



**Community  
LEGAL  
Resources**

Tax Considerations Guide for  
Nonprofit Organizations in Michigan

Prepared for Michigan Community Resources  
by a generous resource provider

**DISCLAIMER**

This material should be used as a reference only. **It is not a substitute for legal advice.** The law changes frequently. The information provided may not apply to your specific set of facts or circumstances. If you require legal advice, please consult your attorney. Nonprofit organizations are encouraged to contact Michigan Community Resources to apply for pro bono legal assistance.

The information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your organization or business. Before making any decision or taking any action that may affect your organization or business, you should consult a qualified professional advisor.

## Table of Contents

<i>About this Guide</i> .....	4
<i>Exempt Status</i> .....	4
<i>Exemption Requirements - 501(c)(3) Organizations</i> .....	4
Exemption Application – FORM 1023 .....	4
Exemption Application – FORM 1023EZ.....	5
Exceptions to Application Requirement.....	5
Exemption Application - User Fee.....	5
Rulings and Determinations Letters .....	6
Jeopardizing Exemption .....	6
Revocation .....	8
Reinstatement .....	8
State of Michigan: Charitable Solicitations .....	8
Public Disclosure of Exempt Organizations Filings .....	9
Furnishing Copies of Form 990 to State Officials.....	10
<i>Substantiating Charitable Contributions</i> .....	11
Returns required to substantiate charitable contributions of donated property .....	11
Written Acknowledgments: Charitable Contribution of \$250 or More.....	11
Written Disclosure Statement: Quid Pro Quo.....	12
Substantiating Noncash Contributions .....	13
Charity Auctions .....	14
Bingo and Other Gaming.....	15
Reporting requirements: Exempt organization annual returns .....	18
<i>Unrelated Business Income Tax – Tax and Filing Requirements</i> .....	19
Tax Requirements .....	19
Filing Requirements and estimated payments .....	19
Specific exclusions from the definition of unrelated trade or business.....	20
Determining Unrelated Business Taxable Income .....	21
<i>Information Reporting</i> .....	25
Forms 1099 .....	25

The information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your organization or business. Before making any decision or taking any action that may affect your organization or business, you should consult a qualified professional advisor.

Forms W-9.....	25
Form W-8BEN.....	26
Form 1096.....	26
Independent Contractor (Self-Employed) or Employee.....	27
Public Disclosure and Availability of Exempt Organization Returns and Applications .....	27
<i>Sales/Use Tax Rules for Michigan Nonprofit Organizations .....</i>	<i>29</i>
Michigan Sales & Use Tax General Rules .....	29
Purchases Made by Certain Nonprofits.....	29
Casual Sales Made by Nonprofits .....	30
Taxability of Food and Beverages at Fundraisers.....	31
Sales of Food by Nonprofit Organizations to Students .....	31
Taxability of Sales to Contractors for Construction on Behalf of Nonprofit Organizations .....	32
Michigan Sales & Use Tax Filing Frequency.....	32
<i>Glossary of Terms.....</i>	<i>33</i>

The information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your organization or business. Before making any decision or taking any action that may affect your organization or business, you should consult a qualified professional advisor.

## About this Guide

This guide compiles various tax considerations for nonprofit organizations operating in Michigan. The information included herein is derived from the source documents referenced and organized for the reader's convenience, which include federal and state tax publications and links to governmental websites. While connected to the internet, hit control + click on the link to be redirected to the website from which the information was obtained.

## Exempt Status

### Exemption Requirements - 501(c)(3) Organizations

[http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations)

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, *i.e.*, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Organizations described in section 501(c)(3) are commonly referred to as *charitable organizations*. Organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170.

The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any organization managers agreeing to the transaction.

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charity-Required-Provisions-for-Organizing-Documents>

A charity's organizing document must limit the organization's purposes to exempt purposes set forth in section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that do not further those purposes. This requirement may be met if the purposes stated in the organizing document are limited by reference to section 501(c)(3).

In addition, an organization's assets must be permanently dedicated to an exempt purpose. This means that if an organization dissolves, its assets must be distributed for an exempt purpose described in section 501(c)(3), or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the organizing document should contain a provision insuring their distribution for an exempt purpose if the organization dissolves. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its organizing document includes a provision ensuring permanent dedication of assets for exempt purposes.

### Exemption Application – FORM 1023

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Public-Charity-Exemption-Application>

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

To be exempt under section 501(c)(3), an organization must file an application for recognition of exemption with the IRS. The law provides limited exceptions to the filing requirement. The form required to apply for exemption under section 501(c)(3) is [Form 1023](#). Form 1023 has [instructions](#) and checklists to help you provide the information required to process your application. The IRS will not process an incomplete application.

## Exemption Application – FORM 1023EZ

<http://www.irs.gov/uac/About-Form-1023EZ>

Form 1023-EZ is the streamlined version of Form 1023. To determine if you are eligible to file Form 1023-EZ, you must complete the Form 1023-EZ Eligibility Worksheet. If you meet the eligibility requirements, you must check the box at the top of Form 1023-EZ to attest that you are eligible to file the form. You are not required to submit the eligibility worksheet with your form. However, you should retain the worksheet for your records.

Per the eligibility worksheet, if your gross receipts were more than \$50,000 in any of the three prior years or are projected to be more than \$50,000 annually, then you are not eligible to file the Form 1023-EZ. See the eligibility worksheet for other eligibility criteria.

The Form 1023-EZ can only be filed electronically by going to [www.irs.gov/form1023](http://www.irs.gov/form1023) or [www.pay.gov](http://www.pay.gov) (enter the term “Form 1023-EZ” in the search box). IRS will not accept printed copy submissions of the application.

## Exceptions to Application Requirement

The following organizations are excepted from the exemption application requirement:

- Churches, their integrated auxiliaries, and conventions or associations of churches; and
- An organization that is not a private foundation and the [gross receipts](#) of which in each taxable year are normally not more than \$5,000.

For Group Exemptions see [Publication 4573, Group Exemptions](#)

<http://www.irs.gov/pub/irs-pdf/i1023.pdf>

## Exemption Application - User Fee

<http://www.irs.gov/Charities-&-Non-Profits/Exemption-Application---User-Fee>

The law requires the payment of a [user fee](#) for determination letter requests such as your application for recognition of tax-exempt status. Your payment must accompany your request. The IRS will not process a request unless the fee has been paid.

<http://www.irs.gov/Charities-&-Non-Profits/Form-1023:-Amount-of-User-Fee>

The amount of the user fee depends on the applying organization's average annual gross receipts. If the organization's average annual gross receipts have exceeded or will exceed \$10,000 annually over a four-year period, the fee is \$850. If gross receipts have not exceeded or will not exceed \$10,000 annually over a four-year period, the user fee is \$400. An applicant must certify its gross receipts in Form 1023, Part XI.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

When filing form 1023EZ, a user fee of \$400 is required to process your application. This fee must be paid through [www.pay.gov](http://www.pay.gov) when you file your application. Payments can be made directly from your bank account or by credit/debit card.

These amounts are [subject to change](#); the IRS publishes the latest user fee information at [www.irs.gov](http://www.irs.gov), keyword "user fee".

**Additional information:**

Form 1024 (see [Form 8718](#) for user fee information)

## Rulings and Determinations Letters

<http://www.irs.gov/pub/irs-pdf/i1023.pdf>

If you file Form 1023 within 27 months after the end of the month in which you were legally formed, and the IRS approves the application, the legal date of formation will be the effective date of your exempt status.

**Public Disclosure** – An exemption determination letter is subject to [public disclosure](#).

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organizations-Rulings-and-Determinations-Letters>

A ruling or determination letter will be issued to your organization if its application and supporting documents establish that it meets the particular requirements of the section under which it is claiming exemption. However, the IRS will not ordinarily issue rulings or determination letters recognizing exemption if an issue involving the organization's exempt status is pending, in litigation, or is under consideration within the IRS.

**Advance Ruling** – A ruling or determination letter may be issued in advance of operations if your organization can describe its proposed operations in enough detail to permit a conclusion that it will clearly meet the particular requirements of the section under which it is claiming exemption. A restatement of the organization's purpose or a statement that it will be operated in furtherance of that purpose will not satisfy this requirement. The organization must describe fully the activities in which it expects to engage. This includes standards, procedures, or other means adopted or planned by the organization for carrying out its activities, expected sources of funds, and the nature of its contemplated expenses.

**Adverse Determination** – A proposed adverse ruling or determination letter will be issued to an organization that has not provided sufficiently detailed information to establish that it qualifies for exemption or if the information provided establishes that it does not qualify for exemption. An organization can [appeal](#) a proposed adverse ruling or determination letter.

## Jeopardizing Exemption

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity-Jeopardizing-Exemption>

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

A section 501(c)(3) organization will jeopardize its exemption if it ceases to be operated exclusively for exempt purposes. An organization will be operated exclusively for exempt purposes only if it engages primarily in activities that accomplish the exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities does not further an exempt purpose.

A 501(c)(3) organization:

- must absolutely refrain from participating in the [political campaigns](#) of candidates for local, state, or federal office
- must restrict its [lobbying activities](#) to an insubstantial part of its total activities
- must ensure that its earnings do not [inure](#) to the benefit of any private shareholder or individual
- must not operate for the [benefit of private interests](#) such as those of its founder, the founder's family, its shareholders or persons controlled by such interests
- must not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory
- may not provide [commercial-type insurance](#) as a substantial part of its activities
- may not have purposes or activities that are illegal or violate fundamental public policy
- must satisfy [annual filing requirements](#)

In addition to loss of the organization's section 501(c)(3) exempt status, activities constituting [inurement](#) may result in the imposition of [penalty excise taxes](#) on individuals benefiting from [excess benefit transactions](#).

