

Navigating Legal Nonprofit Compliance

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Alliance for Greater Works

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Introduction

- Why compliance matters
- Understanding your exempt status
 - 'Nonprofit'
 - 'Taxexempt'
 - 501(c)(3)
 - 501(c)what?
 - 'Charitable'
- Understanding your entity type

Federal Tax Exempt Status

501(c)(3)

501(c)(3)

Organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (with limitations), or for the prevention of cruelty to children or animals

Public Charity vs. Private Foundation

- Public Charity Status

- Public support test (1/3 from public sources)
- Favorable tax treatment

- Failing public support test - reclassification

Schedule A (Form 990 or 990-EZ) 2020 Page 2

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 Total. Add lines 1 through 3						
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						
6 Public support. Subtract line 5 from line 4						

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2016	(b) 2017	(c) 2018	(d) 2019	(e) 2020	(f) Total
7 Amounts from line 4						
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources						
9 Net income from unrelated business activities, whether or not the business is regularly carried on						
10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part IV.)						
11 Total support. Add lines 7 through 10						
12 Gross receipts from related activities, etc. (see instructions)						12
13 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here						<input type="checkbox"/>

Section C. Computation of Public Support Percentage

- Private Foundation Status

- Typically funded by single source
- Minimum annual distributions
- Investment tax
- Stricter regulations

Public Charity Status

- 170(b)(1)(A) – includes churches, educational organizations, hospitals and similar, publicly supported organizations, supporting organizations

Good Governance

Protecting Your Organization

Understanding Governance

- Certificate of Formation, Bylaws, and Governance Policies
 - Texas Business Organizations Code
- Role of the Board of Directors
 - Duty of Care
 - Duty of Loyalty
 - Duty of Confidentiality
 - Duty of Obedience
- Meeting and recordkeeping

Governance Policies

- Conflict of Interest Policy
- Whistleblower Policy
- Document Retention Policy
- Accountable Reimbursement Policy
- Gift Acceptance Policy
- Financial Procedures Policy
- Endowment and Spending Policies
- Investment Policy
- Code of Conduct and Ethics
- Fundraising Policy
- Compensation Policy
- External Communications and Social Media Policy
- Foreign Activities and/or Grantmaking Policies
- HR Policies

Compliance Considerations

Key Issues Under Federal and Texas Law

Texas Compliance

- Periodic Reports with Secretary of State
- Franchise / Margin Tax Exemption
 - Sales Tax Exemption for Items Purchased
 - Sales Tax for Items Sold – Generally Not Available
- Property Tax Exemptions
- Hotel Occupancy Tax, Motor Vehicle Tax
- Disclosure Requirements

Federal Exemption Compliance

- Maintaining 501(c)(3) Status
 - Operational and organizational tests
- Annual Form 990 filings
 - Auto-revocation if not filed for three years
 - Churches and certain religious organizations are exempt
 - Ministries/nonprofits under a church group exemption are *not* exempt
- Unrelated Business Taxable Income (UBTI) and Form 990-T
 - Churches are *not* exempt
- Public Information Disclosure Requirements

Federal Exemption Compliance

- IRS Oversight and Regulation
 - Insiders / Disqualified Persons
 - Intermediate sanctions / Excess Benefits
 - Self-Dealing / Prohibited Activities / Excise Taxes
- Private Inurement
- Private Benefit
- Substantiating Donor Contributions

Potential Pitfalls

Common Compliance Challenges

- Unrelated Business Taxable Income (UBTI)
 - Failure to identify
 - Misunderstood as exempt from Form 990-T
- Poor Recordkeeping
- Uniform Prudent Management of Institutional Funds Act (UPMIFA)
- Governance Failures
 - Board meetings, membership documentation, internal controls, conflicts of interest, inadequate documentation of actions, improperly amended documents
- Registered Office and Registered Agent
 - Required by Texas Business Organizations Code
 - Keep updated with Secretary of State's Office
- Gambling, Raffles, and Casino Nights

Key Takeaways

Staying Compliant and Mission Focused

Key Takeaways

- Compliance is an Ongoing Process
- Good Governance is Critical to the Mission
- Understand State and Federal Requirements
- Review and Revise Policies and Procedures Regularly

Questions and Answers

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