions to certain organizations other than section 501(c)(3) organization are deductible for Federal income and estate and gift tax purposes, e.g., contributions to a Federal, State, or local governmental entity exclusively for public purposes, to a veterans' organization, or to a domestic fraternal society. In addition, contributions to certain nonprofit cemetery companies are deductible for Federal income tax purposes, but generally are not deductible for Federal estate and gift tax purposes. Secs. 170(c)(1), 170(c)(3), 170(c)(4), 170(c)(5), 2055(a)(3), 2055(a)(4), 2106(a)(2)(A)(iii), 2522(a)(3), and 2522(a)(4).

<sup>54</sup> Sec. 102(a).

the Pension Protection Act of 2006, in the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.<sup>55</sup> For contributions of \$250 or more, no charitable contribution deduction is allowed unless the donee organization provides a contemporaneous written acknowledgement of the contribution that describes and provides a good faith estimate of the value of any goods or services provided by the donee organization in exchange for the contribution.<sup>56</sup>

### Contributions of property

In general, the amount of the deduction for charitable contributions of property equals the fair market value of the contributed property on the date of the contribution. However, for certain contributions of property, the deductible amount is reduced from the fair market value of the contributed property by the amount of any gain that the donor had in the donated property, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) ordinary income property, e.g., property that, at the time of contribution, would not have resulted in long-term capital gain if the property had been sold by the taxpayer on the contribution date;<sup>57</sup> (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; (3) certain other tangible personal property that is disposed of by the donee without a certification by the donee organization as to the exempt use of the property;<sup>58</sup> (4) property (other than qualified appreciated stock)<sup>59</sup> donated to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)); (5) certain intellectual property; and (6) self-created taxidermy property.

Contributions of capital gain property are subject to different percentage limitations than other contributions of property. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain.

In general, a charitable contribution deduction is allowed only for contributions of the donor's entire interest in the contributed property, and not for contributions of a partial interest.<sup>60</sup>

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<sup>55</sup> Sec. 170(f)(17).

<sup>56</sup> Sec. 170(f)(8).

<sup>57</sup> In general, for certain contributions of inventory, C corporations (and depending on the type of inventory, certain other taxpayers) may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis. Secs. 170(e)(3), 170(e)(4), and 170(e)(6).

<sup>58</sup> A net result of a basis deduction may occur through imposition of a recapture tax. Sec. 170(e)(7).

<sup>59</sup> Sec. 170(e)(5).

<sup>60</sup> Sec. 170(f)(3).

An exception is provided if the partial interest is a qualified conservation contribution.<sup>61</sup> If a taxpayer sells property to a charitable organization for less than the property's fair market value, the amount of any charitable contribution deduction is determined in accordance with the bargain sale rules.<sup>62</sup> If a taxpayer pays more than fair market value for property acquired from a charitable organization, the excess above fair market value may be deductible assuming that the donor intended to make a gift of such excess.

Taxpayers are required to obtain a qualified appraisal for donated property with a value of \$5,000 or more, and to attach an appraisal summary to the tax return.<sup>63</sup> Pursuant to the Pension Protection Act of 2006, a qualified appraisal is an appraisal of property prepared by a qualified appraiser, also defined in such Act, in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.<sup>64</sup> As modified by the Pension Protection Act of 2006, a taxpayer is subject to a substantial valuation misstatement penalty when the claimed value of any property is 150 percent or more of the amount determined to be the correct value;<sup>65</sup> a gross valuation misstatement occurs when the claimed value of any property is 200 percent or more of the amount determined to be the correct value.<sup>66</sup> In addition, pursuant to the Pension Protection Act of 2006, a penalty applies to any person who prepares an appraisal that is to be used to support a tax position if such appraisal results in a substantial or gross valuation misstatement.<sup>67</sup>

### **Tax-exempt financing**

State and local governments may act as conduits to provide tax-exempt financing for limited activities conducted and paid for by nongovernmental entities or individuals, including for the exempt activities of section 501(c)(3) organizations.<sup>68</sup> Accordingly, section 501(c)(3) organizations have access to tax-exempt financing through State and local governments. This generally does not include financing for unrelated business activities of such organizations.<sup>69</sup> Tax-exempt organizations other than section 501(c)(3) organizations generally must satisfy requirements generally applicable to nongovernmental entities or individuals in order to obtain tax-exempt financing.

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<sup>61</sup> Secs. 170(f)(3)(B)(iii) and 170(h).

<sup>62</sup> Sec. 1011(b) and Treas. Reg. sec. 1.1011-2.

<sup>63</sup> Sec. 170(f)(11).

<sup>64</sup> Sec. 170(f)(11)(E).

<sup>65</sup> Sec. 6662(e).

<sup>66</sup> Sec. 6662(h).

<sup>67</sup> Sec. 6695A.

<sup>68</sup> Sec. 145.

<sup>69</sup> Sec. 145(a).

## **B. Determinations of Tax-Exempt Status and Annual Reporting Requirements**

### **1. Determinations of tax-exempt status for section 501(c)(3) organizations**

#### **Application for tax-exemption**

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023). In response to the application, the IRS issues a determination letter or ruling either recognizing the applicant as tax-exempt or not. Certain organizations are not required to apply for recognition of tax-exempt status in order to qualify as tax-exempt under section 501(c)(3), but may voluntarily seek recognition of such status. These organizations include churches, certain church-related organizations, organizations (other than private foundations) the gross receipts of which in each taxable year are normally not more than \$5,000, organizations (other than private foundations) subordinate to another tax-exempt organization that are covered by a group exemption letter and, for certain purposes only, charitable trusts described in section 4947(a)(1) that were organized before October 9, 1969.