A tax-exempt organization that does not file a required annual return or notice for three consecutive years [automatically loses](#) its tax-exempt status.

## Revocation

<http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption>

Most tax-exempt organizations are required to file an annual return or notice with the Internal Revenue Service. (See [Annual Return Filing Exceptions](#) for a list of organizations that are not required to file.) Section 6033(j) of the Internal Revenue Code automatically revokes the exemption of any organization that fails to satisfy its filing requirement for three consecutive years. The automatic revocation of exemption is effective as of the due date of the third required annual filing or notice. Organizations on the Automatic Revocation of Exemption List (Auto-Revocation List) previously recognized as exempt under section 501(c)(3) of the Internal Revenue Code are no longer eligible to receive tax-deductible contributions under Code section 170.

Contributors and grantors can rely on the [Exempt Organizations Select Check](#) (Pub 78 data) page to determine organization deductibility and foundation status, even if the organization no longer appears in the [Statistics of Income \(SOI\) Tax Stats - EO BMF](#). See [Revenue Procedure 2011-33](#).

Publication of an organization's name on the Auto-Revocation List serves as notice to donors and others that the organization is no longer eligible to receive tax-deductible contributions under section 170 and that donors and others may not rely on an IRS determination letter dated before the effective date of revocation or on a prior listing in either *Exempt Organizations Select Check* (Pub. 78 data) or the IRS Business Master File extract for purposes of claiming tax-deductible contributions.

## Reinstatement

<http://www.irs.gov/Charities-&-Non-Profits/Reinstatement-of-Tax-Exempt-Status-after-Automatic-Revocation>

If an organization has had its tax-exempt status automatically revoked and wishes to have that status reinstated, it must file an application for exemption and pay the appropriate [user fee](#) even if it was not required to apply for exempt status initially.

If the IRS determines that the organization meets the requirements for tax-exempt status, it will issue a new determination letter. The IRS also will include the reinstated organization in the next update of *Exempt Organizations Select Check* (Pub. 78 database), and indicate in the IRS Business Master File (BMF) extract that the organization is eligible to receive tax-deductible contributions. Donors and others may rely upon the new IRS determination letter as of its stated effective date and on the updated *Exempt Organizations Select Check* and BMF extract listings.

In most cases, the effective date of reinstated exemption will be the date that the organization's exemption application was submitted to the IRS. However, organizations may choose to request that reinstatement be retroactive to the effective date of revocation. The IRS will grant retroactive reinstatement of exemption under certain limited circumstances

Because the Auto-Revocation List is an official IRS record of organizations that lost their exempt status for failing to file for three consecutive years, [an organization whose exempt status is reinstated remains on the list](#).

## State of Michigan: Charitable Solicitations

[http://www.michigan.gov/ag/0,4534,7-164-17337\\_18095\\_18101-45037--,00.html](http://www.michigan.gov/ag/0,4534,7-164-17337_18095_18101-45037--,00.html)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

The Charitable Organizations and Solicitations Act requires an organization to register if it solicits or receives contributions in Michigan. The Solicitations Act also requires licensing and bonding for professional fundraisers before soliciting, planning, or carrying out a solicitation campaign in Michigan for a charitable organization.

**Exemptions** – The Solicitations Act exempts organizations that raise funds exclusively using volunteers and receive less than \$25,000 a year. Other exemptions include certain educational institutions, certain hospitals, and unpaid solicitations for the benefit of individuals.

If you believe your organization is exempt, confirm this with the Charitable Trust Section by submitting the Request for Exemption.

**Initial Registration** – If registering for the first time, submit the [Initial Solicitation Registration Form](#) and all requested attachments:

- Out-of-state corporations must submit copies of their articles of incorporation and all amendments and bylaws; copies must show that they were filed with the appropriate state agency. Michigan corporations must submit bylaws, if any;
- Unincorporated entities should submit constitutions, bylaws, or other organizing documents;
- Organizations with tax exempt status from the Internal Revenue Service (IRS) should provide a copy of the IRS determination letter; (For more on obtaining tax exempt status, see the IRS website.);
- Organizations that have had any financial activity should provide a recent financial accounting.

Alternatively, organizations that solicit in more than one state may file the [Unified Registration Statement](#) (URS) that is accepted by many states. When filing the URS, ensure appropriate responses to state-specific requirements, such as Michigan's resident agent requirement.

**Expiration and Renewal** – The charitable solicitation registration must be renewed annually. Each registration includes its expiration date, which is seven (7) months after the end of the organization's fiscal year. To renew, the organization should submit a [Renewal Solicitation Registration Form](#) at least thirty (30) days prior to the expiration date, along with required attachments.

## Public Disclosure of Exempt Organizations Filings

<http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Public-Disclosure-of-Exempt-Organizations-Filings>

Exempt organizations must allow for public inspection and copying of their exemption applications, determination letters, and annual returns. The IRS also makes these documents available for public inspection and copying. For more information about disclosure requirements, see [Public Disclosure](#).

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

These organizations may also be subject to additional disclosure requirements:

- Disclosure, in [fundraising solicitations](#), that contributions are not deductible as charitable contributions
- Disclosure that [dues payments](#) allocable to nondeductible lobbying and political activities may not be deducted as business expenses

## **Furnishing Copies of Form 990 to State Officials**

[http://www.michigan.gov/ag/0,4534,7-164-17337\\_18095\\_52773-288903--,00.html#General\\_Questions](http://www.michigan.gov/ag/0,4534,7-164-17337_18095_52773-288903--,00.html#General_Questions)

When the Michigan Charitable Trust section registers a charity it means the charity submitted all information required under the Charitable Organizations and Solicitations Act, including:

- a complete financial statement (usually the IRS Form 990);
- a list of officers and directors;
- an indication of the methods of solicitation (and upon our request samples of solicitation materials);
- contracts with professional fundraisers; and
- a statement of the purpose for which donations will be used.

Charities that receive over \$250,000 in contributions that year must also provide financial statements reviewed by a certified public accountant; while charities that receive over \$500,000 in contributions that year must provide audited financial statements.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

## Substantiating Charitable Contributions

Many charitable organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with section 170. Most eligible organizations are listed in [Exempt Organizations Select Check \(Pub 78 database\)](#).

### Returns required to substantiate charitable contributions of donated property

Charities that receive donated property may also have information reporting requirements, in addition to the [requirement to file annual returns](#). Requirements depend on the type of property donated, the claimed value of the donated property, and the use to which the charity puts the property.

Depending on these factors, the following information reporting requirements may apply:

- [Written acknowledgment](#): Required under Internal Revenue Code section 170(f) for a donor to substantiate a charitable contribution of \$250 or more.
- [Written disclosure statement](#): Required under Code section 6115 when a donor makes a *quid pro quo* contribution (a payment exceeding \$75 partly as a contribution and partly for goods and services provided by the organization). The same document may serve as both the written acknowledgment and the written disclosure statement.
- [Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities](#). Required when your organization's revenue from gaming exceeds a certain amount.
- [Form 8282, Donee Information Return](#): Form to be completed upon the sale, exchange or other disposition of certain donated property made within three years after the donor contributed the property.
- [Form 8283, Noncash Charitable Contributions](#): For noncash donations over \$5,000. (See below re: Substantiating Noncash Contributions for more details.)
- [Form 8899, Notice of Income from Donated Intellectual Property](#): Required when donor has provided notice that donor intends to treat the contribution as a qualified intellectual property donation under Internal Revenue Code sections 170(m) and 6050L. Form 8899 is used by a donee to report net income from qualified intellectual property to the donor of the property and to the IRS.

Additional information on other sections: <http://www.irs.gov/Charities-&-Non-Profits/Contributors/Information-on-Donated-Property-for-Charitable-Organizations>)

### Written Acknowledgments: Charitable Contribution of \$250 or More

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Contributions-Written-Acknowledgments>

The written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information:

- Name of the organization;
- Amount of cash contribution;
- Description (but not value) of non-cash contribution;
- Statement that no goods or services were provided by the organization, if that is the case;

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- Description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution; and
- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

**Additional Information:**

[Publication 1771](#), *Charitable Contributions - Substantiation and Disclosure Requirements*

**Written Disclosure Statement: Quid Pro Quo**

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Contributions-Quid-Pro-Quo-Contributions>

<http://www.irs.gov/Charities-&-Non-Profits/Substantiating-Charitable-Contributions>

A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution in excess of \$75. A **quid pro quo contribution** is a payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity. For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution portion of the payment is \$60. Even though the part of the payment available for deduction does not exceed \$75, a disclosure statement must be filed because the donor's payment (quid pro quo contribution) exceeds \$75.

The required written disclosure statement must:

- Inform the donor that the *amount of the contribution that is deductible* for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the value of goods or services provided by the charity, and
- Provide the donor with a *good faith estimate* of the value of the goods or services that the donor received. The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

No disclosure statement is required when:

- The goods or services given to a donor meet the standards for *insubstantial value* set out in [Revenue Procedure 90-12](#), 1990-1 C.B. 471, and [Revenue Procedure 92-49](#), 1992-1 C.B. 987 (as updated);
- There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop); or
- There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context.

