Staying “Friends” with your 501(c)(3) Organizations

Presented by

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TABLE OF CONTENTS

I. INTRODUCTION - WHAT IS A 'FRIENDS' ORGANIZATION?

A. "Friends" organizations is a colloquial term used to refer to community groups, interest groups, affiliates of national organizations, or not for profit incorporated entities that are formed for the purpose of supporting causes, departments, or programs that are typically offered or run by governmental organizations. Some examples include: libraries and law libraries, parks, history museums and villages, preserves, fire rescue, police, arts, animal programs, and other social or benevolent programs.

B. The organizations exist and function to raise money and or provide services that could otherwise be provided by the governmental entity or governmental program. In order to be most effective in their efforts, many apply for status as a tax exempt organization under 501(c)(3) of the Internal Revenue Code. Some may have other legal structures, or no legal structure at all.

C. Such organizations may have been established and operated by or have substantial volunteer involvement from employees of the governmental entity. These may have changed over time with little or no formal organization or agreements with the governmental entity. Often such organizations identify with the governmental entity they are supporting. Ex: Friends of Hillsborough County Fire Rescue; Friend of Brooker Creek Preserve.

D. These organizations can be a great tool for fundraising, community outreach, utilizing volunteers, education, and awareness but also present unique challenges for the governmental entities that they support. Such challenges may include complications or blurred lines of responsibility relating to delegations, access to and use of public property, meetings, and public records, insurance coverage and risk management, as well as practical challenges with organizations identifying with the governmental entity.

E. Donors who may want to support a particular program, department, or government function may be more comfortable doing so if they know and independent corporation will control the funds, and that it is not in a government general fund account. Donors also receive a tax exemption and the knowledge that, even upon dissolution, the funds must be used toward an exempt purpose.

F. This outline will address each of these challenges and offer solutions for how governmental entities and their supportive 501(c)(3) organizations can stay "friends, " and how to take a "friend" through the non-profit or 501(c)(3) process. It also provides some structure for an analysis of potential problems the rogue "friends" organization, where the president decides to run for county commission, donations are solicited without permission, using an official seal, or other problems.

II. ESTABLISHING THE NON-PROFIT – CHAPTER 617, FLORIDA STATUTES AND THE INTERNAL REVENUE CODE

A. Under Chapter 617, Florida Statutes, the Chapter governing all non-profit corporations in Florida, a "corporation not for profit" means a corporation where no part of the income or profit is distributable to its members, directors, or officers, except as otherwise provided under Chapter 617.

B. Internal Revenue Code (IRC) 501(c)(3) exempts from federal income tax: corporations, and any community chest, fund, or foundation, 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 (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (i)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

C. A Florida corporation not for profit does not necessarily need to be a 501(c)(3) tax exempt organization; however, in addition to the exemption from payment of federal income tax on its revenues, organizations recognized as exempt under IRC 501(c)(3) may enjoy other benefits, such as:

1. Eligible to receive tax-deductible contributions in accordance with IRC section 170(c)(except for organizations established for the purpose of testing for public safety);
2. Exemption from state property, sales, and use tax - many state and local jurisdictions accept the Internal Revenue Service's determination for their own exemption requirements, or require exemption from federal income tax under IRC 501(c)(3) as a prerequisite to granting exemption under state or local provisions;
3. Exemption from taxes under the Federal Unemployment Tax Act (FUTA) and certain federal excise taxes;
4. Preferred postal rates pursuant to Section 134.5 of the United States Postal Service Regulations, 39 U.S.C. 3626–27;
5. Can offer employees the benefit of special annuity tax provisions under IRC 403(b);
6. Certain grant opportunities may be available to tax exempt entities.

D. A Florida corporation not for profit is formed by filing articles of incorporation with the Department of State, Division of Corporations.

E. The articles of incorporation <u>must</u> set forth: (§617.0202, Fla. Stats.)

1. A name for the corporation;
2. The street address of the initial principal office and, if different, the mailing address of the corporation;
3. **<u>The purpose or purposes for which the corporation is organized;</u>**
4. A statement of the manner in which the directors are to be elected or appointed (or a statement that the method of election of directors will be stated in the bylaws);
5. Any limitations of the corporate powers (as long as not inconsistent with Chapter 617 or any other law),
6. The name and street address of the initial registered agent, with written acceptance from the registered agent of such appointment; and
7. The name and address of each incorporator.

MEETING THE EXEMPT PURPOSE TEST: The importance of setting forth the purposes of the corporation (#3 above) cannot be understated. This is the IRS' primary consideration in determining whether the corporation has been organized exclusively for one or more tax exempt purposes. IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either the organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)–1(a)(1). The organizational test concerns the organization's articles of incorporation. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. *IRC Reg.* 1.501(c)(3)–1(b)(1)(iv). The following are guidelines for meeting the organizational test:

<u>*IRS Rulings and Agreements; Chapter 25, Section 3;* 7.25.3.3 Organizational Test Requirements</u>

Reg. 1.501(c)(3)–1(b)(l)(i) provide that an organization is organized exclusively for one or more exempt purposes only if its articles of incorporation:

1) Limit the purposes of such organization to one or more exempt purposes; and

2) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

In addition, the organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law. Reg. 1.501(c)(3)–1(b)(4).

This test cannot be met by any document that is not the creating document. A corporation's bylaws cannot remedy a defect in its corporate charter. A charter can be amended only in accordance with the State's nonprofit corporation law. States generally require that any amendments be filed with and approved by the chartering authority.

IRS Rulings and Agreements; Chapter 25, Section 3; 7.25.3.3.1; Specified Purposes

To meet the organizational test, the organization's purposes must be specified in Its articles. They may be as broad as, or more specific than, the purposes stated in IRC 501(c)(3). Reg. 1.501(c)(3)–1(b)(1)(ii).

The following examples provide illustrations of broad and narrow purposes clauses that meet the test:

(BROAD) Charitable and educational purposes within the meaning of IRC 501(c)(3),

(NARROW) To grant scholarships to deserving junior college students residing in Gotham City

IRS Rulings and Agreements; Chapter 25, Section 3; 7.25.3.3.2; Ambiguous Purposes

The purpose stated in the articles must be a purpose that necessarily falls within the purposes stated in IRC 501(c)(3). For example, a purpose "to operate a hospital" does not meet the organizational test since it is not necessarily within the purposes stated in IRC 501(c)(3). A hospital may or may not be exempt, depending upon the manner in which it is operated.

Under no circumstances may the organizational purposes be broader than the purposes of IRC 501(c)(3). They may, however, be narrower. For example, the charter may recite as purposes "charitable and educational purposes within the meaning of IRC 501(c)(3)." It may also recite a narrow specific purpose such as "to grant scholarships to deserving junior college students residing in Gotham City." Reg. 1.501(c)(3)–1(b)(1)(iv).

IRS Rulings and Agreements; Chapter 25, Section 3; 7.25.3.3.4; Express Powers that Cause Failure of Organizational Test

An organization does not meet the organizational test if its articles expressly empower it:

To devote more than an insubstantial part of its activities to influence legislation by propaganda or otherwise (Reg. 1.501(c)(3)–1(b)(3)(i));

Directly or indirectly to 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 (Reg. 1.501(c)(3)–1 (b)(3)(ii));

To have objectives and to engage in activities which characterize it as an "action" organization (Reg. 1.501(c)(3)–1 (b)(3)(iii));

To carry on any other activities (unless they are insubstantial) which are not in furtherance of one or more exempt purposes (Reg. 1.501(c)(3)–1(b)(1)(i)(a)).

F. In addition to the mandatory items for the articles of incorporation listed above, the articles of incorporation may set forth: (§617.0202, Fla. Stats.)

1. The names and addresses of initial directors;
2. Provisions regarding the regulation of the internal affairs of the corporation;
3. The manner of termination of membership in the corporation;
4. The rights, upon termination of membership, of the corporation, the terminated members, and the remaining members;
5. The transferability or nontransferability of membership;
6. **The distribution of assets upon dissolution or final liquidation or, if otherwise permitted by law, upon partial liquidation;**
7. If the corporation is to have one or more classes of members, any provision designating the class or classes of members and stating the qualifications and rights of the members of each class;
8. The names of any persons or the designations of any groups of persons who are to be the initial members;
9. A provision to the effect that the corporation will be subordinate to and subject to the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, foundation, federation, or other corporation, society, organization, or association not for profit; and
10. Any provision that under Chapter 617 is required or permitted to be set forth in the bylaws. Any such provision set forth in the articles of incorporation need not be set forth in the bylaws.

IRS PRACTICE NOTE: While the distribution of assets is listed under the non-mandatory section of Section 617.0202, the Internal Revenue Code (the IRC) requires that the organizations assets must be permanently dedicated to an exempt purpose. *IRC Reg. 1.501(c)(3)–1(b)(4).* Therefore, if the Friends organization intends to be not only a not for profit organization under Florida Law, but intends to apply for tax exempt status under Section 501(c)(3) of the IRC, the IRS specifically recommends including a provision ensuring distribution of assets to an exempt purposes in the event of dissolution. *IRS Rulings and Agreements; Chapter 25, Section 3; 7.25.3.3.6.1.*

*IRS Rulings and Agreements; Chapter 25, Section 3; 7.25.3.3.6.3.*Example of Dissolution Provision:

The following language illustrates a dissolution provision that properly dedicates an organization's assets: "Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."

G. ORGANIZATIONAL MEETING

1. After the articles of corporation are filed, the initial directors (if so named in the articles) or the incorporators (if no initial directors are named) shall hold an organizational meeting to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting. §617.0205, Fla. Stats.

2. As discussed in Section III(A) *infra*, the Bylaws should include acknowledgment of the Sunshine Laws.

3. As discussed in Section II(H) *infra* the Board should consider adopting a conflict of interest policies at this organizational meeting, which will be required by the IRS as part of the application for tax exempt status.

4.
5. The directors or incorporators calling the organizational meeting shall give at least 3 days' notice thereof to each director or incorporator so named, stating the time and place of the meeting. §617.0205(3), Fla. Stats.

H. STATE AND LOCAL REQUIREMENTS

1. Solicitations and Contributions Act

    a. The Solicitation of Contributions Act requires anyone who solicits donations from people in the State of Florida to register with the Florida Department of Agriculture and Consumer Services and to renew annually. §496.401 *et seq.,* Fla. Stats.

    b. This applies to charitable organizations, sponsors, professional solicitors, as well as professional fundraising consultants. The department collects registration fees and has authority to impose penalties for non-compliance.

    c. Registration forms can be found at: http://forms.freshfromflorida.com/10100.pdf

2. Local Requirements

    a. The organization should also check to see if there are any local registration requirements. Non-profit organizations are exempt from local business tax receipts (*See* section 205.192, Florida Statutes), but there may be local registration requirements.

b. For example, see Pinellas County provisions in appendix.

I. APPLYING FOR TAX EXEMPT STATUS

1. Once the state and local organizational requirements have been met, the organization is ready to prepare and file its application to the IRS for tax exempt status under 501(c)(3).

2. FORM 1023

a. The IRS application form is Form 1023 which can be access here: http://www.irs.gov/pub/irs-pdf/f1023.pdf.

b. The completed application is submitted to the IRS together with all applicable IRS schedules identified in the application and copies of the Articles of Incorporation (and any amendments), Bylaws and other rules of operation (including Conflict of Interest Policies), narratives explanations, financial data, and printed materials or publications.

PRACTICE NOTE: While not specifically required, the IRS will want to see that a conflict of interest policy has been adopted which is consistent with their sample policy (included in appendices). If no conflict of interest policy is adopted, they will require detailed explanations of how the organization plans to endure that those who have a conflict of interest will not have influence in setting compensations and business dealings.

c. FORM 1023-EZ

(i) Certain organizations with projected gross receipts of less than \$50,000 and projected total assets of less than \$250,000 may be eligible to file a streamlined application for tax exempt status called Form 1023-EZ.

(ii) Eligibility requirements can be found at: http://www.irs.gov/pub/irs-pdf/i1023ez.pdf

PRACTICE NOTE: WAITING FOR IRS APPROVAL: Applications are processed by the IRS as they are received. Approval can take several months depending on the work load of each individual agent. While there are processes to expedite an application, these are only available in certain limited situations. It is important that the organization not represent that it has status as a tax exempt entity until approval is received by the IRS. Therefore, the following is an example of language for donation receipts:

**501(c)(3) tax status has been applied for by the organization and is pending before the IRS, however the organization has not yet been approved as a 501(c)(3) organization and cannot represent that donations are or will be tax exempt or deductible.*

However, once an application is approved, absent special circumstances, the organization is considered exempt as of the date it was formed. Also, interim use of a community foundation may be possible for donations received while waiting for IRS approval.

J. KEEPING THE ORGANIZATION CURRENT - **Annual Filings for Florida Nonprofit Organizations**

1. Florida Department of State, Division of Corporations

Form: Annual Report
Due Date: May 1

Details: Annual Reports must be filed online. To do so, use the following website: https://services.sunbiz.org/filings/AnnualReport/FilingStart
Current Filing Fee: $61.25

2. Internal Revenue Service

Form: Annual Return Form 990 (or Form 990-EZ)
Due Date: 4 ½ months after end of fiscal year

Details: Internal Revenue Service
Ogden, UT 84201-0027
Information: (800) 829-1040
Current Filing Fee: $0

3. Florida Department of Agriculture & Consumer Services

Form: DACS-10100
Due Date: Form must be filed prior to engaging in solicitation of donations and must be renewed annually. A pre-printed renewal form is typically mailed approximately 60 days in advance of renewal date.

Details: Florida Dept. of Agriculture & Consumer Services
Solicitation of Contributions
PO Box 6700
Tallahassee, FL 32314-6700
Phone: (850) 410-3800

Current Filing Fee: $10-400 (based on amount of contributions received during the preceding FY)
Note: If gross receipts between $500,000-$1,000,000, submit reviewed financial statement with renewal. If gross receipts above $1,000,000, submit audited financial statement with renewal. Some organizations are exempt from registration/renewal. See www.800helpfla.com for more details.

III. ISSUES UNIQUE TO FRIENDS ORGANIZATIONS

A. SUBJECT TO SUNSHINE LAWS

1. FLORIDA CONSTITUTION - Article I, section 24, of the Florida Constitution provides:

Section 24. Access to public records and meetings.

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

b) All meetings of any collegial public body or the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature, shall be open and noticed as provided in Article Ill, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

c) This section shall be self-executing. The legislature, however, may provide by general law for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by his section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject

B. PUBLIC MEETINGS – Section 286.011, Florida Statutes

1. While there are some statutory exemptions from the public meetings requirements for delegations to private corporations, (See Section 395.3036, Florida Statutes – Private Corporations that Lease Public Hospitals), there is no general statutory exemption of supportive "friends" organizations.

2. Therefore, under the principals of delegation outlined below, if a private non-profit entity has been created by a public agency, been delegated the public agency's governmental function, or when the private organization plays an integral part in the decision-making process; then, the private non-profit entity must follow the public meetings laws.