A favorable determination by the IRS on an application for recognition of tax-exempt status (Form 1023) will be retroactive to the date that the section 501(c)(3) organization was created if it files a completed Form 1023 within 15 months from the end of the month it was formed.<sup>70</sup> In general, if the organization does not file Form 1023 or files a late application, it will not be treated as tax-exempt under section 501(c)(3) for any period prior to the filing of an application for recognition of tax exemption.<sup>71</sup> Contributions to section 501(c)(3) organizations that are subject to the requirement that the organization apply for recognition of tax-exempt status generally are not deductible from income, gift, or estate tax until the organization receives a determination letter from the IRS.<sup>72</sup>

Information required on Form 1023 (as revised in 2006) includes, among other things: (1) a detailed statement of actual and proposed activities; (2) a statement of receipts and expenditures for the current year and the three preceding years (or for the number of years of the organization's existence, if less than four years); (3) a balance sheet for the current year; (4) a description of anticipated receipts and contemplated expenditures; (5) a copy of the articles of incorporation, trust document, or other organizational or enabling document; (6) organization

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<sup>70</sup> Pursuant to Treas. Reg. sec. 301.9100-2(a)(2)(iv), organizations are allowed an automatic 12-month extension as long as the application for recognition of tax exemption is filed within the extended, i.e., 27-month, period. The IRS also may grant an extension beyond the 27-month period if the organization is able to establish that it acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Treas. Reg. secs. 301.9100-1 and 301.9100-3.

<sup>71</sup> Treas. Reg. sec. 1.508-1(a)(1).

<sup>72</sup> Sec. 508(d)(2)(B). Contributions made prior to receipt of a favorable determination letter may be deductible upon the organization's receipt of such favorable determination letter if the organization has timely filed its application to be recognized as tax-exempt. Treas. Reg. secs. 1.508-1(a) and 1.508-2(b)(1)(i)(b).



bylaws (if any); and (7) information about previously filed Federal income tax and exempt organization returns, if applicable.

A favorable determination letter issued by the IRS will state that the application for recognition of tax exemption and supporting documents establish that the organization submitting the application meets the requirements of section 501(c)(3) and will classify the organization as either a public charity or a private foundation. If the IRS denies an organization's application for recognition of exemption under section 501(c)(3), the organization may seek a declaratory judgment regarding its tax status.<sup>73</sup> Prior to utilizing the declaratory judgment procedure, the organization must have exhausted all administrative remedies available to it within the IRS.

### **Review of exempt status**

An organization that has received a favorable tax-exemption determination from the IRS generally may continue to rely on the determination as long as "there are no substantial changes in the organization's character, purposes or methods of operation."<sup>74</sup> There is no formal process to review an organization's continuing qualification for exemption.

Organizations that are classified as public charities (or as private operating foundations) and not as private nonoperating foundations may cease to satisfy the conditions that entitled the organization to such status. The IRS makes an initial determination of public charity or private foundation status (either a definitive ruling, or an advance ruling generally effective for five years and then reviewed again by the IRS) that is subsequently monitored by the IRS through annual return filings. The IRS periodically announces in the Internal Revenue Bulletin a list of organizations that have failed to establish, or have been unable to maintain, their status as public charities or as private operating foundations, and that become private nonoperating foundations.

The IRS may revoke tax-exempt status by notice to the organization.<sup>75</sup> The IRS generally issues a letter revoking recognition of an organization's tax-exempt status only after: (1) conducting an examination of the organization; (2) issuing a letter to the organization proposing revocation; and (3) allowing the organization to exhaust the administrative appeal rights that follow the issuance of the proposed revocation letter. However, failure of an organization to file an annual return for three consecutive years automatically results in revocation of tax-exempt status.<sup>76</sup> In the case of a section 501(c)(3) organization, the revocation letter immediately is subject to judicial review under the declaratory judgment procedures of section 7428. To sustain a revocation of tax-exempt status under section 7428, the IRS must demonstrate that the organization no longer is entitled to exemption. Revocations for failure to file an annual return are not subject to declaratory judgment procedures.

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<sup>73</sup> Sec. 7428.

<sup>74</sup> Treas. Reg. sec. 1.501(a)-1(a)(2).

<sup>75</sup> Rev. Proc. 90-27, 1990-1 C.B. 514.

<sup>76</sup> Sec. 6033(j).

The IRS may suspend the tax-exempt status of an organization for any period during which an organization is designated or identified by U.S. Federal authorities as a terrorist organization or supporter of terrorism.<sup>77</sup> Such an organization also is ineligible to apply for tax exemption.

## **2. Annual reporting requirements (Forms 990, 990-PF, 990-T)**

In general, section 501(c)(3) organizations (as well as other organizations exempt from taxation under section 501(a)) are required to file an annual return, stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.<sup>78</sup> Section 501(c)(3) organizations that are classified as public charities must file Form 990 (Return of Organization Exempt From Income Tax) and an additional form, Schedule A, which requests information specific to section 501(c)(3) organizations. An organization that is required to file an information return, but that has gross receipts of less than \$100,000 during its taxable year, and total assets of less than \$250,000 at the end of its taxable year, may file Form 990-EZ. Private foundations are required to file Form 990-PF rather than Form 990.

On the applicable annual information return, organizations are required to report their gross income, information on their finances, functional expenses, compensation, activities, and other information required by the IRS in order to review the organization's activities and operations during the previous taxable year and to review whether the organization continues to meet the statutory requirements for exemption. Examples of the information required by Form 990 include: (1) a statement of program accomplishments; (2) a description of the relationship of the organization's activities to the accomplishment of the organization's exempt purposes; (3) a description of payments to individuals, including compensation to officers and directors, highly paid employees and contractors, grants, and certain insider transactions and loans; and (4) disclosure of certain activities, such as expenses of conferences and conventions, political expenditures, compliance with public inspection requirements, and lobbying activities. Form 990-PF requires, among other things, reporting of: the foundation's gross income for the year; expenses attributable to such income; disbursements for exempt purposes; total contributions and gifts received and the names of all substantial contributors; names, addresses, and compensation of officers and directors; an itemized statement of securities and other assets held at the close of the year; an itemized statement of all grants made or approved; and information about whether the organization has complied with the restrictions applicable to private foundations (secs. 4941 through 4945).