A penalty is imposed on a charity that does not make the required disclosure in connection with a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

**Good Faith Estimate of Fair Market Value** – An organization may use any reasonable method to estimate the fair market value (FMV) of goods or services it provided to a donor, as long as it applies the method in good faith. The organization may estimate the FMV of goods or services that generally are not commercially available by using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they do not have the unique qualities of the goods or services being valued.

*Example 1.* A charity provides a one-hour tennis lesson with a tennis professional for the first \$500 payment it receives. The tennis professional provides one-hour lessons on a commercial basis for \$100. A good faith estimate of the lesson's FMV is \$100.

*Example 2.* For a payment of \$50,000, a museum allows a donor to hold a private event in a room of the museum. A good faith estimate of the FMV of the right to hold the event in the museum can be made by using the cost of renting a hotel ballroom with a capacity, amenities, and atmosphere comparable to the museum room, even though the hotel ballroom lacks the unique art displayed in the museum room. If the hotel ballroom rents for \$2,500, a good faith estimate of the FMV of the right to hold the event in the museum is \$2,500.

*Example 3.* For a payment of \$1,000, a charity provides an evening tour of a museum conducted by a well-known artist. The artist does not provide tours on a commercial basis. Tours of the museum normally are free to the public. A good faith estimate of the FMV of the evening museum tour is \$0 even though the artist conducts it.

## Substantiating Noncash Contributions

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Organizations-Substantiating-Noncash-Contributions>

<http://www.irs.gov/Charities-&-Non-Profits/Contributors/Returns-and-Reports-Required-to-Substantiate-Charitable-Contributions-of-Donated-Property>

A charity may need to provide additional substantiation with respect to noncash contributions.

**Charitable Deduction Property** – This is any property (other than money or *publicly traded securities*) for which the donee organization signed an *appraisal summary* or [Form 8283](#), *Noncash Charitable Contributions*.

**Form 8283** – For noncash donations over \$5,000, the donor must attach Form 8283 to the tax return to support the charitable deduction. The donee must sign Part IV of Section B, Form 8283 unless publicly traded securities are donated. The person who signs for the donee must be an official authorized to sign the donee's tax or information returns, or a person specifically authorized to sign by that official. The signature does not represent concurrence in the appraised value of the contributed property. A signed acknowledgement represents receipt of the property described on Form 8283 on the date specified on the form. The signature also indicates knowledge of the information reporting requirements on dispositions, as previously discussed. A copy of Form 8283 must be given to the donee.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

**Publicly Traded Securities** – These are securities for which market quotations are readily available on an established securities market as of the date of the contribution.

**Vehicle donations** – Additional reporting requirements may apply when a charity receives a donation of a vehicle. See [Publication 4302](#), *A Charity's Guide to Vehicle Donations*, for more information.

- [Form 1098-C](#), *Contributions of Motor Vehicles, Boats, and Airplanes*
- [Instructions for Form 1098-C](#): Click [here](#) for a downloadable version (Adobe Acrobat) of these instructions.

**Appraisal Summary** – If the value of the donated property exceeds \$5,000, the donor must get a qualified appraisal for contributions of property (other than money or publicly traded securities). **The donee organization is not a qualified appraiser for the purpose of valuing the donated property.** For more information, get [Publication 561](#), *Determining the Value of Donated Property*.

**Dispositions of Donated Property** – If an organization receives *charitable deduction property* and within 3 years sells, exchanges, or disposes of the property, the organization must file [Form 8282](#), *Donee Information Return*.

However, an organization is not required to file Form 8282 *if*:

- The property is valued at \$500 or less, or
- The property is distributed for charitable purposes.

Form 8282 must be filed within 125 days after the disposition. A copy of Form 8282 must be given to the previous donor. If the organization fails to file the required information return, penalties may apply.

## Charity Auctions

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charity-Auctions>

Donors who purchase items at a charity auction may claim a charitable contribution deduction for the excess of the purchase price paid for an item over its fair market value. The donor must be able to show, however, that he or she knew that the value of the item was less than the amount paid. For example, a charity may publish a catalog, given to each person who attends an auction, providing a good faith estimate of items that will be available for bidding. Assuming the donor has no reason to doubt the accuracy of the published estimate, if he or she pays more than the published value, the difference between the amount paid and the published value may constitute a charitable contribution deduction.

In addition, donors who provide goods for charities to sell at an auction often ask the charity if the donor is entitled to claim a fair market value charitable deduction for a contribution of appreciated property to the charity that will later be sold. Under these circumstances, the law limits a donor's charitable deduction to the donor's tax basis in the contributed property and does not permit the donor to claim a fair market value charitable deduction for the contribution. Specifically, the Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an *unrelated use*, the donor's contribution is limited to the donor's tax basis in the contributed property. The term *unrelated use* means a use that is unrelated to the charity's exempt purposes or function, or, in the case of a

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

governmental unit, a use of the contributed property for other than exclusively public purposes. The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs.

*See Internal Revenue Code section 170 for limited circumstances in which more than cost basis can be deducted by the donor.*

## **Bingo and Other Gaming**

<http://www.irs.gov/pub/irs-pdf/p3079.pdf>

A common misconception is that gaming is a “charitable” activity. There is nothing inherently charitable about gaming. It is a recreational activity and a business. Although a charity may use the proceeds from gaming to pay expenses associated with its charitable programs, gaming itself does not further exempt purposes. **Thus, the sole purpose of a 501(c)(3) organization cannot be to conduct gaming.**

A charity conducting gaming as an insubstantial part of its activities will not ordinarily jeopardize its tax-exempt status but may be subject to the tax on unrelated business income.

The IRS determines whether an organization is conducting a “substantial” unrelated activity by examining all of the facts and circumstances. There is no “bright-line” or numerical test prescribed by the Code. The IRS will consider the dollars raised by and spent on an unrelated activity as well as the time and other resources devoted to it in making the determination of substantiality.

Does gaming generate Unrelated Business Income (UBI)? Let’s look at each of the three parts of the UBI definition in relation to gaming.

- First, gaming is generally considered a “trade or business” if it generates revenue.
- Second, gaming is considered “regularly carried on” if it is conducted with a frequency and continuity similar to comparable activities of a non-exempt organization and if pursued in a manner similar to commercial gaming activities. Gaming activities will not ordinarily be treated as regularly carried on if they occur only occasionally or sporadically. For example, gaming conducted only at an annual fundraising event is not regularly carried on. On the other hand, gaming that occurs weekly is considered to be regularly carried on.
- Third, gaming is not per se an exempt activity. Whether gaming is substantially related to an organization’s exempt purposes will depend on the classification of the exempt organization.

Even if a gaming activity meets the three-part UBI definition, there are some other exceptions that may apply. These include:

- Certain bingo games;
- Activities conducted with substantially all volunteer labor; and
- Qualified public entertainment activities.

**Bingo** – Certain bingo games are not included in the term “unrelated trade or business.” In order to qualify for this statutory bingo exclusion, a game must:

- Meet the definition of bingo under the Code and Regulations;
- Not violate state or local law where it is played; and
- Be played in a jurisdiction where bingo games are not regularly carried on by for-profit organizations.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Satellite and Internet bingo, “Instant Bingo,” “Mini Bingos,” and similar pull-tab or scratch-off games do not qualify.

The bingo exclusion applies only if the game is legal under the laws of the jurisdiction where it is conducted. The fact that a jurisdiction’s law prohibiting bingo is rarely enforced or is widely disregarded does not make the conduct of bingo legal for this purpose.

*Example* – Church Z, a tax-exempt organization, conducts weekly bingo games in State O. State and local laws in State O expressly provide that bingo games may be conducted by tax-exempt organizations. Bingo games are not conducted in State O by any for-profit businesses. Because Z’s bingo games are not conducted in violation of state or local law and are not the type of activity ordinarily carried out on a commercial basis in State O, Z’s bingo games do not constitute an unrelated trade or business. Because of the statutory bingo exclusion, an exempt organization may conduct games meeting the exclusion to raise funds, and the activity will not generate unrelated business income subject to taxation. (The exception does not apply to 501(c)(7) social clubs).

**Volunteer Labor** – Does your organization use volunteers to conduct its gaming? Even if gaming is not limited to bingo games that meet the above bingo exclusion, it will **not** be considered an unrelated trade or business – and the income earned from it will not be taxed – if **substantially all** of the work is performed by volunteers. Although “substantially all” is not defined in this context, an unofficial guideline borrowed from other areas of exempt organization law is 85%. That is, if at least 85% of the work (as measured by the number of hours worked), absent other factors, is carried on by people who work without pay and no more than 15% of the work is carried on by people who are compensated. Please note, that few cases strictly apply the 85% test. Instead, “substantially all” is to be applied in a general manner.

*Tip: If you intend to rely on the volunteer labor exclusion to exclude gaming from unrelated trade or business, you should maintain accurate records reflecting the number of hours worked by compensated and volunteer workers.*

*Example* – A volunteer fire company regularly holds a slot machine night that is open to the public. Holding public slot machine nights on a regular basis may, given the facts and circumstances of a particular case, be considered unrelated trade or business. However, because the work at the slot machine night was performed by unpaid volunteers, the income from the wagering is not taxable as unrelated business income.

Note that the volunteer labor exclusion is in addition to the “bingo” exclusion discussed above. Thus, if gaming satisfies the bingo exclusion, the bingo income is not taxed even if workers are paid, as long as state or local law does not prohibit payment. Many jurisdictions, however, require as a condition of receiving a gaming license that exempt organizations conduct their gaming activities with all volunteer labor. If an exempt organization violates such a requirement by compensating its bingo game workers, then the bingo exception would not apply if such payment rendered the game illegal under state law.

