

IRC 509(a)(3) SUPPORTING ORGANIZATIONS GUIDE SHEET

TYPE I & TYPE II

March 13, 2008

PART 1: ORGANIZATIONAL TEST UNDER IRC 509(a)(3)(A)

An organization must meet the organizational test to qualify under IRC 509(a)(3). If a supporting organization does not meet the Organizational Test, it is not qualified under IRC 509(a)(3). Special organizational test rules pertain to supporting organization that support IRC 501(c)(4), (5) or (6) organizations. Therefore, complete Section II below instead of Section I to demonstrate that an organization meets the organizational test where it seeks to qualify under 509(a)(3) because it is supporting an IRC 501(c)(4), (5) or (6) organization.

Section I - Organizational Test for an organization supporting IRC 509(a)(1) or 509(a)(2) public charities

		Yes	No
A.	Is the supporting organization requesting classification as a Type I or II supporting organization? If "No", refer case to 509(a)(3) Type III reserved inventory. If "Yes", to satisfy the organizational test there must be a "Yes" answer to one of the questions B, C or D below. In addition, all three components of question E must be met.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Does the supporting organization's organizing document specify by name the IRC 509(a)(1) or (2) organization(s) it supports? See Form 1023, Schedule D, Section III.1.a. If "Yes", skip to E below.	<input type="checkbox"/>	<input type="checkbox"/>
C.	Does the supporting organization's organizing document identify the IRC 509(a)(1) or (2) organization(s) it supports by class or purpose? See Form 1023, Schedule D, Section III.1.a. If "Yes", skip to E below	<input type="checkbox"/>	<input type="checkbox"/>
D.	Do the supporting organization and the supported organization(s) have a historic and continuing relationship such that there is a substantial identity of interests between the two organizations?	<input type="checkbox"/>	<input type="checkbox"/>
E.	To meet the organizational test, there must be a "Yes" answer to E(1) and "No" answers to E(2) and E(3)		
	E(1) Does the organization's organizing document limit its purposes to provide that it is organized, and at all times thereafter is operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified 509(a)(1) or (a)(2) organizations?	<input type="checkbox"/>	<input type="checkbox"/>
	E(2) Does the organization's organizing document expressly empower it to engage in activities which are not in furtherance of the purposes stated in E(1) above?	<input type="checkbox"/>	<input type="checkbox"/>
	E(3) Does the organization's organizing document expressly empower it to operate to support or benefit any organization not specified by name, purpose or class in its organizing document?	<input type="checkbox"/>	<input type="checkbox"/>

Section II – Organizations Operating in Conjunction With Certain IRC 501(c)(4), (5) or (6) organizations

		Yes	No
A.	Does the supporting organization claim to support an IRC 501(c)(4), (5) or (6) organization? If "Yes", proceed to questions B through E.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Does the IRC 501(c)(4), (5) or (6) organization meet the public support tests of IRC 509(a)(2)?	<input type="checkbox"/>	<input type="checkbox"/>
C.	Does the supporting organization meet the organizational test by stating in its organizing document that it will carry on exclusively charitable purposes, which can include religious, charitable, scientific, literary, educational, or for the prevention of cruelty to children or animals within the meaning of IRC 170(c)(2)?	<input type="checkbox"/>	<input type="checkbox"/>
D.	Does the supporting organization meet the Type I or Type II relationship requirement?	<input type="checkbox"/>	<input type="checkbox"/>
E.	Does the supporting organization have sufficient safeguards to ensure its support is used	<input type="checkbox"/>	<input type="checkbox"/>

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exclusively for charitable purposes?		
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PART 2: OPERATIONAL TEST UNDER IRC 509(a)(3)(A)

An organization must meet the operational test to qualify under IRC 509(a)(3). If an organization does not meet the requirements of either A or B below or a combination of A and B below, it does not meet the operational test.

