



Statement of

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Executive Summary

Chairman Schweikert, Ranking Member Pascrell, and Members of the Subcommittee:

My name is Justin Chung, and I am a legislative attorney in the American Law Division of the Congressional Research Service (CRS). Thank you for the opportunity to testify today on tax-exempt organizations and their involvement in political activity. As you have requested, my testimony will focus on three subjects: (1) the history and development of the law governing organizations that are exempt from federal taxation under Internal Revenue Code (IRC) section 501(c), particularly under sections 501(c)(3) and 501(c)(4); (2) the growth in the number of Section 501(c)(3) and 501(c)(4) organizations; and (3) current reporting requirements for these organizations.

Legislation enacted by Congress between 1894 and 1969 established and refined the foundational requirements for tax exemption in the United States Tax Code that apply today, including:

- enumerated charitable purposes,
- a prohibition on private inurement,
- certain tax deductions for contributions,
- limitations on lobbying and campaign activity,
- a tax on unrelated business income, and
- categories of tax-exempt organizations, including Section 501(c)(3) charitable organizations and Section 501(c)(4) social welfare organizations.

Section 501(c)(3) and Section 501(c)(4) organizations are the first and second most common types of tax-exempt organizations, respectively, and continue to grow across multiple measures. They differ in significant ways, including their eligibility to receive tax-deductible charitable contributions and their ability to engage in political activity, such as electioneering and lobbying.

Under its constitutional taxing power, Congress has the authority to require organizations to provide certain information to the Internal Revenue Service (IRS) for purposes of obtaining and establishing continued compliance with the requirements for tax exempt status. Section 501(c) organizations generally must file some version of IRS Form 990. Schedules to the Form 990 require further information. For example, Schedule B reports substantial donor contributions and Schedule C reports political activity. Section 501(c) organizations may also have reporting obligations to the Federal Election Commission (FEC).

Under current IRS regulations, donor information (i.e., names and addresses) must be reported by Section 501(c)(3) organizations, but not by Section 501(c)(4) entities. The donor information reported by Section 501(c)(3) organizations that are private foundations is made available to the public, but not the donor information for Section 501(c)(3) organizations that qualify as public charities.

History and Development of the Law Governing Tax-Exempt Organizations Under IRC Section 501(c)

For as long as there has been a federal income tax, Congress has exempted certain types of entities from income taxation.¹ Legislation enacted between 1894 and 1969 established and refined the foundational requirements for tax exemption in the United States Tax Code that apply today.² During this period, Congress established the basic principles and prerequisites of tax exemption, and identified the activities that are and are not exempt from federal income taxation.³

Even before the founding of the United States, early settlers formed charitable and other “voluntary” associations—such as hospitals, fire departments, and orphanages—to address social needs.⁴ These associations comprised two distinct types of organizations—public-serving and member-serving.⁵ Public-serving, or “charitable,” organizations—such as schools and churches—provided services to the public.⁶ During the Industrial Revolution, private philanthropy proliferated to direct newly acquired wealth towards charitable endeavors.⁷ Compared to other early charitable organizations, private foundations generally were controlled and funded by fewer sources, such as an individual, corporation, or family.⁸

In contrast to public-serving organizations, member-serving organizations—such as fraternal societies and mutual benefit associations—promoted the interests of their members.⁹ The distinction between public-serving and member-serving organizations would come to be reflected in the categorization of tax-exempt organizations. Public-serving organizations are now described under section 501(c)(3) of the IRC, with further division between public charities and private foundations.¹⁰ Member-serving organizations are covered under other subsections of section 501(c).¹¹

The Wilson-Gorman Tariff Act of 1894¹² contains one of the earliest statutory references to tax exemption for charitable organizations.¹³ The Act established the requirement that tax-exempt charitable organizations operate for certain enumerated purposes.¹⁴ It stated that the corporate income tax shall not apply to “corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies.”¹⁵ This exemption language

¹ STAFF OF J. COMM. ON TAXATION, 109TH CONG., HISTORICAL DEVELOPMENT AND PRESENT LAW OF THE FEDERAL TAX EXEMPTION FOR CHARITIES AND OTHER TAX-EXEMPT ORGANIZATIONS, DOC. NO. JCX-29-05, AT 2 (2005), <https://www.jct.gov/publications/2005/jcx-29-05/> [hereinafter JCX-29-05].

