

NOVEMBER 8, 2011

Fiscal Sponsorship of Occupy Wall Street . . . and Other Locations

Last week, I received a call from a reporter at the *Chronicle of Philanthropy* asking whether it was true that people could donate in support of Occupy Wall Street and receive a charitable tax deduction.

Here's how I answered:

The [Alliance for Global Justice](#) is listed with the IRS as a 501(c)(3) public charity and so contributions to the Alliance are tax-deductible as charitable gifts.

I read [Chuck Kaufman's explanation of the Alliance's fiscal sponsorship of Occupy Wall Street](#) and found it fairly well-reasoned and appropriate. The Alliance can receive donations designated for the support of the Occupy Wall Street movement and hold those assets restricted for that specific cause. The Alliance seems to know that it must exercise discretion and control over all expenditures, to ensure that they are charitable. The Alliance cannot act as a conduit for another group: donations are restricted to support of the purposes of Occupy Wall Street, but the Alliance retains the right to decide who gets the money to further those purposes.

I also read [The Blaze critique of the relationship between the Alliance and Occupy Wall Street](#). While it is clear that the writer differs ideologically with these progressive endeavors, he didn't seem to find anything legally improper. In between the lines, I almost detected some respect for how it was set up.

It can take 3 to 6 months or more for a new organization to apply to the IRS and receive approval of its 501(c)(3) tax exemption. Fiscal sponsorships are often used to provide a charitable fundraising facility for an emerging community need, whether it is a natural disaster like Hurricane Katrina or a sudden upsurge among people seeking reforms or protesting events.

I'm sure that the Alliance is finding it a big challenge to handle these financial affairs for the movement, and no doubt it will need to make improvements as it goes along.

Note: Alliance for Global Justice is not a client of Adler & Colvin.

The *Chronicle of Philanthropy* story appeared online [here](#).

Other Cities?

Next, I was asked about other cities where there may not be a proper fiscal sponsorship in place, and here's how I answered:

RELATED CATEGORIES

➤ [Public Charities](#)

AUTHOR



Gregory L. Colvin
Emeritus

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



Stephanie L. Petit
Principal



Eric K. Gorovitz
Principal

About the financial status of the Occupy groups, there's more to worry about than just the tax deduction. Before supporters open a bank account, decisions must be made:

1. Who does the money belong to? The bank will want a tax ID number, either a person's social security number or an entity's federal employer identification number (FEIN). As far as the IRS is concerned, that is the owner of the account. If it is an individual person, he or she has legal control over the funds and deposits to the account may be taxable income to him or her, personally.
2. If the bank account is held by a new entity with a new FEIN, its tax life will begin. Sooner or later, it will need to file papers with the IRS and declare what it is.
3. If the entity doesn't qualify for some kind of tax-exempt status, the IRS will likely view it as a taxable organization, like a business.
4. Tax exemption as a 501(c)(3) charity is the most beneficial. If the Occupy group is educating the public and advocating for social change, with no more than an insubstantial amount of lobbying and absolutely no political candidate campaign activity, it could qualify. But it must not conduct or encourage any illegal activity, such as civil disobedience. Social welfare tax status is also available under 501(c)(4) if the group wants to do more lobbying and some political activity.
5. Most groups wanting to declare a tax-exempt status will want to file state papers as a nonprofit corporation, and may have state tax forms to file as well.
6. On top of that, the very act of soliciting funds for charitable or public-spirited purposes will likely trigger charitable solicitation registration laws in all the states where the group is soliciting funds. The state attorney general may enforce those laws and require donated funds to be spent in accord with those specific purposes.
7. For all these reasons, use of a local, reputable, experienced, tax-exempt fiscal sponsor can be a great advantage for a new project that is just getting on its financial legs. If the sponsor is convinced the Occupy group is conducting a truly charitable program, the sponsor can adopt the group as a direct project and take full responsibility for its financial, tax, and legal affairs.
8. With a fiscal sponsor in place for now, the decision about creating an independent, separate, new tax-exempt organization can be postponed until the group's structure, mission, and base of support have fully taken shape.
9. None of this is easy to do. Cutting corners can be disastrous. Those responsible for handling Occupy finances must understand the system under which they are operating, not misrepresent it, and pay faithful attention to the details.

Based on this additional commentary, a follow-up article will appear in the November 17 print edition of the *Chronicle of Philanthropy*. Stay tuned.