



Section 509(a)(3) Supporting Organizations

Provisions in legislation signed by the President on August 17, 2006, may affect the information on this page.

Click [here](#) for a discussion of the new law.

Supporting organizations are public charities that carry out their exempt purposes by supporting one or more other exempt organizations, usually other public charities. The category can cover many types of entities including university endowment funds and organizations that provide essential services for hospital systems. The classification is important because it is one means by which a charity can avoid classification as a private foundation, a status that is subject to a much more restrictive regulatory regime. The key feature of a supporting organization is a strong relationship with an organization it supports. The strong relationship enables the supported organization to oversee the operations of the supporting organization. Therefore, the supporting organization is classified as a public charity, even though it may be funded by a small number of persons in a manner that is similar to a private foundation.

Like all charitable organizations, a supporting organization must be organized and operated exclusively for purposes described in section 501(c)(3). A supporting organization must also be organized and operated exclusively to support specified supported organizations. Moreover, a supporting organization must have one of three relationships with the supported organizations, all of which are intended to ensure that the supporting organization is responsive to the needs or demands of the supported organization and intimately involved in its operations and that the public charity is motivated to be attentive to the operations of the supporting organization. Type I supporting organizations are "operated, supervised, or controlled by" the supported organization. Type II supporting organizations are "supervised or controlled in connection with" the supported organization. Type III supporting organizations are "operated in connection with" the supported organization. Since Type III relationships are less formal than a Type I or Type II relationship, Type III organizations must meet a responsiveness test and an integral part test. Section 1.509(a)-4(i)(2) and (3) of the Income Tax Regulations. These tests are designed to ensure that the supporting organization is responsive to needs of a public charity and that the public charity oversees the operations of the supporting organization. Finally, the supporting organization must not be controlled directly or indirectly by disqualified persons (defined in section 4946), who generally are substantial contributors and their family members. Section 509(a)(3)(C).

Some promoters have encouraged individuals to establish and operate supporting organizations described in section 509(a)(3) for their own benefit. There are a variety of methods of abuse, but a common theme is a "charitable" donation of an amount to the supporting organization, and a return of the donated amounts to the donor, often in the form of a loan. To disguise the abuse, the transaction may be routed through one or more intermediary organizations controlled by the promoter.

Organizations that operate for the personal benefit of their founders are not operated exclusively for purposes described in section 501(c)(3). Where part of an organization's net earnings inures to the benefit of private persons or where more than an insubstantial part of its activities benefit private interests, the organization will fail to qualify, or lose its tax-exempt status under section 501(c)(3). In addition, section 4958 excise taxes may be imposed on its disqualified persons and organization managers as defined under section 4958(f). Even in cases where the organization does not operate for the personal benefit of its founder, it may fail to qualify for section 509(a)(3) classification for several reasons. It might be controlled by disqualified persons. It might not be sufficiently responsive to the needs or demands of a supported public charity. It might not maintain a significant involvement in the affairs of a specified publicly supported charity. A specified public charity might not be motivated to be attentive to its operations. Loss of section 509(a)(3) classification means that the

organization would be classified as a private foundation, subject to excise taxes under chapter 42 for a variety of reasons including self-dealing transactions and improper investments.

Additional information:

Public Charity or Private Foundation Status, Issues Under IRC 509(a)(1)-(4), 4942(j)(3), and 507, 2003 EO CPE Text Topic B

Control and Power: Issues Involving Supporting Organizations, Donor Advised Funds, and Disqualified Person Financial Institutions, 2001 EO CPE Text Topic G

Public Charity Classification and Private Foundation Issues: Recent Emerging Significant Developments, 2000 EO CPE Text Topic P

Supporting and Publicly Supported Organizations, 1993 EO CPE Text Topic J

Exclusion from Private Foundation Status Under IRC 509(a)(3), 1982 EO CPE Text Topic B