3. CASE LAW PRINCIPALS ON DELEGATION TO PRIVATE ENTITIES:

a. Times Publishing Company v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969) In an action to enjoin a school board from holding a closed meeting to discuss personnel matters, the Florida Supreme Court set forth an early delineation of public obligations as it relates to the sunshine law, and, **implicitly, why delegations of authority must also be open to the public.**

> "Every thought as well as every affirmative act of the public official as it relates to and is within the scope of his official duties is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. Every step in the decision-making process, including the decision itself, is a necessary preliminary to the formal action. It follows that each such step constitutes an "official act" and indispensable requisite to "formal action" within the meaning of the act." Id. at 470.

b. IDS Properties, Inc. v. Town of Palm Beach, 279 So. 2d 353 (Fla. 4th DCA 1973) Applying the general principle that public officials cannot do indirectly what they are prevented from doing directly to the open meeting rules of the sunshine law. The court in this case specified that **"[t]he sunshine law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the sunshine law by undertaking to delegate the conduct of public business through an alter ego**." Id. at 359.

c. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) In a consolidated review of IDS Properties, Inc. v. Town of Palm Beach (discussed *supra*), this Court dealt with the applicability of the sunshine law when the town council of the Town of Palm Beach wanted to update and revise the town's zoning ordinances. The town had hired a planning firm and authorized a contract; further, a citizens' planning commission was decided upon, and chosen by the town council. The committee was a group of lay citizens who were not regularly employed personnel of the town. Essentially, they were a buffer lay-group of citizens to serve part-time as alter-egos of the town council and to make tentative decisions guiding the zoning planners and advising the council as to the ultimate zoning ordinances. Holding that the committee was subject to the sunshine law, the Supreme Court stated:

> "One purpose of the government in the sunshine law was to prevent at non-public meetings the crystallization of secret decisions to appoint just short of ceremonial acceptance. Rarely could there by any purpose to a non-public premeeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices." Id. at 477.

The Court went on to give this very important a rule of construction: **"The principle to be followed is very simple: when in doubt, the members of any board, agency, authority or commission should follow the open meeting policy of the state."** Id.

d. Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 927 So.2d 961 (Fla. 5th DCA 2006) A central issue in this case was whether the *Schwab* factors (discussed in section 6, *infra*, of this outline) were even to be applied when there is a clear delegation of the Authority's statutory responsibility. Id. at 965 (relying on Stanfield v. Salvation Army, 695 So. 2d 501 (Fla. 5th DCA 1997). The court made an important distinction:

> "We likewise agree [...] in noting the distinction between providing materials or services to a public body to facilitate the public body's own performance of its public function **and an agreement under which a private actor performs the public function in place of the public body. When the agreement transfers the actual public function, public access follows, as was correctly determined [...] in Stanfield v.** Salvation Army. Id. at 502-03.

4. *See also* the following AGOs which held that private non-profit entities were subject to the public meetings laws:

   a. AGO 92-53 - The sunshine law does apply to meetings relating to the John and Mable Ringling Museum of Art Foundation, a not-for-profit Florida corporation, operating as a direct support organization for the John and Mable Ringling Museum. Specifically meetings relating to the foundation's discharge of its duties to raise funds, hold property and make expenditures to or on behalf of the museum is subject to the sunshine law. Additionally, the advisory council established to discharge its duties to advise and assist the board of trustees of the museum and its direct support organization is subject to the sunshine law.

   b. AGO 98-49 - The Lake County Board of County Commissioners dissolved its cultural affairs council and designated a non-profit organization to fulfill that role for the county, pursuant to section 265.32, Florida Statutes. The non-profit organization would be subject to the government in the sunshine law.

   c. AGO 00-03- Board of Directors meetings of a coalition managing foster care services in the Department of Children and Families is subject to the sunshine law when services would normally be performed by the Department.

   d. AGO 02-53 - After reviewing the relationship between the private entity and the public agency the attorney general held that a golf and country club established for the sole purpose to enter into a lease with the county and operate a public golf course was subject to the sunshine law.

   e. AGO 04-32 - Individual boards of directors of volunteer fire departments that provide firefighting services to the county paid for by the county through an assessment each year on its residents was found subject to the sunshine law (overruling AGO 83-01, discussed *supra*). The county does not dictate through contract or ordinance how the volunteer fire departments operate, nor do they suggest compliance with certain guidelines based on receipt of funds; and receipt of county funds does not, in and of itself, subject them to the sunshine law. However, fire department is providing the government functions of fire suppression. **To determine whether a private entity is subject to the sunshine law courts look for 1) creation by public agency, 2) delegation of governmental functions, or 3) an integral part in the decision-making process by the private entity.** Conversely, meetings of the Escambia County Volunteer Fireman's Association, which was established by the county's volunteer fire departments to discuss firefighting issues of mutual concern, were not found to be subject to the sunshine laws because they are an organization providing an opportunity to network and discuss common concerns.

f. Informal Advisory Legal Opinion, 2005 WL 929188 (Fla. A.G., January 6, 2005) - St. Jones River Alliance, a non-profit corporation of 23 individuals formed to help carry out the federal American Heritage Rivers Initiative and the partnership agreement among state, local, and federal entities, was held to be subject to the sunshine law. **The Alliance advocated specific policy initiatives, developed plans, sought funding to achieve their goals, and reflected "substantial government involvement at the local and state level." It was considered "a close call" similar to AGO 98-24; however, because the sunshine law is to be interpreted broadly, tie goes to the sunshine law.**

g. Informal Advisory Legal Opinion, 2005 WL 3689270 (Fla. A.G., December 28, 2005) - Winter Garden Heritage Foundation, a non-profit organization holding fee simple title to a historic theater conveyed by the city with a reversion clause requiring the foundation to operate the theater for the public's benefit, was found to be subject to the sunshine law. The Assistant Attorney General reasoned that the operating agreement was fulfilling a public purpose and it was strongly suggested that they comply.

C. PUBLIC RECORDS – Chapter 119, Florida Statutes

1. Section 119.0107, Florida Statutes, require that all entities contracting with a governmental entity for services **in which they are acting on behalf of the governmental entity** comply with certain public records requirements. (**emphasis added)**.

2. This does not mean that all friends organizations are providing good or services to the government, but that they are acting on behalf of the government. Ex. a gift shop at a botanical garden to benefit the non-profit and support the garden are not acting on behalf of the government. However, a non-profit delegated an entire animal control function would be acting on behalf of that organization.

3. <u>TWO TESTS:</u> Delegation & "Totality of Factors"

a. Under the delegation test outlined above, when a public entity delegates a statutorily authorized function to a private entity, the records **generated by the private entity's performance of that duty become public records.** *Weekly Planet Inc. v. Hillsborough County Aviation Auth.*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

b. **NOTE** that if the Friends organization provides other functions beyond any delegated duties from the governmental entity, records related to those outside duties may remain private.

c. Totality of Factors - *Schwab Twitty*

(i) In determining whether a private organization was subject to public records requirements, the Supreme Court of Florida adopted the "totality of factors" approach in *News and Sun-Sentinel Company v. Schwab, Twitty & Hansen Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992) as follows:

(ii) the level of public funding;
(iii) commingling of funds;
(iv) whether the activity was conducted on publicly-owned property;
(v) whether services contracted for are an integral part of the public agency's chosen decision-making process;
(vi) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
(vii) the extent of the public agency's involvement with, regulation of, or control over the private entity;
(viii) whether the private entity was created by the public agency;
(ix) whether the public agency has a substantial financial interest in the private entity;
(x) for whose benefit the private entity is functioning.

4. *See also* INFORMAL AGO – December 31, 2014 in appendix.

D. **Generally, Friends organizations should be subject to the Sunshine Laws, to include both public record and public meetings laws of the State of Florida, and should incorporate these requirements into its Bylaws.** Any organization can agree to comply with the Sunshine Laws by contract.

E. Sample Sunshine Law Materials to Non-Profit Board Members are included with the appendices.

F. RELATIONSHIP WITH PUBLIC ENTITY

1. In addition to navigating the Sunshine Laws, the Friends organizations will also need to successfully navigate their relationship with the governmental entity they are supporting.

2. The Florida Bar rules prohibit the representation of a client if the representation of such client would be directly adverse to another client, or if there is a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. Fla. Bar Rules 4-1.7. **Therefore, if you are in house or general counsel to the governmental entity, it is prudent to have representation of the friends organization by a separate, independent counsel or an informed waiver, preferably after consultation with a separate, independent counsel.**

3. Below are some practice tips to help both entities set and manage expectations:

    a. <u>Involvement in Incorporation.</u> The governmental entity should be involved in the incorporation process when the purposes, policies, and rules of the organization are being formed. If there are certain functions or programs that the Friends organization will not be performing, it can be explicitly excluded from the powers of the Friends organization in its incorporating documents.

    b. <u>Memoranda of Understanding.</u> The governmental entity and Friends organization can and should enter into an agreement governing the terms of their relationship. This agreement should address all aspects of the relationship including:

    (i) Organizational structure (i.e composition of board of directors, member v. non-member non-profits);

    (ii) Support obligations (e.g. level of funding, amount of support to governmental entity);

    (iii) Use of property, not only real property, but also personal property, intellectual property, use of the names of the organizations, official seals (*see* Section 165.043, Florida Statutes, regarding use of seal, misuse of which is a misdemeanor criminal offense), etc.;

    (iv) Relationship with governmental staff and employees;

    (v) Relationship with non-profit staff and employees;

    (vi) Parameters on fundraising;

    (vii) Compliance with public records laws;

(viii) Disposition of funds (REMEMBER: all proceeds of the 501(c)3 organization must be used for exempt purposes of the organization and as authorized by the IRC);

(ix) Audit rights and requirements;

(x) Program accounting requirements, including understanding how 501(c)3 organizations are vetted and rated (*see e.g.* www.givewell.org);

(xi) Financial reports;

(xii) Requirements and forms for grant applications, both from the 501(c)(3) organization to the governmental entity and vice versa; and

(xiii) Insurance requirements.

c. A sample Memorandum of Understanding has been included with the appendices.

G. ADDITIONAL CONSIDERATIONS

1. Employment Issues

a. Sharing employees with governmental entities

(i) The friends organization and governmental entity should clearly spell out in an agreement how, when, and other under what circumstances friends' employees and/or volunteers can perform tasks for the governmental entity.

(ii) The parties may wish to consider having the individual employees join in a 1099-agreement, or other independent contractor arrangement.

b. Overtime – Wage/Hour Violations

(i) The governmental entity and friends organization should be explicit about when friends' volunteers or employees are doing work for such entity, that it is in that capacity solely, and not as an employee of the governmental entity.

(ii) The governmental entity and friends organizations should consider having written policies addressing overtime and that such independent work does not constitute "overtime" for the governmental entity.

c. Workers’ Compensation

(i) Friends organizations should have and maintain separate workers compensation for each of its “employees” as that term is defined by Section 440.02(15), Florida Statutes.

2. Risk Management

a. Background checks should be conducted as required by law (e.g. required for those working with youth or providing other services). The uniform background screening of Chapter 435, Florida Statutes may need to be utilized and followed.

b. Volunteer Training

(i) If the friends organization intends to use volunteers to carry out its events or activities, the governmental entity should ensure that all volunteers are properly trained or qualified to carry out such activities and meet all other requirements of volunteer programs run by the governmental entity (e.g. see discussion on background checks *infra*).

c. Use of Waivers and Releases

(i) The friends organizations should utilize waivers, releases, and indemnification agreements as appropriate for its activities and volunteers. The releases and indemnification should, at a minimum:

(a) Comply with all legal requirements for such releases (see e.g. Section 744.301, Florida Statutes, which provides specific requirements for valid waivers/releases on behalf of minors); and

(b) Cover the governmental entity as well as the organization.

d. Premises Liability

(i) A property owner generally has a non-delegable duty to keep its premises safe. *See Pembrok Lakes Mall Ltd. v. McGruder*, 137 So. 3d 418, 430 (Fla. 4th DCA 2014); *Armiger v. Assoc. Outdoor Clubs, Inc.*, 48 So. 3d 864, 876 (Fla. 2d DCA 2010); *Suarez v. Gonzalez*, 820 So. 2d 342, 347 (Fla. 4th DCA 2002).

(ii) If the governmental owner allows the friends organization to operate or host events or activities on it property, the parties should have insurance and indemnification agreements in place.

(iii) Such agreements should be explicit in that they do not waive and defense or limitation of liability, including but not limited to Section 768.28, Florida Statutes.

e. Insurance Policies

(i) The friends organization and governmental entity may consider times when it is appropriate for the other to be an additional insured under their insurance policy, depending on the activities being conducted. If the friends organization is operating out of buildings or on property owned by the governmental entity, the organizations should be an additional insured to policing insuring such buildings and property.

3. Historical or Undocumented Entities

a. Often, governmental entities may have undocumented or unincorporated entities who have been providing support for many years. While the historical benefits may be evident, it may be difficult to ascertain the management or such entities, how such entities may be using the governmental entities' name, seal or image, and how their funding is accounted for and applied.

b. It may be appropriate to approach such entities becoming the "official" friends organization to the governmental entity and following the formal incorporation process to avoid the pitfalls discussed in this outline.

4. Grants to Other Individuals and Non-profits

a. Should have objective criteria establishing the program and providing for applications.

b. Criteria should ensure that the grant monies are used for their intended purpose, that the purpose is in line with the tax exempt purpose of the entity, and follow all other laws and ordinances with regard to awarding such grants (e.g. anti-discrimination, anti-nepotism policies).

Florida Attorney General Advisory Legal Opinion

Number: INFORMAL
Date: December 31, 2014
Subject: Open Government -- Private Organizations

Mr. V. James Dickson
Adams and Reese, LLP
150 Second Avenue North
Suite 1700
St. Petersburg, Florida 33701

Dear Mr. Dickson:

Thank you for your letter of December 8, 2014, on behalf of the St. Petersburg Area Chamber of Commerce, Inc., regarding the applicability of Florida's Government in the Sunshine Law and Public Records Law to that organization. You have included a memorandum prepared by the State Attorney for the First Judicial Circuit in Escambia County determining that those open government laws did apply to the Pensacola Bay Area Chamber of Commerce. As you and I discussed, this office is not statutorily authorized to provide legal advice and opinions to private entities[1] but, in an effort to be helpful, I offer the following informal comments.

You ask whether the St Petersburg Area Chamber of Commerce, Inc. (the chamber), as a private entity is subject to Florida's open government laws. The discussion below should not be read as a comment on Mr. Eddins' findings and I must caution that investigation and prosecution (both civil and criminal) of violations of Florida's open government laws is the province of the State Attorney for the judicial circuit in which these violations are alleged to have occurred. The following comments represent official Attorney General Opinions which this office has issued in the past and may not be understood to be an analysis of or comment on any particular situation in which the St. Petersburg Area Chamber of Commerce may currently be involved.

<u>Is a private organization subject to Florida's Public Records Law, Chapter 119, Florida Statutes?</u>

The mere act of contracting with, or receiving public funds from, a public agency is not sufficient to subject a private entity to the Public Records Law, however, under certain circumstances, the statute has been held applicable to private entities. There is no single factor which is controlling on the question of when a private corporation, not otherwise connected with government, becomes subject to the Public Records Act. However, the courts have held that the mere act of contracting with a public agency is not dispositive.[2]

Again, the receipt of public funds, standing alone, is not determinative of the organization's status for purposes of Chapter 119, Florida Statutes.[3] The courts have relied on "two general sets of circumstances" in determining when a private entity is "acting on behalf of" a public agency and must therefore produce its records under Chapter 119, Florida Statutes.[4] These two tests are briefly outlined below. Additional discussion of the tests, case law, and relevant Attorney General Opinions can be reviewed in the 2014 Government in the Sunshine Manual available at: www.myfloridalegal.com.

