

Legal Treatment Of Nonprofit Organizations

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An incomplete listing of benefits, privileges, and special legal treatment afforded nonprofit organizations other than the “usual suspects” of federal income tax exemption and the ability to receive charitable contributions under IRC § 170.¹

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¹ This document was inspired by Bazil Facchina, Evan Showell, and Jan E. Stone, *Privileges & Exemptions Enjoyed by Nonprofit Organizations: A Catalog And Some Thoughts on Nonprofit Policymaking*, E Topics in Philanthropy, New York University School of Law (1993). This monograph does not appear to be readily publicly available. An abridged version by the same authors can be found at *Privileges & Exemptions Enjoyed by Nonprofit Organizations*, 28 U.S.F. L. Rev. 85 (1993-1994). Citations were verified in early 2013 but may not reflect very recent legislative changes. This chart will be posted and maintained at www.harmoncurran.com/resources. Updates, additions, and comments will be welcome.

	Description	Cites	Qualification
1	State Taxes		
1.1	State income tax exemption	[various]	State exemption may or may not hinge on recognition of federal. May have categories that mirror but no explicit tie.
1.2	Sales tax exemption (payment)	[various]	Usually, only for purchase of items used for exempt purposes. Typically only for organizations exempt under 501(c)(3) corresponding state law definitions
1.3	Sales tax (collection)	[various]	Some states exempt 501(c)(3) fundraising sales from obligation to collect sales tax. Likely to require federal exemption. May be defined more narrowly to apply only to a subset of 501(c)(3)s.
1.4	Property tax exemption	[various]	Generally limited to charities, or a narrower subgroup. Overlap with federal tax status not consistent. In all or almost all states, property must be owned by a qualifying organization and used for exempt purposes.
2	Estate and Gift Tax Exemptions		
2.1	Estate tax exemption for transfers to certain organizations	IRC § 2055(a)(2)	Any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals. No private inurement. Not disqualified under section 501(c)(3) for excess lobbying or campaign intervention. Also, any veterans' organization incorporated by Act of Congress, local posts. No private inurement.

2.3	State inheritance tax credit.	[various]	Typically mirrors federal exemption as indirect credit. Most states impose inheritance tax only to the extent that credit for the state tax is allowable against the federal estate tax.
2.4	Gift tax exemption to a 501(c)(3), veterans org., or to fraternal society for charitable purposes	IRC § 2522	Nearly identical to estate tax; adds gifts to a fraternal society for charitable purposes. Different wording re: veterans' organizations.
2.5	Gift tax exemption.	IRC § 2501(a) (4)	Transfers to a political organization (within the meaning of IRC § 527(e)(1))
2.6	Gift tax exemption.	IRC § 2501(a)(6)	Transfers to 501(c)(4)s, (5)s, and (6)s.
3	Payroll Taxes		
3.1	Federal unemployment tax (FUTA) exemption	IRC § 3306(c)(8)	Described in 501(c)(3) and exempt under 501(a)
3.2	Option to self-insure for purposes of state unemployment funds	IRC §§ 3303(e), 3309(a), 3304(a)(6).	Described in 501(c)(3) and exempt under 501(a)
3.3	Religious exemption from unemployment coverage.	IRC §§ 3309(b)(1), (2).	Employment by a church, church school, or services by a minister in the exercise of his [sic] ministry.
3.4	FICA opt-out	IRC § 1402(a)(14).	Religious organizations. Employees must pay self-employment tax (SECA) if employer opts out.
3.5	SECA opt-out	IRC § 1402 (g).	Ministers opposed to accepting government benefits on religious grounds.

4	Employee Benefits		
4.1	Special treatment for contributions to tax sheltered annuities.	26 USC § 403(b)	501(c)(3)s only.
4.2	Unfunded deferred compensation	IRC § 457	Any exempt organization except churches
4.3	Parsonage allowance – tax-free housing or housing allowance	IRC § 107	“Minister of the gospel”
4.4	Public Service loan Forgiveness Program – federal student loans forgiven after 120 months of payments if employed full-time in qualifying public service employment	20 USC § 1087e(m)	501(c)(3)s or certain specified types of public service work such as emergency management, public education, or law enforcement.
4.5	ACA contraceptive mandate exemption	45 CFR § 147.141(a)	Houses of worship exempt from mandate to provide contraceptive coverage to employees
4.6	ACA contraceptive mandate accommodation	26 CFR § 54.9815-2713A	Nonprofit entity that holds itself out as a religious organization (or a closely held for-profit)
5	Labor		
5.1	Fair Labor Standards Act (FLSA) enterprise coverage.	29 USC § 201 et seq.; § 203(s)	does not apply to eleemosynary activities of nonprofits, but does cover them when engaged in business/commerce (but does explicitly include hospitals).
5.2	Even in the absence of enterprise coverage, FLSA still applies to nonexempt employees individually engaged in interstate commerce.		Examples of such interstate commerce activities include making/receiving interstate telephone calls, shipping materials to another state, and transporting persons or property to another state.
5.3	National Labor Relations Board may decline jurisdiction where employer is not substantially involved in interstate commerce.	29 USC 164(c); 29 CFR 103.1	For example, a religious order providing non-commercial religious services. It has said it won’t cover small (under \$1M) colleges and universities.