² Paul Arnsberger et al., *A History of the Tax-Exempt Sector: An SOI Perspective*, *Stat. Income Bull.* 105, 106 (2008), <https://www.irs.gov/pub/irs-soi/tehistory.pdf>.

³ *Id.*

⁴ *Id.* at 105.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ I.R.C. §§ 501(c)(3); 509; Arnsberger et al., *supra* note 2, at 105.

¹¹ I.R.C. § 501(c); Arnsberger et al., *supra* note 2, at 105.

¹² Wilson-Gorman Tariff Act of 1894, ch. 349, 28 Stat. 509.

¹³ Arnsberger et al., *supra* note 2, at 106.

¹⁴ Wilson-Gorman Tariff Act of 1894, ch. 349, 28 Stat. 509, 556; Arnsberger et al., *supra* note 2, at 106.

¹⁵ Wilson-Gorman Tariff Act of 1894, ch. 349, 28 Stat. 509, 556; Arnsberger et al., *supra* note 2, at 106–07.

provided the basis for future tax exemption legislation.¹⁶ The Revenue Act of 1909¹⁷ set forth the requirement that tax-exempt charitable organizations be free of private inurement—in other words, that they be nonprofit entities.¹⁸

The Revenue Act of 1913¹⁹ first introduced a separate tax exemption for “any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare,” the precursor to the modern section 501(c)(4) exemption.²⁰ The provision may have resulted from lobbying by the Chamber of Commerce for an exemption for civic or commercial organizations.²¹

To encourage charitable contributions, the Revenue Act of 1917²² established, for the first time, an individual income tax deduction for contributions made to tax-exempt charitable organizations.²³ Congress later added deductions for charitable contributions from estates and corporations.²⁴

The Revenue Act of 1934²⁵ set forth limits on lobbying by charitable organizations, stating that “no substantial part” of such an organization’s activities can involve “propaganda” or influencing legislation.²⁶

The Revenue Act of 1950²⁷ marked the start of a period of increasing limitation on tax exemption. The Act established the “unrelated business income tax” (UBIT) so that income earned by a tax-exempt organization from activity not “substantially related” to the organization’s exempt purpose is taxed.²⁸

The Internal Revenue Code of 1954²⁹ introduced the current structure of the IRC, with section 501(c) describing the now familiar categories of tax-exempt organizations.³⁰ Among the categories of exempt organizations, which remain largely unchanged to today, charitable organizations were described under section 501(c)(3) and social welfare organizations in section 501(c)(4).³¹

The 1954 Code also established limits on political activities.³² Charitable organizations governed by section 501(c)(3) were prohibited from “participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), a political campaign on behalf of any candidate for public office.”³³ The Code did not impose the same explicit prohibitions against engaging in political activities on 501(c)(4)

¹⁶ Arnsberger et al., *supra* note 2, at 107.

¹⁷ Revenue Act of 1909, 36 Stat. 11.

¹⁸ Revenue Act of 1909, 36 Stat. 11, 113; Arnsberger et al., *supra* note 2, at 107.

¹⁹ Revenue Act of 1913, Pub. L. No. 63-16, ch. 16, 38 Stat. 114.

²⁰ Revenue Act of 1913, Pub. L. No. 63-16, ch. 16, 38 Stat. 114, 172; Jeremy Koulisch, *From Camps to Campaign Funds: The History, Anatomy, and Activities of 501(c)(4) Organizations* 7 (2016), [https://www.urban.org/sites/default/files/publication/77226/2000594-From-Camps-to-Campaign-Funds-The-History-Anatomy-and-Activities-of-501\(c\)\(4\)-Organizations.pdf](https://www.urban.org/sites/default/files/publication/77226/2000594-From-Camps-to-Campaign-Funds-The-History-Anatomy-and-Activities-of-501(c)(4)-Organizations.pdf); JCX-29-05 at 31, 160; John Francis Reilly et al., *IRC 501(c)(4) Organizations* 4 (2003), <https://www.irs.gov/pub/irs-tege/eotopici03.pdf>.

²¹ Koulisch, *supra* note 20, at 7; JCX-29-05 at 162.

²² War Revenue Act of 1917, Pub. L. No. 65-50, ch. 63, 40 Stat. 300.

