# CHAPTER 1

# Distinguishing Characteristics of Tax-Exempt Organizations





***p.4. Add after third paragraph:***

The Christ Ambassadors Church was not recognized at tax-exempt (c)(3) organization by the IRS or the Tax Court. The available descriptions of its activities and modest amount of money involved make one wonder whether there is more to this case than reported. The activities reported on Form 990 included:

- "Assisting individuals with therapy, food pantry, group therapy assistance, individual with therapy, food pantry, group therapy, and after school tutoring to help the less privileged." (Part II, line 1)
- "Assistance to the public by providing food and medical assistance to the less fortunate and mentally retarded patients in Las Vegas Nevada." (Schedule O)
- The organization claims public charity status as a church. Schedule A, Part I, box 1. Petitioner operated the 501(c)(3) exempt organization as a church to assist the community with spiritual and other needs.

Christ Ambassadors Church operated a behavioral health clinic. Donations and monies from the behavioral health clinic were used to, among other things, operate the church, bring congregants to and from church events, and purchase food and necessities for the homeless and hungry of the greater Las Vegas, Nevada area.

The IRS's revocation letter said, "Our adverse determination as to your exempt status was made for the following reasons: You have not established that you are both organized and operated exclusively for charitable, educational, or other exempt purposes within the meaning of IRC § 501(c)(3). Additionally, your primary activity is the provision of behavioral health services to those that can pay. You are operated in a commercial manner with substantial income-producing activities of a kind normally conducted by nonexempt commercial entities. You have not established that you continue to qualify for tax-exempt status as a church or that your church activities were not secondary and incidental to your overall operations. Furthermore, part of your earnings inured to the benefit of your officers and their family members, which constitutes inurement prohibited under IRC § 501(c)(3). For all these reasons, you fail to meet the requirements for tax exemption."

***p. 4. Sources to identify qualifying Exempt Organization***

The amazing list of organizations that qualify as tax-exempt organizations according to the IRS should be carefully reviewed on Exhibit 1.1 Organization Reference Chart. Note the chart takes four pages in the original book. Additionally lists can be found in the following publications on the Internet.

- **Publication 78.** An online version of IRS Publication 78 can be found on the IRS website. Referred to as Pub 78 by most, it allows taxpayers to search check to see if a charitable organization qualifies for tax-IRS Publication 78 (Cumulative List of Organizations) lists organizations that have been recognized by the IRS as eligible to receive tax-deductible contributions. The list is not all-inclusive and does not show every qualifying organization. This is now searchable on the IRS website on Tax Exempt Organization (`https://apps.irs.gov/apps/oes/`). Organizations may be searched by name or tax ID number.
- **GuideStar Charity Check Data Sources**. GuideStar acquires all IRS data directly from the IRS.
- **IRS Internal Revenue Bulletin** (IRB) lists changes in charitable status since the last Publication 78 release. Between the release of IRS Publication 78 and the subsequent IRS Internal Revenue Bulletin, the IRB date will reflect the most recent release date of IRS Publication 78.
- **IRS Business Master File** lists approximately 1.7 million nonprofits registered with the IRS as tax-exempt organizations.
- **IRS Automatic Revocation of Exemption List** contains organizations that have had their federal tax-exempt status automatically revoked for failing to file an annual return or notice with the IRS for three consecutive years.
- **Foundation Status Code** is a value derived by mapping the codes found on the 990PF filing instructions to the corresponding codes in the IRS BMF. Note that not all codes are able to be mapped due to insufficient data.
- **Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN)** lists organizations that are owned or controlled by targeted individuals, groups, and entities, such as terrorists or narcotics traffickers. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

## CHAPTER 1.3

*p. 13. Add as opening text:*

A June 26, 2023, article entitled "The 2022 Giving Slump Exposes the Fragility of Top-Heavy Charity," is causing many involved in philanthropic programs to wonder. According to the author, "wealthy donors have taken more and more control over our charitable sector, while increasingly distressed households of everyday Americans drop off the donor rolls. This results in problems for working charities: one is donor control over mission and two is money being funneled away from active charities into intermediaries such as foundations and Donor Advised Funds.[1]