5.4	Harbor maintenance tax exemption	IRC § 4462(h)	Cargo which is owned or financed by a nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.
6	Civil Rights		
6.1	Exemption from prohibition on discrimination on the basis of religion in employment	42 USC 2000e-1(a)	Religious organizations may choose to employ individuals of a particular religion for work connected with the organization's activities.
6.2	Exemption from prohibition on discrimination on the basis of religion in employment	42 USC 2000e-2(E)(2).	Educational institutions associated with a particular religion or religious organization or if the curriculum is directed toward the propagation of a particular religion.
7	Volunteer Immunity		
7.1	Federal Volunteer Protection Act provides immunity from tort liability for volunteers.	42 U.S.C §§ 14501-14505	An organization described in IRS § 501(c)(3) and exempt under § 501(a); or a not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.
7.2	State volunteer and other immunity provisions.	[various]	Federal law supersedes conflicting state laws, but states may provide more generous protections. DC, e.g., includes volunteers for any nonprofit corporation, and provides limited personal liability for their employees. States may be more generous – e.g., DC covers all nonprofits, also limited liability for employees.
8	Gift Annuities: Special treatment under insurance laws	[varies by state]	Most (all?) states requires organizations to be exempt under IRC § 501(c)(3). Many impose additional requirements, such as duration of existence or minimum level of assets.

9	Government Grants, Facilities, Resources		
9.1	Federal grants.	[various]	Many but not all government grant programs use exempt status as screen for eligibility of participating programs.
9.2	Surplus federal government personal property.	40 USC § 549(c)(3)	Nonprofit educational or public health institutions may receive to use for such purposes, including research, if exempt under ICS § 501.
9.3	Certain nonprofits eligible to purchase surplus federal real property. Price may be reduced to reflect the benefit to the government from use by the organization.	40 USC § 550	501(c)(3) organizations, for specific uses (e.g., educational, public health, public park, low-income housing)
9.4	State, local grants and other programs	[various]	May or may not hinge on federal or state tax status. Must look program by program.
9.5	Access to government property, e.g. convention centers, at preferred rates.	[various]	States and localities may provide nonprofits with preferential access to various facilities. In many cases this will require evidence of federal exemption, and likely 501(c)(3) status.
9.6	Ineligibility for federal award, grant, or loan.	2 U.S.C. 1611	An IRC § 501(c)(4) organization which engages in lobbying.
10	Tax-exempt Bonds State and local governments may issue bonds whose interest is exempt from federal income tax	IRC § 145	95% of net proceeds must be used by a 501(c)(3) organization or a governmental unit
11	Securities Laws		

11.1	Securities Act of 1933 exempts from registration any security issued by certain organizations.	15 USC § 77c(a)(4).	"Organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual."
11.2	Exemption under the Investment Company Act of 1940.	15 USC sec. 80a-3(c)(10).	Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. [Also, exemption for certain types of funds relevant to charities.]
11.3	State level exemptions.	Uniform Securities Act	Exempts registration and filing of sales and advertising lit. for any security issued by "any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association." In some states, exception is permissive, in some mandatory. Some states require some filings even if the security is exempt.
12	Antitrust exception allows price discrimination in favor of covered organizations when purchasing supplies for their own use.	15 USC § 13c	Schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.
13	Bankruptcy: nonprofits may not be forced into involuntary liquidation or reorganization.	11 USC § 303(a).	A corporation that is not a moneyed, business, or commercial corporation.
14	Preferred Postal Rates		

14.1	Nonprofit Standard Mail	DMM 703-1.2.3 - 1.2.10	Religious, educational, scientific, philanthropic, agricultural, labor, veterans' and fraternal organizations “not organized for profit and none of its net income inures to the benefit of any private stockholder or individual.”
14.2	Ineligible organizations	DMM 703-1.4.1	List includes auto clubs, civic associations, business associations, social clubs.
14.3	USPS requires evidence of nonprofit status	703-1.7.4	Documentation of federal exemption will be accepted in the absence of other disqualifying factors, but is not required. USPS explicitly acknowledges that qualifying organizations may be non-exempt.