**Qualified Public Entertainment** – Income from qualified public entertainment activities is also excluded from the definition of unrelated business income. A “public entertainment activity” is one traditionally

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

conducted at a fair or exposition promoting agriculture and education, including any activity whose purpose is designed to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment. A “qualifying organization” is an organization exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(5) that regularly conducts an agricultural and educational fair or exposition as one of its substantial exempt purposes.

To be excluded from the term “unrelated trade or business,” a public entertainment activity must be conducted by a qualifying organization either:

- In conjunction with an international, national, state, regional, or local fair or exposition;
- In accordance with provisions of state law that permit only qualifying organizations (or an agency, instrumentality, or political subdivision of the state) to conduct the activity; or
- In accordance with provisions of state law that permit a qualifying organization to be granted a license to conduct the activity for 20 days or less on payment to the state of a lower percentage of the revenue from the licensed activity than is required from non-qualifying organizations.

*Example* – Organization X, a 501(c)(5) agricultural organization, conducts harness racing at an agricultural fair in State L pursuant to a state law that permits the organization to conduct pari-mutuel betting in connection with the races. Income from wagers placed is excluded from the tax on unrelated business income.

**Reportable Winnings** – If you pay the winner or winners of a game more than a certain amount, you must report the amount and information about the winner(s) to the IRS. The threshold amount at which winnings become reportable depends on the type of game involved.

Unless the winnings are from poker, keno, bingo, or slot machines, you must report a payment of winnings, including raffle prizes, when the amount paid is:

- \$600 or more, and
- At least 300 times the amount of the wager.

In determining whether the \$600 threshold is met, you may reduce the winnings by the amount of the wager.

You must report winnings from a keno game that are \$1,500 or more after deducting the amount of the wager. That is, you must reduce the amount of the winnings by the amount of the wager in determining whether the \$1,500 threshold is met.

**Bingo Games and Slot Machines:** You must report winnings from a bingo game or slot machine that are \$1,200 or more before deducting the amount of the wager.

**Poker Tournaments:** If you sponsor a poker tournament, you must report any winnings of more than \$5,000 after deducting the wager (i.e., the entry or “buy-in” fee). You need not report poker tournament winnings paid before March 4, 2008, or winnings that are \$5,000 or less.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Summary of Reportable Winnings		
Type of Game	Winnings Amount at Least:	Reduced by Amount of Wager?
Bingo	\$1,200	No
Slot machines	\$1,200	No
Keno	\$1,500	Yes
Other wagering transactions (e.g.,	\$600 and at least 300 times the wager	At option of payer
Poker tournaments	\$5,000.01	Yes

Each time you pay reportable winnings, you must complete a Form W-2G, Certain Gambling Winnings, to report those winnings to the IRS and to the person receiving the winnings (the “payee”). The payee should provide you with his or her name, address, and taxpayer identification number (e.g., social security number), and you should verify the information from the person’s driver’s license, social security card, voter registration card, or other proper identification.

If you use a paper form, you must file copy A of Form W-2G with the IRS by February 28 following the calendar year in which you paid the winnings. Use Form 1096 to transmit paper Forms W-2G to the IRS. If you file electronically, you must file Form W-2G by March 31 following the calendar year in which you paid the winnings. If you complete 250 or more Forms W-2G in a year, you cannot file the paper form; you must file electronically instead.

In addition to filing of Form W-2G with the IRS, you must give the winner copies B and C of Form W-2G by January 31 following the calendar year in which you paid the winnings.

Organizations that conduct gaming must maintain records of gross receipts from gaming, prize payouts, and other related disbursements to substantiate information submitted on the exempt organization information return (Form 990 or 990-EZ), and the income tax return (Form 990-T), if one is required.

In general, an organization must maintain records until the statute of limitations expires; generally three years from the later of the filing or due date of a return. Employment tax returns should be kept for four years after the due date of return, or four years from the date when the organization paid the tax, if the payment date was later than the due date.

### Reporting requirements: Exempt organization annual returns

(see also “Revocation” on page 7 of this document for further details)

Most charities must file [annual returns](#) of their activities and finances. Beginning with the 2008 tax year (returns filed in 2009), a redesigned annual return requires organizations that receive donated property to file new [Schedule M](#). This schedule enhances the IRS' ability to scrutinize certain contributions for compliance with valuation and charitable deduction requirements.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

## Unrelated Business Income Tax – Tax and Filing Requirements

<http://www.irs.gov/publications/p598/ch02.html>

### Tax Requirements

- All organizations subject to the tax on unrelated business income, except for certain exempt trusts, are taxable at corporate rates on that income.
- The tax is reduced by any applicable tax credits, including the general business credits (such as the investment credit) and the foreign tax credit.
- Organizations liable for this tax may also be liable for alternative minimum tax on certain adjustments and tax preference items

### Filing Requirements and estimated payments

- An exempt organization subject to the tax on unrelated business income must file Form 990-T and attach any required supporting schedules.
- The obligation to file Form 990-T is in addition to the obligation to file any other required returns. Form 990-T is required if the organization's gross income from unrelated business is \$1,000 or more.
- The Form 990-T of an employees' trust, an IRA or an MSA must be filed by the 15<sup>th</sup> day of the 4<sup>th</sup> month after the end of its tax year.
- The Form 990-T of any other exempt organization must be filed by the 15<sup>th</sup> day of the 5<sup>th</sup> month after the end of its tax year.
- A Form 990-T filer may request an automatic 3-month (6 months for corporations) extension of time to file a return by submitting Form 8868.
- A tax exempt organization must make estimated tax payments if it expects its tax (UBI after certain adjustments) to be \$500 or more.
  - Estimated tax payments are generally due by the 15<sup>th</sup> day of the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> months of the tax year
  - Tax exempt organizations should use Form 990-W, *Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations* to figure their estimated tax.  
<http://www.irs.gov/pub/irs-pdf/f990w.pdf>
  - Electronic funds transfer must be used to make estimated tax payments. Generally, electronic fund transfers are made using the Electronic Federal Tax Payment System (EFTPS). Organizations can also arrange for tax professionals, financial institutions, payroll services or other trusted third parties to make deposits on your behalf (including same-day wire payments). To get more information about EFTPS or to enroll in EFTPS, visit [www.eftps.gov](http://www.eftps.gov) or call 1-800-555-4477. Additional information about EFTPS is available in Publication 966.  
<http://www.irs.gov/pub/irs-pdf/p966.pdf>

**General Rule** – An exempt organization is not taxed on its income from an activity substantially related to the charitable, educational, or other purpose that is the basis for the organization's exemption. Such income is exempt even if the activity is a trade or business.

- What is "unrelated business income"? <http://www.irs.gov/Charities-&-Non-Profits/Unrelated-Business-Income-Defined>.
- For most organizations, an activity is an unrelated business (and subject to unrelated business income tax) if it meets three requirements:
  - It is a trade or business – any activity conducted for the production of income from selling goods or performing services

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- It is regularly carried on – show a frequency and continuity and are pursued in a manner similar to comparable commercial activities of nonexempt organizations
- It is not substantially related to furthering the exempt purpose of the organization – depends in each case on the facts involved.

For examples, see <http://www.irs.gov/publications/p598/ch03.html>

## Specific exclusions from the definition of unrelated trade or business

[http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267770](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267770)

**Volunteer workforce** – Any trade or business in which substantially all the work is performed for the organization without compensation is not an unrelated trade or business

**Convenience of member** – A trade or business conducted by a 501(c)(3) organization or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees is not an unrelated trade or business. For example, a laundry operated by a college for the purpose of laundering dormitory linens and students' clothing is not an unrelated trade or business.

**Qualified sponsorship activities** – Soliciting and receiving qualified sponsorship payments is not an unrelated trade or business, and the payments are, therefore, not subject to unrelated business income tax.

**Qualified sponsorship payment** – This is any payment made by a person engaged in a trade or business for which the person will receive no substantial benefit other than the use or acknowledgment of the business name, logo, or product lines in connection with the organization's activities.<sup>1</sup>

- **Advertising** – a payment is not a qualified sponsorship payment if, in return, the organization advertises the sponsor's products or services.
- **Exceptions:**
  - **Contingent payments** – A payment is not a qualified sponsorship payment if its amount is contingent, by contract or otherwise, upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure at one or more events.
  - **Periodicals** – A payment is not a qualified sponsorship payment if it entitles the payer to the use or acknowledgment of the business name, logo, or product lines in the organization's periodical.
  - **Conventions and trade shows** – A payment is not a qualified sponsorship payment if it is made in connection with any qualified convention or trade show activity.

**Selling donated merchandise** – A trade or business that consists of selling merchandise, substantially all of which the organization received as gifts or contributions, is not an unrelated trade or business.

**Employee association sales** – The sale of certain items by a local association of employees described in section 501(c)(4), organized before May 17, 1969, is not an unrelated trade or business if the items are sold for the convenience of the association's members at their usual place of employment. This exclusion

---

<sup>1</sup> See Internal Revenue Code section 513(i) and related regulations for more details.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

applies only to the sale of work-related clothes and equipment and items normally sold through vending machines, food dispensing facilities, or by snack bars

**Bingo games** – Certain bingo games are not included in the term “unrelated trade or business.” To qualify for this exclusion from unrelated trade or business, the bingo game must meet the following requirements

- It meets the legal definition of bingo - wagers must be placed, winners must be determined, and prizes or other property must be distributed in the presence of all persons placing wagers in that game
- It is legal where it is played
- It is played in a jurisdiction where bingo games are not regularly conducted by for-profit organizations

**Gambling activities other than bingo** – Any game of chance conducted by an exempt organization in North Dakota is not an unrelated trade or business if conducting the game does not violate any state or local law. <http://www.irs.gov/publications/p598/ch03.html>

**Distribution of low cost articles** – The term unrelated trade or business does not include activities relating to the distribution of low cost articles incidental to soliciting charitable contributions.

