

Charitable Trusts vs. Foundations

A Charitable Trust is not under the massive restrictions imposed by the IRS on Charities and Foundations that maintain a 501(c)(3) status.

A public charity is prohibited from allowing more than an insubstantial accrual of private benefit to individuals or organizations. This restriction is to ensure that a tax-exempt organization serves a public interest, not a private one. If a private benefit is more than incidental, it could jeopardize the organization's tax-exempt status. No part of an organization's net earnings may inure to the benefit of an insider. An insider is a person who has a personal or private interest in the activities of the organization such as an officer, director, or a key employee. This means that an organization is prohibited from allowing its income or assets to accrue to insiders. An example of prohibited inurement would include payment of unreasonable compensation to an insider. Any amount of inurement may be grounds for loss of tax-exempt status. If a public charity provides an economic benefit to any person who is in a position to exercise substantial influence over its affairs (that exceeds the value of any goods or services provided in consideration), the organization has engaged in an excess benefit transaction. A public charity that engages in such a transaction must report it to the IRS. Excise taxes are imposed on any person who engages in an excess benefit transaction with a public charity, and on any organization manager who knowingly approves such a transaction.

Beneficiaries of a Charitable Trust may include anyone and anything. Trustees of a Charitable Trust may endow Trusts in which a Trustee of the Charitable Trust is a managing Trustee or a Beneficiary of a Beneficial Trust.

Public charities are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) a candidate for public office. Contributions to political campaign funds or public statements of position made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in revocation of tax-exempt status and/or imposition of certain excise taxes.

Charitable Trusts may directly or indirectly participate, intervene or engage in political campaigns on behalf of anyone for any reason.

The IRS considers the following factors that tend to show an advocacy communication is political campaign activity: whether the statement identifies one or more candidates for a given public office, whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions, whether the statement is delivered close in time to the election, whether the statement makes reference to voting or an election, whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office, whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election, and, whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office. A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election.

A Charitable Trust may engage in all this activity without any consequence.

A public charity is not permitted to engage in substantial legislative activity (commonly referred to as lobbying). An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for purposes of proposing, supporting or opposing legislation, or advocates the adoption or rejection of legislation.

A Charitable Trust may lobby anyone or any organization or legislative activity without restrictions. While 501(c)(3) public charities are exempt from federal income tax, most of these organizations have information reporting obligations under the Code to ensure that they continue to be recognized as tax-exempt. In addition, they may also be liable for employment taxes, unrelated business income tax, excise taxes, and certain state and local taxes.

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A Charitable Trust's endowments are not income to the Trust.

A public charity must file a Form 990-T, Exempt Organization Business Income Tax Return, if it has \$1,000 or more of gross income from an unrelated trade or business during the year. Net income from income-producing activities is taxable if the activities: constitute a trade or business, are regularly carried on, and, are not substantially related to the organization's exempt purpose. Examples of unrelated business income may include income from advertising in publications, income from gaming (except for income from traditional bingo under certain circumstances), and income from the sale of merchandise unrelated to the organization's exempt purpose. Whether an income-producing activity is an unrelated trade or business activity depends on all the facts and circumstances. For more information, see IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations. The public charity must pay quarterly estimated tax on unrelated business income if it expects its tax for the year to be \$500 or more. Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations, is a worksheet to determine the amount of estimated tax payments required.

A Charitable Trust files a 1041 annually with declarations showing no taxable income.