On June 14, 2007, the IRS released a draft revision of the Form 990. The redesigned form consists of a 10-page core form to be complete by all filers. The core form includes, among other things, a new summary page, as well as questions designed to elicit information about the organization's governance, board of directors, and financial statement practices. The redesigned form also includes 15 schedules for reporting of additional information by certain organizations.

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<sup>77</sup> Sec. 501(p).

<sup>78</sup> Sec. 6033(a). An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

The schedules cover topics such as fundraising, compensation, hospitals, tax-exempt bonds, and noncash charitable contributions.

The requirement that an exempt organization file an annual information return does not apply to certain exempt organizations, including organizations (other than private foundations) the gross receipts of which in each taxable year normally are not more than \$25,000. Pursuant to the Pension Protection Act of 2006, organizations that are excused from filing an information return by reason of normally having gross receipts below such amount must furnish to the Secretary an annual notice, in electronic form, containing certain basic information about the organization.<sup>79</sup>

Other organizations exempt from the annual information return requirement include: churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.<sup>80</sup>

A section 501(c)(3) organization that is subject to the unrelated business income tax and that has \$1,000 or more of gross unrelated business taxable income must file Form 990-T. The Form 990-T is a tax return and requires information necessary to calculate the unrelated business income tax, including, among other things, gross receipts or sales from unrelated activities, capital gain net income, rental income, unrelated debt-finance income, amounts received from controlled entities, and advertising income.

Public charities that make an election under section 501(h) regarding permitted lobbying expenditures and that incur tax for excess lobbying expenditures must file Form 4720. Form 4720 also is required to be filed (by public charities or private foundations, as the case may be) with respect to any taxes owed for self-dealing (sec. 4941), undistributed income (sec. 4942), excess business holdings (sec. 4943), investments that jeopardize charitable purposes (sec. 4944), taxable expenditures (sec. 4945), political expenditures (sec. 4955), and excess benefit transactions (sec. 4958).

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<sup>79</sup> Sec. 6033(i).

<sup>80</sup> Sec. 6033(a)(2)(A); Treas. Reg. sec. 1.6033-2(a)(2)(i) and (g)(1).

## **C. Public Availability of Documents and Information Sharing**

### **1. Disclosure of applications for recognition of tax exemption and annual returns**

In general, the IRS and the organization are required to make approved applications for recognition of tax-exempt status (and certain related documents) available for public inspection, except that the Secretary (and the organization) may withhold disclosure of certain information if disclosure would divulge a trade secret, patent, process, style of work, or apparatus of the organization, and the Secretary determines that such disclosure would harm the organization, or the Secretary determines the disclosure would harm national defense.<sup>81</sup> The IRS is required to make annual information returns available for public inspection, except that the IRS is not authorized to disclose the names and addresses of contributors (other than contributors to a private foundation). A copy of the organization's annual return generally is required to be made publicly available by the organization for inspection. Names and addresses of contributors (other than contributors to a private foundation) are not required to be made available for public inspection by the organization. Pursuant to the Pension Protection Act of 2006, a section 501(c)(3) organization is required to make the Form 990-T available for public inspection.<sup>82</sup>

### **2. Information sharing with State officials**

In general, the Secretary of the Treasury is required to share certain information with appropriate State officers regarding charitable organizations and organizations that have applied for tax-exempt status as a charitable organization.<sup>83</sup> The Secretary must notify the appropriate State officer of: (1) a refusal to recognize such an organization as an organization described in section 501(c)(3); (2) a revocation of a section 501(c)(3) organization's tax-exempt status; and (3) the mailing of a notice of deficiency for imposition of certain taxes. In addition, pursuant to the Pension Protection Act of 2006, the Secretary may disclose additional information regarding section 501(c)(3) organizations.

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<sup>81</sup> Sec. 6104.

<sup>82</sup> Sec. 6104(d)(1)(A)(ii).

<sup>83</sup> Sec. 6104(c).

## **D. Certain Penalties and Taxes Applicable to Section 501(c)(3) Organizations**

### **1. Cause for revocation of tax-exempt status**

The tax-exempt status of a section 501(c)(3) organization may be revoked for violation of the operating requirements described above, i.e., the private inurement, private benefit, campaign activity, lobbying activity, and exempt purpose requirements.

### **2. Intermediate sanctions (excess benefit transactions)**

#### **In general**

The Code imposes excise taxes on excess benefit transactions between disqualified persons and section 501(c)(3) organizations (other than private foundations).<sup>84</sup> An excess benefit transaction generally is a transaction in which an economic benefit is provided by a section 501(c)(3) organization directly or indirectly to or for the use of a disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. The tax does not apply to fixed payments made by an organization to a disqualified person pursuant to a binding written contract between the organization and a person who was not a disqualified person immediately before entering into the contract (the initial contract exception).<sup>85</sup> For example, the tax does not apply to a fixed payment compensation agreement between an exempt organization and an individual who is hired by the organization as its chief executive officer, if the individual was not a disqualified person with respect to the organization immediately before the parties executed the agreement.

The excess benefit tax is imposed on the disqualified person and, in certain cases, on the organization's organization managers. An initial tax of 25 percent of the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax on the disqualified person of 200 percent of the excess benefit applies if the violation is not corrected. A tax of 10 percent of the excess benefit (not to exceed \$20,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager's participation was willful and not due to reasonable cause, and if the initial tax was imposed on the disqualified person.<sup>86</sup> If more than one person is liable for the tax on disqualified persons or on management, all such persons are jointly and severally liable for the tax.<sup>87</sup> Pursuant to the Pension Protection Act of 2006, special

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<sup>84</sup> Sec. 4958. The excess benefit transaction tax is commonly referred to as "intermediate sanctions," because it imposes penalties generally considered to be less punitive than revocation of the organization's exempt status. The excess benefit transaction tax also applies to organizations described in section 501(c)(4) (social welfare organizations).

