

SCHOOL SUPPORT GROUPS
AND
TAX-EXEMPT STATUS

School support groups such as band boosters or athletic boosters are a separate entity from the school. As a result, each organization must establish its own tax identity on the federal and state levels or face possible tax implications. The following packet of information summarizes the requirements to establish tax-exempt status on the federal and state levels. The tax forms included in this packet are current as of the date of issuance; however, tax laws change frequently. Therefore, it is ultimately each organization's responsibility to ensure the forms are current.

The following is a brief outline detailing the requirements that each support group or organization must meet based upon the entity's specific needs.

- a. If the organization wishes to obtain federal and state tax-exempt status, the organization must establish its exemption from federal incomes taxes by filing Form 1023 as detailed in STEP 2. State income tax exemption is automatically granted if a favorable determination letter is received from the IRS. See STEPS 1-5.
- b. If the organization is covered by a group exemption letter, the organization is considered automatically to be exempt from federal income taxes. However, to establish state income tax exemption, the organization must comply with the provisions of STEPS 1, 2, 4, and 5.

STEP 1. Articles of Incorporation

Each organization must establish a set of articles of incorporation. The articles must establish the organization's purpose and place limitations on activities to the exempt purpose. In addition, the articles must include a provision that the assets of the organization are permanently dedicated to the exempt purpose. In the event of dissolution, the assets cannot be distributed to members or individuals; otherwise, the organizational test for an exempt entity is not met. Generally, school support groups are considered to be organized for charitable and educational purposes which are publicly supported. An example of articles of incorporation and the organizational test criteria are presented in Publication 557, "Articles of Organization", page 15 (Attachment 1)

STEP 2. Employer Identification Number (EIN)

At a minimum, each support group should have a federal identification number. In order to obtain the number, complete the enclosed IRS Form SS-4 (Attachment 2) and forward to the appropriate address disclosed within the form instructions. No fee is assessed for filing.

STEP 3. Form 1023, "Application for Recognition of Exemption Under Section 501 (c)(3) of the Internal Revenue Code" (Attachment 3)

Section 501 (c)(3) explains that an organization may qualify for tax-exempt status if it is Organized and operated exclusively for one or more of the following purposes:

Charitable
Religious
Educational
Scientific
Literary
Testing for public safety
Fostering national or international amateur sports competition (see page 18 of Attachment 1 for more information) or
The prevention of cruelty to children or animals

To qualify, the organization must be a corporation, community chest, fund, or foundation. An individual or partnership will not qualify.

Every organization that qualifies for tax exemption as an organization described in Section 501 (c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term. Organizations that fall into the excluded categories are generally those that have either broad public support or actively function in a supporting relationship to such organizations.

Excluded categories are described in detail in Publication 557 (Attachment 1) on pages 24 through 40. Most school support groups will fall into the Section 509 (a)(2) category described on page 30 of Publication 557. To be excluded from private foundation treatment under Section 509 (a)(2), an organization must meet two support tests:

1. The one-third support test, and
2. The not-more-than-one third support test

The one-third support test will be met if an organization normally receives more than one-third of its annual support from gifts, grants, contributions, or membership fees; and gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities in an activity that is not an unrelated trade or business.

The not-more-than-one-third support test will be met if the organization normally receives no more than one-third of its annual support from gross investment income and the excess of unrelated business taxable income over the tax imposed on income from unrelated trades or businesses.

Even if an organization falls within one of the exclusion categories, it will be presumed to be a private foundation, with some exceptions, unless the organization gives timely notice to the IRS that it is not a private foundation. The only exceptions to this requirement are those organizations that are excepted from the requirement of filing Form 1023 (Attachment 3).

Form 1023 is not required for organizations that have gross receipts in each taxable year of normally not more than \$5,000 and not considered a "Private Foundation" as defined in Chapter 3 of Publication 557, page 24 (Attachment 1).

As explained further in Publication 557 page 15, for purposes of the gross receipts test, an organization normally does not have more than \$5,000.00 annually if:

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

An organization that meets the gross receipts test of normally not more than \$5,000 may elect to file Form 1023 and receive a ruling or determination letter recognizing its exempt status so that potential contributors are assured by the IRS that contributions will be deductible. However, any organization that has receipts in excess of the amounts in the gross receipts test, must file Form 1023.

Form 8718, "User Fee for Exempt Organization Determination Letter Request" (Attachment 4), must accompany Form 1023 with the appropriate fee before a determination will be considered. Exempt organizations with annual gross receipts averaging not more than \$10,000 during the preceding four (or the first four) years of operation will be assessed a fee of \$150. Exempt organizations with average annual gross receipts of more than \$10,000 during the preceding four (or the first four) years of operation will be assessed a fee of \$500.