²³ War Revenue Act of 1917, Pub. L. No. 65-50, ch. 63, 40 Stat. 300, 330; Arnsberger et al., *supra* note 2, at 107.

²⁴ Arnsberger et al., *supra* note 2, at 108.

²⁵ Revenue Act of 1934, Pub. L. No. 73-216, ch. 277, 48 Stat. 680.

²⁶ Revenue Act of 1934, Pub. L. No. 73-216, ch. 277, 48 Stat. 680, 690, 700, 760; Arnsberger et al., *supra* note 2, at 106, 124.

²⁷ Revenue Act of 1950, Pub. L. No. 81-814, ch. 994, 64 Stat. 906.

²⁸ Revenue Act of 1950, Pub. L. No. 81-814, ch. 994, 64 Stat. 906, 948-50; Arnsberger et al., *supra* note 2, at 107.

²⁹ Internal Revenue Code of 1954, Pub. L. No. 83-591, ch. 736, 68A Stat. 3.

³⁰ Internal Revenue Code of 1954, I.R.C. § 501(c); Arnsberger et al., *supra* note 2, at 124.

³¹ Internal Revenue Code of 1954, I.R.C. § 501(c)(3), (4); Arnsberger et al., *supra* note 2, at 124.

³² Internal Revenue Code of 1954, I.R.C. § 501(c)(3), Arnsberger et al., *supra* note 2, at 106, 124.

³³ Internal Revenue Code of 1954, I.R.C. § 501(c)(3), Arnsberger et al., *supra* note 2, at 124.

organizations.³⁴ Subsequent IRS rulings gave 501(c)(4) organizations more leeway to engage in lobbying and political activity than 501(c)(3) entities.³⁵

The 1954 Code also established the distinction between a public charity and a private foundation for 501(c)(3) organizations.³⁶ The Tax Reform Act of 1969³⁷ included the first explicit definition of a private foundation, defining it as a charitable organization that did not: (1) engage in inherently public activities; (2) test for public safety; (3) receive substantial support from a wide array of public sources; or (4) operate in support of any organization that met any of the three preceding requirements.³⁸ Responding to concerns that private foundations were less accountable to the public than traditional charities, the 1969 Act also established an array of requirements specific to private foundations, including imposing a minimum charitable payout and an excise tax on net investment income.³⁹

The Revenue Reconciliation Act of 1993⁴⁰ imposed a tax on certain nondeductible lobbying and political expenditures made by membership organizations that are exempt from federal income taxation under IRC section 501(c)(4).⁴¹

The current iteration of the IRC describes approximately thirty types of tax-exempt organizations.⁴² The IRS has explained that “public charities exempt under section 501(c)(3) represent most of the tax-exempt organizations, and account for the bulk of the financial activity for the tax-exempt sector.”⁴³ The present exempt purposes allowed for 501(c)(3) organizations are: religious, charitable, scientific, testing for public safety, literary, educational, amateur sports, and the prevention of cruelty to children or animals.⁴⁴

Section 501(c)(3) organizations are further classified as either a private foundation or a public charity, distinguished primarily by the level of public involvement in their activities.⁴⁵ A Section 501(c)(3) organization is presumed to be a private foundation unless it requests, and qualifies for, a determination as a public charity, which generally involves proving public support or activity.⁴⁶

³⁴ Internal Revenue Code of 1954, I.R.C. § 501(c)(4).

³⁵ See, e.g. Rev. Rul. 55-269, 1955-1 C.B. 26; Rev. Rul. 81-95, 1981-1 C.B. 332; Koulisch, *supra* note 20, at 7.

³⁶ JCX-29-05 at 10.

³⁷ Tax Reform Act of 1969, Pub. L. 91-172, 83 Stat. 487.

³⁸ Arnsberger et al., *supra* note 2, at 108; JCX-29-05 at 10.

³⁹ Arnsberger et al., *supra* note 2, at 106–08.

⁴⁰ Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, tit. XIII, ch. 1, §§ 13001–134444, 107 Stat. 312, 416.

⁴¹ Arnsberger et al., *supra* note 2, at 106, 126.

⁴² CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock (2020).