Delegation test

While the mere act of contracting with a public agency is not sufficient to bring a private entity within the scope of the Public Records Act, there is a difference between a party contracting with a public agency to provide services to the agency and a contracting party which provides services in place of the public body.[5] Stated another way, when a public entity delegates a statutorily authorized function to a private entity, the records generated by the private entity(s performance of that duty become public records.[6]

Accordingly, if a private entity contracts to relieve the public body from the operation of a public obligation such as operating a jail or providing fire protection, the open government laws apply.[7]

"Totality of factors" test

Recognizing that "the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," the Supreme Court adopted a "totality of factors" test to serve as a guide for evaluating whether a private entity is subject to Chapter 119, Florida Statutes.[8]

Accordingly, when a public agency contracts with a private entity to provide
goods or services to facilitate the agency(s performance of its duties, the courts have considered the "totality of factors" in determining whether there is a significant level of involvement by the public agency so as to subject the private entity to Chapter 119, Florida Statutes.[9]

The factors identified by the Florida Supreme Court include the following:

1) the level of public funding;
2) commingling of funds;

3) whether the activity was conducted on publicly-owned property;
4) whether the contracted services are an integral part of the public agency(s chosen decision-making process;
5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
6) the extent of the public agency(s involvement with, regulation of, or control over the private entity;
7) whether the private entity was created by the public agency;
8) whether the public agency has a substantial financial interest in the private entity;
9) for whose benefit the private entity is functioning.

Thus, the application of the totality of factors test will often require an analysis of the statutes, ordinances, or charter provisions which establish the function to be performed by the private entity as well as the contract, lease or other document establishing the relationship between the governmental entity and the private organization.

I would also note that section 119.0701, Florida Statutes, adopted by the Legislature in 2013, mandates that all agency contracts for services with "contractors" must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term "contractor" is defined to mean "an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.]."[10]

Is a private organization subject to Florida's Sunshine Law, section 286.011, Florida Statutes?

The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.[11] However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

Private entities providing services to public agencies

Much of the litigation regarding the application of the open government laws to private organizations doing business with public agencies has been in the area of public records, and the courts have often looked to Chapter 119, Florida Statutes, for direction in applying the Sunshine Law.[12]

As the courts have emphasized in analyzing the application of Chapter

119, Florida Statutes, to entities doing business with governmental agencies, the mere receipt of public funds by private corporations is not, standing alone, sufficient to bring the organization within the ambit of the open government requirements.[13]

Similarly, a private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency(s governmental or legislative functions have been delegated to it.[14] However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated "the performance of its public purpose" to a private entity.[15] Thus, in *Keesler v. Community Maritime Park Associates, Inc.*,[16] the court deemed it "undisputed" that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property "is subject to the requirements of the Sunshine Law."[17]

In accordance with these principles, the Attorney General's Office has found meetings of the following entities to be subject to the Sunshine Law: Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Families which services would normally be performed by the department;[18] Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act;[19] nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council;[20] nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds;[21] downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues;[22] and a private nonprofit corporation, if the county accepts the corporation's offer to review, recodify, and prepare draft amendments to the county zoning code.[23]

Further, this office has determined that the Sunshine Law applies to a private economic development entity when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the county's economic development strategic plan.[24] Without commenting on the Escambia County State Attorney's opinion, it appears that his conclusion that the Pensacola Chamber of Commerce was a provider of economic development services and had been delegated governmental functions were deciding factors in his determination that the Chamber was subject to Florida's open government laws. As discussed above, this office has come to a similar conclusion in a number of Florida Attorney General Opinions.

I trust that these informal comments will assist you in advising your client, the St. Petersburg Area Chamber of Commerce. If you wish to do additional research into the application of Florida's open government laws, please visit our website to find the 2014 Sunshine Manual. The manual discusses relevant judicial decisions and Attorney General Opinions on open government topics as well as providing the statutes and exemptions to both the Public Records Law and the Sunshine Law. You may also read and print any of the Attorney General Opinions cited in this letter from our website: www.myfloridalegal.com / Legal Resources / AG Opinions.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

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[1] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com / Legal Resources / AG Opinions / Frequently Asked Questions).

[2] *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992) (private corporation does not act "on behalf of" a public agency merely by entering into a contract to provide architectural services to the agency); *Parsons & Whittemore, Inc. v. Metropolitan Dade County*, 429 So. 2d 343 (Fla. 3d DCA 1983); *Stanfield v. Salvation Army*, 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract with county to provide services does not in and of itself subject the organization to Ch. 119 disclosure requirements). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other private entities into public records).

[3] *See Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.*, 582 So. 2d 730 (Fla. 2d DCA 1991) (mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important); and *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (attorneys retained by individual commissioners in a criminal matter were not "acting on behalf of " a public agency for purposes of Ch. 119, Fla. Stat., even though county commission subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to officers successfully defending charges filed against them arising out of the performance of their official duties). *Cf.* Inf. Op. to Cowin, dated November 14, 1997 (fact that nonprofit medical center is built on property owned by the city would not in and of itself be determinative of whether the medical center's meetings and records are subject to open government

requirements).

[4] See *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002); *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied*, 4 So. 3d 1220 (Fla. 2009); and *County of Volusia v. Emergency Communications Network, Inc.*, 39 So. 3d 1280 (Fla. 5th DCA 2010).

[5] *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999).

[6] *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

[7] *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999). *And see Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 307 (Fla. 3d DCA 2001) (consortium of private businesses created to manage a massive renovation of an airport was an "agency" for purposes of the Public Records Act because it was created for and had no purpose other than to work on the airport contract; "when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be"); and *Fox v. News-Press Publishing Company*, 545 So. 2d 941, 943 (Fla. 2d DCA 1989) (upholding a trial court decision finding that business records maintained by a towing company in connection with its contract with a city were public records, as the company "was clearly performing what is essentially a governmental function, *i.e.*, the removal of wrecked and abandoned automobiles from public streets and property"). *See also* Op. Att'y Gen. Fla. 08-66 (2008) (Public Records Act applies to not-for-profit corporation contracting with city to carry out affordable housing responsibilities and screening applicant files for such housing). *Compare* Op. Att'y Gen. Fla. 87-44 (1987) (records of a private nonprofit corporation pertaining to a fund established for improvements to city parks were not public records since the corporation raised and disbursed only private funds and had not been delegated any governmental responsibilities or functions).

[8] *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992). *See New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993); *Wells v. Aramark Food Service Corporation*, 888 So. 2d 134 (Fla. 4th DCA 2004).

[9] *See Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

[10] Section 119.0701(1)(a), Fla. Stat.

[11] Op. Att'y Gen. Fla. 07-27 (2007).

[12] *See Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc.*, 390 So. 2d 1216, 1218 n.5 (Fla. 2d DCA 1980) (inasmuch as the policies behind Ch. 119, Fla. Stat., and s. 286.011, Fla. Stat., are similar, they should be read together); *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983); and *Krause v. Reno*, 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979).

[13] *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992) (records of private architectural firm not subject to Ch. 119, F.S., merely because firm contracted with school board).

[14] *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law); and Op. Att'y Gen. Fla. 98-47 (1998) (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city). *Cf.* Op. Att'y Gen. Fla. 80-45 (1980) (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); and Inf. Op. to Gaetz and Coley, dated December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

[15] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999).

[16] *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659, 660 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1289 (Fla. 2010).

[17] *Compare Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006), in which the Fifth District applied the "totality of factors" test set forth in *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, *supra*, and determined that a private corporation that purchased a hospital it had previously leased from a public hospital authority was not "acting on behalf of " a public agency and therefore was not subject to the Public Records Act or the Sunshine Law.

[18] Op. Att'y Gen. Fla. 00-03 (2000).

[19] Op. Att'y Gen. Fla. 96-43 (1996).

[20] Op. Att'y Gen. Fla. 98-49 (1998).

[21] Op. Att'y Gen. Fla. 02-53 (2002).

[22] Op. Att'y Gen. Fla. 85-55 (1985).

[23] Op. Att'y Gen. Fla. 83-95 (1983). *Cf.* Inf. Op. to Bedell, dated December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply with the Sunshine Law when holding discussions or making decisions regarding the theater).

[24] Op. Att'y Gen. Fla. 10-30 (2010). *See also* Op. Att'y Gen. Fla. 10-44 (2010) (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). *Compare* Inf. Op. to Gaetz and Coley, dated December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). *Accord* Inf. Op. to Hatcher and Thornton, dated September 15, 1992 (Sunshine Law not applicable to private nonprofit corporation established by local business people to foster economic development where no delegation of legislative or governmental functions by any local governmental entity has occurred and the corporation does not act in an advisory capacity to any such entity).

ORIGINAL COPY OF AGREEMENT

Hillsborough County
Florida

Agenda Item Cover Sheet

Agenda Item N°. A-29

Meeting Date July 16, 2014

☒ Consent Section ☐ Regular Section ☐ Public Hearing

Subject:
Agreement between Hillsborough County and the Hillsborough County Fire Rescue Foundation, Inc. (HCFRF)

Department Name: Fire Rescue

Contact Person: Ronald Rogers Contact Phone: (813) 272-6600

Sign-Off Approvals:

Dexter Barge	06/27/2014	Ronald Rogers	06/27/2014
Assistant County Administrator	Date	Department Director	Date
		Jane Rose	06/27/2014
Management and Budget – Approved as to Financial Impact Accuracy	Date	County Attorney – Approved as to Legal Sufficiency	Date

Staff's Recommended Board Motion:
Approve the agreement between Hillsborough County and the Hillsborough County Fire Rescue Foundation, Inc. (HCFRF). The Hillsborough County Fire Rescue Foundation, Inc. will support and enhance the mission of Hillsborough County Fire Rescue, which is to preserve and protect life and property by providing quality, timely emergency services and to enhance public safety through public education, comprehensive prevention, and emergency planning initiatives.

The HCFRF will provide financial assistance to Hillsborough County Fire Rescue as part of a commitment to supporting the protection of life and property. The financial assistance provided by HCFRF will help in areas where County funds are not available or are not adequate for the planned project/program.

Financial Impact Statement:
The HCFRF will provide financial assistance to Hillsborough County Fire Rescue as part of a commitment to supporting the protection of life and property. The financial assistance provided by HCFRF will help in areas where County funds are not available or are not adequate for the planned project/program.

Background:

14-0585 (1 orig)

The Hillsborough County Fire Rescue Foundation, Inc. (HCFRF) is the official not-for-profit organization created in 2013. HCFRF was established to promote Fire and Life Safety in Hillsborough County, and to provide professional development, training, and education to members of Hillsborough County Fire Rescue. HCFRF's tax exempt application is currently pending before the IRS.

List Attachments:
Agreement

HillsboroughCounty

Florida

Fire Rescue

Fire Rescue
PO Box 1110
Tampa, FL 33601-1110
Phone: (813) 272-6600
Fax: (813) 272-6692

MEMORANDUM

DATE: July 1, 2014

TO: Kimberly Richards, Associate Director, BOCC Records/VAB

FROM: Marie Haynes, Fire Rescue *Marie V. Haynes*

Subject: Agreement between Hillsborough County and the Hillsborough County Fire Rescue Foundation, Inc. (HCFRF)

I have enclosed an original subject agreement to be approved by the Board of County Commissioners Chairman on July 16, 2014.

If you have questions, please contact Fire Chief Ronald Rogers at (813) 272-6600.

Enclosure

RECEIVED 2014 JUL -2 PM 12:13

AGREEMENT BETWEEN

HILLSBOROUGH COUNTY, FLORIDA

And

HILLSBOROUGH COUNTY FIRE RESCUE FOUNDATION, INC.

THIS AGREEMENT ("Agreement") is made and entered into, between Hillsborough County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and Hillsborough County Fire Rescue Foundation, Inc., a not-for-profit corporation, existing under the laws of the State of Florida, hereinafter referred to as "HCFRF."

RECITALS

WHEREAS, the corporation was organized under the Laws of the State of Florida and approved on the 25th day of June, 2013, for the purpose of aiding and promoting fire and life safety in Hillsborough County, and the professional development, training, and education of members of Hillsborough County Fire Rescue as well as to educate, inform and involve the citizens of Hillsborough County in protecting life and property in the event of an emergency; and

WHEREAS, the HCFRF has applied to be recognized as a tax-exempt, non-profit charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code, devoted to the support of Hillsborough County Fire Rescue, established as a department of Hillsborough County; and

WHEREAS, the HCFRF sponsors and promotes Hillsborough County Fire Rescue programs and offers enhancement of services to the community that encourage favorable awareness about, use of and donations to programs; and

WHEREAS, the HCFRF was established for the financial and cultural benefit of Hillsborough County and its citizens, and

WHEREAS, both parties agree that a comprehensive written agreement, which includes (1) defined responsibilities and reporting requirements; (2) a "right to audit" to ensure that both parties are in compliance with terms of the agreement; and (3) mandatory review of the agreement by the County Attorney's Office and approval by the HCFRF's Board and the Board of County Commissioners (BOCC), is needed; and

WHEREAS, the COUNTY has determined that the best interest of its citizens will be served by entering into an Agreement with the HCFRF for the furnishing of such services provided by the HCFRF.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the COUNTY and the HCFRF agree as follows;

ARTICLE 1

HCFRF Obligations and Rights

To assist and support success under this agreement, the HCFRF shall, consistent with the policies of the BOCC, offer the following:

1. HCFRF shall sponsor and promote programs to enhance public safety to the community that will encourage awareness of steps that can be taken to reduce the need for Hillsborough County Fire Rescue services.
2. HCFRF shall raise monies to be spent for programs and services for the benefit of Hillsborough County Fire Rescue as lawfully permitted.
3. HCFRF shall be authorized to accept funds specifically donated to Hillsborough County Fire Rescue for the programs identified herein.
4. HCFRF shall maintain documentation showing its current status adhering to applicable Federal, State and/or local laws as required of a 501(c)3 organization once approved by the IRS.
5. The HCFRF agrees to operate under written and maintained Bylaws as required by a corporation not-for-profit under Laws of the State of Florida.
6. HCFRF shall establish and maintain open communication between the HCFRF and its Board.
7. HCFRF is comprised of volunteers and members of Hillsborough County Fire Rescue.
8. HCFRF shall comply with all applicable Hillsborough County policies and directives and all County ordinances.
9. The HCFRF agrees that Hillsborough County Fire Rescue administration has the final say in accepting or declining any and all gifts made to the department. Monthly financial statements should be provided by HCFRF to County Fire Rescue to determine the appropriateness of any gifts.
10. The HCFRF agrees that if the HCFRF is dissolved, the distribution of previously raised monies shall be made available to the COUNTY to allow for a new HCFRF group to be established in the future provided that such distribution is an exempt purpose or public purpose within the meaning of Section 501(c)(3) of the Internal Revenue Service Code, or the corresponding section of any future federal tax code.
11. The HCFRF agrees that all events, advertisements, and activities shall be pre-approved by Hillsborough County Fire Rescue administration and that these events, advertisements, and activities shall, at all times, promote a positive image of Hillsborough County firefighting and related professions, and Hillsborough County employees. Such events, advertisements, and activities shall not include the consumption of alcoholic beverages on Hillsborough County property.