<sup>85</sup> Treas. Reg. sec. 53.4958-4(a)(3).

<sup>86</sup> Sec. 4958(d)(2). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

<sup>87</sup> Sec. 4958(d)(1).

intermediate sanctions rules apply with respect to certain transactions by a donor advised fund or a supporting organization.

### **Disqualified person**

In general, a disqualified person is any person in a position to exercise substantial influence over the affairs of the organization at any time in the five-year period before the excess benefit transaction occurred, such as officers, directors, and certain key employees of the organization.<sup>88</sup> A disqualified person also includes certain family members of such a person, and certain entities that satisfy a control test with respect to such persons. (“Disqualified person” is defined separately for purposes of the self-dealing rules applicable to private foundations.) Pursuant to the Pension Protection Act of 2006, certain persons automatically are considered to be disqualified persons with respect to donor advised funds and supporting organizations.

### **3. Self-dealing by private foundations**

Excise taxes are imposed on acts of self-dealing between a disqualified person and a private foundation.<sup>89</sup> In general, self-dealing transactions are any direct or indirect: (1) sale or exchange, or leasing, of property between a private foundation and a disqualified person, including transfers of property subject to a mortgage or lien that the private foundation assumes or that was put on the property by the disqualified person within 10 years of the transfer; (2) lending of money or other extension of credit between a private foundation and a disqualified person, except for no-interest loans by a disqualified person, the proceeds of which are used exclusively for charitable purposes; (3) furnishing of goods, services, or facilities between a private foundation and a disqualified person, unless the goods, services, or facilities are (i) functionally related to the foundation’s exempt purposes and are provided to or by the foundation on the same basis as provided by the foundation or disqualified person to the general public, (ii) reasonable and necessary to performing exempt purposes and are not excessive, or (iii) provided by a disqualified person without charge; (4) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the private foundation, unless the use or benefit is de minimis; and (5) certain payments of money or property to a government official. Leases provided by a disqualified person without charge to a private foundation are permitted, even if the foundation pays for maintenance.

In general, a disqualified person includes: (1) substantial contributors; (2) foundation managers (officers, directors, trustees, or individuals having powers or responsibilities similar to those of officers, directors, or trustees); (3) owners of more than 20 percent of a business enterprise that is a substantial contributor; (4) family members of the persons described above; (5) business entities (including corporations, partnerships, trusts, and estates) in which persons described above own more than 35 percent of the voting power (or profits interest or beneficial interest as the case may be); and (6) certain government officials.<sup>90</sup>

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<sup>88</sup> Sec. 4958(f)(1)(A); Treas. Reg. sec. 53.4958-3(a).

<sup>89</sup> Sec. 4941.

<sup>90</sup> Sec. 4946.

An initial tax of 10 percent of the amount involved with respect to an act of self-dealing is imposed on any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In general, if such a tax is imposed, a five percent tax of the amount involved is imposed on a foundation manager who participated in the act of self-dealing knowing it was such an act (and such participation was not willful and was due to reasonable cause). Such initial taxes may not be abated.<sup>91</sup> If the act of self-dealing is not corrected, a tax of 200 percent of the amount involved is imposed on the disqualified person and a tax of 50 percent of the amount involved is imposed on a foundation manager who refused to agree to correcting the act of self-dealing. Such additional taxes are subject to abatement.<sup>92</sup>

#### **4. Certain other excise taxes applicable to private foundations and not to public charities**

##### **Tax on failure to distribute income and on net investment income**

In order to avoid an excise tax on undistributed income, private nonoperating foundations are required to pay out a minimum amount each year as qualifying distributions. In general, a qualifying distribution is an amount paid to accomplish one or more of the organization's exempt purposes, including reasonable and necessary administrative expenses.<sup>93</sup> Failure to pay out the minimum results in an excise tax of up to 100 percent of the undistributed amount.<sup>94</sup> A foundation may include as a qualifying distribution the salaries, occupancy expenses, travel costs, and other reasonable and necessary administrative expenses that the foundation incurs in operating a grant program. A qualifying distribution also includes any amount paid to acquire an asset used (or held for use) directly in carrying out one or more of the organization's exempt purposes and certain amounts set aside for exempt purposes.<sup>95</sup> Private operating foundations are not subject to these payout requirements.

Private foundations are subject to a two-percent excise tax on their net investment income.<sup>96</sup> The two-percent rate of tax is reduced to one percent if, in general, a foundation makes a minimum amount of qualifying distributions in a taxable year and certain other

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<sup>91</sup> Sec. 4962(b).

<sup>92</sup> Sec. 4961.

<sup>93</sup> Sec. 4942(g)(1)(A).

<sup>94</sup> Sec. 4942(a) and (b). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

<sup>95</sup> Sec. 4942(g)(1)(B) and 4942(g)(2). In general, an organization is permitted to adjust the distributable amount in those cases where distributions during the five preceding years have exceeded the payout requirements. Sec. 4942(i).

