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New Activities for Your 501(c)(3): Eight Things to Keep in Mind

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When your organization applied to the IRS for tax-exempt status as an organization described in Section 501(c)(3) of the Internal Revenue Code, you described the activities you expected to carry out, often before they even began. However, it often happens that after receiving your determination letter, as the organization grows and evolves, you may want to launch new activities that were not part of that original description. Here are eight key considerations as you move forward:

1. Is the Activity Charitable? The first consideration should always be whether the activity is “charitable” within the meaning of Section 501(c)(3). The term “charitable” is used in its generally accepted legal sense, but not every good thing is necessarily charitable for IRS purposes. Qualifying activities include:

- › Relief of the poor, distressed, or underprivileged
- › Advancement of religion, education, or science
- › Erection or maintenance of public buildings, monuments, or works
- › Lessening the burdens of government or neighborhood tensions
- › Eliminating prejudice and discrimination
- › Defending human and civil rights
- › Combating community deterioration or juvenile delinquency
- › If you are unsure whether a proposed activity qualifies as charitable, consult appropriate counsel.

2. Does It Align With Your Mission? It is important to consider whether the activity is consistent with your organization’s charitable purposes. These purposes can be found in the Articles of Incorporation and your mission statement, if you have one.

Sometimes, an organization’s charitable purpose may be described very narrowly. If the new activity falls outside your charitable purpose, it is possible to amend your governing documents to state a broader purpose to allow you to proceed with the new activity. However, in many states, charitable trust law will apply the change only to assets received after the change is effective. In addition, any specific charitable purpose restrictions imposed on assets you hold at the time of the gift by donors must also continue to be followed. In most states, the state Attorney General is responsible for enforcing such charitable restrictions.

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AUTHORS



Rosemary E. Fei
Senior Counsel



Sara Ortega Corriols
Associate

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EDITORS



Eric K. Gorovitz
Principal

3. Watch for Private Benefit or Inurement. Even if an activity accomplishes charitable purposes within the meaning of 501(c)(3) and furthers the organization's mission, a 501(c)(3) organization cannot conduct an activity that provides more than "incidental" benefits to individuals or businesses who are not members of a charitable class. In this context, "incidental" means benefits that are both unavoidable if the charitable purpose is to be achieved and no more than necessary to achieve the charitable purpose.

Unlike other private benefit, private inurement — which occurs where an insider takes advantage of their influence over a charity to benefit themselves — is strictly prohibited.

4. Income Generation and Unrelated Business Income Tax (UBIT). If a new activity does not inherently further the organization's charitable mission aside from any income it generates, but merely generates income that the organization can apply to support that mission, it is termed "unrelated." If the unrelated activities constitute a trade or business and are regularly carried on, then the net income they generate is subject to tax at ordinary corporate tax rates, unless an exception is available. (For more information on UBIT, see our blog posts [here](#) and [here](#).)

5. Assess Risks and Insurance Needs. Some new activities may be more dangerous or entail risks of a different nature than an organization's current activities. You should evaluate whatever risks a new activity may create and manage them. This may include:

- › Careful operational planning to minimize risks to staff, volunteers, and participants
- › Obtaining liability waivers from volunteers or participants where appropriate
- › Securing sufficient insurance coverage for additional risks (or being prepared to self-insure)
- › Housing the new activity in a separate legal entity to prevent new risks from endangering other activities

6. Does It Represent a Material Change? Your IRS determination letter may not be relied upon with respect to any activities that reflect a material change in the facts you originally presented to the IRS in your application. The new activity will not benefit from having been disclosed, reviewed, and confirmed as charitable by the IRS.

Nonetheless, you can still proceed once you determine that the new activity is charitable, mission-aligned, and avoids excessive private benefit or inurement. Such determination, however, rests with the organization and warrants careful consideration, often with the benefit of independent counsel review, given the potential consequences if the activity is later determined to be inconsistent with 501(c)(3) requirements.

7. Consider the Political Climate. Activities that intersect with hot-button political or social issues may draw scrutiny from regulators and other government agencies, legislative bodies, the media, or the public. Organizations should consider their appetite for, and ability to manage, such scrutiny, even if the activity is charitable and compliant.

If a new activity changes the organization's risk assessment, then it may need to consider whether it should adjust its risk tolerance accordingly or take additional steps to mitigate any perceived new risks.

8. Reporting New Activity on Form 990. Organizations must report significant changes in program services or in how the organization conducts its charitable activities on Form 990, Part III. If the new activities are material in scope, you should inform your tax preparer so they can make the appropriate disclosures to the IRS. Also, if UBIT applies, additional quarterly IRS filings — and tax payments — will be necessary.