ARTICLE 2

Term of Agreement

This Agreement shall be effective upon execution by both parties and shall remain in effect until terminated by the written mutual consent of the two parties, or as provided herein.

Each party shall have the option to unilaterally terminate this Agreement after providing ninety (90) days written notice to the other party. Upon termination, each party shall cease any advertisement, representation, or statements indirectly or inferring affiliation including change of business name, corporate or other brands or marks. The parties acknowledge and agree that approval of HCFRF's tax exempt application to the IRS is a condition precedent to the County's obligations under this Agreement and, should HCFRF's application be denied and the HCFRF fails to submit an amended or revised application within the time allotted by the IRS, this Agreement shall automatically terminate and any funds received by HCFRF from the County prior to such termination shall be retuned to the County.

ARTICLE 3

HCFRF Obligations and Rights

For its performance under this Agreement and to assist and support success under this Agreement, the HCFRF shall receive, through the Hillsborough County Fire Rescue, the following considerations:

1. Office space in designated areas to support the operation of the organization;
2. Space in designated areas for partnership services and support thereof for uses such as the sale of promotional items, vending items and donated items as a facility space allows;
3. Training and support of HCFRF staff and volunteers;
4. Background checks for all HCFRF staff and volunteers;
5. Public space for HCFRF information and sponsored-program promotional materials in accordance with department policy;
6. Staff support to the HCFRF to assist with the operation of the 501(c)3 as well as office space, records and equipment storage;
7. The use of COUNTY owned facilities for revenue generating activities to include classroom and practical training to outside participants;
8. The use of meeting or conference rooms for HCFRF activities and meetings;
9. Communication of long-term planning goals to the HCFRF seeking understanding and input as strategies and actions are developed and implemented;
10. Space in designated areas for vehicles and or equipment to be used by HCFRF for its operations;
11. Recognition of HCFRF members working within Hillsborough County Fire Rescue facilities as nonpaid volunteer staff;
12. Use of the name "Hillsborough County" in its corporate name and the COUNTY seal; and
13. Cooperation with the HCFRF in seeking approval for appropriate events on County property while complying with all County, State and local rules. The County Administration shall be the final authority regarding approval for any special non-fire rescue programs and/or events on County property

ARTICLE 4

Right to Audit

The HCFRF shall develop an acceptable reporting process agreeable to the County BOCC for the purpose of documenting adherence to federal, state and local laws. The BOCC will give credit to the HCFRF for reported accomplishments in its annual report which is forwarded to the County Administrator as required by Hillsborough County Ordinance 84-443. The COUNTY has the right to audit financial transactions between Hillsborough County Fire Rescue and the HCFRF.

This reporting requirement will satisfy a "right to audit" to ensure that both parties are in compliance with the terms of the Agreement.

ARTICLE 5

Maintenance and Storage of Records

Hillsborough County Fire Rescue shall offer storage space for HCFRF official 501(c)3 records in compliance with basic not-for-profit standards as established by HCFRF policy as to auditing and records retention and State of Florida public records requirements, as applicable.

ARTICLE 6

Financial Reports

The HCFRF shall maintain financial and operations records in accordance with their governing documents and generally accepted accounting principles.

ARTICLE 7

Consideration Given

HCFRF and COUNTY agree that the consideration given to and from each is sufficient to support this Agreement.

ARTICLE 8

Equal Opportunity Clause

The HCFRF agrees to comply with the requirements of all applicable state, federal, and local laws, rules, regulations, ordinances and Executive Orders prohibiting and/or relating to discrimination, including but not limited to, Executive Order 11246, as amended and supplemented, and 41 CFR 60-1.4 and Hillsborough County Ordinance No. 00-37. All such applicable state, federal and local laws, rules, regulations, ordinances and Executive Orders, including but not limited to Executive Order 11246, as amended and supplemented, 41 CFR 60-1.4, and Hillsborough County Ordinance No. 00-37 are incorporated by reference herein.

ARTICLE 9

Insurance

The COUNTY agrees to provide appropriate and adequate insurance coverage, whenever the HCFRF operates a sanctioned HCFRF Event at a COUNTY facility. HCFRF Event shall mean any function operated by the HCFRF and located at any COUNTY facility.

Whether or not the HCFRF shall procure Insurance for other events that it operates on COUNTY property shall determined on an Event-by-Event basis.

ARTICLE 10

Conflict of Interest

The HCFRF shall maintain a conflict of interest policy as prescribed in its organizing documents and as required by and federal, state, or local law.

ARTICLE 11

Governing Laws

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and venue shall be in Hillsborough County, Florida.

ARTICLE 12

Compliance With Applicable Laws

The HCFRF shall comply with the requirements of all applicable federal, state and local laws and the rules and regulations promulgated thereunder, including but not limited to, the Health Insurance Portability and Accounting Act ("HIPAA") (42 USC 1320d) and the regulations promulgated thereunder if applicable.

ARTICLE 13

Assignment

This Agreement may not be assigned nor subcontracted in whole or in part without the prior written consent of the COUNTY.

ARTICLE 14

Headings

Article headings have been included in the Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

ARTICLE 15

Waiver

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

ARTICLE 16

Additional Rights and Remedies

Nothing contained herein shall be constructed as a limitation on such other rights and remedies available to the parties under law or in equity which may now or in the future be applicable.

ARTICLE 17

Severability

In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

ARTICLE 18

Project Publicity

Pursuant to BOCC Policy No. 10.04.00.00, the HCFRF shall recognize the Hillsborough County Board of County Commissioners for its contribution in promotional material and at any events or workshops for which COUNTY funds are used. Any news release or other type of publicity must identify the Hillsborough County Board of County Commissioners when the COUNTY is a funding source. In written materials, the reference to the Board of County Commissioners must appear in the same size letters and font type as the name of any other funding sources.

ARTICLE 19

Third Party Beneficiaries/Independent Contractor

This Agreement is for the benefit of Hillsborough County and the HCFRF. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement. HCFRF acknowledges and agrees that it is acting as an independent contractor in performing its obligations.

ARTICLE 20

Political Endorsement Prohibition

Pursuant to BOCC Policy No. 02.12.00.00, the HCFRF shall not engage in political activities that promote or oppose a specific candidate.

ARTICLE 21

Modifications

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement may only be amended or extended by a written instrument executed by the COUNTY and the HCFRF expressly for that purpose.

ARTICLE 22

Termination of Agreement for Non-Performance

In addition to the exercise of any other remedies available to it at law or in equity, the COUNTY may terminate this Agreement for the HCFRFS' non-performance, as determined by the COUNTY, upon no less than twenty-four (24) hours written notice to the HCFRF Board of Directors.

ARTICLE 23

Notice

Any notices required or permitted to be given hereunder shall be sent by United States certified mail, return receipt requested, or by overnight delivery service or personal delivery with signature verification, to the attention of the following representatives of the parties:

COUNTY:
Hillsborough County, Florida
P.O. Box 1110
Tampa, FL 33601

HCFRF:
Hillsborough County Fire Rescue Foundation
2709 E Hanna Ave
Tampa, Fl. 33610
Attn: Ronnie Rivera, President

Any notice sent in accordance with this Article 23 shall be deemed given two-days after deposit in the U.S. Mail, if sent certified mail, or upon receipt, if sent by overnight delivery service or personal delivery. The act of refusal of delivery of a notice sent in accordance with this Article 23 shall be deemed acceptance of such notice by such party.

ARTICLE 24

Fiscal Non-Funding Clause

This Agreement is subject to funding availability. In the event sufficient budget funds to fund this Agreement become reduced or unavailable, the COUNTY shall notify the HCFRF of such occurrence, and the COUNTY may terminate this Agreement, without penalty or expense to the COUNTY, upon no less than twenty- four (24) hours written notice to the HCFRF. The COUNTY shall be the final authority as to the availability of funds and how available funds will be allotted. If this Agreement is funded in whole or in part by federal or state dollars which are reduced or become unavailable, the COUNTY shall notify the HCFRF of such occurrence and the COUNTY may terminate this Agreement, without penalty or expense to the COUNTY, upon no less than twenty-four (24) hours written notice to the HCFRF.

ARTICLE 25

Access To Records and Information

If applicable, the HCFRF shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers, and records made or received by the HCFRF members in connection with this Agreement and Chapter 286, Florida Statutes, with respect to HCFRF board of directors' meetings.

ARTICLE 26

Review of Agreement

The Agreement must have County Attorney review prior to Hillsborough County Fire Rescue Administration approval as well as approval by the Board of County Commissioners. The Board of Directors of the HCFRF shall review and approve this Agreement.

ARTICLE 27

Approval of Agreement

This Agreement must be approved by all parties: the HCFRF, the Hillsborough County Fire Rescue Administration, and the Board of County Commissioners in order to become effective.

IN WITNESS WHEREOF, the HCFRF and the COUNTY respectively, have caused this Agreement to be executed by their duly authorized representatives.

ATTEST: PAT FRANK
Clerk of Circuit Court

By:
Deputy Clerk

Date: July 16, 2014

COUNTY: HILLSBOROUGH COUNTY, Florida

By:
Chairman, Board of County Commissioners

HCFRF:

BY:
HCFRF PRESIDENT

Ronnie Rivera
(Printed Name of Signer)

7-1-14
(Date)

APPROVED BY COUNTY ATTORNEY
As to Form and Legal Sufficiency

BY:
Sr. Assistant County Attorney

FIRE RESCUE DEPARTMENT

BY:
Fire Chief

Ronald Rogers
(Printed Name of Signer)

7-1-14
(Date)

BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY FLORIDA
DOCUMENT NO. 14-0585

Conflict of Interest Policy

1. Purpose

The purpose of this conflict of interest policy is to protect the interests of ______________________________________ (the Organization) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the organization. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to the Organization.

2. Definitions

Interested Person. Any director, principal, officer, or member of a committee with board delegated powers who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any entity of which the Organization is a part, he or she is an interested person with respect to all entities in the Organization.

Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family: an ownership or investment interest in any entity with which the Organization has a transaction or arrangement, or a compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or a potential ownership or investment in, or compensation arrangement with any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not substantial in nature. A financial interest is not necessarily a conflict of interest. For purposes of this policy, a person who has a financial interest may have a conflict of interest only if the board of directors or committee decides that a conflict of interest exists.

3. Procedures

Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

Procedures for Addressing the Conflict of Interest. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. After exercising due diligence, the board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest and for its own benefit and whether it is fair and reasonable to the Organization, and shall make its decision, whether to enter into the transaction or arrangement in conformity with such determination.

Violations of the Conflicts of Interest Policy. If the board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

4. Records of Proceedings

The minutes of the board and all committee with board-delegated powers shall contain: the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed; and the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

5. Compensation

A voting member of the board of directors who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

6. Annual Statements

Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms that such person: has received a copy of the conflicts of interest policy, has read and understands the policy, has agreed to comply with the policy, and understands the Organization is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more if its tax-exempt purposes.

7. Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects: Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arms-length bargaining. Whether partnerships, joint ventures arrangements, and arrangements with management service organizations conform to written polices, are properly recorded, reflect reasonable payments for goods and services, further the Corporation's charitable purposes and do not result in inurnment, or impermissible private benefit.

8. Use of Outside Experts

In conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the board of its responsibility for ensuring periodic reviews are conducted.

____
Director Signature

____
Print Name

____
Date

Bryant Miller Olive
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One Tampa City Center
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Tampa, FL 33602
Tel 813.273.6677
Fax 813.223.2705
www.bmolaw.com

GOVERNMENT IN THE SUNSHINE LAW

SECTION 286.011, FLORIDA STATUTES

I. Basic Provisions.

Section 286.011(1) provides that:

"All meetings of any board or commission of any state agency or authority or of any agency or authority of any country, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

II. What constitutes a "board or commission?"

A. All governing bodies and decision-making committees.

B. All advisory boards that are more than mere fact-finders (e.g. those that make a recommendation to the governing body). Advisory boards with "decision-making" functions, (i.e., screening applicants for an appointed position) are subject to the Sunshine Law. The courts focus on the nature of the act performed in determining whether a committee is making a recommendation or decision or merely fact-finding.

C. A public body cannot escape the application of the Sunshine Law by delegating a job to an "alter ego."

III. What constitutes a "meeting?"

A. An occasion where two or more members of the same board are present (includes presence physically, by telephone, and even when conferring by written documents or communications through third parties, i.e., spouses); and

B. Discussion ensues on a matter on which "foreseeable action" will be taken (this encompasses entire decision-making process, including briefings, workshops, etc.).

IV. Requirements for a public meeting.

A. Location

1. Section 286.011(6) prohibits holding public meetings at any facility that discriminates on the basis of sex, age, creed, color, origin, or economic status.

2. Section 286.26 requires accommodations to be made, upon written request received at least 48 hours in advance, for physically handicapped individuals. Federal law requires that persons with disabilities be given full access to all public meetings and programs.

B. Notice

1. The statutes do not contain any particular notice requirement.

2. The courts have interpreted the intent of the statutes to require "reasonable notice."

3. In an informal opinion, the Attorney General's office has suggested that reasonable notice should contain the time and place of the meeting and, if available, an agenda (otherwise a summary of subject matter). (Note: the courts have held publication of an agenda is not required and it is not a Sunshine Law violation to discuss items not on the agenda.) The Attorney General has further advised that these notices should be "prominently displayed" in a city hall or comparable area set aside for that purpose and that the notices should be posted sufficiently in advance to provide "appropriate and effective notice under the circumstances." Except in cases of emergency, special meetings should have at least 24 hours reasonable notice.

4. Section 286.0105 requires that each notice include the advice that if a person(s) decides to appeal any decision, they may need to ensure that a verbatim record of the proceedings is made.

C. Minutes

1. Section 286.011(2) requires that minutes be kept of each public meeting and that they be open to public inspection.

2. Meetings may be tape recorded or video taped, but this is not required and does not alleviate the need for written minutes.

D. Voting

1. Section 286.012 requires that all members present at a meeting vote on official actions or decisions unless they comply with the conflict of interest provisions of Chapter 112, Florida Statutes.

2. Roll call votes on all matters are not necessary.

3. Secret ballots are prohibited.

V. <u>Effect of Sunshine Law Violations</u>.

A. Sanctions

1. Criminal - knowing violation of the Sunshine Law is a second degree misdemeanor, with penalties of up to $500 in fines and up to 60 days in jail.

2. Civil - inadvertent violations are civil infractions with penalties not to exceed a $500 fine.

3. Removal from office, attorneys' fees, injunctive and declaratory relief.

B. Validity of actions taken in violation of the Sunshine Law.

1. Actions which have been taken are <u>void ab initio</u>.

2. Members of the general public have standing to sue.

3. Initial action taken in violation of the Sunshine Law can be cured by an independent final action taken in the Sunshine; in other words, start over but in the Sunshine (however, this cannot be merely a perfunctory ratification of secret meetings.)

SUNSHINE LAW - DO'S AND DON'TS

DON'TS

1. Hold any conversation with other members of the board regarding items that are scheduled to come before the board, or is likely to come before the board outside of advertised, public meetings.

2. Ask other people, including staff, about their conversations with another board member regarding items that are likely to come before the board.

3. Send memos or emails to other board members asking that they reveal how they will vote. This includes "reply all" emails in which you indicate your views on matters that are either scheduled to come before the board or is likely to come before the board.

