

A**A****abatement**

In general, the word “abatement” means an alleviation, lessening, mitigation, or reduction of something. More technically, the **IRS** has the authority to “abate” all of the **first-tier taxes** underlying the **private foundation** rules, other than those concerning **self-dealing**; the penalties underlying the **political expenditures** rules; the penalties underlying the **intermediate sanctions** rules; the penalties underlying the rules concerning **hospitals’ failures**; and the penalties underlying the **donor-advised funds** rules. These abatable taxes are known as **qualified first tier taxes**. Additional rules apply in connection with the potential for abatement of **second-tier taxes** when there is a **correction** (**IRC** §§ 4961, 4962). [**EO** §§ 12.4, 21.10; **PF** §§ 1.10, 5.15(f), 6.7(d), 9.10(b), 13.1, 13.7].

absolute percentage limitation

The phrase “absolute percentage limitation” refers to a provision of a state **charitable solicitation act** (or local **law** equivalent) containing a percentage, which, when applied to the total expenses of a **charitable organization**, results in an amount of money that is less than the organization’s **fundraising costs**. The organization’s fundraising costs are consequently deemed, by operation of law, to be deemed **unreasonable**, thus preventing the organization from **soliciting charitable contributions** in the jurisdiction. The use of this type of percentage limitation was struck down by the U.S. Supreme Court as a violation of the **free speech rights** of the soliciting charitable organizations. [**FR** § 4.3; **SM** p. 152].

abuse of discretion

The phrase “abuse of discretion” arises in the context of court review of a decision by an **administrative agency** or an **appellate court** review of a decision by a **lower court**. Both government agencies and lower courts generally have broad discretion in formulating their decisions. When these fact-finders and decision-makers, however, arrive at a conclusion of **law** that is inconsistent with the **facts and circumstances** that were before the agency or lower court, the reviewing court can find an abuse of discretion and overrule that decision.

2 ABUSIVE TAX SHELTER

A

abusive tax shelter

The phrase “abusive tax shelter” means a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, in connection with which a statement is made by a person with respect to the allowability of a **tax deduction** or a **tax credit**, the **excludability** of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or **fraudulent** as to any **material** matter. Abusive tax shelter also refers to instances in which there is a **gross valuation overstatement** as to any material **matter** (IRC § 6700(a)). [EO § 28.17(a)] (also **Tax shelter**).

accountable care organization

The Department of Health and Human Services has established a Medicare Shared Savings Program that promotes accountability for care of Medicare beneficiaries, improves the coordination of Medicare fee-for-service items and services, and encourages investment in infrastructure and redesigned care processes for high-quality and efficient health care service delivery. Groups of health care service providers, including **tax-exempt organizations**, and suppliers that have established a mechanism for shared **governance** and that meet criteria specified by the HHS are eligible to participate as “accountable care organizations,” which essentially are networks designed to reduce health care costs, under the MSSP. [HC § 13.5; EO § 7.6(m); SM pp. 5, 230].

accountable plan

An “accountable plan” is a reimbursement or other expense allowance arrangement that satisfies the requirements of the **federal tax law** by including the elements of business connection, substantiation, and return of amounts that are in excess of substantiated expenses (IRC § 62(c)). Reimbursements that are not pursuant to an accountable plan are forms of **gross income** and likely are **automatic excess benefit transactions**. [GV § 6.3(r); CU Q 7.28; SM pp. 279–280; LI Q 6.28].

accountant

The word “accountant” is used to describe an individual whose profession is the preparation, inspection, and **auditing** of the books and records of other individuals and **organizations**. Most **nonprofit organizations** use the services of an accountant, both in the preparation of their books and records, including preparation of the appropriate **annual information return**, and in the audit phase. [AR § 7.2(d)(2); SM pp. 26, 27, 81, 241] (also **Certified public accountant**; **Generally accepted accounting principles**; **Public accountant**).

accounting method

The term “accounting method” is used to describe one of the methods by which a **for-profit organization** or a **nonprofit organization** keeps its books and records. It is by this method that the organization determines its **revenue** and **expenses** (both **deductible** and nondeductible) and thus its **net income**, as well as its **assets**, **liabilities**, and **fund** balance. One of the principal

differences among accounting methods is the timing of **recognition** of an item of income and expense (**IRC** § 446). [AR § 7.2(d)(1); PF §§ 2.7(b), 6.5, 12.3(e), 15.4(a), 15.5, 15.6(a); CG §§ 2.10, 6.14; CU Q 17.54; UB § 11.5(a); SM p. 155] (also **Accrual method of accounting**; **Cash basis method of accounting**).

A

accounting period

An organization's "accounting period" is the period of time comprising twelve months, such as the calendar year or a **fiscal year**, that corresponds to its **tax year**. [CG § 2.9; UB § 11.5(b)] (also **Annual accounting period**).

accounting period, change of

A **tax-exempt organization** may decide to change its **accounting period**. This is done by a timely filing of its **annual information return** with the appropriate **IRS** Center for the **short period** (occasioned by the change in the period) for which the return is required, indicating on the return that a change of accounting period is being made. Generally, if an organization is not required to file an annual information return or a **tax return** reflecting **unrelated business income**, it is not necessary to otherwise notify the **IRS** that a change of accounting period is being made. If, however, an organization has previously changed its annual accounting period at any time within the ten calendar years ending with the calendar year that includes the beginning of the short period resulting from the change of an accounting period, and if the organization had a filing requirement at any time during the ten-year period, it must file an application for a change in accounting period (**Form 1128**) with the appropriate **IRS** Center. [PF § 10.4(c); CU Q 17.57; RE Q 12.1].

accounting standards

See **Generally accepted accounting principles**.

accreditation

The term "accreditation" refers to a form of **credentialing**, by which an **organization** reviews the **programs** and other activities of other organizations for a particular purpose and approves (or disapproves) the organization by using a set of criteria known to all of the organizations being reviewed. For example, an accrediting organization will periodically review **colleges** to determine whether they should continue to be accredited as **educational organizations** or to initially accredit such an **institution**. An organization may also accredit programs of other organizations. Most accrediting organizations are **tax-exempt organizations** and will be classified as **charitable organizations** where the organizations being accredited are charitable organizations, or where the programs being accredited are **operated** by organizations that are charitable organizations. [CU Q 5.45] (cf. **Certification**).

accrual, of income

See **Accrue**.

4 ACCRUAL METHOD OF ACCOUNTING

A

accrual method of accounting

The “accrual method of accounting” is a **method of accounting** by which items of **income** and **expense** are recognized at the time a **right** to receive income and/or an obligation for an expense arises (**IRC** § 446(c) (2)).

A **corporation** that reports its **taxable income** using the accrual method of accounting may, at its **election**, **deduct charitable contributions** paid within two and a half months after the close of its **tax year**, as long as the **board of directors** of the corporation authorized the making of the charitable contribution during the tax year and the charitable contribution is made after the close of the tax year of the corporation and within the two-and-a-half-month period (**IRC** § 170(a)(2)). [CG § 2.10] (also **Cash basis method of accounting**).

accrue

The word “accrue” generally means either to come into existence or to accumulate something. The term is used as part of the **federal tax law** that **excludes** from **gross income** forms of income accrued by a state or a **political subdivision** of a state, or the District of Columbia, where the income is derived from any public utility or the exercise of any **essential governmental function**, or forms of income that accrued to the government of any possession of the United States or any political subdivision of such a possession (**IRC** § 115). [EO § 19.21(b)].

accuracy-related penalty

The **federal tax law** contains several “accuracy-related penalties,” many of them having direct applicability to **tax-exempt organizations** and **charitable** giving to them. These penalties apply to acts of **negligence** in the tax context (**IRC** § 6662(b)(1)), disregard of tax **rules** and **regulations** (*id.*), a **substantial understatement of income tax** (**IRC** § 6662(b)(2)), a **substantial valuation misstatement** in the income tax setting (**IRC** § 6662(b)(3)), a **substantial estate tax valuation understatement** (**IRC** § 6662(b)(5)), and a **substantial gift tax valuation understatement** (*id.*). The penalty is 20 percent of the portion of an underpayment of tax required to be shown on a **tax return** (**IRC** § 6662(a)). [CG § 10.14].

achievement award

A **private foundation grant** to an individual made in recognition of an achievement generally does not require prior approval of the **IRS**. The selection criteria must be fair and serve one or more **charitable** purposes. These grants do not require that the monetary award be expended for a particular purpose or that the recipient perform a specific action. [PF § 9.3(b)].

acknowledgement

For purposes of the **corporate sponsorship** rules, an “acknowledgment” may include exclusive sponsorship arrangements; logos and slogans that do not contain qualitative or comparative descriptions of a company’s products, services, or facilities; a list of the company’s locations, telephone numbers, or Internet address; value-neutral descriptions, including displays or visual depictions, of a company’s product line or services; and a company’s brand or trade names and product or services listings. (also **Contemporaneous written acknowledgement**).

acquisition indebtedness

The term “acquisition indebtedness” is used in the context of the rules pertaining to the computation of **unrelated debt-financed income**. Acquisition indebtedness, with respect to **debt-financed property**, means the unpaid amount of (1) the indebtedness incurred by an **organization** in acquiring or improving the property, (2) the indebtedness incurred before any acquisition or improvement of the property if the indebtedness would not have been incurred but for the acquisition or improvement, and (3) the indebtedness incurred after the acquisition or improvement of the property if the indebtedness would not have been incurred but for the acquisition or improvement and the incurring of the indebtedness was **reasonably** foreseeable at the time of the acquisition or improvement (IRC § 514(c)(1)).

There are some **exceptions** to these rules. One is that the phrase acquisition indebtedness does not include indebtedness that was necessarily incurred in the performance or exercise of an organization’s **tax-exempt purpose** or function (IRC § 514(c)(4)). Another is that the term does not include an obligation to pay an **annuity** that (1) is the sole **consideration** issued in **exchange** for property if, at the time of the exchange, the **value** of the annuity is less than 90 percent of the value of the property received in the exchange, (2) is payable over the life of one individual who is living at the time the annuity is issued, or over the lives of two individuals living at that time, and (3) is payable under a **contract** that does not guarantee a minimum amount of payments or specify a maximum amount of payments and does not provide for any adjustment of the amount of the annuity payments by reference to the **income** received from the transferred property or any other property (IRC § 514(c)(5)). Further, the term generally does not include indebtedness incurred by a **qualified organization** in acquiring or improving any **real property** (IRC § 514(c)(9)). [UB § 5.4(a); EO § 24.9(c); HC § 24.21(b); PF §§ 6.2(f), 11.4(a)–(c); CG § 14.6; SM p. 175].

act

An “act” is the product of a **bill** or resolution passed by a legislature. It is **statutory law**. [EO § 22.2].

act of god

The phrase “act of God” is used to describe an incident involving natural forces that cannot be prevented by human beings, such as flooding, hurricanes, and tornadoes. Most **contracts**, including **insurance** policies, contain a provision relieving one or more parties from **liability** where damages are due to an act of God, rather than a direct act (or failure to act) on the part of a party to the **agreement**.

action

The word “action” is a technical term for a lawsuit. It is, thus, a proceeding in a court where one **person** has instituted litigation against another person for something done or not done, or to protect a **right**. The word is used in the sense of one person bringing an “action” against another. This term can also be used in connection with an **administrative proceeding**.