15	Copyright		
15.1	Special protection for performance or display of protected works.	17 USC §§ 110(1), (2), (3), (4), (6), (8), (9), (10). 47 USC § 397(6) defines nonprofit broadcaster; 47 USC § 397(8) prohibits private inurement.	Nonprofit educational institutions, religious services, nonprofit broadcasters, agricultural or horticultural organizations.
15.2	Compulsory license for certain works.	17 USC § b118(f); 47 USC § 397(6)	Public broadcasters
16	Gambling		
16.1	Charitable gaming sheltered from prosecution as illegal gambling	18 USC 1955(e)	Games conducted by an organization exempt under IRC § 501(c)(3).
16.2	Many states allow otherwise prohibited gambling when conducted by certain organizations.	[varies by state]	Some but not all states use federal tax status to determine eligibility.
16.3	Federal wagering excise tax exemption.	Section 4421(2)(b)	Lotteries or raffles by nonprofits exempt under IRC § 501 or 521 agricultural cooperatives

17	Federal Excise Taxes		
17.1	Communications services excise tax exemption	IRC § 4253	Hospitals and educational organizations exempt under 501(a) and described in 170(b)(1)(A)(iii) and (ii) respectively, and schools operated by a 501(c)(3).
17.2	Exemption for Chapter 32 excise taxes, with exceptions, for sales to nonprofit educational organizations for their own use	IRC § 4221(a)(5)	Must be described in IRC § 170(b)(1)(A)(ii) and exempt under IRC § 501(a). Also includes a school operated by a 501(c)(3).
17.3	Special fuels tax exemption for nonprofit educational organizations	IRC § 4041(g)(4)	Must be described in IRC § 170(b)(1)(A)(ii) and exempt under IRC § 501(a). Also includes a school operated by a 501(c)(3).
17.4	Harbor maintenance tax exemption	IRC § 4462(h)	Cargo which is owned or financed by a nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.
18	Criminal Laws		
18.1	Former federal officials prohibited from lobbying during post-employment "cool-down" period except if working for qualifying organization.	18 USC § 207(j)(2)(B)	Institutions of higher education, hospitals or medical research orgs. exempt under IRC § 501(c)(3).
18.2	Exception to federal anti-bribery law which generally criminalizes payments to federal executive branch, agency, or District of Columbia employees for payments to a person injured in connection with assassination, kidnapping or assault of certain senior officials.	18 USC § 209	An organization which is described in IRC § 501(c)(3) and exempt under IRC § section 501(a)
19	Congressional Ethics Rules		

19.1	Congressional travel (House members and staff) may not be sponsored by an entity that retains or employs lobbyists – limited exception.	House Rule XXV; 2 USC § 1604(d)(1)(G)	Institutions of higher education excepted, covered by same rules as apply to entities without lobbyists. “‘An institution of higher education’ is one within the meaning of section 101 of the Higher Education Act of 1965, that is, an accredited, degree-granting postsecondary institution.”
19.2	Travel by Senators or Senate staff similarly may not be sponsored by an entity that retains or employs lobbyists – limited exception.	Standing Rules of the Senate, XXXV 2(a)(2)(A)(ii)	Must be exempt as a 501(c)(3) organization.

20	Lobbying and Electioneering		
20.1	Option to use certain tax code definitions to track and report expenditures under the federal Lobbying Disclosure Act.	2 USC § 1610	An organization not exempt under § 501(c)(3) would not have the § 4911 option of § 1610(a), but would have the § 162(e) option of § 1610(b).
20.2	State or local parties prohibited from solicitation for certain organizations. BCRA soft money rules.	2 USC § 441i(d)	Covers only organizations (1) described in IRC § 501(c) and exempt under IRC § 501(a) or (2) described in IRC § 527 that engage in "federal election activity."
20.3	Exception from general prohibition on federal candidates and officeholders raising funds for use in connection with a federal election (unless subject to the restrictions and limitations of federal campaign finance laws).	2 USC § 441i(e)(4)(A) and (B)	Solicitations for organizations described in IRC § 501(c) and exempt under IRC § 501(a) (or with pending application) if their principal purpose is not to conduct election activity or voter registration, voter ID, or get-out-the-vote. Limited exception (amounts of \$20k or less and only from individuals) where voter reg., ID, and GOTV are principal purpose of the organization.