4. Abstain from voting without having a conflict of interest.

5. If you have questions about whether a meeting or communication will violate the Sunshine Law, it probably does.

DO'S

1. Feel free to attend social functions with colleagues (just do not discuss any matters which may come before the board!)

2. Feel free to talk to county staff that are not on the board.

3. Feel free to talk to members of other boards or committees.

4. Feel free to talk to other members of boards and committees of different political entities.

PUBLIC RECORDS

I. Basic Provisions

Under Florida law, all records and documents made or received in connection with the official business of a governmental entity is subject to public inspection and copying. Section 119.011, Florida Statutes. Under the bylaws of the corporation, the corporation will be adhering to the public records laws.

II. What types of Records are Included?

Some common examples of public records are:

- Written documents
- Minutes
- Computer/electronic files
- Emails
- Tape Recordings
- Photographs
- Text Messages

This list is not meant to be exhaustive as the public records requirements are not dependent on the form, characteristics or method of transmission of the record. Generally, a record in any form that is made or received in connection with the official business of the agency, it is a public record.

III. Are my notes a "public record" subject to inspection and copying?

Under Florida law, notes which are designed for your own personal use in remembering certain things do not fall within the definition of "public record." However, if your notes are intended to perpetuate, communicate, or formalize knowledge, they may be considered a public record subject to production and inspection.

IV. What can I do to comply with public records laws?

- Keep all records that are a part of your official business or used to communicate or formalize knowledge, regardless of its form.

- Avoid using methods of communication for the transaction of official business or to communicate knowledge if that method would be difficult to preserve or reproduce (ex. text messages, personal email accounts).

- If you have any questions, contact the President.

Tax Exempt and Government Entities

EXEMPT ORGANIZATIONS

Compliance Guide for 501(c)(3) Public Charities

Inside:

Activities that may jeopardize a charity's exempt status

Federal information returns, tax returns or notices that must be filed

Recordkeeping—why, what, when

Governance considerations

Changes to be reported to the IRS

Required public disclosures

Resources for public charities

Contents

Contents (cont'd)

Compliance Guide for 501(c)(3) Public Charities

Federal tax law provides tax benefits to nonprofit organizations recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code). The Code requires that tax-exempt organizations must comply with federal tax law to maintain tax-exempt status and avoid penalties.

In this publication, the IRS addresses activities that could jeopardize a public charity's tax-exempt status. It identifies general compliance requirements on recordkeeping, reporting, and disclosure for exempt organizations (EOs) described in section 501(c)(3) of the Code that are classified as public charities. Content includes references to the statute, Treasury regulations, IRS publications and IRS forms with instructions. Publication 4221-PC is neither comprehensive nor intended to address every situation.

To learn more about compliance rules and procedures that apply to public charities exempt from federal income tax under section 501(c)(3), see IRS Publication 557, *Tax-Exempt Status for Your Organization*, and the *Life Cycle of a Public Charity* on *www.irs.gov/eo*. Stay abreast of new EO information, also on this Web site, by signing up for the *EO Update*, a free newsletter for tax-exempt organizations and practitioners who represent them. For further assistance, consult a tax adviser.

What Activities May Jeopardize a Public Charity's Tax-Exempt Status?

Once a public charity has completed the application process and has established that it is exempt under section 501(c)(3), the charity's officers, directors, trustees and employees must ensure that the organization maintains its tax-exempt status and meets its ongoing compliance responsibilities.

A 501(c)(3) public charity that does not restrict its participation in certain activities and does not absolutely refrain from others, risks failing the operational test and jeopardizing its tax-exempt status. The following summarizes the limitations on the activities of public charities.

Private Benefit and Inurement

A public charity is prohibited from allowing more than an insubstantial accrual of private benefit to individuals or organizations. This restriction is to ensure that a tax-exempt organization serves a public interest, not a private one. If a private benefit is more than incidental, it could jeopardize the organization's tax-exempt status.

No part of an organization's net earnings may inure to the benefit of an insider. An insider is a person who has a personal or private interest in the activities of the organization such as an officer, director, or a key employee. This means that an organization is prohibited from allowing its income or assets to accrue to insiders. An example of prohibited inurement would include payment of unreasonable compensation to an insider. Any amount of inurement may be grounds for loss of tax-exempt status.

If a public charity provides an economic benefit to any person who is in a position to exercise substantial influence over its affairs (that exceeds the value of any goods or services provided in consideration), the organization has engaged in an excess benefit transaction. A public charity that engages in such a transaction must report it to the IRS. Excise taxes are imposed on any person who engages in an excess benefit transaction with a public charity, and on any organization manager who knowingly approves such a transaction. (See **Reporting Excess Benefit Transactions** on page 12).

A public charity that becomes aware that it may have engaged in an excess benefit transaction should consult a tax advisor and take appropriate action to avoid any potential impact it could have on the organization's continued exempt status. Go to *www.irs.gov/eo* for details about inurement, private benefit, and excess benefit transactions.

Political Campaign Intervention

Public charities are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) a candidate for public office. Contributions to political campaign funds or public statements of position made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in revocation of tax-exempt status and/or imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, the conduct of certain voter education activities (including the presentation of public forums and the publication of voter education guides) in a non-partisan manner do not constitute prohibited political campaign activity. Other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner. On the other hand, voter education or registration activities with evidence of bias that would favor one candidate over another, oppose a candidate in some manner, or have the effect of favoring a candidate or group of candidates, will constitute campaign intervention.

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of public charities speaking for themselves as individuals. However, for their organizations to remain tax exempt under section 501(c)(3), organization leaders cannot make partisan comments in official organization publications or at official functions. When speaking in a non-official capacity, these leaders should clearly indicate that their comments are personal, and not intended to represent the views of the organization.

Some section 501(c)(3) organizations take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate’s name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate’s platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

The IRS considers the following factors that tend to show an advocacy communication is political campaign activity:

- whether the statement identifies one or more candidates for a given public office,
- whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions,
- whether the statement is delivered close in time to the election,
- whether the statement makes reference to voting or an election,
- whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office,
- whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election, and
- whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the commu-nication must still be considered in context before arriving at any conclusions.

Political candidates may be invited to appear or speak at organization events in their capacity as candidates, or individually (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at a public charity's event as a candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- whether the public charity provides an equal opportunity to the political candidates seeking the same office,
- whether the public charity indicates any support of or opposition to the candidate, and
- whether any political fundraising occurs.

When a candidate is invited to speak at a public charity's event in an individual (non-candidate) capacity, factors in determining whether the organization participated or intervened in a political campaign include the following:

- whether the individual is chosen to speak solely for reasons other than candidacy for public office,
- whether the individual speaks in a non-candidate capacity or references his or her candidacy or the election,

- whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and
- whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

In determining whether candidates are given an equal opportunity to participate, a public charity should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, a public charity that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Sometimes a public charity invites several candidates to speak at a public forum. A public forum involving several candidates for public office may qualify as an exempt educational activity. However, if the forum is operated to show a bias for or against any candidate, then the forum would be prohibited campaign activity, as it would be considered intervention or participation in a political campaign. When an organization invites several candidates to speak at a forum, it should consider the following factors:

- whether questions for the candidate are prepared and presented by an independent nonpartisan panel,
- whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- whether each candidate is given an equal opportunity to present his or her views on the issues discussed,
- whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Read Revenue Ruling 2007-41 at *www.irs.gov/eo* for additional information on the prohibition against political campaign intervention.

When a 501(c)(3) public charity participates in political campaign activity, it jeopardizes both its tax-exempt status and its eligibility to receive tax-deductible contributions. In addition, an excise tax may be imposed in addition to, or instead of, revocation.

Legislative Activities

A public charity is not permitted to engage in substantial legislative activity (commonly referred to as lobbying). An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for purposes of proposing, supporting or opposing legislation, or advocates the adoption or rejection of legislation.

If lobbying activities are substantial, a 501(c)(3) organization may fail the operational test and risk losing its tax-exempt status and/or be liable for excise taxes. Substantiality is measured by either the substantial part test or the expenditure test. The substantial part test determines substantiality on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time and expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

As an alternative, a public charity (other than a church) may elect to use the **expenditure test** by filing Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organizations to Make Expenditures to Influence Legislation*. Under the expenditure test, a public charity's lobbying activity will not jeopardize its tax-exempt status provided its expenditures related to lobbying do not normally exceed a set amount specified in section 4911 of the Code. This limit is generally based on the size of the organization and may not exceed $1 million.

Also, under the expenditure test, a public charity that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess. Read the *Life Cycle of a Public Charity* at *www.irs.gov/eo* for additional information about the rules against substantial legislative activities.

Public charities that engage in lobbying activities must report lobbying activities on Form 990, Schedule C, *Political Campaign and Lobbying Activities.*

What Federal Information Returns, Tax Returns and Notices Must Be Filed?

While 501(c)(3) public charities are exempt from federal income tax, most of these organizations have information reporting obligations under the Code to ensure that they continue to be recognized as tax-exempt. In addition, they may also be liable for employment taxes, unrelated business income tax, excise taxes, and certain state and local taxes.

Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax* and Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required To File Form 990 or 990-EZ*

Public charities generally file either a:

- Form 990, *Return of Organization Exempt from Income Tax,*
- Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax,* or
- Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*

The type of Form 990 series return a public charity must file is generally determined by the organization's gross receipts and total assets.

The chart below explains which Form 990 an organization is required to file.

Filing Dates

Forms 990, 990-EZ, and 990-N must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The due date for the Forms 990 and 990-EZ may be extended for three months, without showing cause, by filing Form 8868, *Application for Extension of Time To File an Exempt Organization Return*, before the due date. An additional three-month extension may be requested on Form 8868 if the organization shows reasonable cause why the return cannot be filed by the extended due date.

An organization cannot request an extension for filing the Form 990-N; however, there is no penalty for filing it late.

See **Filing Penalties and Revocation of Tax-Exempt Status** on page 13.

Gross Receipts Thresholds	Form to File
Gross receipts normally ≤ **$50,000**	990-N
Gross receipts > **$50,000** and < **$200,000** and Total assets < **$500,000**	990-EZ or 990
Gross receipts ≥ **$200,000**, or Total assets ≥ **$500,000**	990

Filing Exceptions

Public charities that are not required to file Forms 990 or 990-EZ include:

- churches and certain church-affiliated organizations,
- certain organizations affiliated with governmental units,
- subordinate organizations included in a group return filed by the parent organization, and
- organizations whose annual gross receipts are normally $50,000 or less (see **Form 990-N**, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ* on page 12).

If a public charity is excepted from filing a Form 990 or Form 990-EZ because annual gross receipts are normally $50,000 or less, and it elects to file the Form 990 or Form 990-EZ, it must complete the entire return; otherwise, it must file the e-Postcard, Form 990-N, electronically. An organization that only completes those items of information on the Form 990 or Form 990-EZ that are required to be provided on an electronic Form 990-N will not be deemed to have met its electronic notice requirement. See **Form 990-N**, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required To File Form 990 or 990-EZ* on page 12.

Special Requirements for Supporting Organizations and Donor Advised Funds

Public charities that are supporting organizations described in section 509(a)(3) are generally required to file Form 990 or Form 990-EZ even if their gross receipts are normally $50,000 or less. Supporting organizations of religious organizations need not file Form 990 or Form 990-EZ if their gross receipts are normally $5,000 or less. Such organizations will, however, be required to file the Form 990-N.

Supporting organizations will be required to indicate whether they are a Type 1, Type 2, a Type 3-Functionally Integrated or Type 3-Other supporting organization, identify their supported organizations, and annually certify that they are not controlled by a disqualified person. See the instructions for Schedule A (Form 990 or Form 990-EZ), *Public Charity Status and Public Support* and Notice 2006-109 to determine an organization's appropriate supporting organization type for information return purposes. Learn about new requirements applicable to supporting organizations on the IRS Nonprofits and Charities Web site at *www.irs.gov/eo*.

Sponsoring organizations of donor advised funds (defined as organizations that maintain one or more donor advised funds), and organizations that have controlled entities are required to file Form 990 rather than Form 990-EZ or 990-N.

Form 990 and Form 990-EZ

Form 990 consists of a core form and schedules. Each organization that files the form must complete the entire core form. The core Form 990 includes a Summary Page that provides a “snapshot” of the organization’s key financial and operating information for the current and prior year.

All Form 990 filers will provide information about their program service accomplishments, compensation of certain officers, directors and key employees as well as information about governance practices and procedures and financial information.

Each organization that files Form 990 must complete Part IV of Form 990, *Checklist of Required Schedules*, to determine which schedules it must complete based on its activities. See the instructions for Form 990-EZ for information about which schedules 990-EZ filers must complete.

Schedule A, *Public Charity Status and Public Support*, and Schedule B, *Schedule of Contributors*

Public charities that file Form 990 or Form 990-EZ must file Schedule A of that return. Schedule A is used to report information about the organization’s public charity status and public support.

A new organization will be classified as a public charity, and not a private foundation, for its first five years if it can show that it can reasonably be expected to be publicly supported. If the organization can make this showing, it will be a public charity for its first five years regardless of the public support it actually receives.

The IRS will monitor a new organization’s public charity status after the first five years of existence based on the public support information reported annually by the organization on Schedule A of Form 990 based on a five year computation period that consists of the current year and the four years immediately preceding the current year.

Beginning with the organization’s sixth year and for all succeeding years, if an organization meets the public support test on Schedule A, the organization will remain a public charity for that current year and the next year.

If a publicly supported charity fails the public support test for two consecutive years, it will be reclassified as a private foundation.

An organization that received an advance ruling determining it a publicly supported organization on or after June 9, 2008, will automatically be classified as a publicly supported organization and need not file Form 8734 at the end of the advance ruling period.

See Publication 4220, *Applying for 501(c)(3) Tax-Exempt Status*, for details on the distinctions between public charities and private foundations. Also go to *www.irs.gov/eo* for additional information on the elimination of the advance ruling process.

Most public charities that received contributions of $5,000 or more from any one contributor must file Schedule B, *Schedule of Contributors.* See Part IV, line 2 of Form 990 and the instructions to Schedule B (Form 990, 990-EZ) for complete instructions.

Also see *www.irs.gov/eo* for additional information about other schedules that a public charity may be required to complete based on the nature of its activities.

Reporting Excess Benefit Transactions

If a public charity believes it provided an excess benefit to a person who is in a position to exercise substantial influence over the organization's affairs, it must report the transaction on Form 990 or Form 990-EZ. Excess benefit transactions are governed by section 4958 of the Code. See Appendix G of the Form 990 Instructions for a discussion of section 4958, and Schedule L, Part I, regarding reporting of excess benefit transactions.

Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ*

Any public charity that is not required to file Form 990 or 990-EZ because its annual gross receipts are normally $50,000 or less must instead file Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*. Only churches, their integrated auxiliaries, and conventions or associations of churches, and subordinate organizations included in a group return filed by a parent organization are excused from filing Form 990-N.

The Form 990-N is due by the 15th day of the fifth month after the close of your tax period. For example, if your organization's tax period ends on December 31, 2013, the Form 990-N is due May 15, 2014. The e-Postcard cannot be filed until the organization's tax year ends.