6 ACTION ON DECISION

A

The word is also used in connection with the **expenditure test**. In defining the word “**legislation**,” the test uses the word “action.” That use defines the term “action” as being limited to the introduction, amendment, enactment, defeat, or repeal of **acts, bills**, resolutions, or similar items (**IRC § 4911(c)(3)**). [EO § 22.2(b)] (also **Actionable; Cause of action**).

action on decision

An “Action on Decision” is a document prepared by the **IRS** that contains an analysis of a court opinion and the decision by the Office of Chief Counsel as to the future steps the **IRS** should take with respect to it, such as opting to appeal the decision.

action organization

An **organization** is an “action organization” if a **substantial** part of its activities involves attempting to **influence legislation** by **propaganda** or otherwise. Also, an organization is an action organization if it participates or intervenes, **directly or indirectly**, in any **political campaign** on behalf of or in opposition to any **candidate for public office**. Further, an organization is an action organization if it has these characteristics: (1) its main or **primary** objective or objectives (as distinguished from its **incidental** or secondary objectives) may be attained only by legislation or a defeat of proposed legislation, and (2) it advocates or campaigns for the attainment of these primary objectives as distinguished from engaging in **nonpartisan analysis, study, or research** and making the results of those nonpartisan activities available to the public. In determining whether an organization has these characteristics, all of the surrounding **facts and circumstances**, including the **articles of organization** and all activities of the organization, are considered. [EO §§ 4.5(b), 22.3(c)(i), 23.1; HC §§ 7.1(b), 7.4(b), (f); AR § 1.6(d); CU Q 8.5, Q 9.4; SM pp. 186, 198; LI Q 7.5, Q 8.4].

actionable

A matter is “actionable” when it involves one or more legitimate bases for a lawsuit (an **action**).

active conduct

The term “active conduct” is used to describe a situation in which a **tax-exempt organization** is engaged in the **operation** of a **program**, as contrasted with the funding of a program that is operated by another organization. An illustration of this is the “active conduct” requirement that is part of the **income test** that a **private operating foundation** must meet. Under that test, funds must be expended by the private operating foundation itself (the active conduct), rather than by or through one or more **grantee** organizations. The rules concerning **medical research organizations** contain a requirement that these entities be directly engaged in the continuous active conduct of **medical research** in conjunction with a **hospital**. [EO § 7.6(d); HC § 5.1(b); PF § 3.1(d)] (also **Significant involvement**).

activist organization

The term “activist organization” is used to describe an **organization** that engages in advocacy activities, such as demonstrations, boycotts, strikes, picketing, and litigation, and is not an **action organization**. [EO § 23.2(f)].

activities, bundle of

In many ways, a **nonprofit organization** can be regarded as a bundle of activities. Some of these activities are **program**, some are administration or management, and some are **fundraising**. Other activities may be **lobbying** or **political campaign activities** (which may be program), or **unrelated business** activities.

Essentially, when the **IRS audits a tax-exempt organization**, it is reviewing each of the activities in this bundle. The law in this regard is particularly developed in the unrelated business income context. Thus, the law states that an activity does not lose identity as a **trade or business** merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors that may, or may not, be related to the **exempt purposes** of the organization (**IRC § 513(c)**). This is known as the **fragmentation rule**.

With the authority of this rule, the **IRS** is empowered to fragment a tax-exempt organization's operation, administered as an integrated whole, into its component parts in search of an unrelated trade or business or other disqualifying activity. [**EO § 24.2(f)**; **UB § 2.3**; **SM p. 172**] (also **Functional accounting**).

activities conducted outside the United States

The phrase "activities conducted outside the United States," for purposes of **Form 990**, Schedule F, include grantmaking, other **program** services, **fundraising**, the conduct of **unrelated trade or business**, **program-related investments**, other investments, or maintaining offices, **employees**, or **agents** in particular regions outside the U.S. [**AR Chap. 13**].

activities, measurement of

As a consequence of the controversy concerning the permissible extent of **political campaign activities** that may be undertaken by **tax-exempt social welfare organizations**, there is interest in the methodology (or methodologies) to be used in measuring the activities of these organizations. This quantification needs to be developed because, in addition to defining permissible (and impermissible) political campaign activity, the federal tax law must stipulate how much of this activity is allowable. This matter goes beyond the confines of political campaign activity and the activities of exempt social welfare organizations, however, and will encompass all activities of all **tax-exempt organizations**.

The current approach of the **IRS** in this regard is to allocate expenditures to an exempt organization's various functions, thereby assigning a percentage of these expenditures to each function. Sometimes, the agency also ascribes percentages on the basis of time expended by an organization's **directors**, **trustees**, **officers**, **employees**, **volunteers**, and **agents**. A third approach used by the **IRS** is to analyze the way in which the organization describes itself in its dealings with the **public**. (also **Primary purpose text**).

activities test

Increasingly, the **IRS** is applying an "activities test" to determine whether a **nonprofit organization** qualifies for **tax exemption** in accordance with the **federal tax law**. This test is usually applied in a **noncharitable** context. As the test's name implies, it is used to ascertain whether

8 ACTUAL CONTROVERSY

A

an organization is sufficiently performing activities in conformity with the prescription of the particular exemption. (also **Operational test**; **Primary purpose test**).

actual controversy

One of the requirements for bringing an **action** in accordance with the **declaratory judgment** rules (concerning the **tax** status of **charitable organizations** and **farmers' cooperatives**) is that the case must involve an “actual controversy” (**IRC** § 7428). This means that there must be a **bona fide** issue of law between the organization and the **IRS** and that the organization is in existence and prepared to litigate the issue or issues between the parties. [EO § 27.6(b)(i)].

actuarial tables

The U.S. Department of the Treasury prepares “actuarial tables” for a variety of uses, including the determination of the **value of income interests** and **remainder interests** for purposes of computing **charitable contribution deductions**. (**IRC** § 7520(a)(1)) These tables must be prepared using the most recent mortality experience available (**IRC** § 7520(c)(3)). The tables must be revised at least once every ten years to take into account the most recent mortality experience available as of the time of the revision (*id.*). In this setting, these tables are often termed “valuation tables.” They reflect the use of certain **interest** rates and **adjusted payout rates**. [CG §§ 11.3, 11.4].

actuary

An “actuary” is an individual who computes elements, such as risks and rates, according to probabilities on the basis of certain facts. Actuaries prepare **actuarial tables** (sometimes termed “experience tables”) to determine statistical items such as **insurance** rates, pension rates, and premiums. In the context of **planned giving**, actuaries prepare tables of **factors**, used to determine the **charitable contribution deduction**; these tables are prepared by actuaries in the U.S. Department of the Treasury (**IRC** § 7520(a)(1)). [CG §§ 11.3, 11.4].

ad hoc

“Ad hoc” is a Latin term meaning “for a particular purpose.” It is generally used in reference to an **ad hoc committee**.

ad hoc committee

The term “ad hoc committee” is used to describe a **committee**, such as one established by a **nonprofit organization**, formed to function only for a specific purpose and often only for a specific time (as opposed to a **standing committee**).

addition to tax

Some **penalties** in the **federal tax law** that are particularly relevant to **tax-exempt organizations** and **charitable** giving to them are framed as “additions to tax.” Thus, there is an **addition to tax** for a failure to timely file a **tax return** (for example, a **Form 990-T**) (**IRC** § 6651(a)(1)).

This addition to tax is 5 percent of the amount of the tax due if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction of a month during which the failure continues, not exceeding 25 percent in the aggregate.

There is an addition to tax for a failure to timely pay a tax shown due on a tax return (IRC § 6651(a)(2)). This addition to tax is 0.5 percent of the amount of the tax due if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction of a month during which the failure continues, not exceeding 25 percent in the aggregate.

There also is an addition to tax for a failure to timely pay any amount in respect of any tax required to be shown on a tax return that is not shown (IRC § 6651(a)(3)). This addition to tax is 0.5 percent of the amount of the tax due if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction of a month during which the failure continues, not exceeding 25 percent in the aggregate.

These additions to tax of 0.5 percent may be increased to 1 percent where the failure continues after notice and demand for payment is given by the IRS (IRC § 6651(d)). They are not to be applied, however, in instances where the failure is due to **reasonable cause** and not due to **willful neglect**.

There are explicit penalties imposed on tax-exempt organizations and/or their **managers** that are enumerated in the **Internal Revenue Code** in the portion referencing additions to tax. These are the penalties for failure to file an annual information return (IRC §§ 6652(c)(1)(A) and (B)), for failure to provide public access to an **annual information return** (IRC § 6652(c)(1)(C)), failure to provide public access to an **application for recognition of exemption** (IRC § 6652(c)(1)(D)), failure by certain **trusts** to file an **information return** (IRC §§ 6652(c)(2)(A) and (B)), failure to file an information return reflecting a **liquidation, dissolution, termination, or substantial contraction** of a tax-exempt organization (*id.*), failure by an **estate** or trust to pay **estimated income taxes** (IRC § 6654(1)), failure by a tax-exempt organization to pay estimated **unrelated business income taxes** (IRC § 6655(g)(3)), and failure by a **private foundation** to pay estimated **net investment income taxes** (*id.*).

additional hospital exemption requirements

Congress, as part of enactment of the **Pension Protection and Affordable Care Act**, enacted an array of additional requirements for eligibility for **tax-exempt status**, as **charitable** entities, for **hospital organizations**. These requirements pertain to **community health needs assessments, financial assistance policies, limitations on charges, and billings and collections** (IRC § 501(r)). [HC § 26.10; EO § 7.6(b)].

additional tax

The term “additional tax” is synonymous with the term “**second-tier tax**,” as these taxes are applied in the **private foundation, black lung benefits trust, intermediate sanctions, and political expenditures** settings (IRC §§ 4941(b), 4942(b), 4943(b), 4944(b), 4945(b), 4951, 4952, 4955(b), 4958(b)). [EO §§ 12.4, 18.5, 21.10, 23.3; PF §§ 5.15(d), 6.7(c), 7.6, 8.5, 9.10(c); HC § 4.9(a)(vi); SM pp. 90–91].

A

adjunct theory

The term “adjunct theory” means, in essence, that an **organization** that is an adjunct of another organization takes on the **tax law** characteristics of the other entity. Under this theory, an organization can be **tax-exempt** because it bears a close and intimate relationship to another organization that is tax-exempt. This doctrine, however, does not have broad application, in that it cannot be used to sidestep the prerequisites for tax exemption that an organization must meet under the **statutory** rules. [EO § 7.13(b)].

adjusted basis

The phrase “adjusted basis” is used to define a **basis** in a **property** that has been adjusted to reflect true economic **gain** or **loss** in the **disposition** of the property. (IRC § 1011) Generally, basis is adjusted for **expenditures**, receipts, losses, or other items properly chargeable to a capital account (other than for certain **taxes** (IRC § 266) or other carrying charges and circulation expenditures (IRC § 173)) (IRC § 1016). Basis is also adjusted for the following items, to the extent the allowable items resulted in a reduction of tax: exhaustion, wear and tear, obsolescence, **amortization**, and **depletion**. [CG § 2.14(b)].

adjusted gross income

The term “adjusted gross income” means **gross income** less certain **expenses**, such as alimony payments, certain moving expenses, and certain **business** expenses (IRC § 62(a)). Thus, adjusted gross income is gross income that is adjusted to take into account certain costs of acquiring or transferring income. The reason for the concept of adjusted gross income is to provide a fair basis for the allowance of noneconomic personal expense **deductions**. Thus, adjusted gross income is gross income after adjusting for the economic costs of generating revenue to the **taxpayer**. [CG § 2.4] (also **Contribution base**).

adjusted net income

For purposes of the rules concerning **mandatory payout** by **private foundations**, the term “adjusted net income” means the excess (if any) of (1) the private foundation’s gross income for the **tax year** (determined using certain income **modifications**) over (2) the sum of the **deductions** (determined using certain **deduction modifications**) that would be allowed to a taxable **corporation** for the tax year (IRC §§ 4942(f)(1), 4942(j)(3)(A)(i)). This term is also used in connection with the **income test** with respect to **private operating foundations** and the payout requirement for **Type III non-functionally integrated supporting organizations**. [PF §§ 3.1(d), 12.1(b), 15.7(g)].

adjusted payout rate

The term “adjusted payout rate” is used in the context of **charitable remainder trusts** to mean adjustments in the factors used to calculate the **charitable contribution deduction** where there is a variation in the payout sequence other than an **income interest** payment at the end of each

tax year or, in the case of a **charitable remainder unitrust**, where there is a valuation of **trust assets** on a day other than the day at the end of the year. [CG § 12.12].