<sup>96</sup> Sec. 4940(a). Taxable private foundations, such as certain charitable trusts, are subject to an excise tax that is calculated somewhat differently from that imposed on tax-exempt private foundations. Secs. 4940(b) and 4947. Exempt operating foundations are exempt from the tax based on net investment income. Sec. 4940(d).

requirements are met.<sup>97</sup> The amount of tax paid on net investment income reduces the amount that a foundation is required to pay out as qualifying distributions.<sup>98</sup>

### **Tax on excess business holdings**

Private foundations are subject to tax on excess business holdings.<sup>99</sup> In general, a private foundation is permitted to hold 20 percent of the voting stock in a corporation, reduced by the amount of voting stock held by all disqualified persons (as defined in section 4946). If it is established that no disqualified person has effective control of the corporation, a private foundation and disqualified persons together may own up to 35 percent of the voting stock of a corporation. A private foundation shall not be treated as having excess business holdings in any corporation if it owns (together with certain other related private foundations) not more than two percent of the voting stock and not more than two percent in value of all outstanding shares of all classes of stock in that corporation. Similar rules apply with respect to holdings in a partnership (“profits interest” is substituted for “voting stock” and “capital interest” for “nonvoting stock”) and to other unincorporated enterprises (by substituting “beneficial interest” for “voting stock”). Private foundations are not permitted to have holdings in a proprietorship. Foundations generally have a five-year period to dispose of excess business holdings (acquired other than by purchase) without being subject to tax.<sup>100</sup> This five-year period may be extended an additional five years in limited circumstances.<sup>101</sup> Pursuant to the Pension Protection Act of 2006, the excess business holdings rules apply to donor advised funds and certain supporting organizations.

### **Tax on jeopardizing investments**

Private foundations and foundation managers are subject to tax on investments that jeopardize the foundation’s exempt purpose.<sup>102</sup> In general, an initial tax of ten percent of the amount of the investment applies to the foundation and to foundation managers who participated in the making of the investment knowing that it jeopardized the carrying out of the foundation’s exempt purposes. If the investment is not removed from jeopardy (e.g., sold or otherwise disposed of), an additional tax of 25 percent of the amount of the investment is imposed on the foundation and five percent of the amount of the investment on a foundation manager who refused to agree to removing the investment from jeopardy. An investment, the primary purpose of which is to accomplish an exempt purpose and no significant purpose of which is the

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<sup>97</sup> Sec. 4940(e).

<sup>98</sup> Sec. 4942(d)(2).

<sup>99</sup> Sec. 4943. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

<sup>100</sup> Sec. 4943(c)(6).

<sup>101</sup> Sec. 4943(c)(7).

<sup>102</sup> Sec. 4944. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.



production of income or the appreciation of property, is not considered a jeopardizing investment.<sup>103</sup>

### **Tax on taxable expenditures**

Certain expenditures of private foundations are subject to tax.<sup>104</sup> In general, taxable expenditures are expenses: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) as a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a public charity (or, pursuant to the Pension Protection Act of 2006, that is a certain type of supporting organization) or exempt operating foundation unless the foundation exercises expenditure responsibility<sup>105</sup> with respect to the grant; or (5) for any non-charitable purpose. For each taxable expenditure, a tax is imposed on the foundation of 20 percent of the amount of the expenditure, and an additional tax of 100 percent is imposed on the foundation if the expenditure is not corrected. A tax of five percent of the expenditure (up to \$10,000) also is imposed on a foundation manager who agrees to making a taxable expenditure knowing that it is a taxable expenditure. An additional tax of 50 percent of the amount of the expenditure (up to \$20,000) is imposed on a foundation manager who refuses to agree to correction of such expenditure.

## **5. Penalties for violations of annual reporting and public inspection requirements**

### **Information return filing penalties**

Exempt organizations other than private foundations generally use Form 990 or Form 990-EZ to file their annual information returns. Private foundations use Form 990-PF. If an exempt organization does not timely and completely file the information return or does not furnish the correct information, it must pay \$20 for each day the failure continues (\$100 a day for large organizations, i.e., ones with gross receipts exceeding one million dollars for the taxable year).<sup>106</sup> The maximum penalty for each return may not exceed the lesser of \$10,000 (\$50,000 for a large organization) or five percent of the gross receipts of the organization for the year. The penalty will not be imposed if the organization can show the failure was due to reasonable cause. There also are penalties for willful failures and for filing fraudulent returns and statements.<sup>107</sup>

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<sup>103</sup> Sec. 4944(c).

<sup>104</sup> Sec. 4945. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

<sup>105</sup> In general, expenditure responsibility requires that a foundation make all reasonable efforts and establish reasonable procedures to ensure that the grant is spent solely for the purpose for which it was made, to obtain reports from the grantee on the expenditure of the grant, and to make reports to the Secretary regarding such expenditures. Sec. 4945(h).

<sup>106</sup> Sec. 6652(c)(1)(A).

<sup>107</sup> Secs. 7203, 7206, and 7207.

## **Filing and payment penalties for returns for which tax is paid**

In general, exempt organizations that have gross unrelated business taxable income of at least \$1,000 for the taxable year are required to file Form 990-T.<sup>108</sup> Such organizations may be subject to penalties for filing late returns or failing to pay tax when due. The penalty for late filing of a Form 990-T is five percent of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25 percent of the unpaid tax.<sup>109</sup> The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty for late payment of taxes is usually one-half of one percent of the unpaid tax for each month the tax is unpaid, not to exceed 25 percent of the unpaid tax. Failure to file and failure to pay penalties will not be imposed if the organization can show the failure was due to reasonable cause. Penalties can be imposed for negligence, substantial understatement of tax, and fraud.<sup>110</sup> There also are penalties for willful failure to file and for filing fraudulent returns and statements.<sup>111</sup>

The Form 990-PF constitutes a tax return for the excise tax on net investment income, so the penalties imposed by section 6651 for not filing a tax return or paying tax, and the penalties for negligence, substantial understatement of tax, fraud, willful failure to file, and filing fraudulent returns and statements, also apply.