⁴³ Statistics of Income, Nonprofit Charitable and Other Tax-Exempt Organizations, Tax Year 2019, I.R.S. Pub. 5331 (Rev. 7-2023), <https://www.irs.gov/pub/irs-pdf/p5331.pdf>.

⁴⁴ I.R.C. § 501(c)(3).

⁴⁵ I.R.C. § 509; *EO Operational Requirements: Private Foundations and Public Charities*, IRS, <https://www.irs.gov/charities-non-profits/eo-operational-requirements-private-foundations-and-public-charities> (last visited Dec. 11, 2023).

⁴⁶ I.R.C. § 509(a)(1)-(4); *EO Operational Requirements: Private Foundations and Public Charities*, *supra* note 45; *Exempt Organizations Annual Reporting Requirements - Form 990, Schedules A and B: Public Charity Support Test*, IRS, <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-form-990-schedules-a-and-b-public-charity-support-test> (last visited Dec. 10, 2023); *Public Charities*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/public-charities> (last visited Dec. 11, 2023).

Section 501(c)(3) and 501(c)(4) organizations (the second-most common type of tax-exempt organization)⁴⁷ differ in some significant ways. First, Section 501(c)(3) organizations are eligible to receive tax-deductible charitable contributions, while Section 501(c)(4) organizations generally are not.⁴⁸

Second, Section 501(c)(3) and Section 501(c)(4) organizations differ in their ability to engage in political activity, such as electioneering and lobbying.⁴⁹ For example, the charitable organizations described in Section 501(c)(3) may not engage in any campaign activity and may only conduct a limited amount of lobbying.⁵⁰ Meanwhile, Section 501(c)(4) social welfare organizations may engage in campaign activity (so long as such activity is not their primary purpose) and an unlimited amount of lobbying if it is related to their exempt purpose.⁵¹ The Supreme Court’s decision in *Citizens United v. FEC*⁵² invalidated limits in the Federal Election Campaign Act (FECA) on corporate independent expenditures. This included implications for incorporated Section 501(c)(4) organizations.⁵³ Even so, it remains the case that campaign intervention cannot be a Section 501(c)(4) organization’s primary purpose if it is to maintain its tax-exempt status. In other words, after *Citizens United*, an incorporated Section 501(c)(4) organization is no longer subject to those FECA limits, but—as a condition of its tax exemption—campaign intervention must not be its primary purpose, which is assessed by the IRS using a facts and circumstances test.⁵⁴ Section 501(c) organizations are required to report information regarding their political activities on Schedule C of the IRS Form 990.⁵⁵ They may also have reporting obligations to the FEC.⁵⁶

⁴⁷ *SOI Tax Stats - Tax-Exempt Organizations and Nonexempt Charitable Trusts - IRS Data Book Table 14*, IRS, <https://www.irs.gov/statistics/soi-tax-stats-tax-exempt-organizations-and-nonexempt-charitable-trusts-irs-data-book-table-14> (last visited Dec. 11, 2023).

⁴⁸ I.R.C. § 170; JCX-29-05 at 31, 164.

⁴⁹ I.R.C. §§ 501(c)(3), (4); 501(h); Treas. Reg. §§ 1.501(c)(3)-1; 501(c)(4)-1; JCX-29-05 at 164; STAFF OF J. COMM. ON TAXATION, 117TH CONG., PRESENT LAW AND BACKGROUND RELATING TO THE FEDERAL TAX TREATMENT OF POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES OF TAX-EXEMPT ORGANIZATIONS, DOC. NO. JCX-7-22 (2022), at 5, <https://www.jct.gov/publications/2022/jcx-7-22/> [hereinafter JCX-7-22].

⁵⁰ I.R.C. §§ 501(c)(3) (“[N]o substantial part of the activities [of the organization can be] carrying on propaganda, or otherwise attempting, to influence legislation . . . and [it may not] participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office”); 501(h); Treas. Reg. § 1.501(c)(3)-1(b)(3), (c)(3); JCX-7-22 at 7, 14.

⁵¹ I.R.C. § 501(c)(4) (establishing that the organization must be “operated exclusively for the promotion of social welfare”); Treas. Reg. § 1.501(c)(4)-1(a)(2) (“An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. . . . The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office . . . A social welfare organization . . . may qualify under section 501(c)(4) even though it is an action [i.e., lobbying] organization.”) (emphasis in original); JCX-7-22 at 11, 18.