A

administration, power of

See **Power of administration**.

administrative

The term “administrative” is derived from the words “administer” and “administration.” The term is used in government parlance to describe the function of an **entity** that has the task of implementing (administering) a body of **statutory law**. A U.S. Supreme Court justice wrote that, “[a]lthough modern administrative agencies fit most comfortably within the Executive Branch, as a practical matter they exercise legislative power, by promulgating **regulations** with the force of law; executive power, by policing compliance with those regulations; and judicial power, by adjudicating enforcement actions and imposing sanctions on those found to have violated their rules.” (also **Administrative agency**).

administrative agency

An “administrative agency” is a unit of government that has some form of regulatory and/or **rule-making** authority. For example, the **IRS** is an administrative agency, as are the **Federal Election Commission** and the U.S. Postal Service. A U.S. Supreme Court justice wrote that, “[a]lthough modern administrative agencies fit most comfortably within the Executive Branch, as a practical matter they exercise legislative power, by promulgating **regulations** with the force of law; executive power, by policing compliance with those regulations; and judicial power, by adjudicating enforcement actions and imposing sanctions on those found to have violated their rules.” [FR §§ 3.1(k), 4.6].

administrative allowance

The term “administrative allowance” is used to define the amount of money a **tax-exempt organization** is to receive from an **insurance** company or broker for its efforts in assisting with the marketing and sale of insurance products to its **members**. This type of payment is likely to constitute **unrelated business income**, unless it can be structured as a **royalty**. [UB § 9.4(b); EO §§ 24.5(e)(ii), 25.1(g)].

administrative hearing

An “administrative hearing” is a type of **administrative proceeding**, in which facts are adduced, such as by the testimony of witnesses, usually in the context of development of a **rule** or **regulation**.

administrative law

The body of **law** known as “administrative law” is law created by an **administrative agency** as the result of the promulgation of **regulations, rules**, forms, and the instructions to forms, and

12 ADMINISTRATIVE PROCEEDING

A

the issuance of decisions. For example, the **IRS** creates administrative law when it promulgates regulations, **revenue rulings**, **revenue procedures**, and the like.

administrative proceeding

An “administrative proceeding” is a proceeding conducted by an **administrative agency**. In the proceeding, the agency must comport with its own **rules** and **regulations**, as well as applicable **statutory law** and **constitutional law**. For example, when the **IRS** conducts a hearing on a proposed regulation or rule, or in connection with a specific issue, the hearing is an administrative proceeding.

administrative record

In a **declaratory judgment** case, concerning the **tax** status of a **charitable organization** or a **farmers’ cooperative**, the court involved generally will confine its review of the case to the scope of facts contained in the “administrative record.” That is, the court usually will not conduct a trial at which new evidence may be presented. This limitation is not followed, however, where the matter concerns the revocation of the **tax-exempt status** of an organization. The administrative record is that body of evidence consisting of facts submitted by the organization involved and developed by the **IRS**; third parties may not submit material for the administrative record. [EO § 27.6(b)(iv)].

administrative remedy

The concept of “administrative remedies” is the range of forms of relief (remedies) available to a **person** when that person is involved in a proceeding before an **administrative agency**. Before taking the particular matter into court, the person must **exhaust** his, her, or its administrative remedies. [EO § 27.6(b)(ii)].

administrative remedies, exhaustion of

See **Exhaustion of remedies**.

administrator

An “administrator” is an individual appointed by a court to resolve the affairs of another individual who died **intestate**.

advance

The **federal tax law** uses the word “advance” as a synonym for the word “promote” (as in **promotion of health** and **promotion of social welfare**), principally to describe categories of **charitable organizations**. The term thus means “to move forward” or “to progress.” [EO §§ 7.6, 7.8-7.11; SM p. 34].

advance approval of grants

The **federal tax law** requires a **private foundation**, when it is planning a **program** of **grants** to individuals for travel, study, or similar purposes, to obtain from the **IRS** advance approval

of its grant-making procedures (**IRC § 4945(g)**). To secure this approval, a private foundation must demonstrate, to the satisfaction of the **IRS**, that (1) its grant procedure includes an objective and nondiscriminatory selection process, (2) the procedure is **reasonably** calculated to result in performance by the **grantees** of the activities that the grants are intended to finance, and (3) the private foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance. No single procedure or set of procedures is required. Procedures may vary, depending upon factors such as the size of the private foundation, the amount and purpose of the grants, and whether one or more recipients are involved. Generally, a private foundation that has filed its procedures with the **IRS** can implement them within forty-five days, unless the **IRS** has acted **adversely** in the interim. [PF § 9.3(a)].

advance ruling

When a **private foundation** seeks to **terminate** its **private foundation status** on the ground that it will be operating as a **publicly supported charity**, the organization must receive an advance ruling and meet the requirements of the publicly supported charity rules for an advance ruling period of sixty months. [PF § 13.4].

advancement organizations

Organizations that are **tax-exempt** because they are **charitable** entities include those that **advance education**, **advance science**, and **advance religion**. [EO §§ 7.8-7.10; SM p. 34].

advantages of tax exemption

See **Tax exemption**, advantages of.

adverse

The **IRS** issues **determination letters** and **rulings**. When these pronouncements provide the **person** requesting them with a response that the person did not want, the pronouncements are said to be “adverse.” (also **Favorable**).

adverse determination

A **nonprofit organization** may make **application** to the **IRS** for **recognition** of its **tax-exempt status**. If the **IRS** concludes that the organization qualifies for **tax exemption**, it will issue a **favorable determination letter** or **ruling**. If, however, the **IRS** decides to the contrary, it will issue an “adverse determination,” perhaps triggering the process of **administrative** appeals and **litigation**. [EO § 27.1].

adverse party

For purposes of the **grantor trust** rules, an “adverse party” is a **person** having a **substantial beneficial interest** in a trust that would be **adversely** affected by the exercise or nonexercise of the **power** which he, she, or it possesses with respect to the trust (**IRC § 672(a)**). [CG § 3.8].

A

adverse possession

The term “adverse possession” means a method of acquisition of **title** to an item of **property** by possession of it for a period of time, set by **statute**, and under certain other conditions. (also **Usucaption**).

advertising

As to **law** in the **nonprofit organization** context, the most comprehensive definition as to what constitutes “advertising” is found in the **corporate sponsorship** rules. There, the term means any message or other programming material that is broadcast or otherwise transmitted, published, displayed, or distributed, and that promotes or markets a **trade or business**, or any service, facility, or product. Advertising includes messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use any company, service, facility, or product. Also, any **communication** that is a **business listing** is likely to be regarded as “advertising.” The **net income** from advertising by a **tax-exempt organization** is generally subject to tax as **unrelated business income**. Some forms of “advertising” are acts of **fundraising**. [UB §§ 6.5(a), 6.5(b); EO §§ 24.5(h), 24.6; HC § 24.17; AS § 5.8; CG § 3.1(g); SM pp. 172, 286] (also **Acknowledgment**).

advertising income

Net income derived by a **tax-exempt organization** from the sale of **advertising** is, almost always, **taxable** as a form of **unrelated business income** (IRC § 513(c)). The **federal income tax regulations** contain detailed rules for calculation and reporting of this type of income. It is the view of the **IRS** that all forms of advertising income are taxable; that is, this view holds that it is not possible for a tax-exempt organization to have **related income** from advertising. [EO § 24.5(h); UB § 6.5].

advice of counsel

The term “advice of counsel” means advice provided by a **lawyer**, usually in writing, preceded by a full disclosure of the factual situation. (also **Reasoned written legal opinion**).

advisory committee

An “advisory committee” is a group of individuals who provide policy or technical input in connection with the programs of a **tax-exempt organization**. This committee is, however, separate from the organization’s **governing body** and thus does not have a formal role in the organization’s **governance**. [SM p. 18].

advisory letter

The **IRS** has the authority to, when concluding its examination of a **tax-exempt organization**, issue an “advisory letter” concerning one or more aspects of the organization’s operations where there may be endangerment of **exempt status** or other compliance issues. [AU §§ 5.32(a), 5.33(b)].

advisory opinion

An “advisory opinion” is an interpretation of the **federal election laws** issued by the **Federal Election Commission**.

advocacy

“Advocacy” is active espousal of a position, a point of view, or a course of action. It can include **lobbying, political campaign activity**, demonstrations, boycotts, **litigation**, and various forms of **programmatic advocacy**. [EO Chaps. 22, 23; UB § 9.7(d); PG Chap. 5, p. 342; FR § 4.3(e)].

advocacy communications or research materials

The **expenditure test** contains rules concerning situations where expenses for what are initially nonlobbying **communications** can subsequently be characterized as **grass-roots lobbying** expenditures where the materials or other communications are later used in a lobbying effort. For this result to occur, the materials must be “advocacy communications or research materials.” These materials are any communications or materials that both refer to and reflect a view on **specific legislation** but that do not, in their initial format, contain a direct encouragement for recipients to take action with respect to **legislation**. Where these communications or materials are subsequently accompanied by a direct encouragement for recipients to take action with respect to legislation, the communications or materials themselves are treated as grass-roots lobbying communications unless the **primary** purpose of the **organization** in undertaking or preparing the communications or materials was not for use in lobbying. In the absence of this primary purpose, all **expenses** of preparing and distributing the communications or materials will be treated as **grass-roots expenditures**; in the case of subsequent distribution of the materials by another organization, however, the characterization of expenditures as grass-roots lobbying expenditures under this rule applies only to expenditures paid less than six months before the first use of the communications or materials with a direct encouragement to action. [EO § 23.9; SM p. 203].

advocacy organizations

An “advocacy organization” is an **entity** that has **advocacy** as its **primary purpose**. An **organization** can be an advocacy organization without being an **action organization**. [EO Chaps. 17, 22, 23, § 13.3].

affiant

An “affiant” is an individual who makes and executes an **affidavit**.

affidavit

The term “affidavit” means a written legal document that contains a statement of an individual, executed under oath and attested to by a notary public or some other authorized individual. An affidavit may be used in **litigation** or in an **administrative proceeding** in lieu of testimony.

A

affiliate

The word “affiliate” means a close connection or close association; it basically is synonymous with “associate” or “auxiliary.” The term is often used to describe a class of **members** of an **organization** that are not “voting members” (or otherwise not “regular” members), but nonetheless have some interest in the purposes and programs of the organization. The term is also used to describe a relationship between two or more organizations; an affiliation usually is a looser arrangement than that evidenced by a **parent** and **subsidiary** relationship or that of organizations in a **joint venture**. [HC § 34.3(e)] (also **Affiliated group**; **Affiliated organization**).

affiliated group

The term “affiliated group” is used in conjunction with the **expenditure test**. Generally, under this test, two organizations are deemed “affiliated” where one organization is bound by decisions of the other on legislative issues pursuant to its **governing instrument**, or where the governing board of one organization includes enough representatives of the other to cause or prevent action on legislative issues by the first organization (IRC § 4911(1)(2)). Where a number of organizations are affiliated, even in **chain fashion**, all of them are treated as one group of affiliated organizations. If, however, a group of autonomous organizations controls an organization, but no one organization in the controlling group alone can control that organization, the organizations are not considered an affiliated group by reason of the second of these definitions (IRC § 4911(f)(1)). [AR §§ 9.1(e), 9.2(b); EO § 22.3(d)(viii); HC § 7.1(f)] (also **Interlocking directorate**).

affiliated organization

An **organization** is “affiliated” with another organization if the two entities are related in some manner. The concept of affiliation is broader than that of **control**, although controlled organizations are obviously affiliated. The **law of tax-exempt organizations** contains several instances of situations involving affiliated entities, including organizations that are part of a **group** for purposes of tax exemption, **supporting organizations** in relation to one or more **supported organizations**, related organizations such as a **trade association** and a related **foundation**, a national organization with affiliated organizations that all participate as **beneficiaries** of a **pooled income fund**, and organizations that are members of an **affiliated group**, as that term is used as part of the **expenditure test** rules. [AR §§ 7.2(a)(1), 7.2(b)(19), 15.2(c), (i)(7); EO § 22.2(d)(vii), Chaps. 28–30; CU Q 1.42, Q 1.43, Q 2.66, Q 4.6; SM pp. 190–191 (also **Association-related foundation**; **Group exemption**).

affiliated organization, policy as to

The **IRS**, on the **Form 990**, suggests that the filing organization, if it has one or more **affiliated organizations**, have a policy as to standardization of activities and practices, given the entities’ common **mission** and goals, and the public perception that the organizations are all part of one entity. [GV §§ 4.1(i), 6.3(h); AR §§ 5.1(i)(4), 5.2(a)(8)].

affinity

The word “affinity” means an inherent likeness or agreement between things; when individuals are involved, it refers to a group with common interests or objectives (affinity groups). Many **clubs**, such as those of individuals interested in a particular hobby, are affinity groups. **Organizations** of individuals with a common heritage, base of employment, or some other common experience (such as alumni **associations**) are affinity groups.