Organizations required to file Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code, may be liable for penalties for failure to file or to pay tax.<sup>112</sup> There also are penalties for willful failure to file returns, supply information, or pay tax,<sup>113</sup> and for filing fraudulent returns and statements.<sup>114</sup>

## **Penalties for failure to satisfy inspection and disclosure requirements**

A penalty may be imposed on any person who does not make an organization's annual returns or exemption application materials available for public inspection. The penalty amount is \$20 for each day during which a failure occurs. If more than one person fails to comply, each person is jointly and severally liable for the full amount of the penalty. The maximum penalty that may be imposed on all persons for any one annual return is \$10,000. There is no maximum penalty amount for failing to make the exemption application available for public inspection.

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<sup>108</sup> Sec. 6012; Treas. Reg. sec. 1.6012-2(e).

<sup>109</sup> Sec. 6651(a).

<sup>110</sup> Secs. 6662 and 6663.

<sup>111</sup> Secs. 7203, 7206, and 7207.

<sup>112</sup> Sec. 6651.

<sup>113</sup> Sec. 7203.

<sup>114</sup> Secs. 7206 and 7207.

Any person who willfully fails to comply with the public inspection requirements is subject to an additional penalty of \$5,000.<sup>115</sup>

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<sup>115</sup> Sec. 6685.

## II. SUMMARY DESCRIPTION OF SECTION 501(C)(3) ORGANIZATION-RELATED PROVISIONS IN THE PENSION PROTECTION ACT OF 2006 AND PROPOSED LEGISLATIVE PROPOSALS<sup>116</sup>

### A. Charitable Giving Incentives

#### Tax-free distributions from individual retirement plans for charitable purposes

In general, the Pension Protection Act of 2006 (the "Act") provided that distributions to certain section 501(c)(3) organizations from certain individual retirement arrangements ("IRA"s) are excludible from the IRA owner's income. The provision applies to individuals over the age 70 1/2. Distributions may not exceed \$100,000 per taxpayer per year. To qualify for the exclusion, distributions must be to a public charity, not including donor advised funds or supporting organizations. The provision expires with respect to distributions made in taxable years beginning after December 31, 2007. The provision also modified (on a permanent basis) reporting requirements for split-interest trusts.

#### President's budget proposal and other legislative proposals

The President's fiscal year 2008 budget proposal proposed a permanent extension of the provision.

H.R. 1419, The Public Good IRA Rollover Act of 2007 (sponsored by Mr. Pomeroy et. al) would provide for a permanent exclusion and in addition, in general, would allow distributions by individuals (of at least age 59 1/2) to certain split-interest entities to qualify for the exclusion. The bill also would allow direct distributions to any organization that is eligible to receive charitable contributions (including private foundations, donor advised funds, and supporting organizations) to qualify for the exclusion.

#### Extension of modification for charitable deduction for contributions of food inventory

The Act extended the temporary provision, enacted as part of the Katrina Emergency Tax Relief Act of 2005, which allows contributions of food inventory by non C-corporations to qualify for an enhanced charitable deduction, subject to certain limitations. The provision expires for contributions made after December 31, 2007.

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<sup>116</sup> As a summary description, important details and aspects of the provisions and proposals are omitted. For a full technical explanation of the section 501(c)(3) organization-related provisions in the Pension Protection Act of 2006, see Joint Committee on Taxation, *Technical Explanation of H.R. 4, the "Pension Protection Act of 2006," as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006* (JCX-38-06), August 3, 2006. For a full description of the President's budget proposals, see Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2008 Budget Proposal* (JCS-2-07), March 21, 2007.

### President's budget proposal

The President's fiscal year 2008 budget proposal proposed a permanent extension of the provision.

#### **Basis adjustment to stock of S corporation contributing property**

The Act modified the basis adjustment rules for S corporation shareholders in the case of charitable contributions by the S corporation. The modification prevents shareholders from recognizing gain on the sale of the S corporation stock attributable to the appreciation in the property contributed. The provision does not apply to contributions made in taxable years beginning after December 31, 2007.

### President's budget proposal

The President's fiscal year 2008 budget proposal proposed a permanent extension of the provision.

#### **Extension of modification of charitable deduction for contributions of book inventory**

The Act extended the temporary provision, enacted as part of the Katrina Emergency Tax Relief Act of 2005, that allows contributions of book inventory to public schools (kindergarten through grade 12) to qualify for an enhanced charitable deduction, subject to certain certification requirements. The provision expires for contributions made after December 31, 2007.

#### **Modification of tax treatment of certain payments under existing arrangements to controlling exempt organizations**

The Act provided that the general rule of present law that, in general, treats certain payments by a controlled organization to a controlling exempt organization as unrelated business taxable income of the controlling organization, applies to such payments only to the extent that the payment is not made in amounts more than those made in accordance with an arm's length standard (pursuant to section 482). The Act applies only to payments made pursuant to binding written contracts in effect on August 17, 2006, and does not apply to payments received or accrued after December 31, 2007. The Act also required the Secretary of the Treasury to submit a report relating to the provision by January 1, 2009.

#### **Encouragement of contributions of capital gain real property made for conservation purposes**

The Act increased the percentage limitations and carryforwards applicable to qualified conservation contributions from 30 percent to 50 percent and from five years to 15 years respectively. If such contributions are made by eligible farmers and ranchers the percentage limitation is 100 percent. The provision does not apply to contributions made in taxable years beginning after December 31, 2007.

President's budget proposal and other legislative proposals

The President's fiscal year 2008 budget proposal proposed a permanent extension of the provision.

H.R. 1576 (sponsored by Mr. Thompson et. al) would provide for a permanent extension of the provision.

**Excise taxes exemption for blood collector organizations**

The Act provided that certain blood collector organizations described in section 501(c)(3) are exempt from certain retail and manufacturers excise taxes to the extent such items are for the exclusive use of such organization for the distribution or collection of blood.

## **B. Provisions Relating to Reform of Section 501(c)(3) Organizations**

### **Require reporting on certain acquisitions of interests in certain insurance contracts**

The Act required a temporary reporting requirement regarding the acquisition of interests in certain life insurance contracts by certain exempt organizations, and a Treasury study.