- A distribution is considered incidental to the solicitation of a charitable contribution if:
  - The recipient did not request the distribution,
  - The distribution is made without the express consent of the recipient, and
  - The article is accompanied by a request for a charitable contribution to the organization and a statement that the recipient may keep the low cost article regardless of whether a contribution is made.
- An article is considered low cost if the cost of an item (or the aggregate costs if more than one item) distributed to a single recipient in a tax year is not more than \$5, indexed annually for inflation.

**Exchange or rental of member lists** – The exchange or rental of member or donor lists between organizations described in section 501 that are eligible to receive charitable contributions is not included in the term unrelated trade or business.

**Hospital services** - The providing of certain services at or below cost by an exempt hospital to other exempt hospitals that have facilities for 100 or fewer inpatients is not an unrelated trade or business.

**Public entertainment activity** - An unrelated trade or business does not include a qualified public entertainment activity

**Convention or trade show activity** – An unrelated trade or business does not include qualified convention or trade show activities conducted at a convention, annual meeting or trade show

## Determining Unrelated Business Taxable Income

The general rule is that unrelated business income is taxable, but there are exclusions and special rules that must be considered when figuring the income. (<http://www.irs.gov/publications/p598/ch04.html>) See also *“Income from Debt-Financed Property”* below for modifications to these general rules.

The following types of income (and deductions directly connected with the income) are generally excluded when figuring unrelated business taxable income:

**Dividends, interest, annuities and other investment income** – All dividends, interest, annuities, payments with respect to securities loans, income from notional principal contracts, and other income from an exempt organization's ordinary and routine investments that the IRS determines are substantially similar to these types of income are excluded in computing unrelated business taxable income.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

**Royalties** – Royalties, including overriding royalties, are excluded in computing unrelated business taxable income. To be considered a royalty, a payment must relate to the use of a valuable right. Payments for trademarks, trade names, or copyrights are ordinarily considered royalties. Similarly, payments for the use of a professional athlete's name, photograph, likeness, or facsimile signature are ordinarily considered royalties. However, royalties do not include payments for personal services. Therefore, payments for personal appearances and interviews are not excluded as royalties and must be included in figuring unrelated business taxable income.

**Rents** – Rents from real property, including elevators and escalators, are excluded in computing unrelated business taxable income. Rents from personal property are not excluded. However, special rules apply to “mixed leases” of both real and personal property.

**Mixed leases** – In a mixed lease, all of the rents are excluded if the rents attributable to the personal property are not more than 10% of the total rents under the lease, as determined when the personal property is first placed in service by the lessee. If the rents attributable to personal property are more than 10% but not more than 50% of the total rents, only the rents attributable to the real property are excluded. If the rents attributable to the personal property are more than 50% of the total rents, none of the rents are excludable.

If separate leases are entered into for real and personal property and the properties have an integrated use (for example, one or more leases for real property and another lease or leases for personal property to be used on the real property), all the leases will be considered as one lease.

The rent attributable to the personal property must be recomputed, and the treatment of the rents must be redetermined, if: The rent attributable to all the leased personal property increases by 100% or more because additional or substitute personal property is placed in service, or The lease is modified to change the rent charged (whether or not the amount of rented personal property changes).

**Exception for insurance activity income of a controlled foreign corporation** – This exclusion does not apply to income from certain insurance activities of an exempt organization's controlled foreign corporation. The income is not excludable dividend income, but instead is unrelated business taxable income to the extent it would be so treated if the exempt organization had earned it directly. *See Internal Revenue Code section 512(b)(17) for more information.*

**Income from research** – A tax-exempt organization may exclude income from research grants or contracts from unrelated business taxable income. However, the extent of the exclusion depends on the nature of the organization and the type of research. *See Internal Revenue Code sections 512(b)(7), (8), and (9).*

**Gains and losses from disposition of property** – also excluded from unrelated business taxable income are gains or losses from the sale, exchange, or other disposition of property other than:

- Stock in trade or other property of a kind that would properly be includable in inventory if on hand at the close of the tax year
- Property held primarily for sale to customers in the ordinary course of a trade or business, or
- Cutting of timber that an organization has elected to consider as a sale or exchange of the timber

### **Deductions**

To qualify as allowable deductions in computing unrelated business taxable income, the expenses, depreciation, and similar items generally must be allowable income tax deductions that are directly connected with carrying on an unrelated trade or business. They cannot be directly connected with excluded income. To be directly connected with the conduct of an unrelated business, deductions must have a proximate and primary relationship to carrying on that business.

**Expenses attributable to dual use of facilities or personnel** – When facilities or personnel are used both to conduct exempt functions and to conduct an unrelated trade or business, expenses, depreciation, and similar items attributable to the facilities or personnel must be allocated between the two uses on a reasonable basis.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

**Net operating loss deduction** – The net operating loss (NOL) deduction (as provided in section 172) is allowed in computing unrelated business taxable income. However, the NOL for any tax year, the carrybacks and carryovers of NOLs, and the NOL deduction are determined without taking into account any amount of income or deduction that has been specifically excluded in computing unrelated business taxable income. For example, a loss from an unrelated trade or business is not diminished because dividend income was received.

**Charitable contributions deduction** – An exempt organization is allowed to deduct its charitable contributions in computing its unrelated business taxable income whether or not the contributions are directly connected with the unrelated business. To be deductible, the contribution must be paid to another qualified organization. For purposes of the deduction, a distribution by a trust made under the trust instrument to a beneficiary, which itself is a qualified organization, is treated the same as a contribution.

- Deduction limits - an exempt organization that is subject to the unrelated business income tax at corporate rates is allowed a deduction for charitable contributions up to 10% of its unrelated business taxable income computed without regard to the deduction for contributions.
- Generally, individuals and trusts may deduct up to 50 percent of adjusted gross income, but 30 percent limitations apply in some cases. <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Contribution-Deductions>

**S Corporation Income or Loss** – An organization that owns S corporation stock must take into account its share of the S corporation's income, deductions, or losses in figuring unrelated business taxable income, regardless of the actual source or nature of the income, deductions, and losses. The organization must also take into account its gain or loss on the sale or other disposition of the S corporation stock in figuring unrelated business taxable income.

**Income from Controlled organizations** – the exclusions for interest, annuities, royalties and rents may not apply to a payment of these items received by a controlling organization from its controlled organization. The payment is included in the controlling organization's unrelated business taxable income to the extent it reduced the net unrelated income (or increased the net unrelated loss) of the controlled organization. All deductions of the controlling organization directly connected with the amount included in its unrelated business taxable income are allowed.

- Net unrelated income:
  - For an exempt organization, its unrelated business taxable income , or
  - For a nonexempt organization, the part of its taxable income that would be unrelated business taxable income if it were exempt and had the same exempt purposes as the controlling organization
- Net unrelated loss
  - For an exempt organization, its NOL<sup>2</sup>, or
  - For a nonexempt organization, the part of its NOL that would be its NOL if it were exempt and had the same exempt purposes as the controlling organization
- Control
  - For a corporation, the controlling organization owns (by vote or by value) more than 50% of the stock
  - For a partnership, the controlling organization owns more than 50% of the profits or capital interests, or
  - For any other organization the controlling organization owns more than 50% of the beneficial interest

---

<sup>2</sup> NOL stands for Net Operating Loss

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- For this purpose, constructive ownership of stock (determined under section 318) or other interests is taken into account

**Income from Debt Financed Property** – In general, the term “debt-financed property” means any property held to produce income (including gain from its disposition) for which there is an acquisition indebtedness at any time during the tax year (or during the 12-month period before the date of the property’s disposal, if it was disposed of during the tax year). It includes rental real estate, tangible personal property and corporate stock.

**Acquisition indebtedness** – the unpaid amount of debt incurred by an organization

- When acquiring or improving the property
- Before acquiring or improving the property if the debt would not have been incurred except for the acquisition or improvement and
- After acquiring or improving the property if
  - The debt would not have been incurred except for the acquisition or improvement and
  - Incurring the debt was reasonably foreseeable when the property was acquired or improved
- Debts that are not acquisition indebtedness:
  - Debts incurred in performing and exempt purpose
  - Annuity obligations
  - Securities loans
  - Real property debts of qualified organizations
  - Certain federal financing

If substantially all (85% or more) of the use of any property is substantially related to an organization’s exempt purposes, the property is not treated as debt-financed property. Related use does not include a use related solely to the organization’s need for income or its use of the profits.

## Information Reporting

*This section includes only the more common information reporting requirements but does not include all potential information reporting requirements. Some of the Forms below are also referenced in the Substantiating Charitable Contribution section.*

### Forms 1099

#### 1099-INT – <http://www.irs.gov/pub/irs-pdf/i1099int.pdf>

A Form 1099-INT, Interest Income, must be provided to each person

- To whom you paid amounts reportable in boxes 1, 3, and 8 of at least \$10 (or at least \$600 of interest paid in the course of your trade or business described in the instructions for Box 1. Interest Income, later),
- For whom you withheld and paid any foreign tax on interest, or
- From whom you withheld (and did not refund) any federal income tax under the backup withholding rules regardless of the amount of the payment.

