

# Form 1023 Workshop



**2017 NONPROFIT ORGANIZATIONS  
COMPLIANCE AND INTERNAL REVIEW  
WORKSHOP**

**JANUARY 11, 2017 | AUSTIN, TEXAS**

**PRESENTED BY: MEGAN C. SANDERS |  
BOURLAND, WALL & WENZEL, P.C. | FORT  
WORTH, TEXAS**

## Basic Requirements – Eligibility of Exemption



- **Must be organized and operated exclusively for...**
  - religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals
- **Not necessary for churches, integrated auxiliaries of churches, and conventions or associations of churches, or an organization with gross receipts in each taxable year of no more than \$5,000**

<p><b>Tools for Vigilant Service to Nonprofit Organizations</b></p> <p style="text-align: center;"><b>Blazek &amp; Vetterling</b>          Certified Public accountants          2900 Wesleyan, Suite 200          Houston, TX 77027-5132          (713) 439-5739 fax (713) 439-5757 audit</p> <p style="text-align: center;"><b>SUITABILITY FOR TAX-EXEMPT STATUS</b></p> <p><i>A predominance of "yes" answers to the following questions indicate the proposed organization is NOT a suitable candidate for tax-exempt status or that special rules may apply. Proposed transactions with creators and board members will be thoroughly scrutinized by IRS and for private foundations may be prohibited. Chapter sections cited below from Tax Planning &amp; Compliance for Tax-Exempt Organizations can be studied for more discussion of each issue.</i></p> <p><b>1 Is a new organization necessary, or could the project be carried out as a branch of an existing organization?</b></p> <table border="0" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;"><u>Yes</u></td> <td style="text-align: center;"><u>No</u></td> </tr> <tr> <td>• Life of the project is short.</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• It is a one-time project with no prospect for ongoing funding.</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Project could operate under auspices of another EO.</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Duplication of administrative effort is too costly.</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Cost of obtaining and maintaining independent exemption is excessive in relation to total budget. (Ch.18)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Group exemption is available through a national EO. (Ch.18.2j)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p><b>2 Which §501(c) category of exemption is appropriate to the goals and purposes of the project?</b></p> <table border="0" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;"><u>Yes</u></td> <td style="text-align: center;"><u>No</u></td> </tr> <tr> <td>• The organization participates in efforts to influence elections or otherwise participate in political campaigns. (Ch.23)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Purposes of the organization only be accomplished through legislative and grassroots lobbying activity. (Ch.6 and 23)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• The organization's activities benefit a group of business persons or a social group. (Ch.7, 8, and 9)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Persons benefited by the proposed activities represent a limited group rather than a charitable class. (Ch.2.2a)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p><b>3. Are the sources of revenue suitable for an exempt organization?</b></p> <table border="0" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;"><u>Yes</u></td> <td style="text-align: center;"><u>No</u></td> </tr> <tr> <td>• Organization plans to sell goods produced by members indicating a cooperative, benefitting members not charitable class. (Ch.2.2e)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• A significant amount of the revenues will come from services to be rendered in competition with nonexempt businesses, such as legal services or insurance. (Ch.21.8)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Over half of revenues will be from unrelated businesses operated in competition with for-profit companies. (Ch.21.4(b))</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• A majority of the funding will come from a particular individual, family, or limited group of people that may require classification as a private foundation. (Chs. 11-17)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>		<u>Yes</u>	<u>No</u>	• Life of the project is short.	_____	_____	• It is a one-time project with no prospect for ongoing funding.	_____	_____	• Project could operate under auspices of another EO.	_____	_____	• Duplication of administrative effort is too costly.	_____	_____	• Cost of obtaining and maintaining independent exemption is excessive in relation to total budget. (Ch.18)	_____	_____	• Group exemption is available through a national EO. (Ch.18.2j)	_____	_____		<u>Yes</u>	<u>No</u>	• The organization participates in efforts to influence elections or otherwise participate in political campaigns. (Ch.23)	_____	_____	• Purposes of the organization only be accomplished through legislative and grassroots lobbying activity. (Ch.6 and 23)	_____	_____	• The organization's activities benefit a group of business persons or a social group. (Ch.7, 8, and 9)	_____	_____	• Persons benefited by the proposed activities represent a limited group rather than a charitable class. (Ch.2.2a)	_____	_____		<u>Yes</u>	<u>No</u>	• Organization plans to sell goods produced by members indicating a cooperative, benefitting members not charitable class. (Ch.2.2e)	_____	_____	• A significant amount of the revenues will come from services to be rendered in competition with nonexempt businesses, such as legal services or insurance. (Ch.21.8)	_____	_____	• Over half of revenues will be from unrelated businesses operated in competition with for-profit companies. (Ch.21.4(b))	_____	_____	• A majority of the funding will come from a particular individual, family, or limited group of people that may require classification as a private foundation. (Chs. 11-17)	_____	_____	<p style="text-align: center;"><b>APPENDIX C</b></p> <p><b>Tools for Vigilant Service to Nonprofit Organizations</b></p> <p style="text-align: right;"><b>Chapter 1</b></p> <p style="text-align: center;"><b>SUITABILITY FOR TAX-EXEMPT STATUS, p.2</b></p> <p><b>4. Do the creators desire economic benefits from the operation of the organization?</b></p> <table border="0" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;"><u>Yes</u></td> <td style="text-align: center;"><u>No</u></td> </tr> <tr> <td>• Transactions with related parties are anticipated. (Chs.14-20)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Proposed financial arrangements with creators will pay portion of revenues to insiders as rent, royalty, or interest. (Ch. 6)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Creators wish to be paid incentive compensation based upon funds raised or profitability of the organization. (Chs. 14.1 &amp; 20.4)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Assets will be purchased and/or debts of creators assumed. (Ch. 20.8)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Project will be operated in partnership with for-profit investors. (Ch.22)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Services and activities will be available to a limited group of persons or members instead of a public class.</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>• Upon dissolution of the organization, assets can be returned to creators and/or major donors. (Ch. 2.1c)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p>© J. Blazek 2013          Chapter sections in parenthesis refer to Blazek, Tax Planning &amp; Compliance for Tax-Exempt Organizations 5<sup>th</sup> Edition, 2012, John Wiley &amp; Sons.</p>		<u>Yes</u>	<u>No</u>	• Transactions with related parties are anticipated. (Chs.14-20)	_____	_____	• Proposed financial arrangements with creators will pay portion of revenues to insiders as rent, royalty, or interest. (Ch. 6)	_____	_____	• Creators wish to be paid incentive compensation based upon funds raised or profitability of the organization. (Chs. 14.1 & 20.4)	_____	_____	• Assets will be purchased and/or debts of creators assumed. (Ch. 20.8)	_____	_____	• Project will be operated in partnership with for-profit investors. (Ch.22)	_____	_____	• Services and activities will be available to a limited group of persons or members instead of a public class.	_____	_____	• Upon dissolution of the organization, assets can be returned to creators and/or major donors. (Ch. 2.1c)	_____	_____
	<u>Yes</u>	<u>No</u>																																																																										
• Life of the project is short.	_____	_____																																																																										
• It is a one-time project with no prospect for ongoing funding.	_____	_____																																																																										
• Project could operate under auspices of another EO.	_____	_____																																																																										
• Duplication of administrative effort is too costly.	_____	_____																																																																										
• Cost of obtaining and maintaining independent exemption is excessive in relation to total budget. (Ch.18)	_____	_____																																																																										
• Group exemption is available through a national EO. (Ch.18.2j)	_____	_____																																																																										
	<u>Yes</u>	<u>No</u>																																																																										
• The organization participates in efforts to influence elections or otherwise participate in political campaigns. (Ch.23)	_____	_____																																																																										
• Purposes of the organization only be accomplished through legislative and grassroots lobbying activity. (Ch.6 and 23)	_____	_____																																																																										
• The organization's activities benefit a group of business persons or a social group. (Ch.7, 8, and 9)	_____	_____																																																																										
• Persons benefited by the proposed activities represent a limited group rather than a charitable class. (Ch.2.2a)	_____	_____																																																																										
	<u>Yes</u>	<u>No</u>																																																																										
• Organization plans to sell goods produced by members indicating a cooperative, benefitting members not charitable class. (Ch.2.2e)	_____	_____																																																																										
• A significant amount of the revenues will come from services to be rendered in competition with nonexempt businesses, such as legal services or insurance. (Ch.21.8)	_____	_____																																																																										
• Over half of revenues will be from unrelated businesses operated in competition with for-profit companies. (Ch.21.4(b))	_____	_____																																																																										
• A majority of the funding will come from a particular individual, family, or limited group of people that may require classification as a private foundation. (Chs. 11-17)	_____	_____																																																																										
	<u>Yes</u>	<u>No</u>																																																																										
• Transactions with related parties are anticipated. (Chs.14-20)	_____	_____																																																																										
• Proposed financial arrangements with creators will pay portion of revenues to insiders as rent, royalty, or interest. (Ch. 6)	_____	_____																																																																										
• Creators wish to be paid incentive compensation based upon funds raised or profitability of the organization. (Chs. 14.1 & 20.4)	_____	_____																																																																										
• Assets will be purchased and/or debts of creators assumed. (Ch. 20.8)	_____	_____																																																																										
• Project will be operated in partnership with for-profit investors. (Ch.22)	_____	_____																																																																										
• Services and activities will be available to a limited group of persons or members instead of a public class.	_____	_____																																																																										
• Upon dissolution of the organization, assets can be returned to creators and/or major donors. (Ch. 2.1c)	_____	_____																																																																										