### **Increase in penalty excise taxes relating to public charities, social welfare organizations, and private foundations**

The Act doubled the dollar limitation that applied to excise taxes on organization and foundation managers for purposes of the intermediate sanctions rules and private foundation excise taxes. The Act doubled the initial tax rates with respect to the private foundation excise taxes (sections 4941 through 4945).

### **Reform of charitable contributions of certain easements in registered historic districts**

In general, the Act provided that conservation contributions (e.g., easements) relating to buildings in registered historic districts qualify as charitable contributions only if the property restriction preserves the entire exterior of the building, and imposed certain reporting requirements on such contributions. The Act provided for a reduction in the charitable contribution deduction if a rehabilitation tax credit was claimed with respect to the building.

### **Charitable contributions of taxidermy property**

The Act provided that the amount allowed as a deduction for charitable contributions of taxidermy property that is contributed by the person who prepared the property is the lesser of the taxpayer's basis in the property or the fair market value of the property.

### **Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use**

In general, the Act provides for recovery of the tax benefit for charitable contributions of appreciated tangible personal property with respect to which a fair market value deduction is claimed and which is not used for exempt purposes. In general, if a donee organization disposes of such property within three years of the contribution of the property without making a certification as to the exempt use of the property, the donor is subject to a reduction of the tax benefit. The Act also modified the information return requirements relating to the disposition of contributed property by a donee organization.

### **Limitation of deduction for charitable contributions of clothing and household items**

In general, the Act provided that no deduction is allowed for a charitable contribution of clothing or household items unless the item is in good used condition or better. A deduction may be allowed for a charitable contribution of an item of clothing or a household item not in good used condition or better if the amount claimed for the item is more than \$500 and the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

### **Modification of recordkeeping requirements for certain charitable contributions**

The Act provided that in the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

### **Contributions of fractional interests in tangible personal property**

The Act provided that a donor of an additional charitable contribution of a fractional interest in tangible personal property (e.g., artwork) that has appreciated must, in determining the amount of the charitable contribution deduction, use the value of the property at the time the initial fractional contribution was made. The Act provided for a recapture of the tax benefit with respect to fractional contributions if (1) the donor fails to contribute the donor's entire interest in the property before the earlier of ten years of the date of the initial contribution or the donor's death, (2) the donee fails to substantially physically possess the contributed property, or (3) the donee fails to use the contributed property for an exempt purpose.

### **Provisions relating to substantial and gross overstatements of valuations**

The Act lowered the thresholds for imposing accuracy-related penalties on a taxpayer, established a civil penalty on any person who prepares an appraisal that is to be used to support a tax position if such appraisal results in a substantial or gross valuation misstatement, and defined a qualified appraiser and a qualified appraisal.

### **Additional exemption standards for credit counseling organizations**

The Act established standards that a credit counseling organization must satisfy, in addition to present law requirements, in order to be organized and operated either as an organization described in section 501(c)(3) or in section 501(c)(4).

### **Expansion of the base of tax on private foundation net investment income**

In general, for purposes of the excise tax on the net investment income of a private foundation, the Act amended the definition of gross investment income to include items of income that are similar to the items presently enumerated in the Code. Certain gains or losses relating to the exchange of exempt use property are not taken into account.

### **Definition of convention or association of churches**

The Act provided that an organization that otherwise is a convention or association of churches does not fail to so qualify merely because the membership of the organization includes individuals as well as churches, or because individuals have voting rights in the organization.



### **Notification requirement for entities not currently required to file an annual information return**

In general, the Act required organizations that are excused from filing an information return by reason of normally having gross receipts below a certain specified amount (generally, under \$25,000) to provide a short annual form to the Secretary annually.

### **Disclosure to State officials relating to exempt organizations**

The Act allowed the Secretary to share certain returns and return information of certain tax-exempt organizations with appropriate State officers.

### **Public disclosure relating to unrelated business income tax returns**

In general, the Act extended certain public inspection and disclosure requirements and penalties applicable to the Form 990 to the unrelated business income tax return (Form 990-T) of organizations described in section 501(c)(3). The Act provided that certain information may be withheld by the organization from public disclosure and inspection.

### **Treasury study on donor advised funds and supporting organizations**

The Act required the Treasury to provide a report relating to certain issues concerning donor advised funds and supporting organizations by August 17, 2007.

### **Improved accountability of donor advised funds**

In general, the Act defined donor advised funds, and provided that: certain transactions between a donor advised fund and its donors are subject to an excise tax; donor advised funds making distributions for nonexempt purposes are subject to an excise tax; donor advised fund managers and donors advising grants that result in distributions of more than incidental benefit to the donor are subject to an excise tax; donor advised funds are subject to the private foundation excess business holdings rules; donors (and others) are, for purposes of the intermediate sanctions rules, treated as disqualified persons with respect to their donor advised funds; investment advisors of donor advised funds are, for purposes of the intermediate sanctions rules, treated as disqualified persons with respect to the sponsoring organization; and sponsoring organizations are subject to additional reporting requirements.

### **Improved accountability of supporting organizations**

In general, the Act provided that: payments from a supporting organization to a substantial contributor are subject to an excise tax; loans by a supporting organization to its disqualified persons are subject to an excise tax; certain persons are treated, for purposes of the intermediate sanctions rules, as disqualified persons of the supporting organization; Treasury must provide for a new payout by certain supporting organizations; the private foundation excess business holdings rules are applied to certain supporting organizations; certain supporting organizations may not support a foreign organization; Treasury must revise the standard for exemption of certain supporting organizations that are charitable trusts; certain grants by private foundations to certain supporting organizations do not count towards the foundation's payout

requirement and are taxable expenditures; and supporting organizations are subject to additional reporting requirements.