#### 1099-DIV – <http://www.irs.gov/pub/irs-pdf/f1099div.pdf>

A Form 1099-DIV, Dividends and Distributions, must be provided to each person to whom an organization pays an aggregate of \$10 or more during the year in gross dividends and other distributions on stock.

#### 1099-MISC – <http://www.irs.gov/pub/irs-pdf/i1099misc.pdf>

A Form 1099-MISC, Miscellaneous Income, must be provided to each person to whom an organization paid during the year:

- At least \$10 in royalties (see the instructions for box 2) or broker payments in lieu of dividends or tax-exempt interest (see the instructions for box 8)
- At least \$600 in **rents**, services (including parts and materials), prizes and awards, other income payments, **medical and health care payments**, crop insurance proceeds, cash payments for fish (or other aquatic life) you purchase from anyone engaged in the trade or business of catching fish, or, generally, the cash paid from a notional principal contract to an individual, partnership, or estate
- Any fishing boat proceeds; or
- Gross proceeds of \$600 or more paid to an attorney

#### *Exception:*

Some payments do not have to be reported on Form 1099-MISC including payments to corporation, payment of rent to real estate agents, wage paid to employee, and payments to a tax-exempt organization. However, medical and health care payment, fish purchases for cash, attorney's fee and payment by a federal executive agency for services (vendors) are reportable payments to corporations.

### Forms W-9

<http://www.irs.gov/pub/irs-pdf/iw9.pdf>

This form should be requested of all vendors.

- Use Form W-9 to request the taxpayer identification number of a US person (including a resident alien) and to request certain certifications and claims for exemption. Withholding agents may require signed Forms W-9 from US exempt recipients to overcome a presumption of foreign status.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- Substitute Form W-9 - You may develop and use your own Form W-9 if its content is substantially similar to the official IRS Form W-9 and it satisfies certain certification requirements.
- Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all US account holders that are specified US persons

## Form W-8BEN

<http://www.irs.gov/pub/irs-pdf/iw8ben.pdf>

This Form is applicable for non-US entities. Along with Form W-8ECI, W-8EXP, and W-8IMY, this form has been updated to reflect the documentation requirements of chapter 4 (see below). In particular, this Form W-8BEN is now used exclusively by individuals. Entities documenting their foreign status, chapter 4 status, or making a claim of treaty benefits (if applicable) should use Form W-8BEN-E.

- In 2010, Congress passed the Hiring Incentives to Restore Employment Act of 2010, (the HIRE Act), which added chapter 4 to the Code, commonly referred to as “FATCA” or “chapter 4”.
  - Under chapter 4, participating foreign financial institutions (FFIs) and certain registered-deemed compliant FFIs are generally required to identify their U.S. account holders, regardless of whether a payment subject to withholding is made to the account.
  - The IRS has published regulations that provide due diligence, withholding, and reporting rules for both U.S. withholding agents and FFIs under chapter 4.
- If you receive certain types of income, you must provide Form W-8BEN to:
  - Establish that you are not a U.S. person;
  - Claim that you are the beneficial owner of the income for which Form W-8BEN is being provided or a foreign partner in a partnership subject to section 1446; and
  - If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty and who is eligible for treaty benefits.
- A withholding agent or payer of the income may rely on a properly completed Form W-8BEN to treat a payment associated with the Form W-8BEN as a payment to a foreign person who beneficially owns the amounts paid. If applicable, the withholding agent may rely on the Form W-8BEN to apply a reduced rate of, or exemption from, withholding at source.
- Provide Form W-8BEN to the withholding agent or payer before income is paid or credited to you. Failure to provide a Form W-8BEN when requested may lead to withholding at the foreign-person withholding rate of 30% or the backup withholding rate under section 3406. Please note that FATCA withholding is non-refundable and not creditable.
- For more information on FATCA, go to [www.irs.gov/fatca](http://www.irs.gov/fatca) or <http://www.irs.gov/uac/Form-W-8BEN,-Certificate-of-Foreign-Status-of-Beneficial-Owner-for-United-States-Tax-Withholding>

## Form 1096

<http://www.irs.gov/pub/irs-pdf/f1096.pdf>

Organizations paying a minimum amount of certain income items to a recipient are required to send information returns annually to the individual payees. These returns include:

- Form 1099-DIV (dividends)
- Form 1099-INT (interest)
- Form 1099-MISC (rents, royalties, compensation and prizes to non-employees, other fixed and determinable income)
- Form 1099-OID (original issue discount on obligations)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- Form 1099-PATR (patronage dividends)
- Form 1099-R (retirement plan distributions)
- Form 5498 (IRA information)

If such returns are required, the organization must file annually a Form 1096, Annual Summary and Transmittal of U.S. Information Returns, which summarizes and transmits copies of the various Forms 1099.

Form 1096 must be filed on or before February 28<sup>th</sup> of the year following the year of payment with the Internal Revenue Service Center specified in the instructions for Form 1096.

## **Independent Contractor (Self-Employed) or Employee**

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>

It is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

*I am an independent contractor or in business for myself* – If you are a business owner or contractor who provides services to other businesses, then you are generally considered self-employed. For more information on your tax obligations if you are self-employed (an independent contractor), see <http://www.irs.gov/Individuals/Self-Employed>

*I hire or contract with individuals to provide services to my business* – If you are a business owner hiring or contracting with other individuals to provide services, you must determine whether the individuals providing services are employees or independent contractors. Follow the link above to find out more about this topic and what your responsibilities are.

## **Public Disclosure and Availability of Exempt Organization Returns and Applications**

<http://www.irs.gov/Charities-&Non-Profits/Public-Disclosure-and-Availability-of-Exempt-Organizations>Returns-and-Applications:-Documents-Subject-to-Public-Disclosure>

An exempt organization must make available for public inspection its exemption application. An exemption application includes the Form 1023 (for organizations recognized as exempt under Internal Revenue Code section 501(c)(3)), Form 1024 (for organizations recognized as exempt under most other paragraphs of section 501(c)), or the letter submitted under the paragraphs for which no form is prescribed, together with supporting documents and any letter or document issued by the IRS concerning the application. A political organization exempt from taxation under section 527(a) must make available for public inspection and copying its notice of status, Form 8871.

In addition, an exempt organization must make available for public inspection and copying its annual return. Such returns include 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, Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and the Form 1065, U.S. Partnership Return of Income.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

A section 501(c)(3) organization must make available for public inspection and copying any Form 990-T, Exempt Organization Business Income Tax Return, filed after August 17, 2006. Returns must be available for a three-year period beginning with the due date of the return (including any extension of time for filing). For this purpose, the return includes any schedules, attachments, or supporting documents that relate to the imposition of tax on the unrelated business income of the charity. See Public Inspection and Disclosure of Form 990-T for more information.

Organizations also may be subject to specific state reporting requirements

## **W-2G**

<http://www.irs.gov/pub/irs-pdf/p3079.pdf>

File this form to report gambling winnings and any federal income tax withheld on those winnings. The requirements for reporting and withholding depend on the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager. File W-2G with the IRS. You must provide a statement to the winner.

If you pay the winner or winners of a game more than a certain amount, you must report the amount and information about the winner(s) to the IRS. The threshold amount at which winnings become reportable depends on the type of game involved. Unless the winnings are from poker, keno, bingo, or slot machines, you must report a payment of winnings, including 1) \$600 or more, and 2) at least 300 times the amount of the wager.

Refer to page 16 for more details.

## Sales/Use Tax Rules for Michigan Nonprofit Organizations

### Michigan Sales & Use Tax General Rules

Exempt organizations in Michigan may be exempt from sales and use taxes on purchases for its own exempt use, but may also have the responsibility to collect and remit sales tax on sales it makes to others, including use tax on items used by its for-profit affiliates.

Michigan's 6% sales tax is imposed on a seller for the privilege of engaging in the business of making sales at retail in Michigan. A sale at retail is defined as the transfer of ownership to tangible personal property. The tax applies to taxable sales of tangible personal property which take place in Michigan.

If sales tax was not charged by the vendor, the purchaser must accrue use tax on all taxable items purchased. Michigan's 6% use tax is imposed on a purchaser for the act of storing, using or consuming tangible personal property in Michigan. Use is defined as the exercise of any right over tangible personal property incident to ownership of that property. The tax applies to storage, use or consumption of tangible personal property on which no Michigan sales tax has been paid. An offsetting credit is allowed of up to 6% for sales or use tax properly paid to another state with which Michigan is reciprocal. Michigan is reciprocal with most states that have sales or use tax statutes. This is included in the [Department's RAB 1995-3](#), dated March 30, 1995. However, qualified nonprofits are eligible to make eligible purchases exempt from Michigan Sales and Use Tax, which will be explained in the sections below.

### Purchases Made by Certain Nonprofits

Nonprofit organizations with Michigan sales/use-tax exemption forms issued by the Michigan Treasury under the old law may continue to use them, and don't have to apply for renewal. Other 501(c)(3) and 501(c)(4) organizations can prove exemption from paying Michigan sales and use tax on purchases for their work by giving the vendor (1) a completed copy of [Form 3372](#) "Michigan Sales and Use Tax Certificate of Exemption," and (2) a copy of the first page of their IRS tax-exemption determination letter, which can be copied onto the back of the state form (not required for religious organizations). This is included in the [Department's RAB 2002-15](#), dated June 10, 2002.

Michigan allows a sales tax exemption only on purchases "used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation" of the nonprofit. Therefore, the exemption doesn't apply to items the organization buys and resells to its staff or supporters (e.g., office supplies reimbursed by employees, meals served at fund-raising events).