You can access the e-Postcard filing system through the IRS Charities and Nonprofits Web site, *www.irs.gov/eo* or by going directly to the filing system Web site at *http://epostcard.form990.org*.

The form must be completed and filed electronically. There is no paper form.

An organization is required to provide the following information on Form 990-N:

- the organization's legal name,
- any other names the organization uses,
- the organization's mailing address,
- the organization's Web site address (if applicable),
- the organization's employer identification number (EIN), also known as a taxpayer identification number (TIN),
- name and address of a principal officer of the organization,
- the organization's annual tax period,
- confirmation that the organization's annual gross receipts are still normally $50,000 or less, and
- if applicable, a statement that the organization has terminated or is terminating (going out of business).

Read **Filing Penalties and Revocation of Tax-Exempt Status** below on the consequences for failure to file this annual electronic notice and *www.irs.gov/eo* for information about the Form 990-N.

FILING PENALTIES AND REVOCATION OF TAX-EXEMPT STATUS

If a Form 990 or Form 990-EZ is not filed, the IRS may assess penalties on the organization of $20 per day until it is filed. This penalty also applies when the filer fails to include required information or to show correct information. The penalty for failure to file a return or a complete return may not exceed the lesser of $10,000 or 5 percent of the organization's gross receipts. For an organization that has gross receipts of over $1 million for the year, the penalty is $100 a day up to a maximum of $50,000. The IRS may impose penalties on organization managers who do not comply with a written demand that the information be filed.

Section 6033(j) of the Code provides that failure to file Form 990, Form 990-EZ, or Form 990-N for 3 consecutive years results in revocation of tax-exempt status as of the filing due date for the third return. An organization whose exemption is revoked under this section must apply for reinstatement by filing a new application and paying a user fee, whether or not the organization was originally required to file for exemption. Reinstatement of exemption may be retroactive if the organization shows that the failure to file was for reasonable cause. Information with respect to the implementation of Section 6033(i) is available at *www.irs.gov/eo*.

e-Filing Requirements

Public charities with $10 million or more in total assets and that also file at least 250 returns in a calendar year (including income, excise, employment tax, and information returns such as Forms W-2 and 1099) are required to electronically file Form 990. Other public charities are given a choice to file Form 990 electronically. Click on the "IRS *e-file*" logo on the IRS Web site to get the facts on e-filing.

Form 990-T, *Exempt Organization Business Income Tax Return*

A public charity must file a Form 990-T, *Exempt Organization Business Income Tax Return*, if it has $1,000 or more of gross income from an unrelated trade or business during the year. Net income from income-producing activities is taxable if the activities:

- constitute a trade or business,
- are regularly carried on, and
- are not substantially related to the organization's exempt purpose.

Examples of unrelated business income may include income from advertising in publications, income from gaming (except for income from traditional bingo under certain circumstances), and income from the sale of merchandise unrelated to the organization's exempt purpose. Whether an income-producing activity is an unrelated trade or business activity depends on all the facts and circumstances. For more information, see IRS Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*.

The public charity must pay quarterly estimated tax on unrelated business income if it expects its tax for the year to be $500 or more. Form 990-W, *Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations*, is a worksheet to determine the amount of estimated tax payments required.

FORM 990-T FILING PENALTIES

An organization may be subject to interest and penalty charges if it files a late return, fails to pay tax when due, or fails to pay estimated tax, if required, even if it did not expect its tax for the year to be $500 or more.

Exceptions and Special Rules

Income from certain trade or business activities is excepted from the definition of unrelated business income. Earnings from these sources are not subject to the unrelated business income tax. Exceptions generally include business income from:

- activities, including fundraisers, that are conducted by volunteer workers, or where donated merchandise is sold;
- activities conducted by a charitable organization or by a governmental college or university for the convenience of members, students, patients or employees;
- qualified conventions and trade shows;
- qualified sponsorship activities; and
- qualified bingo activities.

Income from investments and other “passive” activities is usually excluded from the calculation of unrelated business taxable income. Examples of this type of income include earnings from routine investments such as certificates of deposit, savings accounts, or stock dividends, royalties, certain rents from real property, and certain gains or losses from the sale of property.

Special rules apply to income derived from real estate or other investments purchased with borrowed funds. Such income is called “debt-financed” income. Unrelated debt-financed income generally is subject to the unrelated business income tax.

To learn about unrelated business income, get Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*, Form 990-T instructions, and Form 990-W instructions at *www.irs.gov*.

Employment Tax Returns

Like other employers, all public charities that pay wages to employees must withhold, deposit, and pay employment tax, including federal income tax withholding and Social Security and Medicare (FICA) taxes. A public charity must withhold federal income tax from employee wages and pay FICA on each employee paid $100 or more in wages during a calendar year. To know how much income tax to withhold, a public charity should have a Form W-4, *Employee’s Withholding Allowance Certificate*, on file for each employee. Employment taxes are reported on Form 941, *Employer’s Quarterly Federal Tax Return*.

If a small employer (one who has withheld employment taxes of $1,000 or less during the year) has been instructed by IRS to file Form 944, *Employer’s Annual Federal Tax Return* instead of Form 941, the employer must do so. The employer must file Form 944 even if there is no tax due or if the taxes exceed $1,000 unless IRS tells it to file Form 941 (or it is filing a final return). See the instructions to Form 944 for information on how to have the filing requirement changed from Form 944 to Form 941.

Any person that fails to withhold and pay employment tax may be subject to penalties. Public charities do not pay federal unemployment (FUTA) tax.

Public charities do not generally have to withhold or pay employment tax on payments to independent contractors, but they may have information reporting requirements. If a charity incorrectly classifies an employee as an independent contractor, it may be held liable for employment taxes for that worker.

The requirements for withholding, depositing, reporting and paying employment taxes are explained in Publication 15, *Circular E, Employer’s Tax Guide*. For help in determining if workers are employees or independent contractors, see Publication

15-A, *Employer's Supplemental Tax Guide*. Publication 557, *Tax Exempt Status for Your Organization*, covers the employment tax responsibilities of public charities. These IRS publications can be downloaded at *www.irs.gov*.

Employment Taxes and Churches

Although churches are excepted from filing Form 990, they do have employment tax responsibilities. Employees of churches or church-controlled organizations are subject to income tax withholding, but may be exempt from FICA taxes. Like other 501(c)(3) organizations, churches are not required to pay federal unemployment tax (FUTA). In addition, although ministers generally are common law employees, they are not treated as employees for employment tax purposes. These special employment tax rules for members of the clergy and religious workers are explained in Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*. Churches also should consult Publications 15 and 15-A and Publication 1828, *Tax Guide for Churches and Religious Organizations*.

Why Keep Records?

In general, a public charity must maintain books and records to show that it complies with tax rules. The charity must be able to document the sources of receipts and expenditures reported on Form 990, *Return of Organization Exempt From Income Tax* or Form 990-EZ*, Short Form Return of Organization Exempt From Income Tax*, and Form 990-T, *Exempt Organization Business Income Tax Return*. (See **Prepare Annual Information and Tax Returns** on page 17.)

If an organization does not keep required records, it may not be able to show that it qualifies for tax-exempt status or should be classified as a public charity. Thus, the organization may lose its tax-exempt status or be classified as a private foundation rather than a public charity. In addition, a public charity may be unable to complete its returns accurately and, hence, may be subject to penalties described under **Filing Penalties and Revocation of Tax-Exempt Status** on page 13. When good recordkeeping systems are in place, a public charity can evaluate the success of its programs, monitor its budget, and prepare its financial statements and returns.

Evaluate Charitable Programs

A charity can use records to evaluate the success of its charitable program and determine whether the organization is achieving desired results. Good records can also help a charity identify problem areas and determine what changes it may need to make to improve performance.

Monitor Budgetary Results

Without proper financial records, it is difficult for a charity to assess whether it has been successful in adhering to budgetary guidelines. The ability to monitor income and expenses and ensure that the organization is operating within its budget is crucial to successful stewardship of a public charity.

Prepare Financial Statements

It is important to maintain sufficient financial information in order to prepare accurate and timely annual financial statements. A charity may need these statements when it is working with banks, creditors, contributors, and funding organizations. Some states require charities to make audited financial statements publicly available.

Prepare Annual Information and Tax Returns

Records must support income, expenses, and credits reported on Form 990 series and other tax returns. Generally, these are the same records used to monitor programs and prepare financial statements. Books and records of public charities must be available for inspection by the IRS. If the IRS examines a public charity's returns, the organization must have records to explain items reported. Having a complete set of records will speed up the examination.

Identify Sources of Receipts

Public charities may receive money or property from many sources. With thorough recordkeeping, a charity can identify the sources of receipts. Organizations need this information to separate program from non-program receipts, taxable from non-taxable income, and to complete Schedule A, as well as other schedules of the Form 990 the organization may be required to complete, noted in **What Federal Information Returns, Tax Returns, and Notices Must be Filed?** on page 8. An organization should maintain a list of its donors and grantors and the amount of cash contributions or grants (or a description of the noncash contributions) received from each.

Substantiate Revenues, Expenses and Deductions for Unrelated Business Income Tax (UBIT) Purposes

An organization needs to keep records of revenues derived from, and expenses attributable to, an unrelated trade or business so that it can properly prepare Form 990-T and calculate its unrelated business taxable income.

Comply with Grant-Making Procedures (Grants to Individuals)

A public charity that makes grants to individuals must keep adequate records and case histories to demonstrate that such grants serve its charitable purposes. Case histories on grants to individuals should show names, addresses, purposes of grants, manner of selection, and relationship (if any) that the recipient has with any members, officers, trustees, or donors of the organization. For more information about appropriate records required to report on grants made within the United States, see Schedule I of Form 990 and instructions. See also Schedule F of Form 990 for information about records required to report on foreign grants.

Comply with Racial Nondiscrimination Requirements (Private Schools)

Private schools must keep records that show that they have complied with requirements relating to racial non-discrimination, including annual publication of a racially nondiscriminatory policy through newspaper or broadcast media to the general community served. For more information, see Schedule E of Form 990.

What Records Should be Kept?

Except in a few cases, the law does not require a special kind of record. A public charity can choose any recordkeeping system, suited to its activities, that clearly shows the organ-ization's income and expenses. The types of activities a public charity conducts determines the type of records that should be kept for federal tax purposes. A public charity should set up a recordkeeping system using an accounting method that is appropriate for proper monitoring and reporting of its financial activities for the tax year. If a public charity has more than one program, it should ensure that the records appropriately identify the income and expense items that are attributable to each program.

A recordkeeping system should generally include a summary of transactions. This summary is ordinarily written in the public charity's books (for example, accounting journals and ledgers). The books must show gross receipts, purchases, expenses (other than purchases), employment taxes, and assets. For most small organizations, the checkbook might be the main source for entries in the books while larger organizations would need more sophisticated ledgers and records. A public charity must keep documentation that supports entries in the books.

RECORDS MANAGEMENT

GROSS RECEIPTS

Gross receipts are the amounts received from all sources, including contributions. A public charity should keep supporting documents that show the amounts and sources of its gross receipts. Documents that show gross receipts include: donor correspondence, pledge documents, cash register tapes, bank deposit slips, receipt books, invoices, credit card charge slips, and Forms 1099-MISC, *Miscellaneous Income.*

PURCHASES, INCLUDING ACCOUNTING FOR INVENTORY

Purchases are items bought, including any items resold to customers. If an organization produces items, it must account for any items resold to customers. Thus, for example, the organization must account for the cost of all raw materials or parts purchased for manufacture into finished products. Supporting documents should show the amount paid, and that the amount was for purchases. Documents for purchases include: canceled checks, cash register tape receipts, credit card sales slips, and invoices. These records will help a public charity determine the value of its inventory at the end of the year. See Publication 538, *Accounting Periods and Methods,* for general information on methods for valuing inventory.

EXPENSES

Expenses are the costs a public charity incurs (other than purchases) to carry on its program. Supporting documents should show the amount paid and the purpose of the expense. Documents for expenses include: canceled checks, cash register tapes, contracts, account statements, credit card sales slips, invoices, and petty-cash slips for small cash payments.

EMPLOYMENT TAXES

Organizations that have employees must keep records of compensation and specific employment tax records. See Publication 15, *Circular E, Employer's Tax Guide,* for details.

ASSETS & LIABILITIES

Assets are the property, such as investments, buildings, and furniture that an organization owns and uses in its activities. Liabilities reflect the pecuniary obligations of the organization. A public charity must keep records to verify certain information about its assets and liabilities. Records should show:

- when and how the asset was acquired
- whether any debt was used to acquire the asset
- documents that support mortgages, notes, loans or other forms of debt
- purchase price
- cost of any improvements
- deductions taken for depreciation, if any
- deductions taken for casualty losses, if any, such as losses resulting from fires or storms
- how the asset was used
- when and how the asset was disposed of
- selling price
- expenses of sale

Documents that may show the above information include: purchase and sales invoices, real estate closing statements, canceled checks, and financing documents. If a public charity does not have canceled checks, it may be able to show payment with certain financial account statements prepared by financial institutions. These include account statements prepared for the financial institution by a third party. All information, including account statements, must be highly legible. The following defines acceptable account statements.

IF payment is by:	**THEN** statement must show:
check	check number, amount, payee's name, and date the check amount was posted to the account by the financial institution
electronic funds transfer	amount transferred, payee's name, and date the transfer was posted to the account by the inancial institution
credit card	amount charged, payee's name, and transaction date

Accounting Periods and Methods

A public charity must keep its books and records based on an annual accounting period called a tax year in order to comply with annual reporting requirements.

***Accounting Periods* —** A tax year is usually 12 consecutive months. There are two kinds of tax years.

CALENDAR TAX YEAR – This is a period of 12 consecutive months beginning January 1 and ending December 31.

FISCAL TAX YEAR – This is a period of 12 consecutive months ending on the last day of any month except December.

***Accounting Method* —** An accounting method is a set of rules used to determine when and how income and expenses are reported. A public charity chooses an accounting method when it files its first annual return. There are two basic accounting methods:

CASH METHOD – Under the cash method, a public charity reports income in the tax year received. It usually deducts expenses in the year paid.

ACCRUAL METHOD – Under an accrual method, a public charity generally records income in the tax year earned, (i.e., in the tax year in which a pledge is received, even though it may receive payment in a later year.) It records expenses in the tax year incurred, whether or not it pays the expenses that year.

For more information about accounting periods and methods, see Publication 538, *Accounting Periods and Methods*, and the instructions to Form 990 and Form 990-EZ.

Supporting Documents

Organization transactions such as contributions, purchases, sales, and payroll will generate supporting documents. These documents — grant applications and awards, sales slips, paid bills, invoices, receipts, deposit slips, and canceled checks — contain information to be recorded in accounting records. It is important to keep these documents because they support the entries in books and the entries on tax and information returns. Public charities should keep supporting documents organized by year and type of receipt or expense. Also, keep records in a safe place.

How Long Should Records be Kept?

Public charities must keep records for federal tax purposes for as long as they may be needed to document evidence of compliance with provisions of the Code. Generally, this means the organization must keep records that support an item of income or deduction on a return until the statute of limitations for that return runs. The statute of limitations has run when the organization can no longer amend its return and the IRS can no longer assess additional tax. Generally, the statute of limi-tations runs three years after the date the return is due or filed, whichever is later. An organization may be required to retain records longer for other legal purposes, including state or local tax purposes.