A

affinity card

An “affinity card” is a credit or debit card issued only to members of an **affinity** group; the card bears the **organization’s** name, logo, and/or some other unifying symbol. Many **nonprofit organizations** use these cards as **fundraising** opportunities; the **for-profit organization** that is receiving a profit from the use of the card by the consumers who are **members** of the affinity group agrees to pay a percentage of its profit to the nonprofit organization. If this arrangement is properly structured, these payments constitute **royalties**, so that the income the nonprofit organization receives from its affinity card program is not taxable as **unrelated business income**. If, however, the organization is significantly involved in promotion of the program, the consequence may be taxation of the revenue. [EO § 25.1(g); FR §§ 5.7(b)(vi), 5.18(d); SM p. 178].

affinity group

See **Affinity**.

affirmative action

The concept of “affirmative action” is the taking of positive (“affirmative”) steps and measures to eradicate the results of previous forms of **discrimination**; it is the basis for programs that benefit individuals in a particular class (defined using factors such as race or gender) because of past discrimination against other individuals in the same class. Affirmative action is based on the **constitutional law** principle of **equal protection**. The U.S. Supreme Court has held that, while discrimination generally is constitutionally impermissible, it may be engaged in when a legitimate state interest is being pursued and short of any violation of the **Fourteenth Amendment**.

It was in this spirit that the law evolved to the point where a **private educational institution** that has racially discriminatory policies cannot qualify for **tax-exempt status** or **charitable donee status** under the **federal tax law** as a **charitable organization**. While that approach has not been completely taken with respect to other forms of discrimination, the law is developing a comparable **federal public policy** against support for institutions that engage in gender-based discrimination. This body of law to date has concerned equal access to places of public accommodation (defined to include some **nonprofit membership organizations**) and organizations’ **free speech** rights and **right of association**. [EO § 6.2(e); CL § 1.8(d)].

A

agency

The word “agency” is used to define a relationship between two **persons**: a **principal** and an **agent**. The word also includes a segment of a **governmental unit**. [EO § 24.3(b); PF § 15.5(d)] (also **Bureau; Bureau or similar agency**).

agent

An agent is a **person** who acts on behalf of, and under the authority of, a **principal**. The acts of an agent are considered those of the principal and thus are attributed to the principal. For example, a court has held that, in determining whether an **unrelated business is regularly carried on**, the functions of a service provider with which a **tax-exempt organization has contracted** may be attributed to the **exempt organization** on the ground that the service provider was acting as an agent of the organization. Likewise, **charitable contributions** may be made by means of an agent. [EO § 24.3(b); FR § 5.7(b)(v); CG §§ 3.2, 10.2].

agreed case

An “agreed case” is a circumstance where an **IRS** examination has closed, with the **tax-exempt organization** involved agreeing to the **IRS’s** position as to a change in **exempt status, public charity status, and/or tax liability**, with the exempt organization signing the appropriate waiver and acceptance forms. [AU §§ 5.32(a), 5.33(g), (i)] (cf. **Partially agreed case, Excepted agreed case, Unagreed case**).

agreement

An “agreement” essentially is the same as a **contract**, although it may reflect an arrangement between **persons** that is less formal than a contract.

aggregate principle

In accordance with the “aggregate principle,” the activities of a **partnership** or other form of **joint venture** are considered to be the activities of the partners or members of the venture. Thus, the operations of a joint venture that includes a **tax-exempt organization** are attributed to the exempt organization when it is being evaluated pursuant to the **operational test**. This can be a harsh and undesirable outcome, particularly where the exempt organization lacks **control** over and/or has a small interest in the venture. The **IRS** is signaling, by means of developments in the **accountable care organization** context, that it may not apply the principle if the nonexempt activities that would otherwise be attributed are **insubstantial**. [EO § 4.5(c); UB § 8.11; CU Q 15.58; HC § 16.1(a); SM p. 231].

aggregate tax benefit

For purposes of the **termination tax**, the phrase “aggregate tax benefit” means the total tax benefits that have resulted from the **charitable status of a private foundation (IRC § 507(d)(1))**. These benefits are the sum of three items. One is the aggregate increases in **tax** that would have been imposed with respect to all **substantial contributors** to the private foundation if **deductions** for all **contributions** made by these contributors to the private foundation after February 28, 1913, had been disallowed. Another is the aggregate increases in tax that would

have been imposed with respect to the **income** of the private foundation for **tax years** beginning after December 31, 1912, if it had not been a **tax-exempt organization** and, in the case of **a trust**, if its deductions had been limited to 20 percent of the **taxable income** of the trust. The third is **interest** on these increases in tax from the first date on which each increase would have been due and payable to the date on which the **organization** ceases to be a private foundation. [PF § 13.6].

A

aggregation rule

The “aggregation rule” arises in the context of the general requirement that an **information return** be filed by a **charitable organization** when it **disposes** of **charitable deduction property** within three years of the date of the **gift** (IRC § 6050L). This reporting obligation is not required with respect to an item of charitable deduction property disposed of by **sale** if the **appraisal summary** signed by the **donee** with respect to the item contains, at the time of the donee’s signature, a statement signed by the **donor** that the **appraised value** of the item does not exceed five hundred dollars. The aggregation rule requires that items that form a set (for example, a collection of books written by the same author, components of a stereo system, or a group of place settings of a pattern of silverware) must be considered one item. Nonpublicly traded securities are also treated as one item. [CG § 24.10].

agricultural organization

The term “agricultural organization” means an **entity** that is **organized** and **operated primarily** in activities related to **agriculture**. This type of organization may qualify for **tax-exempt status** pursuant to the **federal income tax** rules (IRC § 501(a), by reason of IRC § 501(c)(5)). [EO § 16.2; AS § 1.6(d); UB § 9.5; AU § 7.1(f); PF § 15.9; SM pp. 41, 55].

agriculture

For purposes of the **federal tax law** concerning **tax exemption** for **agricultural organizations**, the term “agriculture” includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock (IRC § 501(g)). A nearly parallel definition in the postal laws defines the word “agriculture” as including the art or science of cultivating land, harvesting crops or marine resources, or raising livestock. (39 U.S.C. § 3626(d)).

This distinction in the two definitions, where one uses the term “aquatic” while the other uses the term “marine,” has led to a bit of an anomaly. The word “aquatic” means “of or pertaining to water”; the word “marine” means “of or pertaining to the sea.” Thus, an organization engaged in or associated with the harvesting of only fresh (non-salt) waters will acquire classification as an agricultural organization for federal tax purposes but (if these definitions are taken literally) will fail to be categorized as an agricultural organization for postal law purposes (that is, it will be ineligible for preferential postal rates). The postal law is unclear as to the proper classification of an organization that harvests both fresh and salt waters. [EO § 16.2].

aiding and abetting

The **federal income tax law** includes a **penalty** for “aiding and abetting” an **understatement of tax liability**. This penalty is imposed upon a **person** who (1) aids or assists in, procures, or

20 ALLOCATION

A

advises with respect to, the preparation or presentation of any portion of a **return, affidavit, claim, or other document**, (2) knows or has reason to believe that the portion will be used in connection with any **material** matter arising under that body of law, and (3) knows that the portion (if used) would result in an understatement of the liability for tax of another person (**IRC § 6701(a)**). This penalty may be applied in the context of aiding and abetting a person to **overvalue** an item of **property** for purposes of computing a **charitable contribution deduction**. [**CG § 10.14(d)**].

allocation

In the law concerning **nonprofit organizations**, the principal use of the term “allocation” is in the context of allocating an **expense** to two or more categories of outlays. The term, however, can be used in other senses, such as an allocation of time by an individual to two or more organizations and allocation of **basis in property** to a **gift** portion and to a **sale** portion (as is done in the instance of a **bargain sale**). (also **Allocation of basis; Allocation of expenses**).

allocation of basis

In the instance of a **bargain sale**, there must be allocated to the **contributed** portion of the **property** involved the portion of the **adjusted basis** of the entire property that bears the same ratio to the total adjusted basis as the **fair market value** of the contributed property bears to the fair market value of the entire property. In other words, in the case of a bargain sale, the basis in the property involved must be allocated to the gift portion and the sales portion of the property. [**CG § 9.19(b)**].

allocation of expenses

A single **expense** by a **nonprofit organization** can relate to two or more functions of the organization, in which case the expense may be **allocated** to those functions for purposes of determining **net income** (or **net expenses**) of each function. For example, in the case of a **charitable organization**, an expense may be allocable part to **program** and part to **fundraising**. As another example, an expense may be allocable part to program and part to **lobbying**. Essentially, the **law** on this point is that an allocation of expenses must be **reasonable** and consistent. In certain instances, however, such as a **nonmembership lobbying communication** that has a **nonlobbying purpose**, the law precludes an allocation. When an allocation is made, the nature of the allocation must be reflected on the organization’s **annual information return**. Further, expenses are often allocated in computing net income from a **related activity** of a **tax-exempt organization** and from an **unrelated business** conducted by the organization, where a facility or other **property** is used in both functions. It is the view of the **IRS** that the allocation must be made on the basis of a twenty-four-hour period (including the period of no use), rather than on the basis of actual use.

The **expenditure test** contains two allocation of expense rules for lobbying **communications** that have a lobbying and a nonlobbying purpose. One rule requires that the allocation be reasonable. This rule applies to an **electing public charity’s** communications primarily with its **members**. More than one half of the recipients of the communication must be members of the electing public charity for this rule to apply. The other allocation rule is for nonmember

communications. Where a nonmembership lobbying communication also has a nonlobbying purpose, an organization must include as lobbying expenditures all costs attributable to those parts of the communication that are on the “same specific subject” as the lobbying message. [EO §§ 22.3(d)(ii), 24.11; HC § 18.4(b); PF §§ 10.4, 12.1(c); AU § 5.19(g)] (also **Functional method of accounting**).

allocations of income and deductions among taxpayers

The **IRS** has broad authority to undo a **taxpayer’s tax** planning by readjusting the facts to state and reflect more correctly the taxpayer’s tax position. This authority empowers the **IRS** to closely scrutinize transactions between mutually **controlled parties**. This process is known as “allocation” (or **reallocation**) of items of **income, deductions, and credits**; it is done where necessary to prevent the evasion of taxes or to ensure the clear reflection of each taxpayer’s income (**IRC § 482**). The **IRS** can use this authority to reallocate, in the context of **charitable contributions**, in order to adjust (reduce) a claimed **charitable contribution deduction**. Further, this rule is utilized in the context of determining whether payments to **controlling organizations** are **reasonable**, for purposes of a special rule by which these payments may not be treated as **unrelated business income** (**IRC § 512(b)(13)(E)**). [EO §§ 29.6, 30.7(d); CG § 10.10] (also **Reallocation of charitable contribution deduction, by IRS**).

allowable distribution period

The phrase “allowable distribution period” is used in the **federal tax law** concerning **mandatory payouts** by **private foundations**. It means the period beginning with the first day of the first **tax year** following the tax year in which the incorrect **valuation** of assets occurred and ending ninety days after the date of mailing of a **notice of deficiency** for the involved. It may be extended by a period of time that the **IRS** determines is **reasonable** and necessary to permit a distribution of undistributed income (**IRC § 4942(j)(2)**). [PF § 6.7(c)].

allowable lobbying

A **charitable organization** (other than a **private foundation**) may engage in a certain amount of **lobbying** of one or more legislative branches without loss or denial of **tax-exempt status**. The amount that is allowed is an amount that is less than a **substantial** amount. There are two bodies of **law** concerning the determination of what is substantial in this context: the **substantial part test** and the **expenditure test**. [EO § 22.1].

alter ego

The term “alter ego” is used to describe a **corporation**, where the separate identity of the corporate **entity** is **disregarded** and it is treated as being the same as or part of another **person** (usually, an individual). This doctrine is often applied where a party seeks to hold an individual **liable** for a corporation’s debts. (also **Corporate veil, piercing the; Sham transaction**).

alternative minimum tax

The **federal tax law** includes an “alternative minimum tax” (**IRC §§ 55-59**). This **tax** is termed an “alternative” tax because it may have to be paid instead of the “regular” **income tax**. It is

A

called a “minimum” tax because it is designed to force a person of wealth to pay some federal tax, notwithstanding the sophistication of his or her tax planning.