		Yes	No
A.	Does the organization make payments to or for the use of the specified IRC 509(a)(1) or (2) organizations? To meet the operational test under this section, there must be a "Yes" answer to A(1), A(2), A(3), or A(4) below. If "No", the organization must meet B below to meet the operational test.	<input type="checkbox"/>	<input type="checkbox"/>
	A(1) Does the organization make payments only to or for the use of one or more specified IRC 509(a)(1) or (2) organizations? See Form 1023, Part VI.1.b.	<input type="checkbox"/>	<input type="checkbox"/>
	A(2) Does the organization make payments to or for the use of individual members of the charitable class benefited by the specified IRC 509(a)(1) or (2) organization(s)? See Form 1023, Part VI.1.a and Form 1023, Part VI.2	<input type="checkbox"/>	<input type="checkbox"/>
	A(3) Does the organization make payments indirectly through another unrelated organization to or for the use of a member of a charitable class benefited by the specified IRC 509(a)(1) or (2) organization(s), but only if the payments consists of a grant to an individual rather than to an organization?	<input type="checkbox"/>	<input type="checkbox"/>
	A(4) Does the organization make payments to or for the use of another supporting organization that also supports or benefits the specified 509(a)(1) or (2) organization(s)?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Does the organization provide services or facilities to or for the use of the specified IRC 509(a)(1) or (2) organization(s)? To meet the operational test under this section, there must be a "Yes" answer to B(1), B(2), or B(3) below. If "No", the organization must meet A above to meet the operational test.	<input type="checkbox"/>	<input type="checkbox"/>
	B(1) Does the organization provide services or facilities only to or for the use of one or more specified IRC 509(a)(1) or (2) organization(s)? See Form 1023, Part VI.1.b.	<input type="checkbox"/>	<input type="checkbox"/>
	B(2) Does the organization provide services or facilities to or for the use of individual members of the charitable class benefited by the specified IRC 509(a)(1) or (2) organization(s)? See Form 1023, Part VI.1.a and Form 1023, Part VI.2	<input type="checkbox"/>	<input type="checkbox"/>
	B(3) Does the organization provide services or facilities to or for the use of another supporting organization that also supports or benefits the specified IRC 509(a)(1) or (2) organization(s)?	<input type="checkbox"/>	<input type="checkbox"/>

PART 3: CONTROL TEST UNDER IRC 509(a)(3)(C)

An IRC 509(a)(3) organization cannot be controlled by disqualified persons (other than foundation managers). Questions A through F require a "No" answer. Questions G through L are facts and circumstances questions that require additional scrutiny if answered "Yes."

		Yes	No
A.	Is the organization controlled directly or indirectly by disqualified persons because disqualified persons on the governing board can potentially aggregate their votes together to control the operations of the supporting organization? See Form 1023, Schedule D, Section IV.1.c.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Is the organization controlled directly or indirectly by disqualified persons because disqualified persons on the governing board can potentially aggregate their votes together with other board members who provide personal services to the disqualified persons, such as legal, accounting, or investment advice, to control the operations of the supporting	<input type="checkbox"/>	<input type="checkbox"/>

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C.	Do disqualified persons have the right to appoint the nominating committee or successor governing board members? See Form 1023, Schedule D, Section IV.1.a	<input type="checkbox"/>	<input type="checkbox"/>
		Yes	No
D.	Is the organization controlled directly by disqualified persons because the disqualified persons either have 50% of the voting power on the governing board or a veto power over the supporting organization's activities?	<input type="checkbox"/>	<input type="checkbox"/>
E.	Is the organization controlled directly or indirectly by disqualified persons because disqualified persons have veto power over the supporting organization's activities?	<input type="checkbox"/>	<input type="checkbox"/>
F.	Is the organization controlled directly because the disqualified persons control the primary assets of the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>
G.	Does a disqualified person own a general partnership interest in a limited partnership in which the supporting organization owns an interest?	<input type="checkbox"/>	<input type="checkbox"/>
H.	Does a disqualified person own an interest of 51% or more of the voting stock of a corporation in which the supporting organization is a stockholder?	<input type="checkbox"/>	<input type="checkbox"/>
I.	Does a disqualified person hold 51% or more control of a corporation through a voting trust or other voting arrangement in which the supporting organization is a stockholder?	<input type="checkbox"/>	<input type="checkbox"/>
J.	Does a disqualified person have a controlling interest in a limited liability corporation (LLC) in which the supporting organization has an interest?	<input type="checkbox"/>	<input type="checkbox"/>
K.	Does a disqualified person have an ownership interest in assets such as real estate, insurance, art work, collectibles, intellectual property, promissory notes, or other assets in which the supporting organization also has an interest?	<input type="checkbox"/>	<input type="checkbox"/>
L.	Do donors or their family members have the right to provide advice to the supporting organization regarding investments or grant making?	<input type="checkbox"/>	<input type="checkbox"/>
M.	Taking into account all of the facts and circumstances, including information described in questions G through L, are disqualified persons in a position to directly or indirectly control the decisions made by the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>