While the bylaws or articles of incorporation of an exempt nonprofit organization probably allow the organization to perform fund-raising activities such as bingo, Las Vegas Nights, and raffles, fund raising is not the stated purpose of the organization. Fund raising is merely a means to an end. The stated purposes of nonprofit organizations are the end goals, which are generally of a health, welfare, educational, cultural arts, charitable, or benevolent nature. An organization would not receive federal 501(c)(3) or 501(c)(4) nonprofit status if its stated purpose was to run a bingo game, Las Vegas Night, raffle, or other fund-raising activity. Therefore, purchases of property used in fund-raising are taxable.

#### *What Entities are Exempt from MI Sales Tax on Purchases Used for Exempt Purposes?*

- Schools
- Churches
- Nonprofit Hospitals
- Government Agencies
- Organizations that have Federal tax-exempt status under Internal Code Sections:
  - 501(c)(3)
  - 501(c)(4)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

#### *What Types of Purchases are Exempt?*

- Purchases of tangible personal property that are used or consumed primarily in carrying out the purposes of the institution or agency, as stated in the bylaws or articles of incorporation of the exempt entity.
- Due to the “primarily” requirement, it may be possible to exclude from sales tax equipment that is used for both exempt and non-exempt purposes, provided that the equipment is used primarily for exempt purposes.
- Bottled water intended primarily for human consumption.
- Food sold at concessions that is not “prepared food” is exempt. This includes the following:
  - Fresh fruit
  - Prepackaged items not heated by seller and sold without eating utensils
  - Sealed containers of non-alcoholic beverages
  - Property donations by manufacturers, wholesalers, or retailers

#### *What Types of Purchases are Not Exempt?*

- Fundraising activities, such as BINGO and raffles, are not the stated purpose of the organization. Purchases associated with fundraising activities are not exempt from MI sales and use taxes.
- If the cost of a purchase will be paid or defrayed by reimbursement to the nonprofit entity from members or others who are not exempt, then the purchase is not exempt from sales tax. To be exempt, the purchase funds must come directly from the entity.
- Purchases of items to be given away as prizes in games of skill or chance are subject to tax.
- Auctioning and raffling of donated gifts is considered to be engaging in fundraising business activities, regardless of frequency, and the fair market value of such gifts is subject to sales tax.
- Sales to churches of property to be used:
  - Mainly in commercial enterprises; AND
  - Vehicles licensed for use on public highways other than a passenger van or bus with a seating capacity of 10 or greater to be used primarily for exempt purposes.

### **Casual Sales Made by Nonprofits**

Casual sales made by nonprofits are exempt from remitting sales tax if the aggregate sales at retail for the calendar year are less than \$5,000. Sales at retail are defined as transfers of ownership of tangible personal property. Affiliated clubs, associations, auxiliaries or other organizations are not allowed a separate exemption under this provision. However, "school" is defined in such a way that each elementary, middle, junior, or high school site is allowed a separate exemption.

Nonprofit organizations making sales at retail are still required to register and obtain a sales tax license even if their total sales for the calendar year are less than \$5,000 and they have no tax liability. Purchases of items intended for resale can only be purchased without payment of tax by making a claim of exemption on the Certificate of Exemption by reason of "for resale at retail." Registering for a sales tax license ([MI Form 518](#)) is required before such a "resale" claim can be legally made.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Exemption is only available to those noted organizations that have total aggregate sales in a calendar year from all sales activity of less than \$5,000. If sales in the year are \$5,000 or more, all sales are subject to tax. This is not an exemption for the first \$5,000 in sales. Regardless of the amount of total aggregate sales in the calendar year, if sales tax is charged to the customers, it must first be refunded to the customers before the exemption is allowed. Tax not refunded to the customers must be remitted to the State.<sup>3</sup>

## **Taxability of Food and Beverages at Fundraisers**

The sale of food and beverages at fundraisers is the sale of “prepared food for immediate consumption” and is, therefore, subject to sales tax. The amount of revenue subject to sales tax is the fair market value of the food and beverages, or the actual payment, if less. Examples:

- Tickets are sold for a fundraiser for \$50 each, and the value of the food is \$20. The nonprofit organization must either pay sales tax directly to the caterer based on the price charged by the caterer, or pay use tax to the state based on the \$20 value of the food.
- “All-you-can-eat” pancake breakfast priced at \$5 for adults and \$2.50 for children. Tax is due on the ticket price charged, which approximates the fair market value of the food.
- Fashion show with coffee and dessert. The fair market value of the coffee and dessert is taxable based on either quotation from caterers or other reasonable method.
- Boy Scouts sell candy bars door-to-door. This is not food for immediate consumption and is not sold at an event, public facility, or place, and therefore is not taxable.

### *How Should the Tax be Remitted?*

- Groups holding a sales tax license may remit the tax on their current Michigan Sales and Use Tax Return ([Form 160](#)).
- Groups that do not have a regular sales tax license but hold fundraising events repeatedly for specific months of the year must register for a sales tax license ([Form 518](#)) from the Michigan Department of Revenue and remit tax on their sales tax return.
- Groups that conduct a one-time fundraising event may remit their sales tax on their Concessionaire Sales Tax Return ([Form 2271](#)), which may be obtained from the Michigan Department of Revenue, Sales and Use Tax Division.

## **Sales of Food by Nonprofit Organizations to Students**

- Sales of food to bona fide, enrolled students by a school or other educational institution not operated for profit are exempt from sales tax.
- If a university engages an outside contractor to manage its food service operations, but hires its own food service employees, the university is deemed the seller of the food. In this case, the sale of food is not subject to sales tax.

---

<sup>3</sup> [MCL §205.54o](#)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

- Scenarios for the sale of food by nonprofit organizations to students through a contract with a non-exempt organization:
  - School cafeteria operated by a private business, OR
  - School leases floor space to private businesses.
  - Private business may either:
    - Charge the student tax on the selling price of the food, OR
    - Include the tax in the selling price

## **Taxability of Sales to Contractors for Construction on Behalf of Nonprofit Organizations**

Sales subject to sales tax include the sale of tangible personal property to businesses engaged in the constructing, altering, repairing, or improving real estate except property affixed to and made a structural part of real estate of a nonprofit hospital or housing entity.

Specific requirements need to be met in order to qualify as a nonprofit hospital, and, therefore, sales tax may be required to be paid on purchase or materials used to build a hospital's facilities such as nursing homes, clinics, medical office buildings, etc.<sup>4</sup>

## **Michigan Sales & Use Tax Filing Frequency**

When a company registers its business with the Michigan Department of Treasury, [Form 518](#) requires the applicant to estimate its Sales, Use and Withholding tax liability for the year to determine one of the following filing frequencies:

- Estimated annual tax due is less than \$750, the applicant would select to file annually.
- Estimated annual tax due is between \$750 and \$3,600, the applicant would select to file quarterly.
- Estimated annual tax due is over \$3,600, the applicant would select to file monthly.
  - Michigan Sales and Use Tax Returns ([Form 160](#)) are due the 20<sup>th</sup> day following the end of the filing period.
  - If the return due date falls on a weekend or federal holiday, the following workday is the actual due date.
  - Electronic funds transfer payment and electronic return filing is available online at the Michigan Department of Treasury [website](#).

---

<sup>4</sup> [MCL §205.54w](#)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

## Glossary of Terms

**Appeal** - If you disagree with the IRS's determination (e.g. *IRS exam assessment, or notice of adjustment*), you may request an Appeals conference by filing a written protest. You may represent yourself, or have a professional represent you. The representative must be an attorney, a certified public accountant, or an enrolled agent authorized to practice before the IRS.

<http://www.irs.gov/Individuals/Preparing-a-Request-for-Appeals-1>

**Appraisal summary** – Form 8283 [http://www.irs.gov/irb/2008-40\\_IRB/ar13.html](http://www.irs.gov/irb/2008-40_IRB/ar13.html)

**Audited (by a CPA)** - Audited Financial Statement is a formal opinion of an organization's financial records and practices by an independent, certified public accountant with the objective of assessing the accuracy and reliability of the organization's financial statements. <http://www.irs.gov/uac/SOI-Tax-Stats-Charities,-Business-Leagues,-and-Other-Tax-Exempt-Organizations-Selected-Terms-and-Concepts>

**Benefit of private interests** - A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. See also Charitable Class definition below. <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Inurement-Private-Benefit-Charitable-Organizations>

**Bright-line rule** - providing an unambiguous criterion or guideline especially in law <http://www.merriam-webster.com/dictionary/bright-line>

**Casual sale**- A sale made outside of the ordinary course of the seller's business.

Also, an isolated transaction by a person not licensed or required to be licensed under this act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner. Please note this is a state of Michigan definition.

[http://www.legislature.mi.gov/\(S\(lj5xxl552bsbjh55wswdzazh\)\)/mileg.aspx?page=getobject&objectname=mcl-205-54d](http://www.legislature.mi.gov/(S(lj5xxl552bsbjh55wswdzazh))/mileg.aspx?page=getobject&objectname=mcl-205-54d)

**Charitable class** - is a group of individuals that may properly receive assistance from a charitable organization. A charitable class must be either large enough that the potential beneficiaries cannot be individually identified, or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all individuals located in a city, county, or state. This charitable class is large and benefits to it benefit the entire geographic community.

