



# LGT-NFP

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## FINANCIAL FOCUS



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## Your Accounting for a New Economy

# IRS Releases New Rules For Grantmakers or Donors

IRS Revenue Procedure 2011-33 set forth new guidelines governing grantmakers and donors. The new rules requires that before making a donation to a not-for-profit entity, the taxpayer must verify the organization's eligibility to receive a charitable donation, determine if the charity is a supporting organization (and if it is, determine what type) and confirm that the organization is not on the OFAC list of organizations and persons linked to terrorism. In this article you will find helpful tips for what donors and grantmakers must do in order to comply with the revised IRS requirements.

### **Verify the organization is eligible to receive a tax-deductible charitable contribution.**

Not all tax-exempt organizations are eligible to receive a tax deductible donation and verifying a specific organization is eligible requires three steps.

#### **1. Determine if the organization is allowed to receive a charitable contribution**

A potential donor may use either IRS Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986. Rev. Proc. 2011 – 33 or the IRS Business Master File (BMF) to determine a specific organization's eligibility.

#### **2. Confirm the organization's foundation and deductibility status**

The majority of organizations that are allowed to receive tax-deductible contributions are classified as 501(c)(3) charitable organizations, but there some other types not-for-profits allowed to receive tax deductible gifts although some special rules and restrictions may apply.

For individual donors, the amount of a charitable deduction is limited to a percentage of the individual's income. It's important to keep in mind that the deductible amount for donations to private foundations are actually lower for private foundations than they are for public charities.

Private foundations and sponsors of donor-advised funds must exercise expenditure responsibility for contributions to certain organizations.

Before making a donation donors and grantmakers should double check the deductible amount allowed as well as whether a grantmaker must exercise expenditure responsibility. The IRS used to require donors and grantmakers to use Publication 78 for this research, but they are now allowed to the BMF as well thanks to Rev. Proc. 2011-33. Both sources will provide a "deductibility code".

### **3. Determine the organization's standing with the IRS**

If a not-for-profit organization fails to file an annual return (Form 990, 990-N, 990-EZ, or 990-PF) for three consecutive years, then The Pension Protection Act of 2006 would revoke their tax exempt status. Under the Act the IRS is required to publish a list of organizations that have lost their tax exempt status. This provision took effect on June 8, 2011 and the revocations are automatic and mandatory under the law. The IRS also revokes the not-for-profit status of organizations on a case-by-case basis for serious noncompliance with the tax code. Revocations for either situation can be found on the IRS Website. ([www.irs.gov](http://www.irs.gov))

Organizations that have lost their tax exempt status may continue to accept contributions, but those donations are no longer tax-deductible. Also, grantmakers and donor-advised funds who much donations to such organizations are required to exercise expenditure responsibility over those grants.

It's important to always check an organization still has its tax-exempt status before making what you believe to be a tax deductible donation.

#### **Determine if the not-for-profit is a supporting organization, and if so, what kind.**

The Pension Protection Act of 2006 also limits distributions to supporting organizations. Supporting organizations are defined as charities established for the purpose of providing support to another charity. There are many different types of supporting organizations, and what type an organization is determines if grantors must exercise expenditure responsibility and whether those grants count towards a private foundation's minimum payout.

Grantmakers are allowed to research supporting organization status (509(a)(3) status) using any of the following sources:

- A charity's IRS Letter of Determination (The document where the IRS approves a not-for-profit organization's application for tax-exempt status)
- The BMF
- A third-party source of BMF data (as long as it meets certain criteria)
- Publication 78

When making donations to a supporting organization, a grantmaker is required to determine what type of organization the recipient is. Unfortunately, Publication 78 does not identify supporting organizations at all, and the BMF contains only limited data. This necessitates additional research on the part of the grantmakers to determine the type of supporting organization a recipient may be.

**Confirm the organization is not on the OFAC list of organizations and persons linked to terrorism.**

Financial contributions to organizations or persons linked to terrorism are prohibited under the USA PATRIOT (Unite and Strengthen America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act. The Office of Foreign Assets Control (OFAC) and the U.S. Department of Treasury maintains a list of individuals and organizations whose assets have been frozen due to suspected terrorist ties. These individuals and organizations are known as "Specially Designated Nationals" (SDNs).

If there is any chance an organization you plan to make a donation to may be linked to terrorism, be sure to check the OFAC publications to ensure that the organization is not an SDN.

These new rules governing grantmakers and donors can be complex. If you have any questions, do not hesitate to contact a member of LGT's not-for-profit group at (214) 871-7500.