⁵² *Citizens United v. FEC*, 558 U.S. 310 (2010).

⁵³ Section 501(c)(3) organizations were, and still are, prohibited from campaign intervention because they may “not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.” I.R.C. § 501(c)(3); *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> (last visited Dec. 11, 2023).

⁵⁴ See, e.g., Rev. Rul. 74-361, 1974-2 C.B. 159; Rev. Rul. 68-45, 1968-1 C.B. 259.

⁵⁵ IRS, Schedule C (Form 990): Political Campaign and Lobbying Activities (2023), <https://www.irs.gov/pub/irs-pdf/f990sc.pdf> (last visited Dec. 11, 2023); JCX-7-22 at 26.

⁵⁶ CRS In Focus IF11005, *Donor Disclosure: 501(c) Groups and Campaign Spending*, by R. Sam Garrett (2018); FECA/FEC requirements are otherwise beyond the scope of this testimony.

Table 1. Summary of Political Activity Allowed for Section 501(c)(3) and 501(c)(4) Organizations

	501(c)(3)	501(c)(4)
Lobbying	Limited	Unlimited, if related to exempt purpose
Campaign Activity	None	Must not be its primary purpose

Source: I.R.C. §§ 501(c)(3), (4); 501(h); Treas. Reg. § 1.501(c)(3)-1; Treas. Reg. § 1.501(c)(4)-1.

The Growth of 501(c)(3) and 501(c)(4) Organizations

By many measures, there has been substantial growth among 501(c)(3) and 501(c)(4) organizations.

In fiscal year (FY) 2022 the most recent year for which data is publicly available, the IRS reported that there were 1,480,565 Section 501(c)(3) organizations, and 74,735 Section 501(c)(4) organizations, which includes the number of organizations that had applied for and received recognition of their tax-exempt status.⁵⁷

By contrast, in FY1992, the IRS reported that there were 546,100 Section 501(c)(3) organizations and 142,673⁵⁸ Section 501(c)(4) organizations, as illustrated in **Figure 1**.

The IRS also reports data collected from the Form 990s that many tax-exempt organizations file and which is presented in the charts in **Figure 1**.

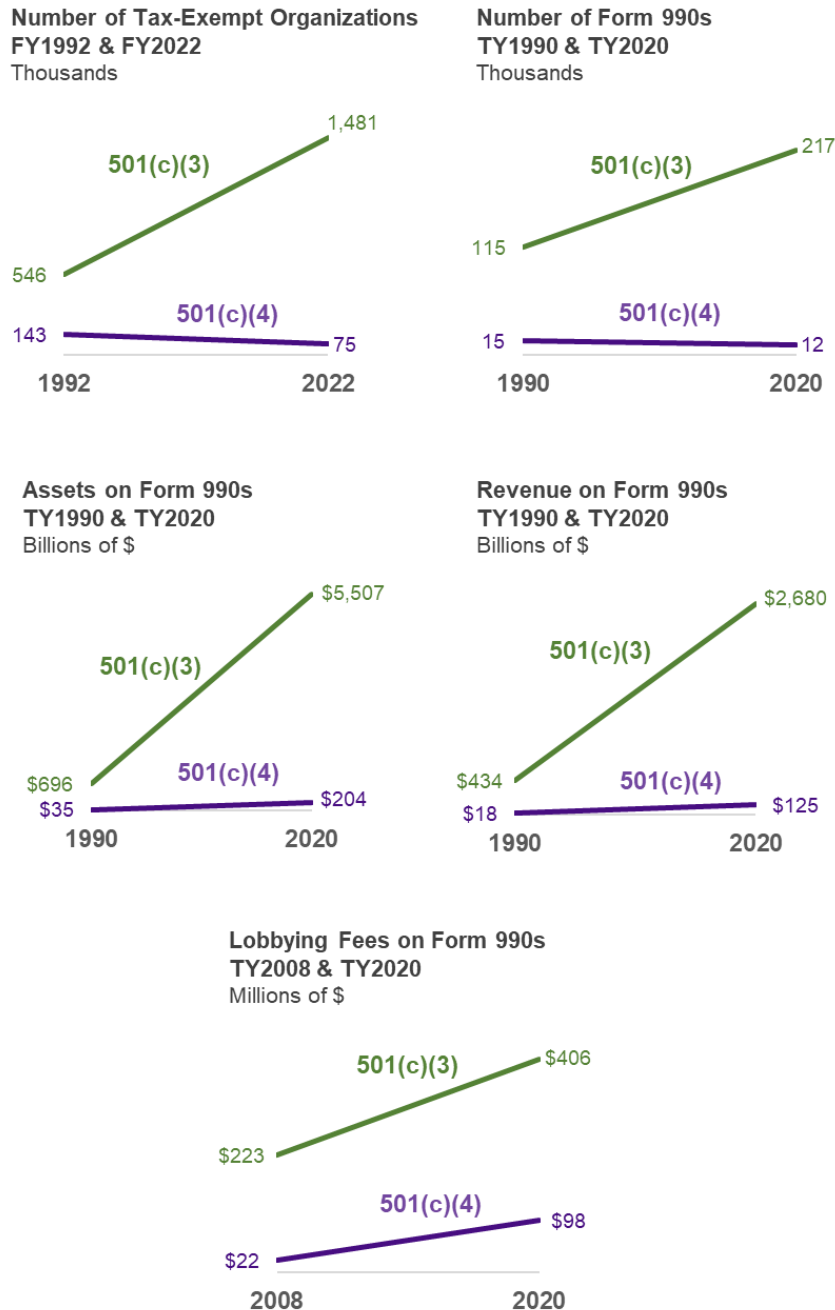
The IRS does not publicly release aggregated data regarding substantial contributions made to 501(c) organizations or their political activities, which the organizations report in Schedule B (discussed in greater detail below) and Schedule C of their annual Form 990 filings with the IRS.⁵⁹ Some organizations purport to numerically track political activity of Section 501(c) organizations using publicly available data from Form 990s, but they appear to rely on methodologies employed by the researchers rather than data drawn directly from IRS filings.⁶⁰