A coalition of leaders from the fields of higher education, health care, philanthropy, law, and nonprofit governance have called upon the IRS to require large nonprofits to make public the composition of their governing boards. In an Open Letter, the Coalition for Nonprofit Board Diversity Disclosure specifically requests that the IRS include on tax form 990 a question about "the gender and racial/ethnic demographics of their boards, based on how board members self-identify." It further supports "including LGBTQ+ and disability disclosure." More than 140 organizations and individuals interested in the governance and operation of nonprofit organizations and committed to the value of diversity throughout organizations have joined the growing Coalition to date.

The Open Letter emphasizes that gender and racial gaps persist in nonprofit board rooms, including those of some of the country's largest universities and hospitals. It also reveals the difficulty that even researchers have obtaining data about nonprofit boards. The IRS, the letter asserts, is best positioned to collect and make public this data as the agency that already asks questions about nonprofit boards and governance practices. The letter clarifies that requiring institutions to be transparent would not require them to change their boards; however, asking the question conveys a message that the IRS stands behind diversity as a good governance practice. Citing more than 15 years of "mainstream and highly visible organizations and publications, and countless studies and reports" on for-profit boards that show that diversity is a commonly accepted standard of good governance, the Coalition points to Nasdaq's model, approved by the Securities and Exchange Commission, that requires its listed companies to report aggregate board composition data.

Board diversity in the nonprofit sector has not generated the same degree of interest and advocacy, although a 2020 national study reports that board diversity brings benefits for nonprofits similar to for-profit organizations. "After years of scrutiny or pressure, leaders in the for-profit community have finally recognized that board diversity makes for better decisions and reduces risk," said Jane Scaccetti, CPA[2] and member of several for-profit and large nonprofit boards and signatory to the letter. "It is time for the boards of nonprofits that serve and employ diverse populations to do likewise." In the Open Letter, the Coalition makes it clear that they are asking for the one new question to be added only for those organizations that file the full Form 990, not the Form 990-EZ used by the smallest nonprofits.

"Board demographic disclosure will bring visibility and accountability to institutions benefiting from the designation of public charities," said Cid Wilson, president and CEO of the Hispanic Association on Corporate Responsibility (HACR) as well as chair of the Alliance for Board Diversity. "The IRS is the one entity that could require them to disclose the demographic make-up of their boards. Form 990 is an existing straightforward way to capture accurate data that will be made publicly available every year." To read and sign the letter or learn more, go to coalition-4-nonprofit-diversity.[3]

***p. 15. Add report of new tax code provisions: (add to end of paragraph 1.4) without a new title.***

[1]Helen Flannery. a researcher with the Institute for Policy studies Reform Initiative, in USA Today.
[2]Of Council, Armanino LLP. Jane is a CPA with experience in family business consulting, family wealth issues and board governance.
[3]Coalition Asks IRS to Require Disclosure of Nonprofit Board Composition.

The Inflation Reduction Act (IRA) added, modified, and extended a number of business credits for investments in clean energy technologies—and also added a "direct pay" provision, effectively making several credits reportable with their annual tax filings available to tax-exempt and many government entities as refundable credits. The benefits of these tax incentives, how they work and who is eligible for payments using examples of opportunities to use them in the exempt organization sector follows and examines some of the thornier implementation issues Treasury work through in issuing guidance.[4]

**Code Sections 30C, 45, 45Q, 45U, 45V, 45V, 45W, 45Y, 45Z, 48, 48C, and 48E are all direct pay credits for which tax exempt organizations are eligible.** The IRS has provided additional guidance in the form of proposed regulations, and announcements on new energy credits.

***p. 14. Add IRS Priority Guidance Plan***

- TE/GE's Priorities for FY 2024

"Our (IRS Exempt Organization Division) FY24 program and priorities align with the IRS Strategic Operating Plan FY2023-2031 and its five transformation objectives:

- Service (Better Taxpayer Experience)
- Issue Resolution (Faster Issue Resolution)
- Enforcement (Smarter Enforcement)
- Modernization (Advanced Technology and Analytics), and
- Workforce (Empowered Employees)

## Better Taxpayer Experience

Dramatically improve services to help taxpayers meet their obligations and receive the tax incentives for which they are eligible.