The tax is applied to many of a person’s **items of tax preference** (IRC § 57). In general, beginning January 1, 1987, through December 31, 1992, the **appreciation element** inherent in a **charitable contribution of appreciated property** was considered an item of tax preference for purposes of this tax; this tax preference item was termed the **appreciated property charitable deduction** (former IRC § 57(a)(6)). There was an exception from the alternative minimum tax concerning contributions made in a tax year beginning in 1991 or made before July 1, 1992, in a tax year beginning in 1992, in the case of contributions of **tangible personal property** (former IRC § 57(a)(6)(B)). The inclusion of the appreciated property charitable deduction as a tax preference item, however, was permanently repealed by a provision in the **Omnibus Budget Reconciliation Act of 1993**. [CG §§ 2.18, 10.6].

amateur athletic organization

A **nonprofit organization** can qualify as an “amateur athletic organization” where its purpose is to foster national or international amateur sports competition (as long as no part of its activities involve the provision of athletic facilities or equipment) (IRC §§ 170(c)(2)(B), 501(c)(3), 2055(a)(2), 2522(a)(2)). When these rules are complied with, the organization qualifies (assuming it otherwise qualifies) as a **charitable organization**. [EO § 11.2; AU § 7.1(h)].

amateur sports organization

See **Amateur athletic organization**.

American Jobs Protection Act of 2004

Enactment of the “American Jobs Protection Act of 2004” brought **federal tax law** changes and additions in connection with the **charitable gift appraisal rules**, the charitable giving recordkeeping rules, the **tax law** treatment of certain leasing arrangements involving **tax-exempt organizations**, and the tax-exempt organizations **tax shelter rules**; plus, it extended the **declaratory judgment** procedures to **farmers’ cooperatives**, modified the **unrelated business income** limitation on investment in certain small business investment companies, introduced rules concerning the treatment of **charitable contributions** of intellectual property and vehicles, increased reporting for **noncash contributions**, added an **exclusion** from unrelated business income for **gain or loss** on the sale or exchange of certain **brownfield properties**, and extended the **IRS user fee** program. [EO §§ 25.1(o), 26.1(d), 27.5(b)(i), 28.15(h); CG §§ 9.27, 9.28, 21.1, 21.5, 24.7; FR §§ 5.9, 5.14(c), 5.14(h), 5.14(k), 5.17; HC § 31.2(d)].

American National Red Cross Governance Modernization Act of 2007

The principal purpose of the American National Red Cross Governance Modernization Act of 2007 was to amend the congressional charter of the American National Red Cross to modernize its structure and enhance the ability of its board of governors to support the organization’s mission. The legislation, however, includes a checklist of responsibilities and duties of **nonprofit boards** in general, particularly those of **public charities**. [GV §§ 2.1(a)-2.1(d), 2.1(g), 3.1, 3.11, 5.2(a), 5.4(a), 5.4(b), 6.1(a), 7.1; EO § 5.6(e); AU § 3.1(o); CU Q 5.11; RE Q 2.14; SM p. 94].

American Recovery and Reinvestment Act of 2009

The legislation titled the American Recovery and Reinvestment Act of 2009 facilitated **tax-exempt status** for **regional health information organizations**, and brought adjustments in the **federal tax law** for state-sponsored **qualified tuition programs** and **voluntary employees' beneficiary associations**. [EO §§ 7.6(k), 18.3, 19.19(a); HC § 19.5].

American Taxpayer Relief Act of 2012

Enactment of the American Taxpayer Relief Act of 2012 brought extension of the special rules pertaining to **charitable gifts** from retirement accounts, concerning payments to **controlled organizations**, for gifts of book **inventory**, and expanding the charitable gift percentage limitations applicable to **farmers** and **ranchers**. [EO § 30.7(d); CG §§ 9.3(i), 9.7(j), 9.10(e)].

amnesty program

The general definition of the word “amnesty” is a forgiving (or pardoning or overlooking) of an offense. An amnesty program, then, is an activity (usually by a **government agency**) by which a violation of law is pardoned, in exchange for an alteration in or cessation of a particular behavior. An illustration of an amnesty program in the **tax-exempt organizations** context was the determination by the **IRS** to allow **tax-exempt hospitals** to reveal and discontinue **joint ventures** with physicians, where the joint venture acquired the net revenue stream of a department of the hospital, because of the decision of the **IRS** that that type of joint venture constituted **private inurement** on a per se basis. [HC §§ 25.6, 25.7].

amount involved

The term “amount involved” is used in connection with the **private foundation rules** concerning **self-dealing**. For purposes of the **excise tax** on **self-dealing**, the “amount involved” means, with respect to an act of self-dealing, the greater of the amount of money and the **fair market value** of the other **property** given or the amount of money and the fair market value of the other property received (**IRC** § 4941(e)(2)). In the case of certain services, however, the amount involved is the excess compensation (*id.*). The same definition is used in connection with the rules concerning self-dealing applicable to **black lung benefit trusts** (**IRC** § 4951(e)(2)). [PF § 5.15(b); EO § 18.5].

ancillary joint venture

The phrase “ancillary joint venture” means a **joint venture** that, from the standpoint of a participant in the venture, such as a **tax-exempt organization**, something less than primary operations of the participant are in the venture. [EO § 31.4; HC § 22.11; UB §§ 8.15(a), 8.15(b); AR § 11.1(f)(3)(F)); AS § 7.5; CU Q 16.61, Q 16.62; PG pp. 161–164; SM pp. 229–230].

animals, prevention of cruelty to

A **nonprofit organization** can qualify for **tax-exempt status** as a **charitable organization** when it is **organized** and **operated exclusively** for the prevention of cruelty to animals. [EO § 11.1].

A

announcement, IRS

The **IRS** frequently issues “announcements,” which are usually notices of upcoming events (such as **administrative hearings**) and other procedural matters. These announcements are published in the IRS’ biweekly **Internal Revenue Bulletin**. [EO App. A; AU § 2.10].

annual accounting period

An **organization’s** “annual accounting period” is essentially its **tax year**. **Income** and **expenses** are reported for **federal income tax** purposes on the basis of the **taxpayer’s** annual **accounting period** (IRC § 441(a),(b)). [CG § 2.9] (also **Fiscal year**).

annual distribution

The **federal tax law** requires certain types of **organizations** to make a distribution of **income** or **property** with respect to each of its **tax years**. A **private foundation** must comply with the **annual mandatory distribution** requirement. Other **charitable organizations**, such as certain **supporting organizations**, **medical research organizations**, and **private operating foundations**, also have payout requirements. [PF Chap. 6, §§ 3.1(d), 15.3(c), 15.7(g); EO §§ 7.6(d), 12.3(a), 12.3(c), 12.4(b)].

Split-interest trusts, such as **charitable lead trusts**, **charitable remainder trusts**, and **pooled income funds** have payout requirements (in some instances, more frequently than annually). A **charitable gift annuity contract** also involves a payout requirement. [CG Chaps. 12, 13, 14, 16].

annual dues

The term “annual dues” means the amount an **organization** requires a **member** to pay in order to be recognized by the organization as a member for an annual period. The term is used in conjunction with the rules by which an **agricultural organization** or a **horticultural organization** determines whether it is automatically **exempt** from the reporting and notice requirements otherwise applicable to it by reason of the law denying a **business expense deduction** for the payment of dues allocable to certain **lobbying activities** and **political campaign activities** (IRC § 162(e)(1)). [EO §§ 22.6(a), 22.6(b), 23.7, 25.2(l)].

annual exclusion

The term “annual exclusion” is used in the context of the **federal gift tax**. The annual exclusion currently is \$14,000. This amount is indexed for inflation (IRC § 2503). It means that a gift of \$14,000 or less is not subject to gift taxation; it also means that, as to a gift in excess of \$14,000, the first \$14,000 is not taxable. Each gift by a **donor** to a separate **donee** is subject to an annual exclusion. There is no limit on the number of **donees** that may receive gifts of money and/or **property** that are covered, in whole or in part, by the annual exclusion. Only **present interests** are considered for purposes of the annual exclusion. The annual exclusion is irrelevant in the case of **charitable contributions** and contributions to **political organizations**, because these gifts are **excluded** from gift taxation in their entirety. [CG § 8.2(h); EO § 17.0].

annual giving program

Many **charitable organizations** have an “annual giving program.” The basic concept of these programs is to recruit **new donors** and renew prior donors; these **contributions** provide for the annual operating needs of the organization. Most of these programs require staff and a volume of **volunteer** leaders and workers. Charitable organizations frequently conduct two or more forms of annual **solicitation** within a twelve-month period, the effect of which is contact of the same audience with multiple requests within a year. [FR § 2.2(a)].

annual information return

Most **nonprofit organizations** that are **exempt** from **federal income taxation** must file an “annual information return” with the **IRS** (**IRC** § 6033(a)(1)). The **return** filed by the larger exempt organizations is **Form 990**. Most **smaller tax-exempt organizations** file **Form 990-EZ** (although the smallest of organizations submit a **Form 990-N**); **private foundations** file **Form 990-PF**; and **black lung benefit trusts** file **Form 990-BL**. Some tax-exempt organizations annually file **tax returns**. Thus, **political organizations** file **Form 1120-POL** and **homeowners’ associations** file **Form 1120-H**. Most organizations with **unrelated business income** file **Form 990-T**. Tax-exempt organizations must make copies of their annual information returns accessible to the public during normal business hours. The annual information return of a charitable organization contains considerable information about **fundraising**; some states permit a charitable organization to file a copy of its annual information return as the basis for compliance with the requests for financial information contained in the states’ **charitable solicitation act**. [EO Chap. 28; FR Chap. 6; GV Chap. 4, §§ 3.13, 8.8(a); CU Chap. 17; RE Q 9.1, Q 9.8; AS §§ 10.1, 10.5; UB §§ 11.3(a), 11.3(c); PG pp. 193–220, 222–227, 236, 237, 347, 448; SM pp. 109–117] (also **Notice**).

annual report

The term “annual report” is used in several ways. It may refer to the annual report a **nonprofit organization** may have to file with one or more states, either by application of a state’s **nonprofit corporation act** and/or **charitable solicitation act**. It may refer to a document that a nonprofit organization prepares for the benefit of its **membership** or other **constituency**, such as its **donors**. The term may refer to an annual financial statement prepared by the **accountants** for a nonprofit organization. Or, the term may be loosely used to make reference to an organization’s **annual information return**. [FR § 3.4; CU Q 18.36; SM pp. 126–127].

annuitant

An “annuitant” is a **person** (usually an individual) who is receiving an **annuity**. [CG §§ 12.2(a)–12.2(c), 14.1, 16.2; SM pp. 235–236, 238].

annuitor

An “annuitor” is a **person**, such as a **charitable remainder annuity trust** or a **charitable organization**, that is paying an **annuity**. [CG §§ 12.2(a), 14.1, 16.2; SM pp. 235–236, 238].