PART 4: RELATIONSHIP REQUIREMENT UNDER IRC 509(a)(3)(B)

An organization must meet either Section I below to qualify as a Type I Supporting Organization or Section II below to qualify as a Type II Supporting Organization.

Section I - Type I "Operated, Supervised or Controlled By"

		Yes	No
A.	Is the supporting organization seeking to meet the "operated, supervised or controlled by" relationship test with respect to one or more IRC 509(a)(1) or (2) organizations? If "Yes," continue. If "No," see Section II below or refer case to 509(a)(3) Type III reserve inventory.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Are a majority of the supporting organization's officers, directors, or trustees appointed or elected by a supported organization's officers, directors, trustees or membership? See Form 1023, Schedule D, Sec. II .1	<input type="checkbox"/>	<input type="checkbox"/>
C.	Does the supporting organization accept gifts or contributions from any person (other than a public charity described in IRC 509(a)(1), (2) or (4)) who directly or indirectly controls the governing body of a supported organization (alone, or together with family members or a 35% controlled organization)? If "No," proceed to the next question. If "Yes," the organization does not meet this requirement.	<input type="checkbox"/>	<input type="checkbox"/>
D.	Does the supporting organization support organizations that are not organized in the United States? If "No," skip D(1), D(2), and D(3). If "Yes," proceed to these questions. There must be a "Yes" answer to either D(1) or D(2), and a "Yes" to D(3) for the organization to qualify under IRC 509(a)(3). See Form 1023, Part VIII, 14a.	<input type="checkbox"/>	<input type="checkbox"/>

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D(1)	Is the foreign supported organization recognized by the IRS as exempt under IRC 501(c)(3) and a public charity under IRC 509(a)(1) or (2)? OR	<input type="checkbox"/>	<input type="checkbox"/>
D(2)	Is the foreign supported organization described in IRC 501(c)(3) and a public charity described under IRC 509(a)(1) or (2)?	<input type="checkbox"/>	<input type="checkbox"/>
		Yes	No
D(3)	Does the organization retain control and discretion over the funds distributed to the foreign organization? See Rev. Ruls. 74-229 and RR 66-79 for more information regarding qualification and deductibility.	<input type="checkbox"/>	<input type="checkbox"/>

Section II - Type II "Supervised or Controlled in Connection With"

		Yes	No
A.	Is the organization seeking to meet the “supervised or controlled in connection with” relationship test with respect to one or more IRC 509(a)(1) or (2) organizations? If “Yes,” continue. If “No,” see Section I above or refer case to 509(a)(3) Type III reserve inventory.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Is control or management of the supporting organization placed with the same persons that control or manage the supported organization? See Form 1023, Schedule D, Sec. II.2	<input type="checkbox"/>	<input type="checkbox"/>
C.	Does the organization support organizations that are not organized in the United States? If “Yes,” proceed to the next questions. There must be a "Yes" answer to either C(1) or C(2), and a "Yes" to C(3) for the organization to qualify under IRC 509(a)(3). See Form 1023, Part VIII, 14a.	<input type="checkbox"/>	<input type="checkbox"/>
C(1)	Is the foreign supported organization recognized by the IRS as exempt under IRC 501(c)(3) and a public charity under IRC 509(a)(1) or (2)? OR	<input type="checkbox"/>	<input type="checkbox"/>
C(2)	Is the foreign supported organization described in IRC 501(c)(3) and a public charity described under IRC 509(a)(1) or (2)?	<input type="checkbox"/>	<input type="checkbox"/>
C(3)	Does the organization retain control and discretion over the funds distributed to the foreign organization? Please see RR 74-229, RR 66-79 and PLR 9651031 for more information regarding qualification and deductibility.	<input type="checkbox"/>	<input type="checkbox"/>