- Focus on proactively connecting with internal and external stakeholders to identify and better serve small and underserved taxpayers such as small entities and limited English proficiency communities to foster voluntary compliance.
- Continue to promote the use of digital communication vehicles like Taxpayer Digital Communications (TDC) and Data Upload Tool (DUT), for secure, electronic communication with taxpayers and representatives.
- Provide education and outreach to help TE/GE stakeholders make complete and accurate elective payment elections for clean energy credits under the Inflation Reduction Act.
- Continue to partner with Stakeholder Partnerships, Education & Communication (SPEC) on its Native American initiative focusing on increasing access to tax services throughout Indian Country.

[4]EO Tax Journal—eotaxjournal@gmail.com, *May 5, 2023, remarks of Amber MacKenzie, Attorney-Advisor, Office of Tax Policy, Department of Treasury.*

### Faster Issue Resolution

Quickly resolve taxpayer issues when they arise.

- Support effective processing and compliance at pre-filing and filing for elective payment elections of clean energy credits.
- Support IRS efforts to proactively review and address Employee Retention Credit claims, during the filing process or immediately after return processing.
- Collaborate across the IRS to streamline notices and improve how notices are updated and issued to taxpayers. Encourage two-way electronic communication between IRS and taxpayers regarding notices.
- Continue effort to update the EPCRS revenue procedure (Revenue Procedure 2021-30) to incorporate changes made by Sections 301 and 305 of SECURE 2.0 Act. Section 305 of SECURE 2.0 requires new guidance for the EPCRS and a new IRA correction program be published by December 2024.
- Based on the results of the Employee Plans (EP) pre-exam compliance program pilot, EP will develop a second pilot during FY 24 for the pre-exam compliance program that allows plan sponsors to self-correct qualification failures before an exam begins.
- Continue efforts to improve filing and reporting compliance within the exempt sector.

### Smarter Enforcement

Focus expanded enforcement on taxpayers with complex tax filings and high-dollar noncompliance to address the tax gap.

- Collaborate with Research, Applied Analytics, and Statistics (RAAS) to continue building and refining Exempt Organizations exam case selection using advanced modeling techniques.

### Advanced Technology and Analytics

Deliver cutting-edge technology, data, and analytics to operate more effectively.

- Complete and launch Form 13909, Tax-Exempt Organization Complaint (Referral) in the Digital and Mobile Adaptive Forms (DMAF) framework to allow the public to submit a referral using the electronic form accessible from any device. This will expand paperless submission options for taxpayers and provide for more accurate electronic data.
- Continue to work with RAAS to develop an artificial intelligence capability to review and prioritize referrals received on Exempt Organizations.
- Continue to support Enterprise Case Management efforts to standardize Servicewide examination processes

**Empowered Employees**

Attract, retain, and empower a highly skilled, diverse workforce and develop a culture that is better equipped to deliver results for taxpayers.

- Continue to focus on improving consistency in the service Human & Capital Resources provides to customers by developing a feedback mechanism for new hires to provide input on ways to improve the onboarding experience for future hires.
- Execute TE/GE's recruitment strategy by continuing to partner with HCO STARS, Workforce Planning, SB/SE, LB&I, and other BODs to host direct hiring and recruiting events across all regions.
- Create detailed/extensive career training paths for employees to use as a tool for them to reference as career milestones occur.
- Commit resources to develop and deliver quality, cost-effective mission critical core training that is focused on both individual and organizational productivity and advancement.
- Create training workshops and mentoring seminars that will focus on developing the skills that TE/GE Frontline managers need to make independent data-driven decisions.
- Continue to build a collaborative team culture by hiring and retaining a diverse, talented, data-savvy, and technology-driven workforce.
- Build community relationships by expanding outreach efforts and engaging with external stakeholders to market TE/GE and IRS careers and increase our visibility.