⁵⁷ Certain organizations, including many religious organizations, do not need to apply for tax-exempt status and are hence not included in these statistics. *Churches, Integrated Auxiliaries, and Conventions or Associations of Churches*, IRS, <https://www.irs.gov/charities-non-profits/churches-integrated-auxiliaries-and-conventions-or-associations-of-churches> (last visited December 11, 2023).

⁵⁸ This decrease in Section 501(c)(4) organizations between 1992 and 2002 may be the result of changes in filing requirements for small organizations and the removal of defunct organizations from the IRS database. See Koulisch, *supra* note 20, at 11–12.

⁵⁹ *Id.*

⁶⁰ See, e.g., Koulisch, *supra* note 20, at 4-7, 17-19.

Figure 1. Select IRS Data on 501(c)(3) and 501(c)(4) Tax-Exempt Organizations

Source: *SOI Tax Stats - Tax-Exempt Organizations and Nonexempt Charitable Trusts - IRS Data Book Tables 2, 3, 14, and 25*, IRS, <https://www.irs.gov/statistics/soi-tax-stats-irs-data-book-index-of-tables> (last visited Dec. 11, 2023).

Notes: FY is fiscal year; TY is tax year. The number of 501(c) organizations includes organizations that applied for and received recognition of tax-exempt status, or that are exempt by virtue of a tax treaty. Not all organizations described in section 501(c)(3) must apply for recognition of tax-exempt status, including churches, interchurch organizations of local units of a church, integrated auxiliaries of a church, conventions or associations of churches, and organizations (other than private foundations as described in section 509(a)) that have normal gross receipts in each taxable year of not more than \$5,000. Section 501(c)(3) organizations that have not applied for recognition of tax-exempt status are not included in this number. (Organizations may be recognized as tax exempt under section 501(c)(3) without filing an application if they are included in a group exemption letter given to an affiliated parent organization.) The first year the IRS reported lobbying fees was in 2008.