### III. CHART OF THE TYPES AND TAX TREATMENT OF SECTION 501(C) ORGANIZATIONS

Section of 1986 Code	Description of Organization	Year Exemption was Introduced	General Nature of Activities	Subject to UBIT	Taxed on Investment Income	Contributions Generally Deductible as Charitable Contributions	Subject to Private Inurement Restriction	Required to File Exemption Application	Number of Entities on Master File for FY 2006
501(c)(1)	Corporations organized under Act of Congress	1934	U.S. instrumentality	No	Generally No	Only if exclusively for public purposes	No	No	126
501(c)(2)	Title holding corporations	1916	Holding title to property for another exempt organization	Yes	Generally No	No	No	Optional	7,120
501(c)(3)	Charitable organizations	1894	Religious, charitable, scientific, educational, etc.	Yes	Generally No (but private foundations are subject to tax on net investment income)	Yes	Yes	Yes (except for certain organizations including churches and small organizations)	1,064,191
501(c)(4)	Social welfare organizations	1913	Promoting the common good and general welfare of people of a community	Yes	Generally No	No	Yes	Optional	135,155

<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(5)	Labor, agricultural, and horticultural organizations	1909	Betterment of the conditions of those engaged in labor, education, or horticulture	Yes	Generally No	No	Yes	Optional	60,932
501(c)(6)	Business leagues, chambers of commerce, trade associations, etc.	1913	Improvement of conditions in one or more lines of business	Yes	Generally No	No	Yes	Optional	86,563
501(c)(7)	Social clubs	1916	Social or recreational	Yes	Yes	No	Yes	Optional	70,569
501(c)(8)	Fraternal beneficiary societies	1894	Fraternal activities and payment of life, sick, accident, or other benefits to members	Yes	Generally No	Only if used for charitable purposes	No	Optional	65,752

<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(9)	Voluntary employees' beneficiary associations	1928	Provides for payment of life, sick, accident, or other benefits to members or dependents, etc.	Yes	Yes	No	Yes (except for payments of life, sick, accident or other benefits to members)	Yes	12,206
501(c)(10)	Domestic fraternal societies	1969	Fraternal activities	Yes	Generally No	Only if used for charitable purposes	No	Optional	21,385
501(c)(11)	Teachers' retirement fund associations	1928	Payment of retirement benefits to teachers	Yes	Generally No	No	Yes, generally	Optional	n.a.
501(c)(12)	Benevolent life insurance associations, rural cooperatives, etc.	1916	Activities of a mutually beneficial nature	Yes	Generally No	No	No	Optional	6,738
501(c)(13)	Cemetery companies	1913	Operation of cemetery company or burial and cremation	Yes	Generally No	Only under certain circumstances (but not for estate and gift tax purposes)	Yes	Optional	10,879

<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(14)	State credit unions and mutual reserve funds	1951	Operating credit union for mutual purposes	Yes	Generally No	No	No	Optional	3,976
501(c)(15)	Certain small insurance companies	1916	Providing insurance to members at cost	Yes	Generally No	No	No	Optional	2,126
501(c)(16)	Crop-financing corporations	1928	Financing of crops for section 521 farmers' cooperative marketing associations	Yes	Generally No	No	No	Optional	n.a.
501(c)(17)	Supplemental unemployment benefit trusts	1960	Payment of supplemental unemployment compensation benefits	Yes	Yes	No	No	Yes	438
501(c)(18)	Funded pension trusts	1969	Trust that forms part of a pension plan funded only by employee contributions	Yes	Generally No	No	No	Optional	n.a.

<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(19)	Veterans' organizations	1972	Organization of veterans; provision of insurance and other benefits	Yes (but certain insurance premium income excluded from UBTI)	Generally No	Limited to certain organizations of war veterans for income and gift taxes and to organizations incorporated by Act of Congress for estate tax	Yes	Optional	35,982
501(c)(20) (expired for taxable years beginning after June 30, 1992)	Qualified group legal services plans	1976	Provision of legal services benefits	Yes	Yes	No	No	Yes	n.a.
501(c)(21)	Black lung benefits trusts	1977	Provision of black lung benefits	Yes	Generally No	No	No	Optional	n.a.
501(c)(22)	Multiemployer Plan trusts	1980	Payment of withdrawal liability and withdrawal-type payments to plans	Yes	Generally No	No	No	Optional	n.a.

<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(23)	Pre-1880 veterans' organizations	1982	Organization of veterans; provision of insurance and other benefits	Yes	Generally No	Limited to certain organizations of war veterans for income gift taxes and to organizations incorporated by Act of Congress for estate tax	No	Optional	n.a.
501(c)(24)	Employee Trusts	1986	Used in efforts to recover from an employer that terminated its pension plan assets sufficient to provide certain plan benefits	Yes	Generally No	No	No	Optional	n.a.
501(c)(25)	Multi parent title holding organizations	1986	Hold title to assets for multiple parent exempt organizations	Yes	Generally No	No	No	Optional	1,238
501(c)(26)	High-risk individuals health care coverage organizations	1996	Coverage of medical care to certain high-risk individuals	Yes	Generally No	No	Yes	Optional	n.a.



<b>Section of 1986 Code</b>	<b>Description of Organization</b>	<b>Year Exemption was Introduced</b>	<b>General Nature of Activities</b>	<b>Subject to UBIT</b>	<b>Taxed on Investment Income</b>	<b>Contributions Generally Deductible as Charitable Contributions</b>	<b>Subject to Private Inurement Restriction</b>	<b>Required to File Exemption Application</b>	<b>Number of Entities on Master File for FY 2006</b>
501(c)(27)	State-sponsored workmens' compensation insurance organizations	1996	Established by a State to reimburse members for losses arising under the workmens' compensation acts	Yes	Generally No	No	No	Optional	n.a.
501(c)(28)	The National Railroad Investment Trust	2001	Manage and invest certain assets of Railroad Retirement System	Yes	Generally No	No	No	Not determined	n.a.