RECORDS MANAGEMENT, GROSS RECEIPTS: Gross receipts are the amounts received from all sources, including contributions. A public charity should keep supporting documents that show the amounts and sources of its gross receipts. Documents that show gross receipts include: donor correspondence, pledge documents, cash register tapes, bank deposit slips, receipt books, invoices, credit card charge slips, and Forms 1099-MISC, Miscellaneous Income. **PURCHASES, INCLUDING ACCOUNTING FOR INVENTORY:** Purchases are items bought, including any items resold to customers. If an organization produces items, it must account for any items resold to customers. Thus, for example, the organization must account for the cost of all raw materials or parts purchased for manufacture into finished products. Supporting documents should show the amount paid, and that the amount was for purchases. Documents for purchases include: canceled checks, cash register tape receipts, credit card sales slips, and invoices. These records will help a public charity determine the value of its inventory at the end of the year. See Publication 538, Accounting Periods and Methods, for general information on methods for valuing inventory. **EXPENSES :** Expenses are the costs a public charity incurs (other than purchases) to carry on its program. Supporting documents should show the amount paid and the purpose of the expense. Documents for expenses include: canceled checks, cash register tapes, contracts, account statements, credit card sales slips, invoices, and petty-cash slips for small cash payments. **EMPLOYMENT TAXES:** Organizations that have employees must keep records of compensation and specific employment tax records. See Publication 15, Circular E, Employer's Tax Guide, for details. **ASSETS & LIABILITIES:** Assets are the property, such as investments, buildings, and furniture that an organization owns and uses in its activities. Liabilities reflect the pecuniary obligations of the organization. A public charity must keep records to verify certain information about its assets and liabilities. Records should show: when and how the asset was acquired, whether any debt was used to acquire the asset, documents that support mortgages, notes, loans, or other forms of debt, purchase price, cost of any improvements, deductions taken for depreciation, if any, deductions taken for casualty losses, if any, such as losses resulting from fires or storms, how the asset was used, when and how the asset was disposed of, selling price, expenses of sale. Documents that may show the above information include: purchase and sales invoices, real estate closing statements, canceled checks, and financing documents. If a public charity does not have canceled checks, it may be able to show payment with certain financial account statements prepared by financial institutions. These include account statements prepared for the financial institution by a third party. All information, including account statements, must be highly legible. The following defines acceptable account statements: IF payment is by _____, THEN statement must show: check, check number, amount, payee's name, and date the check amount was posted to the account by the financial institution, electronic funds transfer, amount transferred, payee's name, and date the transfer was posted to the account by the financial institution, credit card, amount charged, payee's name, and transaction date. **Record keeping is required under law by public charities.**

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A Charitable Trust's records are totally private and are not subject to turnover orders by any court or agency unless fraudulent conveyance is proven.

A public charity must keep its books and records based on an annual accounting period called a tax year in order to comply with annual reporting requirements. Accounting Periods — A tax year is usually 12 consecutive months. There are two kinds of tax years. CALENDAR TAX YEAR – This is a period of 12 consecutive months beginning January 1 and ending December 31. FISCAL TAX YEAR – This is a period of 12 consecutive months ending on the last day of any month except December. Accounting Method — An accounting method is a set of rules used to determine when and how income and expenses are reported. A public charity chooses an accounting method when it files its first annual return. There are two basic accounting methods: CASH METHOD – Under the cash method, a public charity reports income in the tax year received. It usually deducts expenses in the year paid. ACCRUAL METHOD – Under an accrual method, a public charity generally records income in the tax year earned, (i.e., in the tax year in which a pledge is received, even though it may receive payment in a later year.) It records expenses in the tax year incurred, whether or not it pays the expenses that year. For more information about accounting periods and methods, see Publication 538, Accounting Periods and Methods, and the instructions to Form 990 and Form 990-EZ. Supporting Documents: Organization transactions such as contributions, purchases, sales, and payroll will generate supporting documents. These documents — grant applications and awards, sales slips, paid bills, invoices, receipts, deposit slips, and canceled checks — contain information to be recorded in accounting records. It is important to keep these documents because they support the entries in books and the entries on tax and information returns. Public charities should keep supporting documents organized by year and type of receipt or expense. Also, keep records in a safe place. **A Charitable Trust is not required to keep this detained account.**

Public Charities are under strict review and have a Governing Body.

The IRS encourages every charity to adopt, establish and regularly review a mission statement to explain the organization's purposes and guide its work.