A

annuity

The term “annuity” means an amount of money, fixed by **contract** between the **annuitor** and the **annuitant**, that is paid annually, either in one sum or in installments (such as semiannually or quarterly). An annuity is payable over a stated period, usually (particularly in the **charitable** giving context) over the life of an individual (who may or may not be the **donor**). In **consideration** for the annuity, the annuitor is paid a stipulated amount (often termed a **premium**), usually as a single payment but possibly in prior installments. An annuity may be paid by a **charitable remainder annuity trust** or a **charitable lead** trust, or by a **charitable organization** by reason of a **charitable gift annuity** agreement. [EO §§ 3.2(e), 25.1(f); CG §§ 12.2(a), 14.1, 16.2; UB §§ 3.6, 5.4(e)(ii); SM pp. 235–236, 238].

annuity interest

An “annuity interest” is an **income interest** that is structured as payments of an **annuity**. [CG §§ 5.4(b), 5.7(a), 9.23, 16.2].

annuity starting date

The phrase “annuity starting date” is used in the context of the **charitable gift annuity**. For an **immediate payment charitable gift annuity**, the annuity starting date is the date on which the annuity was purchased. In the case of a **deferred payment charitable gift annuity**, the annuity starting date is an anniversary date beginning on a stated date in the future. [CG § 14.3(a)].

answer

An “answer” is a document, filed by one or more **persons** in **litigation**, in response to the filing of a **complaint**. It essentially is a denial by a **defendant** (or defendants) of the allegations made by a **plaintiff**; it may also contain one or more assertions by the defendant against the plaintiff. (also **Counterclaim**; **Petition**).

anti-abuse rule

An “anti-abuse rule” is a **rule** or **regulation** that is developed by a **government agency** in anticipation of, and to prevent, an abuse of a particular **law**. This type of rule is often created before any actual abuse occurs, because the potential for abuse is so obvious and so great. For example, in the context of the **charitable contribution substantiation rules**, where the **separate contribution** rule exists, the **IRS** has the authority (which it has yet to exercise) to formulate an anti-abuse rule to preclude practices such as the writing of multiple checks on the same date. Likewise, the **quid pro quo contributions** rules contain a **separate payment** rule; again, the **IRS** has the (unexercised) authority to issue an anti-abuse rule to preclude practices such as the writing of multiple checks for the same transaction. [CG §§ 21.3, 22.2].

anti-cascading rule

The “anti-cascading rule” applies in the context of the **federal tax law** that denies a **business expense deduction** for **expenditures** for a variety of attempts to **influence legislation** or engage in **political campaign activities** (IRC § 162(e)(1)). It is possible for more than one **person** to be involved in this type of activity where the **lobbying** or political effort is the same; the

“anti-cascading rule” operates to ensure that this **lobbying expense disallowance rule** results in denial of the deduction at only one level (**IRC § 162(e)(5)(A)**).

Thus, in the case of an individual engaged in the **trade or business** of providing lobbying services or an individual who is an **employee** and receives **employer** reimbursements for lobbying expenses, the disallowance rule does not apply to expenditures of the individual in conducting the activities **directly** on behalf of a client or employer. Instead, the lobbying payments made by the client or the employer to the **lobbyist** or employee are nondeductible under the general disallowance rule.

The anti-cascading rule applies where there is a direct, one-on-one relationship between the person and the entity conducting the lobbying activity, such as a client or employment relationship. It does not apply to **dues** or other payments to taxable membership organizations that act to further the interests of all of their members rather than the interests of any one particular member. These organizations are themselves subject to the general disallowance rule based on the amount of their lobbying expenditures. [EO §§ 22.6(a), 23.7; AS §§ 4.2(a)(viii), 4.5(a); HC 18.4(f)].

Anti-Injunction Act

A **federal tax statute**, known as the Anti-Injunction Act, provides that, aside from minor exceptions, “in suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person” (**IRC § 7421(a)**). This law is designed to facilitate prompt collection of federal tax revenue by preventing **taxpayers** from inundating tax collectors with pre-enforcement lawsuits over disputed sums. The U.S. Supreme Court carved out a narrow exception from this act, in that a pre-enforcement **injunction** against tax **assessment** or collection may be granted only if it is clear that under no circumstances could the government ultimately prevail and if **equity jurisdiction** exists (that is, a showing of irreparable injury, no adequate remedy at **law**, and advancement of the **public** interest). Thus, this act, when applicable, divests courts of subject matter **jurisdiction**. [CL § 8.13; EO § 27.6(a)].

anticipated life expectancy

See **Life expectancy**.

anticipatory income assignment

An “anticipatory assignment of income” occurs in the **charitable giving** setting when a **person** has certain **rights** in the **contributed property** that have so matured that the person has a right to the proceeds from the property at the time the transfer is made. If the transfer is an assignment of income, there may not be a **charitable contribution deduction** based on the **fair market value** of the transferred property; the transferor may be taxable on the proceeds diverted to the **charitable organization**, with the charitable deduction determined as if the gift was of the after-tax income. [CG § 3.1(i)].

antitrust laws

Both **federal** and state **laws** include **statutes**, termed “antitrust laws,” that are intended to advance and protect competition in economic marketplaces. At the federal level, the principal statutes are the Clayton Act and the Sherman Act. These laws are directed against

A

combinations, conspiracies, or other collective restraints of trade. The antitrust laws apply in the **nonprofit organization** setting, in instances such as (1) inappropriate **membership** exclusion or expulsion practices, (2) the maintenance of **credentialing** programs, or (3) the enforcement of **codes of ethics** in ways that restrain free competition and trade. [EO § 3.2(f); AS §§ 1.2, 11.6; CL § 3.2(b); CG § 14.8; FR §§ 5.13, 5.19].

apostolic organization

The word “apostolic” means pertaining to or characteristic of an apostle, particularly with respect to the twelve apostles in the Christian religion. Certain “**religious** or apostolic” **organizations** are **exempt** from **federal income taxation**, even though they are not embraced by the general reference to religious organizations (**IRC** § 501(d)). These entities are religious or apostolic **associations** or **corporations** if the organizations have a **common treasury** or **community treasury**, even if the organizations engage in **business** for the common benefit of their **members**. The members of this type of communal organization include (at the time of the filing of their **tax returns**) in their **gross income** their pro rata shares, whether distributed or not, of the **taxable income** of the organization for the year; these amounts are treated as **dividends**. [EO § 10.7; AU § 7.1(aa); RE Q 3.12, Q 9.8; AS § 1.6(p)].

applicable disposition

The term “applicable disposition” means any sale, exchange, or other disposition by the **donee** of **applicable property** (1) after the last day of the **tax year** of the **donor** in which the property was **contributed** and (2) before the last day of the three-year period beginning on the date of the contribution of the property, unless the donee makes a certification as to use of the property (**IRC** § 170(e)(7)(B)). [CG § 4.6(c)].

applicable federal rate

The **IRS**, each month, publishes the “applicable federal rate,” which is a rate of interest used for a variety of **federal income tax** purposes. The valuation of **partial interests in property** is the subject of federal legislation, which created a mechanism for determining rates of return (**IRC** § 7520). This legislation addresses the method for valuing an **annuity**, any interest for life or a term of years, or any **remainder** or reversionary interest, for **income, estate, or gift tax** purposes. Under this approach, the **value** of these interests is determined by using (1) a floating interest rate equal to 120 percent of the applicable federal rate (**IRC** § 1274(d)) in effect for the month in which the valuation date falls and (2) life contingencies in mortality tables prescribed by the **IRS**. [CG § 11.1; HC § 28.3(d)].

applicable property

The term “applicable property” means **charitable deduction property** that is **tangible personal property** the use of which is identified by the **donee** as **related** to its **exempt purpose** and for which a **charitable deduction** in excess of the **donor’s basis** in the property is allowed (**IRC** § 170(e)(7)(C)). [CG § 4.6(c)].

applicable tax-exempt organization

For purposes of the **intermediate sanctions rules**, the phrase “applicable tax-exempt organization” means any organization that (without regard to any **excess benefit**) is a **tax-exempt charitable organization** (other than a **private foundation**), an **exempt social welfare organization**, or an exempt **health insurance issuer**, and any organization that was so exempt at any time during the five-year period ending on the date of the **excess benefit transaction** (IRC § 4958(e)). [EO § 21.2; HC § 4.9(a)(i); AS 3.8(b); SM p. 59].

application for recognition of exempt status

The IRS has developed four forms constituting “applications for **recognition of exempt status**.” These forms are useable by nearly all types of **tax-exempt organizations**; the forms are **Form 1023**, **Form 1023-EZ**, **Form 1024**, and **Form 1028**. Most categories of tax-exempt organizations, however, are not required to file any of these forms; nonetheless, an organization not required to file may file if it wishes to receive recognition by the IRS of its tax exemption. The organizations that must file an application to be tax-exempt are most **charitable organizations** (IRC § 508(a)), certain **consumer counseling organizations** (IRC § 501(q)(3)), **qualified health insurance issuers** (IRC § 501(c)(29)(B)(i)), and certain **employee benefit organizations** (IRC § 505(c)(1)). [EO Chap. 26; CU Q 3.31–Q 3.38; HC § 8.1; AS § 2.15; PG pp. 42–53, 235–236; SM pp. 66–71, 74–75; LI Q 2.13, Q 2.25, Q 2.27, Q 2.47–Q 2.57] (also **Self-declarer; User fee**).

appointment, power of

A “general power of appointment” over **property** is the power to appoint property to oneself, one’s **estate**, creditors, or the creditors of the estate (IRC § 2514(c)). [CG §§ 8.2(d), 8.3(a)].

appraisal

An “appraisal” is an objective estimation of the **fair market value** of an item of **property**. In the case of many **charitable contributions** of property, the **substantiation requirements** mandate a **qualified appraisal** of the property. [EO §§ 20.5(c), 32.7(b); CG §§ 10.1, 21.5; FR § 5.14(k); HC § 31.2(d); PF § 14.6(c); RE Q 13.28; PG pp. 246–250; SM pp. 139–141; LI Q 12.31, Q 12.32] (also **Valuation of property**).

appraisal summary

In the case of **charitable contributions** of **property** for which a **qualified appraisal** is required, an “appraisal summary” must be attached to the **donor’s tax return** on which a **charitable contribution deduction** with respect to the property is first claimed or reported. This appraisal summary must be on a form prescribed by the IRS (**Form 8283**, Section B), and signed and dated by the charitable **donee** and the **qualified appraiser** (or appraisers). The **law** requires the inclusion of certain information in an appraisal summary. [CG § 21.5; FR § 5.14(k); SM p. 139].

appraisal summary, partial

See **Partial appraisal summary**.

A

appraiser

An “appraiser” is an individual hired to make an **appraisal**. Property valuations are necessary, for **charitable contribution deduction** purposes, in the instance of many charitable **gifts** of property. [CG § 21.5(b); FR §§ 5.14(k), 5.17] (also **Appraisal summaries; Qualified appraiser**).

appreciated

See **Appreciation**.

appreciated property

An item of **property** is termed an “appreciated property” where the property has **appreciated in value**. This type of property is often an ideal subject for a **charitable gift**, in that the **charitable contribution deduction** is based on the **fair market value** of the property, with no **recognition** of any **capital gain**. [CG §§ 5.2, 7.1; PF §§ 14.2, 14.4(b), 15.1; FR § 5.14(c); SM pp. 135, 233].

appreciation

“Appreciation” is a term that refers to the increase in the **value** of an item of **property**. This occurs where the value of a property is greater than the owner’s cost of acquisition (the, or part of the, **basis**) of the property. Almost always, appreciation is composed of two elements: real and nominal changes in the value of property. One of these elements, real appreciation, reflects the true increase in economic value of the property. The other element, nominal appreciation, reflects the relative effect in the change in the value of money, rather than a change in the inherent value of the property. Whatever the amount of appreciation is, it is often referred to as the **appreciation element** in the property. In the case of **capital gain property**, the term sometimes used is **capital gain element**.

Over time, then, the value of an item of property may change. This should be considered in relation to the fact that the **federal income tax** system utilizes an **annual accounting period** for purposes of accounting for and taxing of income. Each year, a **person** may have an increase or decrease in wealth due to the real and/or nominal change in the value of the property being held. The federal income tax system does not attempt to track, measure, and tax economic **gain** or **loss** annually. Instead, gain or loss is accounted for only where there is the occurrence of some transactional event—a **sale, exchange**, or other **disposition** of property. The tax on gains or losses, then, is a transactional tax, not a tax on economic improvement (appreciation). [CG §§ 2.14(e), 4.2] (also **Appreciated property**).

appreciation element

The “appreciation element” in an item of **property** is the amount by which the **fair market value** of the property at a point in time exceeds the **adjusted basis** in the property. [CG §§ 2.14(e), 4.2] (also **Appreciated property**).

appropriate data as to comparability

In connection with application of the **rebuttable presumption of reasonableness**, an **authorized body** has “appropriate data as to comparability” if, given the knowledge and expertise of

its **members**, it has information sufficient to determine whether the terms and conditions of a transaction or arrangement are **reasonable**. [EO § 21.9(b); CU Q 7.19].