Record Retention Periods

Record retention periods vary depending on the types of records and returns.

Permanent Records – Some records should be kept per-manently. These include the application for recognition of tax-exempt status, the determination letter recognizing tax-exempt status, and organizing documents, such as articles of incorporation and by-laws, with amendments, as well as board minutes.

Employment Tax Records – If an organization has employees, it must keep employment tax records for at least four years after the date the tax becomes due or is paid, whichever is later.

Records for Non-Tax Purposes – When records are no longer needed for tax purposes, an organization should keep them until they are no longer needed for non-tax purposes. For example, a grantor, insurance company, creditor, or state agency may require that records be kept longer than the IRS requires.

What Governance Procedures and Practices Should an Organization Consider Adopting or Have In Place?

While federal law does not mandate any particular management structures, oper-ational policies or administrative practices, it is important that public charities be thoughtful about the governance practices that are most appropriate for that charity in assuring sound operations and compliance with the tax law. While you may not be required to have one policy or another, the IRS is authorized by sec-tion 6033 to ask for information we consider to be relevant to tax administration, including governance.

Mission Statement and Organizational Documents

The IRS encourages every charity to adopt, establish and regularly review a mission statement to explain the organization's purposes and guide its work. Significant changes in your organizational documents should be reported to the IRS, as noted below.

Governing Body

An active and engaged board is important to the success of a public charity and compliance with the tax law. A governing board should be composed of persons who are informed and active in overseeing a charity's operations and finances. To guard against insider transactions that could result in misuse of charitable assets, the governing board should include independent members and should not be dominated by employees or others who are not independent because of business or family relationships.

Governance and Management Policies

Although the Internal Revenue Code does not require charities to have particular governance and management polices, the IRS does encourage boards of charities to consider whether the implementation of policies relating to executive compensation, conflicts of interest, investments, fundraising, documentation of governance decisions, document retention, and whistleblower claims may be necessary and appropriate.

Further, if a public charity has chapters or affiliates, it is encouraged to have procedures or policies in place to ensure consistency in operations.

Financial Statements and Information Reporting

Board members are encouraged to regularly review the organization's financial statements and information returns, and consider whether an independent auditor is appropriate.

Transparency

Public charities are encouraged to adopt and monitor procedures to ensure that information about their mission, activities, finance and governance is made publicly available. Go to *www.irs.gov/eo* for more information about governance.

How Should Changes be Reported to the IRS?

Reporting Changes on the Annual Information Return

A public charity that is required to file Form 990 or Form 990-EZ must report name, address, structural and operational changes on its annual information return. Regardless of whether a public charity files an annual information return, it may also report these changes to the EO Determinations Office at the mailing address set out in **How to Get IRS Assistance and Information** on page 28; however, such reporting does not relieve the organization from reporting the changes on its annual information return. For information about informing the IRS of a termination or merger see Pub 4779, *Facts About Terminating or Merging Your Exempt Organization.*

Tip: Attach copies of any signed or state certified articles of incorporation or association, constitution or trust instrument or other organizing document, or the bylaws or other governing document showing changes to your return. If signed or state certified copies of a governing document are not available, an authorized officer may certify that the governing document provided is a complete and accurate copy of the original document.

Determination Letters and Private Letter Ruling Requests

A public charity may request a copy of a lost exemption letter or an updated exemption letter that reflects a name or address change from the EO Determinations office. A public charity that has had a change in its public charity or private foundation status should request a new determination letter from the EO Determinations office as well. See **How to Get IRS Assistance and Information** on page 28 for the appropriate address for the EO Determinations office.

An organization may request a ***determination letter*** regarding the effect of certain changes on its tax exempt status or public charity status. For example, as noted above, a determination letter will be issued to classify or reclassify an organization as a public charity or a private foundation. A public charity may also request a determination letter to approve the treatment of a contribution as an unusual grant, or to determine whether an organization is exempt from filing annual information returns in certain situations. However, the IRS will not make any determination regarding any completed transaction.

If a public charity is unsure about whether a proposed change in its purposes or activities is consistent with its status as an exempt organization or as a public charity, it may want to request a ***private letter ruling.***

The IRS issues ***private letter rulings*** on *proposed* transactions and on completed transactions — if the request is submitted before the return is filed for the year in which the transaction was completed. The IRS generally does not issue rulings to public charities on any other completed transactions. The IRS will issue letter rulings to public charities on matters involving a public charity's exempt status, its public charity status, as well as other matters including issues under sections 501 through 514, 4911, 4912, 4955, 4958, 6033, 6104, and 6115.

Consult *www.irs.gov/eo* for the appropriate procedures for preparing and submitting a request for a determination letter, private letter ruling, replacement exemption letter or a letter reflecting a new name and address. For general information about reporting changes, you may contact EO customer service at (877)829-5500.

What Disclosures are Required?

There are a number of disclosure requirements for public charities. Detailed information on federal tax law disclosure requirements for 501(c)(3) tax-exempt organizations can be found in Publication 557, *Tax Exempt Status for Your Organization*, on the IRS Charities and Nonprofits Web site at *www.irs.gov/eo*.

Public Inspection of Annual Returns and Exemption Applications

A public charity must make the following documents available for public inspection and copying upon request and without charge (except for a reasonable charge for copying). The IRS also makes these documents available for public inspection and copying. A public charity may place reasonable restrictions on the time, place, and manner of in person inspection and copying, and may charge a reasonable fee for providing copies. It can charge no more for the copies than the per page rate the IRS charges for providing copies. See *www.irs.gov/foia/index.html* for current IRS copying fees. Although the IRS charges no fee for the first 100 pages, the organization can charge a fee for all copies. The organization can also charge the actual postage costs it pays to provide copies. A tax-exempt organization does not have to comply with individual requests for copies if it makes the documents widely available. This can be done by posting the documents on a readily accessible Web site.

For details on disclosure rules and procedures for public charities, see *Life Cycle of a Public Charity* and the instructions to Forms 990 and 1023 at *www.irs.gov/eo*.

Because certain forms, by law, must be made publicly available by the IRS and the filer, do not include any personal identifying information, such as social security numbers not required by the IRS, on these forms.

Exemption Application – A public charity must make available for public inspection its exemption application, Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, along with each of the following documents:

- all documents submitted with Form 1023;
- all documents the IRS requires the organization to submit in support of its application; and
- the exemption ruling letter issued by the IRS.

Annual Information Return – A public charity must make available for public inspection its annual information return (Form 990 series) with schedules, attachments, and supporting documents filed with the IRS. However, a public charity that files a Form 990 or Form 990-EZ does not have to disclose the names and addresses of contributors listed on Schedule B. All other information, including the amount of contributions, the description of noncash contributions, and any other information provided will be open to public inspection unless it clearly identifies the contributor.

Note: If an organization files a copy of Form 990 or Form 990-EZ, and attachments, with any state, it should not include its Schedule B in the attachments for the state, unless a schedule of contributors is specifically required by the state. States that do not require the information might inadvertently make the schedule available for public inspection along with the rest of the Form 990 or Form 990-EZ.

Certain information may be withheld from public inspection. A return must be made available for a period of three years from the date the return is required to be filed or is actually filed, whichever is later.

Form 990-T – A public charity must make Form 990-T available for the three years beginning on the last day (including extensions) for filing the return. Schedules, attachments and supporting documents filed with Form 990-T that do not relate to unrelated business income tax are not required to be made available. Read Notice 2007-45 and Notice 2008-49 at *www.irs.gov* for interim guidance regarding how the returns are to be made public. See Announcement 2008-21 for procedures the public may use to request a 501(c)(3) organization's Form 990-T from the IRS.

Public Inspection and Disclosure Procedures – A public charity may place reasonable restrictions on the time, place, and manner of in-person inspection and copying, and may charge a reasonable fee for providing copies. It can charge no more for the copies than the per page rate the IRS charges for providing copies. A tax-exempt organization does not have to comply with individual requests for copies if it makes the documents widely available. This can be done by posting the documents on a readily accessible Web site. For details on disclosure rules and procedures for 501(c)(3) organizations, see the *Life Cycle of a Public Charity* and the instructions to Forms 990, 990-T and 1023 at *www.irs.gov/eo*.

All publicly-available information may be obtained from the IRS for a fee by using Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*. An organization may obtain a complete copy of its own application by filing Form 4506, *Request for Copy of Tax Return*.

PENALTIES

Penalties apply to responsible persons of a tax-exempt organization who fail to provide the documents as required. A penalty of $20 per day may apply for as long as the failure continues. A $10,000 maximum penalty applies to a failure to provide an information return; no maximum penalty applies to application requests.

Sale of Free Government Information

If a public charity offers to sell, or solicits money for, specific information or a routine service that is available free from the federal government, the organization must make an express statement at the time of solicitation about the free service. An organization that intentionally disregards this requirement is subject to a penalty.

Charitable Contributions—Substantiation and Disclosure

A public charity should be aware of the substantiation and recordkeeping rules imposed on donors who intend to claim a charitable contribution deduction and the disclosure rules imposed on charities that receive certain *quid pro quo* contributions.

Recordkeeping Rules

A donor cannot claim a tax deduction for any cash, check, or other monetary contribution made on or after January 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, date, and the amount of the contribution.

Substantiation Rules

A donor cannot claim a tax deduction for any single contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgment of the contribution from the recipient public charity. A public charity may assist the donor by providing a timely written statement including the name of the public charity, date and amount of any cash contribution, and description of any non-cash contributions.

In addition, the acknowledgment should indicate whether any goods or services were provided in return for the contribution. If any goods or services were provided in return for a contribution, the organization should provide a description and good faith estimate of the value of such goods or services.

The public charity may either provide separate acknowledgments for each single contribution of $250 or more or one acknowledgment to substantiate several single contributions of $250 or more. Separate contributions are not aggregated for purposes of measuring the $250 threshold.

There are no IRS forms for the acknowledgment. Letters, postcards, or computer-generated forms with the above information are acceptable. An organization can provide either a paper copy of the acknowledgment or an electronic acknowledgment, such as an e-mail, to the donor.

Disclosure Rules That Apply to *Quid Pro Quo* Contributions

Contributions are deductible only to the extent that they are gifts and no consideration is received in return. Depending on the circumstances, ticket purchases and similar payments made in conjunction with fundraising events may not qualify as charitable contributions in full. A contribution made by a donor in exchange for goods or services is known as a *quid pro quo* contribution. A donor may only take a charitable contribution deduction to the extent that the contribution exceeds the fair market value of the goods and services the donor receives in return for the contribution.

If a public charity conducts fundraising events such as benefit dinners, shows, and membership drives, where something of value is given to those in attendance, it must provide a written statement informing donors of the fair market value of the specific items or services it provided in exchange for contributions. Token items and services of intangible religious value need not be taken into account. A public charity should provide the written disclosure statement in advance of any event, determine the fair market value of any benefit received, and state this information in fundraising materials such as solicitations, tickets, and receipts. The disclosure statement should be made, at the latest, at the time payment is received. Subject to certain exceptions, the disclosure responsibility applies to any fundraising circumstance where each complete payment, including the contribution portion, exceeds $75.

Read Publication 1771, *Charitable Contributions—Substantiation and Disclosure Requirements*, and Publication 526, *Charitable Contributions*, for details on the federal tax law for organizations such as public charities, including churches, that receive tax-deductible charitable contributions and for taxpayers who make contributions.

How Do You Get IRS Assistance and Information?

The IRS offers help that is accessible online, via mail, by telephone, and at IRS walk-in offices in many areas across the country. IRS forms and publications can be downloaded from the Internet and ordered by telephone.

Specialized Assistance for Tax-Exempt Organizations

Get help with questions about applying for tax-exempt status, annual filing requirements, and information about exempt organizations from the IRS Exempt Organizations (EO) pages on the IRS website, at *www.irs.gov/Charities-&-Non-Profits*.

EO Web Site — www.*irs.gov/eo*

Highlights:

- The *Life Cycle of a Public Charity* describes the compliance obligations of charities.
- Subscribe to the *EO Update*, an electronic newsletter with information for tax-exempt organizations and tax practitioners who represent them.

EO Web-based Training — *www.stayexempt.irs.gov*

EO Customer Service — (877) 829-5500

EO Determinations Office Mailing Address

Internal Revenue Service
TE/GE, EO Determinations Office
P.O. Box 2508
Cincinnati, OH 45201

Tax Publications for Exempt Organizations

Get publications via the Internet or by calling the IRS at (800) 829-3676.

Pub 1, *Your Rights as a Taxpayer*

Pub 15, *Circular E, Employer's Tax Guide*

Pub 15-A, *Employer's Supplemental Tax Guide*

Pub 463, *Travel, Entertainment, Gift, and Car Expenses*

Pub 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*

Pub 526, *Charitable Contributions*

Pub 538, *Accounting Periods and Methods*

Pub 557, *Tax-Exempt Status for Your Organization*

Pub 571, *Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations*

Pub 583, *Starting a Business and Keeping Records*

Pub 598, *Tax on Unrelated Business Income of Exempt Organizations*

Pub 1771, *Charitable Contributions—Substantiation and Disclosure Requirements*

Pub 1828, *Tax Guide for Churches and Religious Organizations*

Pub 3079, *Tax-Exempt Organizations and Gaming*

Pub 3833, *Disaster Relief, Providing Assistance Through Charitable Organizations*

Pub 4220, *Applying for 501(c)(3) Tax-Exempt Status*

Pub 4221-NC, *Compliance Guide for Tax-Exempt Organizations (other than 501(c)(3) Public Charities and Private Foundations)*

Pub 4221-PF, *Compliance Guide for 501(c)(3) Private Foundations*

Pub 4302, *A Charity's Guide to Vehicle Donations*

Pub 4303, *A Donor's Guide to Vehicle Donations*

Pub 4630, *Exempt Organizations Products and Services Catalog*

Pub 4779, *Facts about Terminating or Merging Your Exempt Organization*

Forms for Exempt Organizations

Get forms via the Internet or by calling the IRS at (800) 829-3676.

Form 941, *Employer's Quarterly Federal Tax Return*

Form 944, Employer's Annual Federal Tax Return

Form 990, *Return of Organization Exempt From Income Tax*

Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*

Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*

Form 990-N, *Electronic Notice (e-Postcard) For Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ* (available electronically only)

Form 990-T, *Exempt Organization Business Income Tax Return*

Form 990-W, *Estimated Tax on Unrelated Business Taxable Income for Exempt Organizations*

Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*

Form 1024, *Application for Recognition of Exemption Under Section 501(a)*

Form 1041, *U.S. Income Tax Return for Estates and Trusts*

Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*

Form 5578, *Annual Certification of Racial Non-Discrimination for a Private School Exempt from Federal Income Tax*

Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*

Form 8282, *Donee Information Return*

Form 8283, *Noncash Charitable Contributions*

Form 8868, *Extension of Time To File an Exempt Organization Return*

FinCEN Form 114, *Report of Foreign Bank and Financial Accounts*

General IRS Assistance

Get materials on the latest tax laws, assistance with forms and publications, and filing information.

IRS Web site	***www.irs.gov***
Federal tax questions	**(800) 829-4933**
Employment tax questions	**(800) 829-4933**
Order IRS forms and publications	**(800) 829-3676**

IRS

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Department of the Treasury **Internal Revenue Service**
www.irs.gov

ARTICLE VII. - CHARITABLE SOLICITATIONS

FOOTNOTE(S):

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Charter reference— Authority relative to charitable solicitations, § 2.04(o).