## CHAPTER 1.4 Role of the Internal Revenue Service

***p. 14. Insert new second paragraph:***

The IRS statistics for 2022, the latest available, didn't reflect a level of activity one would expect given the total number of exempt organizations included on the lists of the Exempt Organizations Division. The numbers reported for the following categories included:

- Denial letters to exemption applicants sent by EO Determinations (Cincinnati)
- Rulings in response to Form 8940 Requests for Miscellaneous Determinations sent by EO Determinations (Cincinnati),
- Revocation letters sent by EO Examinations (Dallas), and
- EO private letter rulings issued by the Office of Chief Counsel, of which there were very few.

For EO denial letters issued in 2022 (latest date available), there were approximately 46 denials to (c)(3)s, 11 to (c)(4)s, 6 to (c)5s, 11 to (c)(6)s, and 27 to (c)(7)s.

Such unapproved applications were likely prepared by persons unfamiliar with the EO tax code provisions that this 900+ page book focuses on, and applicants that were clearly unqualified due to expected to provide benefits to their creators was a common theme in the denials. The total number of denials, 107, is about ½ percent of the total filed in 2022. The Form 1023-EZ submitted by many applicants comprises a large portion of the list and requires very little detailed information to request recognition as a tax-exempt. The form requests in some detail programs for grants to individuals, set asides for multi-year programs or projects, and unusual grants to nonexempt entities are often approved. Surprisingly the total number of approvals was about 80. Since Form 8940 submits information about the approximately 80 Form 8940 rulings requests submitted were approved. A comparison of the total number of applications submitted to those denied and lack of analysis of reasons for failure presumably due to IRS staff levels, could be thought of positively. Thanks for the instructions to the form, which are well written, the nonprofit community receives a goodly number of approved entities to accept donations to support their work.

There were approximately 99 revocations of exempt status resulting from EO Examinations. Many of the (c)(3) revocations were for failure to keep records or for being inactive. Most of the (c)(7) revocations were for failures to satisfy the membership requirements.

**(b) New Donor Instructions**. On August 27, 2023, the IRS issued a revised instruction [Announcement 2023-09] of impact on donors to a charity that loses its tax-exempt qualification. The release also contained a list of "Deletions from Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code." The announcement explained the IRS policy regarding deductibility of donations to organizations whose qualification as a § 170 organization has been revoked. The notice included the names of those revoked entities and its effective date, as illustrated below.

The IRS will not, generally, disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under § 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under § 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand, a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in § 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under IRS § 7428(c) would begin on August 28, 2023, and would end on the date the court first set for in § 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

| Name of Organization | Effective Date of Revocation | Location |
|---|---|---|
| Teachers Organizing Property Inc | 12/29/2017 | Greenville, MS |
| Next Level Foundation | 1/1/2019 | Las Vegas, NV |
| LWL Foundation | 12/1/20218 | Danville, CA |
| Maxcess Foundation Inc | 1/1/2018 | Boca Raton, FL |
| Matthew Kull Foundation for Healing | 1/1/2018 | New Milford, CT |
| A 2nd Cup | 1/1/2019 | Houston, TX |
| Atchafalya Bit & Bridle Club Inc | 1/1/2020 | Houston, TX |
| FCPA Community Outreach | 1/1/2020 | Shelton, CT |
| FL-AL Toy Breeds Inc | 1/1/2020 | Theodore, AL |
| Goff Moll Post Building Association | 9/1/2019 | Brentwood, MO |
| Hawaii Coral Reef and Garden | 10/7/2019 | Sparks, NV |

## CHAPTER 1.5 Suitability as an Exempt Organization

*p. 15. Add at end of introductory paragraph:*

Start the suitability considerations by inserting at beginning an overarching question: **Who will benefit**? The answers to the four questions are significant in determining the new organization is really necessary to accomplish the mission and whether it is qualified to be recognized for tax exemption. Are creators motivated by selfish goals? And ask if the entity is being created to accomplish a charitable purpose rather than to achieve benefits for its funders themselves and their families and friends in addition to the tax savings for their donations. An extensive consideration of this issue should be can be reviewed with discussion included in Chapter 14 entitled Self-Dealing.