A

appropriate high-level Treasury official

The phrase “appropriate high-level Treasury official” refers to the individual within the **IRS** who has the authority to initiate a **church tax inquiry** and/or a **church tax examination**. The existing definition in the **IRC** is not operative because it has never been updated to reflect the reorganization of the **exempt organizations** function of the **IRS** in 1999. Proposed regulations to define the term were issued in 2009 but have not been finalized (**IRC** § 7611(h)(7)). [EO § 27.7(c)].

appropriate state officer

For purposes of the law authorizing disclosures of certain proposed actions involving **charitable organizations** and certain other **tax-exempt** organizations to state officials, the phrase “appropriate state officers” means states’ **attorneys general**; states’ tax officers; in the case of exempt charitable organizations, other state officials charged with oversight of these organizations; and, in the case of other categories of exempt organizations, heads of agencies designated by the states’ attorney general who have the primary responsibility for overseeing the **solicitation** of funds for **charitable** purposes. These individuals must be notified of a refusal by the **IRS** to **recognize** the **tax-exempt status** of a charitable organization, of the fact that the organization is out of compliance with the **federal tax** rules concerning charitable organizations, or of the mailing of a notice of deficiency in connection with certain **taxes**. Also, they may inspect and photocopy filed statements, records, reports, and other information relating to the qualification for, or denial or loss of, tax exemption by a charitable organization as are relevant to any determination under state law (**IRC** § 6104(c)(6)(B)). [EO § 27.10].

appropriations bill

An “appropriations” bill is an item of **legislation** passed by the U.S. Congress to obligate federal funds in support of government programs that previously have been created by means of enactment of an **authorization bill**. While an appropriations bill is **law** in a general sense, it is usually not law in the sense that it contains rules of conduct applicable to one or more persons. Nonetheless, the funding underlying this latter type of law is the function of appropriations bills.

arm's length

The phrase “arm's length” is used to describe a distance between two or more **persons** where none of the persons has a close or intimate relationship with another of these persons. The phrase was born of the view that each of the parties would stand apart from the other—at least as far as the length of a human being's arm.

arm's length relationship

An “arm's length relationship” is a relationship between two persons that is at **arm's length**. It is a relationship in which authentic bargaining can take place. Some relationships, such as

A

those between **insiders** or otherwise constituting **self-dealing**, do not reflect an arm's length relationship. Nonetheless, insiders or other **related parties** may have a relationship, including an **arm's length transaction**, that is at arm's length.

arm's length transaction

An "arm's length transaction" is a transaction involving two or more **persons** where each of these persons is functioning at **arm's length** in relation to the others. For example, the actual selling price of an **asset** that is **sold** in an arm's length transaction is considered to be the true **value** of the asset. The **private foundation** rules were enacted because Congress concluded that an arm's length standard between private foundations and their **disqualified persons** was inadequate. [EO § 20.0; PF Chap. 5; CG § 2.14].

art, gift of

A work of art may be the subject of a **charitable contribution**. In general, the **federal income tax charitable contribution deduction** for a **gift** of a work of art is equal to the **fair market value** of the **property** at the time of the gift. There are, however, exceptions to this rule. One of them pertains to contributions of art that was created by the **donor**; in this case, the deduction is confined to the donor's **basis** in the property (IRC §§ 170(e)(1), 1221). Another exception pertains to the fact that a work of art may be put to an **unrelated use** by the charitable recipient, in which case the deduction is confined to the donor's **basis** in the property (IRC § 170(e)(1)(B)(i)). [AR §§ 3.1(h), 3.2(h), 11.1(c), 19.1(d)(1), 19.2(b); CG §§ 9.1(a), 24.7(b)(2); SM pp. 114–115] (also **Fractional interest in art**).

art, loan of

Certain transfers are **excluded** from the definition of a **taxable gift** for **federal gift tax** purposes. One of these exclusions involves a loan of any work of art that is archaeological, historic, or creative **tangible personal property**. The **law** excludes from this tax loans of art made to a **tax-exempt charitable organization** and used for its **exempt purposes** (IRC § 2503(g)). [AR § 11.1(c)(2); CG §§ 8.2(g), 9.1(c)].

articles of incorporation

The phrase "articles of incorporation" is used to describe the document filed with the appropriate state authority to establish a **corporation**; this is the case irrespective of whether the corporation is **nonprofit** or **for-profit**. Thus, articles of incorporation are the **articles of organization** used to create a corporate entity. [EO § 4.2; GV § 1.2(a); RE Q 2.16; PG pp.; SM pp. 8–9, 68–69, 313; LI Q 1.12, Q 1.40].

articles of organization

The phrase "articles of organization" is used to describe the document by which an **organization** is created. It is the document that is the subject of the **organizational test**. The articles of organization of a **nonprofit organization** should contain a variety of provisions, including those stating the organization's name and purposes; whether there will be **members** and, if so, the qualifications and classes of them; the members of the initial **board of directors** (or **board**

of trustees); the **registered agent** and **incorporators** (if a **corporation**); the **dissolution** or **liquidation** procedure; and the requisite language (if any) referencing the appropriate **tax** law (**federal** and state) requirements and prohibitions. Some states require special language in the articles of organization to enable the directors and **officers** of the entity to utilize statutes providing **immunity** from **personal liability** for acts or failures to act in connection with service to the organization. [EO §§ 4.2, 4.3, 4.3(c); PF §§ 1.6, 1.7, 15.7(c); AR §§ 2.1(b), 2.2(a); GV § 1.2(b); RE Q 1.8, Q 2.16; PG pp. 4–5; SM p. 6; LI Q 1.40] (also **Articles of incorporation; Constitution; Declaration of trust; Trust agreement**).

artificial person

The **law** is applicable to **persons**, and it distinguishes between **natural persons** and “**artificial persons**.” The latter are, in essence, fictions; they are not real in the tangible sense. The principal legal fictions that are artificial persons are **corporations, estates, partnerships, limited liability companies, and trusts**. These **entities** are considered by the **law** to be distinct and separate from the individuals who form and/or manage them.

arts, promotion of

“Promotion of the arts” is a category of **charitable** purpose that can be the basis for **tax exemption** (under **IRC** § 501(a) by reason of **IRC** § 501(c)(3)) for a **nonprofit organization**. Arts can be promoted in many ways, including operation of a theater, training of artists, and promotion of public appreciation of one of the arts. [EO § 7.12; CG § 3.2(b)].

ascending liability

A **nonprofit organization** may incur a legal **liability**, thus causing another nonprofit **entity** to also be liable. For example, a **chapter** of a national organization may cause the national entity to be liable as well; this is termed “ascending liability.” [SM p. 105].

ascertainability

An **estate tax charitable contribution deduction** is likely to be defeated if the **value** of the charitable interest is not “ascertainable” as of the death of the **decedent**, so that it can be severed from noncharitable interests. This rule is at issue if there is vague language in the **will** and/or a substantial amount of discretion vested in the personal representative or a **trustee**. The U.S. Supreme Court stated that the standard must, to be ascertainable, “fixed in fact and capable of being stated in definite terms of money.” [CG § 8.7].

assembly, freedom of

The U.S. Constitution, in the **First Amendment**, provides that Congress may not pass a **law** that abridges the **right** of the people to assemble peaceably. This constitutional protection extends to forms of **advocacy**, such as **demonstrations** and rallies. These activities, however, may not be conducted in a way that is illegal or contrary to **public policy**. [EO §§ 6.2(a), 23.2(g); CL §§ 1.8(a), 8.8].

A

assessment, of tax

An “assessment” of **tax** is made by the **IRS** by recording the tax liability of the **taxpayer** in its records. Several types of assessments exist. The most common form of tax assessment occurs when a taxpayer files an income tax **return** showing a tax due; this is known as a “summary assessment.” An amount of tax due (that is, not paid) is a “tax deficiency.” To start the process of collection of a tax deficiency, the **IRS** is required to send the taxpayer a **notice of deficiency**. (**IRC** §§ 6201(a)(1), 6203) [EO § 28.2(a)(vi); PF § 5.15(g)] (also **Jeopardy Assessment; Termination assessment**).

asset

An “asset” is an item of **property**, irrespective of whether the property is **real property**, **tangible personal property**, or **intangible personal property**. [EO §§ 11.8(d), 12.4(a), 15.6, 20.5(c), 21.4(a); PF §§ 13.1, 13.3, 13.5, 13.6, 16.5; CG § 2.16(a); HC §§ 4.4(g), 21.3(b); AR Chap. 7, §§ 3.1(k), 3.2(k); CU Q 2.47] (also **Capital asset; Ordinary asset**).

asset test

One of the tests a **private foundation** may satisfy to qualify as a **private operating foundation** is an “asset test” (**IRC** § 4942(j)(3)(B)). This test requires that **substantially all** (at least 65 percent) of the foundation’s **assets** be active-use assets of any of these types: (1) program assets devoted **directly** to the active conduct of its **tax-exempt** activities, to one or more **functionally related businesses**, or both; (2) stock of a **corporation** that is **controlled** by the foundation, the assets of which are 65 percent or more so devoted; or (3) a combination of the foregoing two categories. [PF §§ 3.1(e), 3.1(f); EO § 12.1(b); SM p. 87].

assets, diversion of

For purposes of annual reporting to the **IRS**, a “diversion of assets” is an unauthorized conversion or use of the **organization’s assets**, including **embezzlement** or theft. [GV § 4.1(f); AR § 5.2(a)(5)].

assign

In **law**, the word “assign” means to transfer. For example, unless the document prohibits it, a **person** obligated under a **contract** may assign his, her, or its **rights** and responsibilities under the **agreement** to a person not then a party to the contract. In another example, an **annuitant** may assign his or her **rights** under an **annuity** contract to the **annuitor** or another entity in return for a **lump sum** payment or installment payments. [CG §§ 3.1(i), 5.5(b)].

Assistant Commissioner (Employee Plans and Exempt Organizations)

There is, within the **IRS**, an Assistant Commissioner (Employee Plans and Exempt Organizations). The function of this individual is to supervise and direct the “Office of Employee Plans and Exempt Organizations.” He or she is responsible for carrying out such functions as the **Secretary of the Treasury** may prescribe with respect to **administrative** matters pertaining to

the **federal tax law of tax-exempt organizations** and **employee plans** (IRC § 7802(b)(1)). [EO § 2.2(b)].

A

associate member

A **person** is an “associate member” of a **nonprofit organization** where the person’s is a **member** solely for the purpose of receiving a specific service, such as insurance coverage. [EO § 24.5(e)(iii)].

associate member dues

The term “associate member dues” means **dues** paid by an **associate member** of a **tax-exempt organization**. This type of dues payment may be subject to **unrelated business taxation**. [EO §§ 24.5(e)(iii), 25.2(l); UB §§ 4.8, 9.4(c)].

association

An “association” is an **organization** that has **members**; the organization may be **incorporated or unincorporated**. Usually, these members have a common business, professional, or trade interest, and the purpose of this type of association (often, a **business league**) is to promote that interest. This type of association is likely to qualify for **tax-exempt status** under **federal law** (IRC § 501(a), by reason of description in IRC § 501(c)(6)). Some associations are formed for **advocacy** purposes; these are also likely to be tax-exempt (by reason of IRC § 501(c)(4)). Other associations are **organized and operated** for **charitable, educational, and/or scientific** purposes (often termed **societies**); these **entities** are likely to be tax-exempt as well (by reason of IRC § 501(c)(3)). Still other organizations of this nature are organized and operated for **social** and recreational purposes (usually termed **clubs**); these are tax-exempt (by reason of IRC § 501(c)(7)). [AS § 1.1; EO Chap. 14; UB §§ 9.4, 10.11; SM pp. 40–41; CL § 8.3; CG §§ 2.8, 3.3(a); LI Q 1.50] (cf. **Union**).

association, freedom of

An element of the **constitutionally** provided **freedom of speech** is the “freedom of association.” This is the **right of persons** to associate for the advancement of some purpose. This right, however, like most, can be abridged when to do so involves a legitimate **state interest**. For example, **nonprofit membership organizations** are compelled to accept women as regular members—in advancement of eradication of gender-based discrimination—by direction of states’ human rights acts, notwithstanding the organizations’ associational rights. [CL § 1.9; EO § 1.7; CG § 1.3(c)] (also **Expressive association, freedom of; Intimate association, freedom of**).

association of churches

An “association of churches” is **tax-exempt** under the **federal tax law** as a **religious organization** and is not a **private foundation**. The historical meaning of this type of **entity** is a cooperative undertaking by **churches** of the same denomination. A **tax-exempt organization**, the **membership** of which is comprised of churches of different denominations, has been held by the **IRS** to qualify as an association of churches (IRC §§ 170(b)(1)(A)(i), 509(a)(1)). [EO § 10.4; AR § 1.1(b); RE Q 3.7] (also **Convention of churches; Institution**).

