

Charity “Cheat Sheet”

The following pages attempt to summarize some of the highly complex rules relating to 501(c)(3)s in the following areas:

- Charitable contributions
- Self-dealing
- Inter-entity contributions

Disclaimer: Anytime tax law is summarized, pertinent details are excluded. Accordingly, always check the tax authorities on your specific situation. This is just designed to help identify issues, not to provide authoritative conclusions. As with all “cheat sheets,” this is a work in progress (dated August 2008). If you have input, I’d love to hear it.

Types of Charities - Definitions

- Public Charity - certain defined organizations, including colleges and hospitals, as well as organizations meeting one of two mechanical public support tests. Community Foundations are generally public charities
- Donor Advised Fund - Sec. 4966(d)(2) - A fund or account (i) which is separately identified by reference to contributions of a donor or donors, (ii) which is owned and controlled by a qualified sponsoring organization (generally a public charity), and (iii) with respect to which a donor has advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as a donor
- Supporting Organization - Type I - operated, supervised, or controlled by one or more public charities
- Supporting Organization - Type II - supervised or controlled in connection with one or more public charities
- Supporting Organization - Type III - operated in connection with one or more public charities
- Supporting Organization - Type III - Functionally Integrated - Sec. 4943(f)(5)(B) - a Type III supporting organization which, under the regulations, performs the functions of, or carries out the purposes of, such supported organization
- Private Operating Foundation - Sec. 4942(j)(3) - directly conducts exempt activities
- Exempt Private Operating Foundation - Sec. 4940(d) - a private operating foundation that has been publicly supported for 10 years; whose governing body consists of less than 25% disqualified individuals and is broadly representative of the general public; and who has no officer who is a disqualified individual during the year
- Flow Thru Private Foundation - Sec. 170(b)(1)(F)(ii) - a private foundation which, not later than the 15th day of the 3rd month after the close of the foundation’s taxable year in which contributions are received, makes qualifying distributions which are treated as distributions out of corpus in an amount equal to 100% of such contributions and with respect to which the taxpayer obtains adequate records from the foundation showing that the foundation made such qualifying distributions
- Private Foundation - under section 509, all 501(c)(3)s are private foundations unless an exception applies

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Charitable Contributions

	Public Charity	Supporting Organizations				Donor Advised Fund	Private Foundations			
		Type I	Type II	Type III			Exempt Private Operating Foundation	Private Operating Foundation	Flow Thru Private Foundation	Private Foundation
				functionally integrated	not functionally integrated					
Amount of Charitable Deduction (deduction is limited to lesser of FMV or basis, the following assumes FMV>basis) & Percentage Limit										
Contribution of cash or unappreciated property	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 50%	FMV 30%
Contribution of ordinary income or short-term capital gain property	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 30%
Contribution of long-term capital gain property (includes business property, but depreciation recapture reduces FMV)										
Publicly traded security	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 20%
Other long-term capital gain property (other than the following):	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	Basis 20%
Tangible personal property not used in donee's exempt activities	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 20%
Tangible personal property used in donee's exempt activities	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	FMV 30%	Basis 20%
Patents, certain copyrights, trademarks, names, secrets, certain software	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 20%
Taxidermy property	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 50%	Basis 20%
Is Entity Appropriate for Gifts of Closely Held Businesses?										
Is the entity exempt from excise tax on excess business holdings - § 4943? Ownership of > 2%	No	No (z)	Yes (a)	No (z)	Yes(z)	Yes	Yes	Yes	Yes	Yes
(a) But only if it accepts gifts from a person (who is not a public charity) who controls (with attribution) the governing body of the supported organization.										
(z) Type I and III SOs that accept gifts from a person in control of the supported organization will be treated as a PF for all purposes until they demonstrate that they qualify as a public charity other than as an SO.										

Self Dealing/Excess Benefits

	Public Charity	Supporting Organizations				Donor Advised Fund	Private Foundations			
		Type I	Type II	Type III			Exempt Private Operating Foundation	Private Operating Foundation	Flow Thru Private Foundation	Private Foundation
				functionally integrated	not functionally integrated					
Disqualified Person - Includes:										
- substantial contributor (aggregate > 2% of total contributions)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- officer, director, trustee, key employee (5-year rule)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- substantial owner of an entity that is a DP	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- family members of the above (definitions vary)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- entity owned more than 35% by above	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
- disqualified persons of SOs are DPs of the supported organization	N/A	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A
Tax rate - rate at which the transaction is subject to tax	25%	25%	25%	25%	25%	25%	10%	10%	10%	10%
Tax base - amount subject to the tax rate is just the excess over FMV subject to tax or is the entire amount of the transaction subject to tax?										
- Sale or exchange	excess benefit						entire amount			
- Lease	excess benefit						entire amount			
- Lending	excess benefit	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (b)	entire amount			
- Grant	excess benefit	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (b)/(d)	entire amount			
- Furnishing goods or services	excess benefit						entire amount			
- Compensation	excess benefit	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (c)	entire amount (b)	entire amount			
(b) grants, loans, compensation to a donor advisor or related party; others subject to tax on excess benefit										
(c) grants, loans, compensation to substantial contributors/related parties; loans to disqualified persons/related parties. Others subject to tax on excess benefit.										
(d) DAF distributions that benefit to donor advisors or related parties - 125% on the benefit - § 4967										
Governing Code section	4958	4958	4958	4958	4958	4958	4941	4941	4941	4941



Distribution Requirements & Permissible Recipients

	Public Charity	Supporting Organizations				Donor Advised Fund	Private Foundations			
		Type I	Type II	Type III			Exempt Private Operating Foundation	Private Operating Foundation	Flow Thru Private Foundation	Private Foundation
				functionally integrated	not functionally integrated					
Excise tax on failure to distribute income (5%) - § 4942	No	No	No	No	Yes (g)	No	Yes	Yes	Yes	Yes
- Is the entity an eligible recipient of a qualifying distribution from a nonoperating PF?	Yes (e)	Yes (f)		No	Yes (e)	Yes (e)				
(e) Distributions from PFs to public charities or operating foundations that are controlled by the PF or its disqualified persons, or to nonoperating PFs must be redistributed to a non-controlled public charity or operating foundation by the end of the next year.										
(f) Distributions to these supporting organizations will qualify only if the donee and/or its supported organization is not controlled by a disqualified person of the PF.										
(g) By regulations under sec. 509, non-functionally integrated Type III SOs are to have required distributions. Regs have not yet been issued.										
Is the entity subject to tax on taxable expenditures? § 4945 - 20% on expenditures for lobbying, campaign activities, grants to individuals for travel, study, etc., unless the procedure is approved in advance by IRS, grants to certain organizations	No	No	No	No	No	No	Yes	Yes	Yes	Yes
Taxable expenditures of PFs - § 4945 - is a contribution by a PF a taxable expenditure? (If Yes, excise tax may be avoided by exercising expenditure responsibility)	No	Yes, but only if a disqualified person of the PF doesn't control the donee or its supported organization.		Yes, no contribution permitted	No	No	Yes - expenditure responsibility must be maintained.			
Taxable distributions of DAFs - § 4966 - 20% - distributions to natural persons; or other persons if the distribution is for a non-exempt purpose or there is no expenditure responsibility . Excepted distributions to:	Yes	Yes, but only if the donor or advisor of the DAF doesn't control the donee or its supported organization if so, expenditure responsibility.		No	Yes	Yes	Yes	Yes	Yes	No (y)
(y) Technically, distributions from DAFs to PFs are permitted by the Code as currently written, but they are discouraged by the gifting community.										