



Self-Declared 501(c)(3) Nonprofits

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Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

Thank you to Robert H. Levin, Attorney at Law (www.roblevin.net), for providing the legal expertise needed to create this white paper, which is provided solely for informational purposes. No one should rely on it as legal advice. You are strongly encouraged to consult a qualified attorney for advice on any particular situation.

Purpose

To clarify what it means to be a Self-Declared 501(c)(3) Organization and the various obligations of the Board Directors

What is a Self-Declared of 501(c)(3) Organization?

It is any qualifying charitable organization that chooses not to seek official recognition of its tax-exempt status from the Internal Revenue Service (IRS). These qualifying charitable organizations receive all the benefits of tax-exempt status if they operate in compliance with all rules and regulations that govern other tax-exempt organizations under IRS code 501(c)(3).

What Organizations Qualify for Self-Declaration of 501(c)(3) Status?

Normally, any charitable organization seeking 501(c)(3) status must file a Form 1023 application with the IRS. However, Congress has created an exception for very small organizations. **Under I.R.C. § 508(c)(1), a charitable organization that is not a private foundation and that has annual gross receipts normally \$5,000 or less is not required to file Form 1023 in order to be recognized by the IRS as a 501(c)(3) organization.** An organization that falls below the \$5,000/year threshold can essentially "self declare" its 501(c)(3) status.

What does "normally \$5,000 or less" mean?

The IRS requires organizations to use a three-year aggregate time period to determine if its gross receipts are "normally" \$5,000 or less. Thus, for an organization that has been in existence for three or more years, it qualifies for this category if its total gross receipts for the three most recent years are \$15,000 or less.

What are gross receipts?

Gross receipts are essentially every dollar or in-kind donation received by the organization, whether from grants, individual or business donations, proceeds from fundraising events, or virtually any other source.

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What are the Legal Requirements of Self-Declared 501(c)(3)s?

All Generally Applicable 501(c)(3) Obligations

It is important to appreciate and understand that a Self-Declared 501(c)(3) Organization must follow all of the generally applicable 501(c)(3) laws and regulations set forth by the IRS. These are summarized in IRS Publication 4221 (www.irs.gov/pub/irs-pdf/p4221nc.pdf). In particular, this Publication covers:

- ▶ Campaigning restrictions
- ▶ Lobbying restrictions
- ▶ Restrictions on private inurement, private benefit and excess benefit transactions (rules designed to ensure that charitable dollars remain devoted to charitable purposes and are not diverted to private individuals or companies)

Monitor for Compliance

In any given year, if a self-declared 501(c)(3) exceeds \$15,000 in gross receipts for the previous three years, then it must file a Form 1023 application within 90 days after the close of the fiscal year in which it exceeds the threshold. Thus, a self-declared 501(c)(3) nonprofit must pay attention to its gross receipts to confirm that it remains eligible for the exception.

EIN and Bank Account

If a Self-Declared Organization is handling any funds, it must obtain an EIN from the IRS (www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-%28EIN%29-Online) and open a bank account using that EIN. (You'll also need an EIN to file the 990-N – see below.) Many banks will also want to see Articles of Incorporation for the organization, although that is not a legal requirement. It is important that organization's funds not be deposited into and commingled with an individual's personal bank account, as that would likely be a violation of the 501(c)(3) rules summarized above.

Annual IRS Form 990-N Filing

A Self-Declared Organization must file an Annual Form 990-N E-Postcard with the IRS (<http://epostcard.form990.org/>). This is an online filing that generally takes no more than a few minutes. Because a Self-Declared 501(c)(3) is not yet in the IRS exempt organizations database, before filing the Form 990-N for the very first time, an officer will have to call the IRS at (877) 829-5500 and explain to a representative that you would like to register your Self-Declared 501(c)(3) (i.e., below \$5,000 in gross receipts) into the database so that you can file the Form 990-N. This request typically takes 2-3 months for the IRS to process, after which you can then go online and file the Form 990-N.

State of Maine Annual Report

If organized as a Maine nonprofit corporation, the organization must file an Annual Report with the Maine Secretary of State (www.maine.gov/sos/cec/corp/helpful.html) and maintain a Registered Agent.

IRS Public Support Test

In order to not be classified as a private foundation, the organization needs to pass what is called the "public support test." The public support test is not easy to explain, as it contains many nuances and complexities. As a general rule, over a five-year period an organization must receive 1/3 of its total support from public sources in order to meet the public support test. Public sources generally include gifts from members of the public, membership fees, government grants, and foundation grants. However, any contributions made by an individual or a private foundation are capped at 2% of the organization's total

support over the five-year period. For example, if an organization received \$100,000 in total support over four years, and \$25,000 came from a single individual, only \$2,000 of the \$25,000 would count as “public support” and count towards the 1/3 requirement. If the corporation receives an unexpected large gift that would cause it to fail the Mechanical Test, this gift might be treated as an “Unusual Grant” and be ignored for the purposes of the test.

For more information on the public support test, consult any of the following links.

- ▶ www.brainerd.org/downloads/Public_Support_Test_Memo.pdf
- ▶ www.sharinglaw.net/npo/PublicSupportTest.htm
- ▶ http://foundationcenter.org/getstarted/faqs/html/pub_sup_test.html

State of Maine Charitable Solicitation Registration

Organizations that raise less than \$35,000 from the general public and who do not contract with professional fundraisers are exempt from filing an annual Charitable Solicitation Registration with the Maine Department of Professional and Financial Regulation. However, if they are soliciting individuals and companies, they must file an annual Exemption Form along with a \$10 filing fee. For more information about compliance with the Maine Charitable Solicitations Act, please download our Fundraising + Charitable Solicitations White Paper (www.NonprofitMaine.org/FundraisingWhitePaper.)

Gift Substantiation Requirements

Depending on the amount and the kind of gift, 501(c)(3) corporations must meet various federal substantiation requirements. In addition, donors must make certain disclosures on their tax returns. A very useful summary of the substantiation and disclosure requirements for both nonprofits and donors can be found in IRS Publication 1771 (www.irs.gov/pub/irs-pdf/p1771.pdf).

Recordkeeping

Nonprofits should keep their corporate and financial records in one central place. A complete copy of all essential documents should also be located in a separate location, in the event of fire or other damage. The use of a Corporate Records Book, maintained by the Secretary or by the Executive Director, is the easiest way to do this. The book should be a hardbound binder to which items can be added and subtracted. The book should include separate sections for:

- ▶ Charter Documents (Articles of Incorporation, Bylaws)
- ▶ Meeting Minutes + Agendas
- ▶ Meeting Resolutions
- ▶ Membership Records
- ▶ Policies
- ▶ Financial Records
- ▶ Annual Budgets
- ▶ Balance Sheets
- ▶ Profit and Loss Statements