Cross reference— Sale of goods to persons in motor vehicles or solicitation of contributions from occupants of motor vehicles, § 98-1.

DIVISION 1. - GENERALLY

Sec. 42-266. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable organization means any person who is or holds himself out to be established, for profit or not for profit, for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, safety, fraternal, historical, athletic, medical, religious or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. Such term includes a chapter, branch, area office, or similar affiliate soliciting contributions within the county for a charitable organization.

Charitable purpose means any benevolent, philanthropic, patriotic, educational, humane, scientific, artistic, public health, social welfare or advocacy, environmental conservation, civic, safety, fraternal, historical, athletic, medical, religious or other eleemosynary objective.

Charitable sales promotion means an advertising or sales campaign conducted by any person, professional solicitor, federated fundraising organization, commercial co-venturer, or sponsor which represents that the purchase or use of goods or services offered by the person, professional solicitor, federated fundraising organization or sponsor is to benefit a person or charitable or sponsor organization; provided, that advertising services to a charitable or sponsor organization does not, in itself, constitute a charitable sales promotion.

Code enforcement officers means those employees of the department of justice and consumer services designated as code enforcement officers pursuant to F.S. § 125.69.

Contribution means the promise, pledge, or grant of any money, property, financial assistance, service, or any other thing of value in response to a solicitation by any person on behalf of a charitable or sponsor purpose. "Contribution" includes, in the case of an offer of goods or services to the public, the difference between the direct cost of the goods or services and the price at which the goods or services are resold to the public. "Contribution" does not include fees, dues, or assessments paid by members, provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation. "Contribution" does not include funds obtained by a charitable organization or sponsor pursuant to government grants or contracts.

Conviction means a determination of guilt resulting from plea or trial in connection with any federal, state or local ordinance, act, or law regulating theft, fraud, misrepresentation or the solicitation of funds.

Department means the Pinellas County Department of Justice and Consumer Services.

Direct collection campaign means any solicitation of funds on or on behalf of a charitable organization where a pledge or donation for the charitable organization is collected by any person without use of the mail.

Director means the director of the Pinellas County Department of Justice and Consumer Services.

Educational institutions and organizations means those institutions described in F.S. § 212.08(7)(o)2.d.

Emergency service employee means any employee who is a firefighter, as defined in F.S. § 633.30, or ambulance driver, emergency medical technician, or paramedic, as defined in F.S. § 401.23.

Federated fundraising organization means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a United Way or community chest, for purposes of raising and distributing contributions for and among themselves, and where membership does not confer operating authority and control of the individual organization upon the federated group organization.

Financial record means computer records, banking records and statements, checks, drafts, receipts and papers of any description which indicate the receipt or expenditure of contributions.

Fundraising costs means those costs incurred in inducing others to make contributions to a charitable organization or sponsor. "Fundraising costs" include, but are not limited to, salaries, commissions, rent, telephone service, acquiring and obtaining mailing lists, printing, mailing, medical expenses and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions.

Hearing means, subsequent to public notice, a proceeding regarding the denial of a permit application, the suspension of a permit, or the revocation of a permit under this article.

Law enforcement officer means any person who is elected, appointed, or employed by the federal government, the state or any political subdivision thereof, and:

(1) Who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the criminal, traffic, highway, marine, and fish, game and wildlife laws of the state; or

(2) Whose responsibility includes supervision, protection, care, custody, or control of inmates within a reasonable institution.

Mail means a system by which letters and other materials are transported by the U.S. Postal Service or any private carrier.

Membership means the relationship of a person to an organization that entitles him to the privileges, professional standing, honors, or other direct benefit of the organization in addition to the right to vote, elect officers, and hold the office in the organization.

One time event means an event to raise funds for a charitable organization which does not exceed three consecutive calendar days annually.

Owner means any person who has a direct or indirect interest in any professional solicitor, federated fundraising organization or sponsor.

Parent organization means that part of a charitable organization or sponsor which coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more chapters, branches, or affiliates of such organization.

Person means any individual, organization, trust, foundation, group, association, entity, partnership, corporation, sponsor, or society, and the agent(s), employee(s) or officer(s) of any such person.

Professional solicitor means any person who, for compensation, performs for a charitable organization or sponsor any service in connection with which contributions are or will be solicited by the compensated person or by any person it employs, procures, or otherwise engages, directly or indirectly, as an agent, employee, independent contractor or subcontractor, in connection with the solicitation of contributions for or on behalf of a charitable organization or sponsor. A volunteer, employee or salaried officer of a charitable organization or sponsor is not a professional solicitor. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a professional solicitor as the result of such advice. Any person, corporation, association or other organization which places advertising, or prepares or manages a mailing campaign, and sends materials to the public for the purpose of soliciting funds by charitable organization or a sponsor, or any person that conducts any direct collection campaign shall be considered a professional solicitor and not a professional fundraising consultant.

Religious institution means any church, ecclesiastical or denominational organization, or established physical place for worship, at which nonprofit religious services and activities are regularly conducted and carried on, and includes those religious groups which do not maintain specific places of worship. "Religious institution" also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation.

Solicitation means a request, direct or indirect, for money, property, financial assistance, service, or any other thing of value on the plea or representation that such money, property, financial assistance, service, or other thing of value or a portion of it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. "Solicitation" includes, but is not limited to, the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, service, or any other thing of value:

(1) Any oral or written request;

(2) Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contributions; or

(3) Selling or offering or attempting to sell any advertisement, advertising space, book, card, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, admission, ticket, food, or other service or tangible good, item, or thing of value, or any right of any description in connection with which any appeal is made for any charitable organization or sponsor and is used or referred to in any such appeal as an inducement or reason for making the sale or when, in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable or sponsor purpose or will benefit any charitable organization or sponsor. A solicitation is considered as having taken place whether or not the person making the solicitation receives any contribution. A solicitation does not occur when a person applies to the government or to an organization that is exempt from federal income taxation under section 501(c) of the Internal Revenue Code for a grant or an award.

Sponsor means a group which hosts an event or solicits contributions on behalf of a charitable organization.

Violation means that a person has committed a prohibited act under F.S. ch. 496, this article, or any other federal, state or local ordinance, act, or law governing theft, fraud, misrepresentation or the solicitation of funds.

(Ord. No. 93-106, § 1.9, 12-7-93; Ord. No. 97-32, § 1, 5-13-97; Ord. No. 98-108, § 1, 12-22-98; Ord. No. 02-79, § 1, 10-15-02; Ord. No. 03-85, § 2, 11-4-03)

Cross reference— Definitions generally, § 1-2.

Sec. 42-267. - Authority.

This article is enacted pursuant to F.S. chs. 125 and 496, and under the home rule powers of the county in the interest of the health, peace, safety, and general welfare of the people of the county.

(Ord. No. 93-106, § 1.2, 12-7-93)

State Law reference— General powers of chartered counties, Fla. Const. art. VIII, § 1(g).

Sec. 42-268. - Penalty for violation of article.

Violations of this article are punishable with a civil fine as provided in section 1-8 of this Code.

(Ord. No. 93-101, §§ 4.4, 5.4, 12-7-93; Ord. No. 00-52, § 2, 7-11-00)

Sec. 42-269. - Territory embraced.

All territory within the legal boundaries of the county, including all incorporated and unincorporated areas, shall be embraced by the provisions of this article.

(Ord. No. 93-106, § 1.3, 12-7-93)

Charter reference— Conflicts between county and municipal ordinances, §§ 2.01, 2.04.

Sec. 42-270. - Reserved.

Editor's note— Ord. No. 07-11, § 1, adopted Feb. 20, 2007, repealed § 42-270, which pertained to the purpose and intent of article VI and derived from Ord. No. 93-106, § 1.4, adopted Dec. 7, 1993.

Sec. 42-271. - Construction of article.

This article shall be liberally construed to accomplish its purpose.

(Ord. No. 93-106, § 1.5, 12-7-93)

Sec. 42-272. - Exemptions from article.

(a) This article shall not apply to any solicitation made when the solicitation is directed toward persons who are members of the entity at the time of the solicitation.

(b) This article shall not apply to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor establishes a legal depository account and represents in each case that the entire amount collected, without any reduction whatever, shall be turned over to the named beneficiary.

(c) This article shall not apply to any solicitations conducted by schoolchildren or college or university students, or their parents, teachers or instructors under the direction and supervision of their parents, school, college or university officials, teachers, instructors, or principals for the purpose of financing extracurricular, social, athletic, artistic, scientific, or cultural programs which shall include, but shall not be restricted to, solicitations for band and athletic uniforms, scientific and/or artistic implements and literary matter.

(d) This article shall not apply to state agencies or other governmental entities.

(e) The exemptions in this section do not apply to any sponsor or to a person or group which is or holds out to be soliciting contributions by the use of any name which implies that the group or person is in any way affiliated with or organized for the benefit of emergency services employees or law enforcement officers.

(Ord. No. 93-106, § 1.6, 12-7-93; Ord. No. 97-32, § 2, 5-13-97; Ord. No. 98-108, § 2, 12-22-98)

DIVISION 3. - OPERATIONAL PROVISIONS

Sec. 42-306. - Telephone solicitations.

(a) When conducting telephone solicitations for charitable or sponsor purposes, the charitable organization shall furnish to each contributor an invoice, receipt, or statement containing the name of the organization benefiting from the solicitation, the name of the soliciting organization, the full legal name of the individual who made the solicitation and the business address and telephone number from which the solicitation was made.

(b) When conducting telephone solicitations for charitable or sponsor purposes, a professional solicitor and his agent(s) or employee(s) shall immediately identify himself to the listener with his full name and the name of the professional solicitor organization before he solicits any person for a charitable or sponsor contribution.

(Ord. No. 93-106, § 3.1, 12-7-93; Ord. No. 07-11, § 2, 2-20-07)

Sec. 42-307. - Identification of solicitor.

Any person seeking contributions under this article shall identify himself with his full, true and correct name.

(Ord. No. 93-106, § 3.2, 12-7-93)

Sec. 42-308. - Contribution receipts.

(a) Any person accepting a contribution for any charitable or sponsor purpose shall tender to the contributor a receipt which acknowledges the amount and species of the contribution, the name of the organization for whom the contribution is made, the full name of the individual who made the solicitation, and the business address and telephone number from which the solicitation was made.

(b) The receipt required by this section shall not be necessary for contributions made through receptacles, nor shall a receipt be necessary for a contribution of less than $5.00.

(Ord. No. 93-106, § 3.3, 12-7-93)

Sec. 42-309. - Contribution receptacles.

Each contribution receptacle which is unattended by the person or organization soliciting contributions shall bear the person's or organization's name, address and telephone number.

(Ord. No. 93-106, § 3.4, 12-7-93; Ord. No. 97-32, § 16, 5-13-97; Ord. No. 98-8, § 3, 1-6-98); Ord. No. 07-11, § 3, 2-20-07)

Sec. 42-310. - Reserved.

Secs. 42-311—42-320. - Reserved.

DIVISION 4. - PROHIBITED ACTS

Sec. 42-321. - Reserved.

Sec. 42-322. - Reserved.

Sec. 42-323. - False statement or deception in connection with solicitation.

It shall be a violation of this article for any person to make or perpetrate a false or misleading statement, deception or fraud in connection with any solicitation of any contribution for any charitable or sponsor purpose or purported charitable or sponsor purpose.

(Ord. No. 93-106, § 4.3.1, 12-7-93)

Sec. 42-324. - Reserved.

Sec. 42-325. - Commingling of contributions.

It shall be a violation of this article for any person, professional solicitor, federated fundraising organization or sponsor to commingle contributed funds or property with his own funds or property.

(Ord. No. 93-106, § 4.3.3, 12-7-93; Ord. No. 02-79, § 8, 10-15-02; Ord. No. 03-85, § 10, 11-4-03)

Sec. 42-326. - Reserved.

Sec. 42-327. - Reserved.

Sec. 42-328. - Reserved.

Sec. 42-329. - Nighttime solicitation to private residence.

It shall be a violation of this article for any person to solicit under this article at or to a private residence between the hours of 9:00 p.m. and 8:00 a.m.

(Ord. No. 93-106, § 4.3.7, 12-7-93; Ord. No. 97-32, § 20, 5-13-97)

Sec. 42-330. - Reserved.

Sec. 42-331. - Reserved.

Sec. 42-332. - Concealing identity of organization.

It shall be a violation of this article for any person to conceal the identity of an organization on whose behalf solicitations are being made.

(Ord. No. 93-106, § 4.3.10, 12-7-93)

Sec. 42-333. - Misrepresenting donations as being tax deductible.

It shall be a violation of this article to misrepresent that the proceeds of any solicitation of funds under current law would entitle the donor to a federal or state income tax deduction.

(Ord. No. 93-106, § 4.3.11, 12-7-93)

Sec. 42-334. - Reserved.

Sec. 42-335. - Reserved.

Sec. 42-336. - Reserved.

Sec. 42-337. - Unauthorized representation of charitable organization.

It shall be a violation of this article to represent that a contribution is for or on behalf of a charitable organization or sponsor without first being authorized in writing by the charitable organization.

(Ord. No. 93-106, § 4.3.15, 12-7-93; Ord. No. 97-32, § 23, 5-13-97)

Sec. 42-338. - Soliciting for individual without establishing depository account.

It shall be a violation of this article to solicit contributions for or on behalf of a named individual without establishing a legal depository account.

(Ord. No. 93-106, § 4.3.16, 12-7-93)

Sec. 42-339. - Failure to honor timely request for refund.

It shall be a violation of this article for any person to fail to make a refund of a verified contribution within 30 days after a refund has been requested in writing, provided that the request is made within 60 days of the contribution.

(Ord. No. 93-106, § 4.3.17, 12-7-93)

Sec. 42-340. - Improper use of contributions.

It shall be a violation of this article to fail to apply contributions for the stated purpose of the solicitation.

(Ord. No. 93-106, § 4.3.18, 12-7-93; Ord. No. 97-32, § 24, 5-13-97)

Sec. 42-341. - Use of misleading name or symbol.

It shall be a violation of this article to use a name, symbol, emblem, device, service, mark, or statement so closely related to or similar to that used by another charitable or sponsor organization that the use thereof would mislead the public.

(Ord. No. 93-106, § 4.3.19, 12-7-93)

Sec. 42-342. - False representation by solicitor.

It shall be a violation of this article to falsely state that the person making the solicitation is a member of or a representative of a charitable or sponsor organization, or falsely state or represent that such person is a member of or represents a law enforcement or emergency service organization, or falsely state or represent that such person is part of a governmental agency or body.

(Ord. No. 93-106, § 4.3.20, 12-7-93)

Sec. 42-343. - Withholding proceeds from sponsor.

It shall be a violation of this article to fail to provide complete and timely payment to a charitable or sponsor organization of the proceeds from a solicitation campaign or sales promotion.

(Ord. No. 93-106, § 4.3.21, 12-7-93)

Sec. 42-344. - Failure to display required information on contribution receptacle.

It shall be a violation of this article to fail to display the required name, address, and telephone number on an unattended contribution receptacle.

(Ord. No. 93-106, § 4.3.22, 12-7-93; Ord. No. 07-11, § 4, 2-20-07)

Secs. 42-345—42-355. - Reserved.