Any organization who meets the criteria to file Form 1023 and fails to file may face possible federal tax implications as well as losing deductibility of contributions for donors on their tax returns.

Filing Requirements

An organization exempt from federal income taxes is required to file an annual information return with the IRS (Form 990 series), unless it specifically meets one of the thirteen exceptions outlined in Publication 557, page 8. Usually, school support organizations fall under exception 13 and are not required to file unless they have gross receipts in each tax year of more than \$25,000.

Form 990-EZ may be used by organizations with gross receipts of less than \$100,000 but more than \$25,000 and total assets at the end of the year of less than \$250,000. Otherwise, organizations must file Form 990.

STEP 4. West Virginia Application for Business Registration Certificate (Attachment 5)

Any organization who is engaging in a business activity in the state of West Virginia must register with the Department of Tax and Revenue before commencing business activities. Nonprofit organizations are not considered to be "businesses" or engaged in business or subject to any other tax laws by the mere completion of the application. However, in order to be exempt from the consumer sales and use tax, an organization must have a current business registration certificate.

First you must file with the Secretary of State using form on page 4 and Attachment 5. The application for business registration will not be processed until a control number has been assigned by the Secretary of State. Complete the application for business registration, WV/BUS-APP at Attachment 5. The fee is waived for organizations qualifying for exemption from federal income taxes under Section 501 (c)(3) of the Internal Revenue Code.

STEP 5. West Virginia State Sales and Use Tax Exemption

An organization that wishes to be exempt from the State sales tax on purchases must meet all four of the qualifying criteria listed:

- a. Must have a current annual registration certificate with the Department of Tax and Revenue (WV/BUS-APP), and
- b. Must be exempt from paying federal income tax under Section 501 (c)(3) or (c)(4) of the Internal Revenue Code, and
- c. Must receive more than one-half of its support from any combination of gifts, grants, direct or indirect "charitable contributions" or "membership fees", or have no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise such gross income, must be donated to an organization which is exempt from income taxes under Section 501 (c)(3) or (c)(4) of the Code, or
Be a youth organization, such as the Girl Scouts or the Boy Scouts, which is organized and operated exclusively for charitable purposes and have as its primary purpose the nonsectarian character development and citizenship training of its members, and
- d. Items purchased by the organization must be used or consumed in the activities for which the organization qualifies for exemption from federal income taxes.

The organization will receive the sales tax exemption if it has acquired a favorable determination letter from the IRS by filing Form 1023. Even if the organization is not required to file Form 1023 to obtain federal exemption, to obtain state tax exempt status, a favorable determination must be received from the IRS.

State Filing Requirements

Every domestic corporation is required to file a corporate license tax return each year. Certain nonprofit organizations are exempt from paying the corporate license tax. However, every nonprofit corporation must file the returns on time and pay the \$10 fee for the Secretary of State.

Group Exemption Letter

A group exemption letter is another way to claim tax-exempt status. The letter is a ruling or determination letter issued to a central organization recognizing on a group basis the exemption under Section 501 (c)(3) of subordinate organizations on whose behalf the central organization has applied for recognition of exemption.

A central organization is an organization that has one or more subordinates under its general supervision or control.

A subordinate organization is a chapter, local, post, or unit of a central organization. A subordinate organization may or may not be incorporated, but it must have an organizing document.

If an organization is a subordinate one controlled by a central organization (for example, a parent teacher association), check with the central organization to see if it has been issued a group exemption letter that covers the organization. If it has, the subordinate organization is not required to file a separate application unless the organization no longer wants to be included

in the group exemption letter. If the group exemption letter does not cover your organization, ask the central organization about being included in the next annual group ruling update that is submits to the IRS.

Additional Information You May Need

Forms SS-4, 1023, and 8718 as well as Publication 557 may be obtained by contacting the IRS at 1-800-TAX-FORM or visiting the web site at www.irs.gov. Additional technical questions may be addressed to an IRS nonprofit specialist at (513) 241-5199.

State tax forms such as Forms WV/BUS-APP may be obtained from the West Virginia Department of Tax and Revenue by calling (304) 558-3333 or from within the state, 1-800-WVA-TAXES. The forms and publications can also be obtained on the website at www.state.wv.us/taxdiv. Additional technical questions regarding state regulations may be addressed by calling the preceding number.