

Agenda

August 16, 2018 7pm
Buffalo Wild Wings



Welcome-Introductions



Bring everyone up to speed - diary of Hurricanes Booster Inc.



HURRICANESBOOSTER.COM



Old Business

- GATORADE night - bring a case of Gatorade to the football/basketball game and get in for free usually done on the first home game or if we have a home scrimmage game
- Update on Spirit Wear - ON TARGET SALES
- Update on Fall Sports Printed Programs/need advertisers
- Update on Social Media Presence (Facebook, Twitter)
- Update on Section 509(a)(3)



New Business

Introduce the Bylaws provided by Vito DeFrisco vs our current Bylaws
Vote on the Bylaws provided by Vito DeFrisco



Next Buffalo Wild Wings



Adjournment

Internal Revenue Code Section (Sec.) 509 describes the various tests for a Section 501(c)(3) organization to be classified as a public charity. 6-10-15_iStock_000035440884_Full 5 The 509(a)(1) and (a)(2) tests were discussed in previous articles. Section 509(a)(3) describes an organization that is a public charity by being a “supporting organization” (SO).

Supporting organizations are organized and operated exclusively for the benefit of one or more Public Charities described in Section 509(a)(1) or (2). SO activities support the purposes of one or more such organizations. Interestingly, in addition to supporting a Section 501(c)(3) public charity, an SO (Type I or II, see below) may also support a Section 501(c)(4), (5) or (6) organization. The SO is qualified to do so if: the supported organization can meet the 509(a)(2) test; and the support is restricted to use by the supported organization for 501(c)(3) purposes.

Prior to 2014, there was no mechanism in place to test the requirement of No. 1 above. The 2014 Form 990, Schedule A, Part IV, Section A, lines 1-3 now asks if the SO supports a (4), (5), or (6) organization. If “yes”, the organization must confirm that each supported organization satisfies the 509(a)(2) requirement and describe how the supporting organization made that determination. The SO must also confirm that the support provided was used by the supported organizations exclusively for charitable purposes and describe what controls are in place to ensure such use.

Type I, II and III Organizations

A supporting organization must be further classified as a Type I, Type II or Type III organization (Type III has a further classification between “functionally integrated” or “not functionally integrated”). To be a supporting organization, the SO must meet three tests:

- Organizational Test;
- Operational Test; and
- Relationship Test

Organizational Test

To pass this test, an SO’s Articles of Incorporation must:

be limited to operating exclusively for the benefit of, performing the functions of, or carrying out the purposes of one or more public charities;

not expressly empower the SO to engage in any activities that do not further its stated purpose; and

specifically identify the supported organization(s) if qualifying as a Type III SO, or identify a class of supporting organizations if qualifying as a Type I or II SO.

Operational Test

To pass this test, the activities of the SO must actually meet the Organizational Test requirement of operating solely for the benefit of, performing the functions of, or carrying out the purposes of one or more public charities.

Relationship Test

To pass this test, a **Supporting Organization** must meet one of three relationships:

A Type I organization must be operated, supervised or controlled by its supported organization(s). Typically this occurs through the supported organization's control (through election or appointment) of a majority of the directors/trustees of the SO. This is usually referred to as a parent-subsidiary relationship.

A Type II supporting organization must be supervised or controlled in connection with its supported organization(s). In this case, a majority of the directors/trustees of the supported organization also represent a majority of the directors/trustees of the supporting organization. This is usually referred to as a brother-sister relationship.

While it is easy to identify the "control" with a Type I or Type II SO, a Type III supporting organization must only be operated in connection with one or more publicly supported organizations. Since a Type III organization is not subject to the same level of control as a Type I or II, a Type III is subject to three additional requirements: the notification requirement, the responsiveness test and the integral part test.

Notification Requirement

The notification requirement specifies that a Type III organization annually document to each of its supported organizations:

A written notice describing the type and amount of support provided by the supporting organization during the preceding taxable year;

A copy of the supporting organization's most recent Form 990; and

A copy of the supporting organization's current governing documents to the extent not previously provided.

This information must be provided no later than the last day of the fifth month following the close of the SO's taxable year.

Responsiveness Test

A Type III organization must be responsive to the demands of a supported organization. The organization will meet this test if the organization is adequately represented in the governing body of the supporting organization.

This may be accomplished in one of three approaches:

The supported organization may appoint at least one officer, director or trustee of the supporting organization;

At least one member of the governing body of the supported organization also serves as an officer, director or trustee of the supporting organization; or

The officers, directors or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors or trustees of the supported organization.

And because of this relationship, the supported organization must have a significant voice in how the supporting organization manages and uses its assets.

Integral Part Test

A Type III supporting organization may be functionally integrated (FISO) or non-functionally integrated (non-FISO). A non-FISO is subject to significantly greater restrictions.

Specifically, distributions from private foundations to non-FISO's are not qualifying distributions for purposes of satisfying the private foundation's required annual distributions under Section 4952 and may be taxable expenditures under Section 4945. Also, non-FISO's are subject to the excess business holding rules under Section 4943 and must meet annual payout requirements. A non-FISO must distribute its distributable amount each year to its supported organizations.

To be ***functionally integrated***, an organization must satisfy one of three tests:

- Activities test;
- Parent test; or
- Governmental Supported Organization test

The Activities test has two elements, both of which must be met. The Direct Furtherance element requires that substantially all of the supporting organization's activities must be direct furtherance activities conducted by the supporting organization itself. Fundraising, managing non-exempt-use assets, grant-making to organizations and grant-making to individuals are not direct furtherance activities. The "but for" element provides that substantially all activities of a supporting organization must be activities that a supported organization would be involved in "but for" the supporting organization's involvement.

policies, programs and activities of the supported organization.

The Parent of Supported Organizations test requires that a supporting organization must have the power to appoint a majority of the officers, directors or trustees of the supported organization. In addition, the supporting organization must exercise a substantial degree of direction over the policies, programs and activities of the supported organization.

The Supporting a Government Entity test has not been fully developed, but interim guidance is provided in Notice 2014-4. This guidance states that the organization will be functionally integrated if: (1) there is at least one supported organization that is a governmental entity to which the supporting organization is responsive; and (2) it engages in activities for, or on behalf of, the governmental supported organization that performs the functions of, or carries out the purposes of, that governmental supported organization. The “but for” rule also applies here.

A non-FISO is also subject to the Attentiveness requirement, which mandates a certain level of distributions to supported organizations. These distributions must be sufficiently important to the organization to insure that the supported organization has sufficient reason to pay attention to the supporting organization’s role in its operations. The detailed calculations of the distribution requirement are complex and beyond the scope of this article.

Summary

In summary, the rules for being a public charity under the 509(a)(3) test are complex and demanding. Further, the Type III, non-functionally-integrated rules impose additional, sometimes daunting, demands on a supporting organization. However, sometimes, use of these provisions is the only viable option for maintaining public charity status.