A

association-related foundation

An “association-related foundation” is just that: a **foundation** that is **related** to an **association**. In the typical instance, the association is a **tax-exempt organization** (IRC § 501(a), by reason of IRC § 501(c)(6), as is the foundation (IRC § 501(a), by reason of IRC § 501(c)(3)). The usual mechanism for the relatedness factor is the **interlocking directorate**.

The usual purpose of an association-related foundation is to take advantage of the tax attributes of each **entity**. For example, a **contribution** to an association is not deductible as a **charitable gift** (unless the association is a **charitable** organization), but a contribution to a foundation is so deductible. Similarly, a **private foundation** is not likely to make a **grant** to an association (again, unless it is a charitable entity), but a private foundation may make a grant to an association-related foundation.

The typical association is likely to be made up of a blend of **membership** service (IRC § 501(c)(6)) functions and charitable, **educational**, **scientific**, and/or similar (IRC § 501(c)(3)) functions. The ideal is to fund the membership services with **dues** and similar association **revenue**, and fund the charitable activities with gifts and grants. There are two models for this approach. One is for all charitable and like activities to be undertaken by the foundation, initiated there and/or transferred to it from the association; the foundation would fund these activities. The other approach is for all charitable and like activities to remain in the association; the foundation would be a **fundraising** vehicle and would make grants **restricted** for charitable programs to the association.

This approach also works where the association is a **social welfare** (IRC § 501(c)(4)) organization or is a **social club** (IRC § 501(c)(7)). There may be one or more rationales for utilizing a related foundation even where the association is a charitable (IRC § 501(c)(3)) entity.

This type of related foundation is rarely a private foundation; it is usually a **publicly supported organization** or a **supporting organization**. [AS §§ 8.8(a)-8.8(h); EO §§ 12.4(b), 12.4(c); PF §§ 15.4–15.7; SM pp. 80–85].

associational test

The “associational test” is a court-created standard defining what it means to be a **church** for **federal tax law** purposes. This test requires at least a place of worship, a congregation, and regular **religious** services. [EO §§ 10.3(b), 10.3(c); RE 3.4].

astroturf

The word “astroturf” is used as a term of derision, by members of a legislature, to describe a **grass-roots lobbying** effort that is so obviously staged or coordinated by professional **lobbyists** (such as the use of printed postcards) as to not truly reflect the sentiments of a segment of the **public**. [EO §§ 22.3(b), 22.3(d)(i)].

assumption of liability

An “assumption of liability” by an **insider** with respect to a **tax-exempt organization**, if not **valued** as being **reasonable**, can be a form of **private inurement**. [EO § 20.5(e); HC § 4.4(e); AS § 3.4(b)(v)].

attempt to influence

The **federal tax law** provides that, for an **entity** to qualify as a **tax-exempt, charitable organization**, no **substantial part** of its activities may constitute attempts to **influence legislation** (IRC § 501(c)(3)). Thus, inasmuch as the proscription applies to “attempts” to influence legislation, the ultimate success of the effort is irrelevant. [EO § 22.3] (also **Lobbying**).

attempt to influence legislation

See **Influence legislation**.

attentiveness requirement

To qualify, a **non-functionally integrated Type III supporting organization** must meet an “attentiveness requirement,” which means that the **supported organization** is attentive to the operations of the supporting organization during a year if, in the year, at least one of the following requirements is satisfied: (1) the supporting organization distributes to the supported organization amounts constituting at least 10 percent of the supported organization’s total financial support (or perhaps the support of a **division** of the organization) received during the supported organization’s last tax year ending before the beginning of the supporting organization’s tax year, (2) the amount of support received from the supporting organization is necessary to avoid interruption of the conduct of a particular function or activity of the supported organization, or (3) the amount of support received from the supporting organization is a sufficient part of the supported organization’s total support (or perhaps that of a division) to ensure attentiveness. [PF § 15.7(g)].

attorney

The term “attorney” is usually used to refer to a **member** of the legal profession who is licensed to practice law. A lawyer is often referred to as an “attorney.” While technically that designation is correct—in that the term “attorney” means no more than a “representative”—it does not convey the fact of the formal training of and services provided by a lawyer. A compromise term is “attorney-at-law.” One individual can make another individual an “attorney” simply by executing a **power of attorney**.

attorney general

An “attorney general” is the chief legal officer of a government. The U.S. government has an Attorney General, who is the head of the Department of Justice; each of the states has an attorney general as well. In many states, the administration and enforcement of the charitable solicitation act is in the office of the **attorney general**. (Colloquially, a state’s attorney general is often referred to as the “AG”; some are of the view that those initials stand for “aspiring governor.”) [FR § 3.19].

attribution considerations

Where an **organization** so **controls** the affairs of another organization, to the point that the latter is merely an extension of the former, the controlled **entity’s** functions will likely be attributed

A

to the controlling entity so that the controlled entity will not be regarded as a separate entity for **federal tax law** purposes. This can happen, for example, where one organization is **directly** involved in the day-to-day management of the other organization. [EO §§ 30.2, 32.1(d); AR §§ 21.1(b), (c)].

auction

An “auction” is an event at which there are **sales** of items of **property** and/or services to the highest bidder for each item. An auction is frequently used by a **tax-exempt charitable organization** as a **fundraising event**. As a general rule, a payment made to a charitable organization at a fundraising auction by one acquiring the property (the highest bidder) is not a **gift**; rather, it is the purchase of the item and thus there is no **charitable contribution deduction** for the payment (although a **business expense deduction** may be available). State law may require that the organization that is conducting the auction collect the appropriate **sales tax** and remit it to the state. [CG § 9.13; FR § 8.8].

audit

The word “audit” has three meanings. One is the review of an **organization’s** books and records and the preparation of a financial statement by an **accountant** (usually a **certified public accountant**). The second meaning is an examination of an organization’s books, records, and operations by the **IRS** to determine whether the organization is in compliance with the **federal tax laws** and whether it has properly reported and paid all **taxes** due; this definition of an “audit” also extends to examinations by state and local tax authorities. In this regard, there are special rules to which the **IRS** must adhere when auditing a **church** (**IRC** § 7611). The third meaning is an examination of an organization’s books, records, and operations by a **lawyer** and the rendering of a letter of opinion as to the organization’s compliance with federal and state laws (termed a **legal audit**). [AU Chap. 1, §§ 3.0, 3.3; GV Chap. 9; EO § 27.6; PF §§ 2.7(d), 27(e); HC §§ 36.1–36.3; PG Chap. 12; SM pp. 294–296, 306–307].

audit committee

The term “audit committee” means a committee, generally established by the **governing body** of an **organization**, with the responsibilities of overseeing the organization’s financial reporting process, monitoring the choice of accounting policies and principles, monitoring internal control processes, and/or overseeing hiring and performance of any external auditors. [GV §§ 3.4(b), 4.2(e), 5.10, 6.3(u); AU § 7.2(d)(2)].

audit guide

An “audit guide” is a document developed to provide accounting standards and reporting procedures. Audit guides are published by the American Association of Certified Public Accountants; these include guides for **hospitals**, **colleges**, **universities**, and **voluntary** health and welfare **organizations**. Other organizations publish audit guides.

audit guidelines

The **IRS**, from time to time, issues “audit guidelines” to assist its agents in the various field offices in the conduct of their examinations (**audits**) of **tax-exempt organizations**, when these reviews involve specialized areas of the **law**. [HC §§ 7.1(c), 36.3; CG § 23.1; FR § 5.1].

audit lottery, winning of

The phrase “winning the audit lottery” is a euphemism for selection by the **IRS** of a **person** for examination by the agency. [AU §§ 3.2, 5.2; GV § 8.17; SM pp. 302–304].

authority

The word “authority” is used by **lawyers** to describe the body of **law** that supports their position with respect to a particular set of facts. To some extent, the term is synonymous with the concept of **precedent**. That term, however, is usually used in connection with court opinions; “authority” can also include **statutes**, **regulations**, **rules**, **agency rulings**, and (sometimes) scholarly articles.

authorization bill

An “authorization bill” is an item of **legislation** passed by the U.S. Congress that creates **law**. The term is often used when the legislation “authorizes” a government program. Funding for these laws is separately legislated, in an **appropriations bill**. This terminology may also be used at the state level.

authorized body

An “authorized body” is an **independent board** or an independent **committee** of a **governing body** that has been so designed in connection with the **rebuttable presumption of reasonableness**. [EO § 21.9(a)].

automatic excess benefit transaction

An economic benefit may not be treated as **consideration** for the performance of services by a **disqualified person**, in the **intermediate sanctions** context, unless the **applicable tax-exempt organization** providing the benefit clearly indicates its intent to treat the benefit as **compensation** when the benefit is paid (**IRC** § 4958(1)(1)(A)). If this intent is not proven, the services provided by the disqualified person will not be treated as provided in consideration for the benefit for purposes of determining the **reasonableness** of the transaction (even if it is, in fact, reasonable); this is known as an “automatic excess benefit transaction.” Grants, loans, payments of compensation, and similar payments by a **supporting organization** to a **substantial contributor** with respect to the organization are also automatic excess benefit transactions (**IRC** § 4958(c)(3)), as are these types of payments from a **donor-advised fund** to a **person** who, with respect to the fund, is a **donor**, **donor advisor**, or related party (**IRC** § 4958(c)(2)). [EO §§ 21.4(c)-(e); HC § 4.9(a)(iii); AU § 21.1(i); CU Q 6.36, Q 6.37; AS § 3.8(d)(ii)].

A**auto-revocation**

The informal term “auto-revocation” refers to the loss of its **tax-exempt status**, by **operation of law**, when a **tax-exempt organization**, that is required to file an **annual information return** and/or **submit a notice**, fails to do so for three consecutive years (**IRC § 6033(j)**). [EO § 28.5].

auxiliary, of church

An “integrated auxiliary of a church” is a **tax-exempt organization** the principal activity of which is **exclusively religious** and which is **controlled** by or associated with a **church** or a **convention or association of churches**. This type of auxiliary entity is a **public charity**. [EO § 10.5; CG § 3.4(a); RE Q 3.8; SM p. 80].

average gift size factor

The concept of the “average gift size factor” was developed in the context of efforts to measure the **reasonableness** of the **fundraising costs** of **charitable organizations**. This approach rejects the view that the bottom-line amount of fundraising costs (or a ratio that is produced using that amount) is the appropriate way to determine what is reasonable in this setting. One significant factor affecting fundraising costs is the average size of the **gifts** received in a year by a charitable organization. Thus, it is contended that **disclosure** of a charitable organization’s number of gifts—by category of type of **fundraising method** used—is essential for a complete and fair evaluation of the reasonableness of fundraising costs, and that any comparisons of fundraising performance should occur only between organizations with similar **constituencies**, based on a number of factors, particularly average gift size. [FR § 4.1(f)].

average percentage payout

The phrase “average percentage payout” is used in the **federal tax law** concerning circumstances where the **rate** of the **tax** on the **net investment income** of a **private foundation** is one percent. It is defined as being, for the **base period**, the average of the **percentage payouts** for **tax years** in the base period (**IRC § 4940(e)(3)(A)**). [PF § 10.2(a)].