PART 5: ORGANIZATIONS REQUIRING HEIGHTENED SCRUTINY

Most supporting organizations further legitimate charitable purposes. However, some taxpayers may seek to shield assets inappropriately through supporting organizations. This has resulted in the need for heightened scrutiny of supporting organizations generally to screen for those where there is a significant potential for abuse. The typical Type I or II supporting organization that supports a hospital, university, or other large charitable institution generally does not raise the private benefit concerns that require heightened scrutiny. The questions below are aimed at identifying situations that raise potential for impermissible private benefit. Additional questions needed to develop an issue should be tailored to the organization’s specific situation.

Section I – Potential Promoters

For purposes of completing this guide sheet, the term “promoter” refers to a person who organizes or assists in the organization of a partnership, trust, investment plan, or any other entity or arrangement that is to be sold to a third party. The concern is that the partnership, trust, etc., is designed to be used or is actually used by that third party to obtain tax benefits not allowable by the Internal Revenue Code.

		Yes	No
A.	Are any promoters identified with the establishment or operation of the supporting organization?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Does the supporting organization benefit a list of more than five supported organizations?	<input type="checkbox"/>	<input type="checkbox"/>

Section II - Unreasonable Compensation/Loans

		Yes	No
A.	Are goods, services, or cash provided to donors or their family members or persons with	<input type="checkbox"/>	<input type="checkbox"/>
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B.	Are the goods, services, or cash provided to donors or their family members or persons with whom they have business relationships part of reasonable compensation arrangements? See Form 1023, Part V.7.a-b	<input type="checkbox"/>	<input type="checkbox"/>
		Yes	No
C.	Are goods, services, or cash provided to officers, directors, or trustees? See Form 1023, Part V.7.a-b	<input type="checkbox"/>	<input type="checkbox"/>
D.	Are the goods, services, or cash provided to officers, directors, or trustees part of reasonable compensation arrangements? See Form 1023, Part V.7.a-b	<input type="checkbox"/>	<input type="checkbox"/>
E.	Are the goods, services, or cash provided to the five highest compensated employees or independent contractors part of reasonable compensation arrangements? F. 1023, Part V.7.a-b	<input type="checkbox"/>	<input type="checkbox"/>
F.	Is there evidence of any loan activity? See Form 1023, Part V.8.a-f and Part IX. Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
G.	Are loans made to donors or their family members or persons with whom they have a business relationship, to officers, directors, or trustees, or to the five highest compensated employees or independent contractors? See Form 1023, Part V.8.a-f and 9a	<input type="checkbox"/>	<input type="checkbox"/>
H.	Are the loans made to donors or their family members or persons with whom they have a business relationship, to officers, directors, or trustees, or to the five highest compensated employees or independent contractors part of reasonable compensation arrangements? See Form 1023, Part V.8 a-f and 9a	<input type="checkbox"/>	<input type="checkbox"/>

Section III - Closely Held Stock/Non-Liquid Investments/Assets That Do Not Produce Current Income

		Yes	No
A.	Does the supporting organization hold closely held stock? See Form 1023, Part VIII.11 and Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
B.	Does the supporting organization hold an interest in a partnership or limited liability company in which the donor retains an interest as a general partner or member? See Form 1023, Part VIII.8 and Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
C.	Does the supporting organization own significant other investments (\$100,000 or more) that are not explained in detail? See Form 1023, Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
D.	Does the supporting organization own significant land (\$100,000 or more)? See Form 1023, Part VIII.11 and Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
E.	Does the supporting organization own significant other property (\$100,000 or more) that does not produce current income? See Form 1023, Part VIII. 10-11 and Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
F.	Does the supporting organization own life insurance on the donor's life or the life of the donor's family member? See Form 1023, Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>
G.	Does the supporting organization own more than 20% of the stock of a corporation, partnership interest, or beneficial interest of an estate? See Form 1023, Part VIII.8 and Part IX, Balance Sheet	<input type="checkbox"/>	<input type="checkbox"/>