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Disaster-Relief:-Meaning-of-Charitable-Class>

**Controlled (foreign) corporation** - For U.S. income tax purposes, a foreign corporation is "controlled" if U.S. shareholders own more than 50% of its outstanding voting stock. <http://www.irs.gov/uac/SOI-Tax-Stats-Controlled-Foreign-Corporations> . See Form 5471 for more information.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

**Convenience of member** - A trade or business conducted by a 501(c)(3) organization or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees is not an unrelated trade or business. For example, a laundry operated by a college for the purpose of laundering dormitory linens and students' clothing is not an unrelated trade or business [http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267775](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267775)

**Debt-financed property** - any property held to produce income (including gain from its disposition) for which there is an acquisition indebtedness at any time during the tax year (or during the 12-month period before the date of the property's disposal, if it was disposed of during the tax year). It includes rental real estate, tangible personal property, and corporate stock.

#### **Acquisition Indebtedness:**

For any debt-financed property, acquisition indebtedness is the unpaid amount of debt incurred by an organization:

- When acquiring or improving the property,
- Before acquiring or improving the property if the debt would not have been incurred except for the acquisition or improvement, and
- After acquiring or improving the property if:
  - The debt would not have been incurred except for the acquisition or improvement, and
  - Incurring the debt was reasonably foreseeable when the property was acquired or improved.

[http://www.irs.gov/publications/p598/ch04.html#en\\_US\\_2011\\_publink1000269930](http://www.irs.gov/publications/p598/ch04.html#en_US_2011_publink1000269930)

**Determination letter** - A ruling or determination letter will be issued to your organization (*acknowledging that you are recognized as a tax exempt organization, will show the code section under which you are exempt, and your public charity status*) if its application and supporting documents establish that it meets the particular requirements of the section under which it is claiming exemption. The organization must describe fully the activities in which it expects to engage. This includes standards, procedures, or other means adopted or planned by the organization for carrying out its activities, expected sources of funds, and the nature of its contemplated expenses.

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organizations-Rulings-and-Determinations-Letters> In some areas, the law *requires* that an organization notify the Internal Revenue Service or receive an advance determination before undertaking a transaction resulting in certain tax consequences. <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organizations-Private-Letter-Rulings-and-Determination-Letters>

**Director** - Unless otherwise provided, a member of the organization's governing body at

any time during the tax year, but only if the member has any voting rights. A member of an advisory board that does not exercise any governance authority over the organization is not considered a director or trustee. <http://www.irs.gov/pub/irs-pdf/i990.pdf>

**Exception** - a case to which a rule does not apply (<http://www.merriam-webster.com/dictionary/exception>)

**Good faith (estimate)** - any reasonable method to estimate the fair market value (FMV) of goods or services the organization provided to a donor, as long as it applies the method in good faith. Generally, This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

under section 170, the deductible amount of a contribution is determined by taking into account the FMV, not the cost to the charity, of any benefits that the donor received in return. <http://www.irs.gov/Charities-&-Non-Profits/Private-Foundations/Life-Cycle-of-a-Private-Foundation-Quid-Pro-Quo-Contributions>

**Net operating loss** - If your tax deductions for the year are more than your taxable income for the year, you may have a net operating loss (NOL). An NOL year is the year in which an NOL occurs. You can use an NOL by deducting it from your income in another year or years (*as permitted by law*). <http://www.irs.gov/pub/irs-pdf/p536.pdf>

**Officer** - Unless otherwise provided, a person elected or appointed to manage the organization's daily operations at any time during the tax year, such as a president, vice-president, secretary, treasurer, and, in some cases, Board Chair. The officers of an organization are determined by reference to its organizing document, bylaws, or resolutions of its governing body, or as otherwise designated consistent with state law, but at a minimum include those officers required by applicable state law. <http://www.irs.gov/pub/irs-pdf/i990.pdf>

**Public disclosure** - An exempt organization must make available for public inspection its annual information return (e.g., Form 990, Form 990-EZ).<sup>5</sup> Returns must be available for a three-year period beginning with the due date of the return (including any extension of time for filing) or, if later, the date it is actually filed. An organization is not required to provide a copy of its Form 990 if the organization has made that form publicly available (e.g., through Internet posting), but must nevertheless make the form available for in-person inspection.

A tax-exempt organization may charge a reasonable fee for providing copies. For non-commercial requesters, the Freedom of Information Act schedule currently provides a charge of \$.20 per page.

<http://www.irs.gov/Charities-&-Non-Profits/Public-Disclosure-and-Availability-of-Exempt-Organization>Returns-and-Applications:-Public-Disclosure-Overview>

**Publicly traded securities** - include common and preferred stocks, bonds (including governmental obligations such as bonds and Treasury bills), and mutual fund shares that are listed and regularly traded in an over-the-counter market or on an established exchange and for which market quotations are published or otherwise readily available. This does not include stock holdings that represent 5% or more of the outstanding shares of stock of the same class. <http://www.irs.gov/uac/SOI-Tax-Stats-Charities,-Business-Leagues,-and-Other-Tax-Exempt-Organizations-Selected-Terms-and-Concepts>

**Qualified appraisal** - A *qualified appraisal* means an appraisal document that is prepared by a qualified appraiser in accordance with generally accepted appraisal standards. A “qualified appraiser” must be an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed. [http://www.irs.gov/irb/2008-40\\_IRB/ar13.html](http://www.irs.gov/irb/2008-40_IRB/ar13.html)

---

<sup>5</sup> Schedule B may be removed for this purpose for 990 filers.

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

A qualified appraisal must include information about the contributed property, the terms of any agreement or understanding by or on behalf of the donor and donee, the date (or expected date) of the contribution to the donee, the signature of the appraiser and the date signed by the appraiser (appraisal report date), and other certain elements. See Internal Revenue Bulletin: 2008-40 for more detail (link provided above).

- The following declaration by the appraiser: “I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund results from my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. section 330(c);”
- A statement that the appraisal was prepared for income tax purposes;
- The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, or the replacement-cost-less-depreciation approach; and
- The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

**Qualified intellectual property donation** - Qualified intellectual property is generally any patent, copyright, trademark, trade name, trade secret, know-how, software or similar property, or applications or registrations of such property (other than property contributed to or for the use of a private foundation as defined. <http://www.irs.gov/pub/irs-pdf/i8899.pdf>

**Qualified public entertainment activities** - A public entertainment activity is one traditionally conducted at a fair or exposition promoting agriculture and education, including any activity whose purpose is designed to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment  
[http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267793](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267793)

**Qualified sponsorship activities** - Soliciting and receiving qualified sponsorship payments is not an unrelated trade or business, and the payments are not subject to unrelated business income tax. Refer to Internal Revenue Code section Sec. 513(i) and the related regulations for more detail.  
[http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267775](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267775)

**Qualified sponsorship payment** - This is any payment made by a person engaged in a trade or business for which the person will receive no substantial benefit other than the use or acknowledgment of the business name, logo, or product lines in connection with the organization's activities. “Use or acknowledgment” does not include advertising the sponsor's products or services.  
[http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267775](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267775)

**Reviewed (by a CPA)** - An examination of an organization's financial records and practices by an independent accountant with the objective of assessing whether the financial statements are plausible, without the extensive testing and external validation procedures of an audit.  
<http://www.irs.gov/pub/irs-pdf/i990.pdf>

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

**Sale at retail** - is a sale to a purchaser who intends to use the article (A sale to the end user).

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Field-Directive-Federal-Excise-Tax-on-the-Importation-and-Manufacture-of-Fishing-and-Archery-Products>

**S Corporation** - S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations (*and their shareholders*) to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income at the entity level. <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/S-Corporations>

**Schedule** – additional filings to accompany Form 990 or Form 990-EZ, depending on responses to certain questions in the Form 990 or Form 990-EZ. <http://www.irs.gov/uac/Form-990-Schedules>

**Tax-deductible contributions** - To be deductible, charitable contributions must be made to qualified organizations. Payments to individuals are never deductible *as charitable contributions*. See [Publication 526, Charitable Contributions](http://www.irs.gov/taxtopics/tc506.html). <http://www.irs.gov/taxtopics/tc506.html>

Charitable contributions do not include:

- A contribution to a specific individual,
- A contribution to a nonqualified organization,
- The part of a contribution from which you receive or expect to receive a benefit:
  - Quid-pro-quo
  - Contributions for lobbying
  - Contributions to a retirement home for room, board, maintenance, or admittance
  - Costs of raffles, bingo, lottery, etc.
  - Dues to fraternal orders and similar groups
- The value of your time or services,
- Your personal expenses,
- A qualified charitable distribution from an individual retirement arrangement (IRA),
- Appraisal fees,
- Certain contributions to donor-advised funds, or
- Certain contributions of partial interests in property.

[http://www.irs.gov/publications/p526/ar02.html#en\\_US\\_2013\\_publink1000229693](http://www.irs.gov/publications/p526/ar02.html#en_US_2013_publink1000229693)

**Volunteer workforce** - Any trade or business in which substantially all the work is performed for the organization without compensation is not an unrelated trade or business. Although “substantially all” is not defined in this context, an unofficial guideline borrowed from other areas of exempt organization law is 85%. That is, if at least 85% of the work (as measured by the number of hours worked), absent other factors, is carried on by people who work without pay and no more than 15% of the work is carried on by people who are compensated. Please note, that few cases strictly apply the 85% test. Instead, “substantially all” is to be applied in a general manner.

[http://www.irs.gov/publications/p598/ch03.html#en\\_US\\_2011\\_publink1000267771](http://www.irs.gov/publications/p598/ch03.html#en_US_2011_publink1000267771)

This information in this guide is not to be construed as business, financial, investment, legal or tax advice, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.