Governing Body: An active and engaged board is important to the success of a public charity and compliance with the tax law. A governing board should be composed of persons who are informed and active in overseeing a charity's operations and finances. To guard against insider transactions that could result in misuse of charitable assets, the governing board should include independent members and should not be dominated by employees or others who are not independent because of business or family relationships. Governance and Management Policies: Although the Internal Revenue Code does not require charities to have particular governance and management policies, the IRS does encourage boards of charities to consider whether the implementation of policies relating to executive compensation, conflicts of interest, investments, fundraising, documentation of governance decisions, document retention, and whistleblower claims may be necessary and appropriate. Further, if a public charity has chapters or affiliates, it is encouraged to have procedures or policies in place to ensure consistency in operations. Financial Statements and Information Reporting: Board members are encouraged to regularly review the organization's financial statements

and information returns, and consider whether an independent auditor is appropriate. Transparency: Public charities are encouraged to adopt and monitor procedures to ensure that information about their mission, activities, finance and governance is made publicly available. **A Charitable Trust has no such requirements.**

Strict filings are required under law by Public Charities.

A public charity that is required to file Form 990 or Form 990-EZ must report name, address, structural and operational changes on its annual information return. Regardless of whether a public charity files an annual information return, it may also report these changes to the EO Determinations Office at the mailing address set out in "How to Get IRS Assistance and Information" on page 28; however, such reporting does not relieve the organization from reporting the changes on its annual information return. For information about informing the IRS of a termination or merger, see Pub 4779, "Facts About Terminating or Merging Your Exempt Organization". **A Charitable Trust has no such requirements.**

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Public Charities must make public disclosures.

There are a number of disclosure requirements for public charities. Detailed information on federal tax law disclosure requirements for 501(c)(3) tax-exempt organizations can be found in Publication 557, "Tax Exempt Status for Your Organization", on the IRS Charities and Nonprofits Web site at www.irs.gov/eo. Public Inspection of Annual Returns and Exemption Applications: A public charity must make the following documents available for public inspection and copying upon request and without charge (except for a reasonable charge for copying). The IRS also makes these documents available for public inspection and copying. A public charity may place reasonable restrictions on the time, place, and manner of in-person inspection and copying, and may charge a reasonable fee for providing copies. It can charge no more for the copies than the per page rate the IRS charges for providing copies. See www.irs.gov/foia/index.html for current IRS copying fees. Although the IRS charges no fee for the first 100 pages, the organization can charge a fee for all copies. The organization can also charge the actual postage costs it pays to provide copies. A tax-exempt organization does not have to comply with individual requests for copies if it makes the documents widely available. This can be done by posting the documents on a readily accessible Web site. For details on disclosure rules and procedures for public charities, see "Life Cycle of a Public Charity" and the instructions to Forms 990 and 1023 at www.irs.gov/eo. Because certain forms, by law, must be made publicly available by the IRS and the filer, do not include any personal identifying information, such as social security numbers not required by the IRS, on these forms. 25 Exemption Application: A public charity must make available for public inspection its exemption application, Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, along with each of the following documents: all documents submitted with Form 1023; all documents the IRS requires the organization to submit in support of its application; and, the exemption ruling letter issued by the IRS. Annual Information Return: A public charity must make available for public inspection its annual information return (Form 990 series) with schedules, attachments, and supporting documents filed with the IRS. However, a public charity that files a Form 990 or Form 990-EZ does not have to disclose the names and addresses of contributors listed on Schedule B. All other information, including the amount of contributions, the description of noncash contributions, and any other information provided will be open to public inspection unless it clearly identifies the contributor. **A Charitable Trust has no public disclosure requirements and all records and transactions are held in strict privacy.**

Penalties apply to Public Charities.

PENALTIES: Penalties apply to responsible persons of a tax-exempt organization who fail to provide the documents as required. A penalty of \$20 per day may apply for as long as the failure continues. A \$10,000 maximum penalty applies to a failure to provide an information return; no maximum penalty applies to application requests. **A Charitable Trust has no penalties.**

Reports must be filed by Public Charities.

Those working on behalf of organizations as external consultants or fund-raisers frequently must file reports with the various state charity regulators. Many of these entities and/or individuals receive a percentage of the proceeds. Some receive the percentage in addition to a set base amount of compensation. As these arrangements can lead to abuse, consider reviewing all contracts with fund-raising firms to determine the extent of private benefits. **A Charitable Trust may engage or employ anyone or any organization to raise funds without disclosures or registrations of any kind.**

As you can plainly see, the advantages the Charitable Trust has over any IRS structure is far and above any other entity. The freedom of movement and ease of management is unparalleled and there are no tax consequences for the Charitable Trust.