Current Donor Reporting Requirements for 501(c)(3) and 501(c)(4) Organizations

Under its constitutional taxing power, Congress has the authority to require organizations to provide certain information to the IRS for purposes of obtaining and establishing continued compliance with the requirements for tax exempt status.⁶¹ Section 6033 of the IRC prescribes the information required to be included in tax returns filed by exempt organizations.⁶² Subject to certain exceptions, tax-exempt organizations, including 501(c)(3) and 501(c)(4) organizations, must “file an annual return, stating specifically the items of gross income, receipts, and disbursements.”⁶³ In addition, Section 501(c)(3) organizations must include additional information in their returns, including “the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.”⁶⁴ Apart from specifying information required to be in returns, section 6033 also imposes record-keeping requirements on tax-exempt organizations as the IRS may prescribe.⁶⁵

To implement the requirements of section 6033, the IRS has issued regulations⁶⁶ and guidance on the information to be provided by exempt organizations on their tax returns. The IRS has also created the various iterations of Form 990 (Return of Organization Exempt from Income Tax)⁶⁷ and its schedules. Section 501(c) organizations must generally file some version of IRS Form 990.⁶⁸ Organizations with gross receipts above \$50,000 are generally required to file a Form 990 or Form 990-EZ.⁶⁹ Private foundations file a Form 990-PF, regardless of financial status.⁷⁰ Organizations with gross receipts at or below \$50,000 are not required to file a Form 990, but may be required to file an annual electronic notice called a Form 990-N or “e-postcard.”⁷¹ Churches and other qualifying religious organizations are exempt from the annual information-reporting requirements.⁷² Unlike individual and corporate income tax returns, Form 990s filed by exempt organizations are generally available to the public, but public release of certain information is restricted.⁷³

⁶¹ U.S. CONST. amend. XVI, § 7; *Grove City Coll. v. Bell*, 465 U.S. 555, 575 (1984) (“Congress is free to attach reasonable . . . conditions” to voluntary federal subsidies).

⁶² I.R.C. § 6033.

⁶³ *Id.* § 6033(a)(1).

⁶⁴ *Id.* § 6033(b).

⁶⁵ *Id.* § 6033(a)(1);

⁶⁶ Treas. Reg. § 1.6033-2.

⁶⁷ IRS, Return of Organization Exempt From Income Tax (Form 990), <https://www.irs.gov/pub/irs-pdf/f990.pdf> (last visited Dec. 11, 2023).

⁶⁸ CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock (2020), at 3.

⁶⁹ *Form 990 Series Which Forms Do Exempt Organizations File Filing*, IRS, <https://www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in> (last visited Dec. 11, 2023).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *EO Operational Requirements: Private Foundations and Public Charities*, IRS, <https://www.irs.gov/charities-non-profits/churches-religious-organizations/filing-requirements-for-churches-and-religious-organizations> (last visited Dec. 10, 2023); CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock (2020), at 3.

⁷³ I.R.C. §§ 6103, 6104.

Form 990 collects information about the organization's finances, assets, and activities.⁷⁴ The current Forms 990, 990-PF, and their instructions do not ask exempt organizations to report total amounts received from foreign contributions.

Schedule B of the Form 990 is the "Schedule of Contributors."⁷⁵ Schedule B reports substantial contributions received, which is generally defined as contributions from a single source totaling \$5,000 or more during the tax year.⁷⁶ The current Schedule B and its instructions do not delineate between foreign and domestic contributions.⁷⁷ They do not have further instructions on reporting receipt of foreign contributions.⁷⁸ Except for Part III of Schedule B—which is applicable only to 501(c)(7), (8), and (10) organizations (generally lodges, fraternities, societies, and recreation clubs)⁷⁹—Schedule B does not ask the filer to report the purpose and use of contributions.⁸⁰

Under current IRS regulations in place since 2020,⁸¹ the donor information (i.e., names and addresses) required to be included by tax exempt organizations in their Schedule Bs differs depending on whether the organization is established under section 501(c)(3) or one of the other provisions of section 501(c). Mirroring the disclosure requirements of IRC section 6033, IRS regulations require 501(c)(3) organizations to disclose both the amount of significant contributions and information regarding the source of these contributions (i.e., the donor information).⁸² Section 501(c)(4) and other 501(c) organizations are not subject to a similar statutory requirement and do not have to disclose donor information on their Schedule Bs,⁸³ although they still must report the amount of each substantial contribution. They also must maintain internal records of the names and addresses of their substantial contributors and make those records available for inspection by the IRS.⁸⁴

Public Release of Donor Information

IRC section 6104 establishes an exception to the general rule regarding confidentiality of tax returns.⁸⁵ In general, under section 6104(b), the IRS must make available to the public the annual returns filed under section 6033, i.e., the various versions of Form 990 and its schedules.⁸⁶ Section 6104(b) does not,

⁷⁴ IRS, Return of Organization Exempt From Income Tax (Form 990), <https://www.irs.gov/pub/irs-pdf/f990.pdf> (last visited Dec. 11, 2023); CRS Report R45922, *Tax Issues Relating to Charitable Contributions and Organizations*, by Jane G. Gravelle, Donald J. Marples, and Molly F. Sherlock (2020), at 3.