## Basic Requirements – Application for Recognition of Exemption

- Proper Notice is provided on Form 1023
- Must be filed with the Ohio District Office (Covington, Kentucky)
  - Within 27 months from the end of the month of its organization for retroactive application of exemption
- A substantially completed filing begins the running of the 270-day period in which the key District Director must rule on the application
  - Can seek declaratory judgment
- Must be timely in furnishing additional information requested by the IRS

## Form 1023 Packet



- User fee, enclosed but *not* attached;
- Form 1023 checklist;
- Form 2848, Power of Attorney and Declaration of Representative (if applicable, which usually it is);
- Application, including the Form 1023 and Schedules A through H as required;
- Organizing document;
- Amendments to organizing document, in chronological order;
- Bylaws (or other rules of operation) and any amendments;
- All other attachments, including explanations, financial data, etc. (“Exhibit C”)

## Basic Requirements – Local Application



- After receiving the federal exemption determination letter, application should be made to state and local taxing authorities for exemption from franchise taxes, real and personal property taxes, rent taxes, and sales taxes
- Confirm any out-of-state registration requirements, if applicable
- See The National Association of State Charity Officials for links to various states for state registration requirements ([www.nasconet.org](http://www.nasconet.org))

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Form 1023 Workshop

Also available as part of the eCourse

[2017 Nonprofit Organizations Compliance and Internal Review eConference](#)

First appeared as part of the conference materials for the  
2017 Nonprofit Organizations Compliance and Internal Review Workshop session  
"Form 1023 Workshop"