⁷⁵ IRS, Schedule B (Form 990): Schedule of Contributors (2022), <https://www.irs.gov/pub/irs-pdf/f990ezb.pdf> (last visited Dec. 11, 2023).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 4.

⁸⁰ *Id.* at 2–3.

⁸¹ Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. 31959 (May 28, 2020) (codified at 26 C.F.R. 1). The IRS issued the final rule in 2020 after notice and comment rulemaking. The IRS tried in 2018 to implement substantially the same rules in Revenue Procedure 2018-38. A federal district court set aside the Revenue Procedure for failing to follow Administrative Procedure Act rulemaking requirements. *Bullock v. Internal Revenue Serv.*, 401 F. Supp. 3d 1144 (D. Mont. 2019); *see also* CRS Legal Sidebar LSB10187, *Nonprofit Donor Information Disclosure*, by David H. Carpenter (updated 2019).

⁸² I.R.C. § 6033(b); Treas. Reg. § 1.6033-2(a)(2)(ii)(F); Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. at 31966.

⁸³ Treas. Reg. § 1.6033-2(a)(2); Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. at 31966.

⁸⁴ Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. at 31966.

⁸⁵ I.R.C. § 6104.

⁸⁶ *Id.* § 6104(b).

however, authorize the IRS to disclose to the public the name or address of any contributor to a tax-exempt organization, except a contributor to a private foundation organized under section 501(c)(3).⁸⁷ Similarly, IRC section 6104(d) generally requires tax-exempt organizations to release their returns to a member of the public upon request.⁸⁸ An organization other than a 501(c)(3) private foundation is not, however, required to disclose to the public the names and addresses of its contributors.⁸⁹

In short, under current IRS regulations, when a 501(c)(3)⁹⁰ organization is a private foundation, the IRS will, and the private foundation must upon request, release the donor information included on its Schedule B.⁹¹ For all other 501(c)(3) organizations (i.e., public charities), however, the IRS will, and the organizations can, redact donor information on any publicly released Schedule B.⁹²

Table 2. Summary of Donor Disclosure Requirements on IRS Schedule B (Form 990) for Section 501(c)(3) and 501(c)(4) Organizations

	501(c)(3)		501(c)(4)
	Private Foundation	Public Charity	
Is the amount of significant contributions reported?	Yes	Yes	Yes
Is donor information (i.e., name and address) reported?	Yes	Yes	No
Is donor information released to the public?	Yes	No	N/A
			(Not reported in the first instance.)

Source: I.R.C. §§ 6104, 6033; Treas. Reg. § 1.6033-2(a)(2)(ii)(F); Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. 31959, 31966 (May 28, 2020) (codified at 26 C.F.R. § 1).

⁸⁷ *Id.*

⁸⁸ *Id.* § 6104(d).

⁸⁹ *Id.* § 6104(d)(3)(A).

⁹⁰ As explained above, a 501(c)(4) organization need not include donor information on the Schedule B.

⁹¹ 26 C.F.R. § 301.6104(d)-1(b)(4); *Public Disclosure and Availability of Exempt Organizations Returns and Applications: Contributors' Identities Not Subject to Disclosure*, IRS, <https://www.irs.gov/charities-non-profits/public-disclosure-and-availability-of-exempt-organizations-returns-and-applications-contributors-identities-not-subject-to-disclosure> (last visited Dec. 10, 2023).

⁹² *Id.* In a 2020 GAO report, a senior DOJ official stated that difficulty obtaining donor information reported to IRS impaired the Justice Department's law enforcement efforts. U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-66R, CAMPAIGN FINANCE: FEDERAL FRAMEWORK, AGENCY ROLES AND RESPONSIBILITIES, AND PERSPECTIVES (2020).

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