

## **Supporting Organizations**

The Pension Protection Act of 2006 (the “Act”), signed into law on August 17, 2006, contains several provisions that impact charitable organizations.

One of the provisions concerns grants made by private foundations, such as the George and Mary Josephine Hamman Foundation, to supporting organizations, as identified by the Internal Revenue Service (the “IRS.”)

All 501(c)(3) charities are classified as either public charities or private foundations. Classification as a public charity is more beneficial from a tax perspective than classification as a private foundation.

Some types of charities, such as churches, schools and hospitals, are classified as public charities because of the nature of their activities. Others qualify as public charities because they meet a “public support test” that indicates they receive support from a broad base of contributors.

In general terms, a supporting organization is a 501(c)(3) that qualifies as a public charity because it has a close relationship with another 501(c)(3) public charity. To qualify as a public charity, the supporting organization must provide meaningful support – financial, programmatic, or both – and give some degree of structural and operational control to the public charity it supports.

### **Types of Supporting Organizations**

In general, supporting organizations fall into one of three categories – Types I, II, or III – depending on the nature of the relationship between the supporting organization and the charity being supported.

Type I – Operated, supervised, or controlled by: This type is often described as a parent-subsidiary relationship and generally involves the supported charity’s officers, directors, trustees or members having the right to appoint a majority of the officers, directors, or trustees of the supporting organization.

Type II – Supervised or controlled in connection with: This type usually has an overlapping board relationship where at least a majority of the members of the supporting organization’s governing board are also members of the supported charity’s governing board.

Type III – Operated in connection with: This type may have no, or minimal, board overlap. Accordingly, it operates with a greater degree of independence from the organization it supports, but it is required to have procedures designed to ensure that the supporting organization is responsive to the supported organization.

## **Change in Law**

Previously, private foundations were allowed to make grants to all types of supporting organizations just as they would any other public charity.

The provisions of the new law now place several impediments to private foundations making grants to Type III supporting organizations that don't meet special requirements to qualify as "functionally integrated" Type III supporting organizations.

Private foundations may be subject to punitive excise taxes if they make grants to Type III supporting organizations that don't qualify as "functionally integrated" Type III supporting organizations

## **Your Organization**

Determining which type of supporting organization your organization is will require a review of its governing documents and knowledge of the specific requirements for Types I, II, and III supporting organizations.

It may be clear that your organization is a Type I supporting organization. As an example of a Type I supporting organization, the Houston Parks Board is a supporting organization to the City of Houston (the public charity in this example.) The Mayor appoints, with City Council approval, all of the members of the board of directors of the Houston Parks Board.

If your governance structure does not provide that a majority of the members of the board of your supporting organization are appointed or elected by the supported organization, you may want to confer with legal counsel or a tax advisor to determine which type of supporting organization your organization is. If the legal counsel or tax advisor who originally helped obtain your exempt status with the IRS is available, that would be a good place to start. If not, you may want to engage legal counsel or a tax advisor with expertise in the law of tax-exempt organizations to advise you.

If your organization is Type III supporting organization, additional documentation will be required to determine whether it is a "functionally integrated" Type III supporting organization.

The enclosed form will allow the George and Mary Josephine Hamman Foundation to comply with IRS Notice 2006-109, Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.

Before the George and Mary Josephine Hamman Foundation can process your grant application, we must receive the enclosed form and the additional documents indicated. The form must be signed by the president or chief executive officer of your organization.

## Representation of Supporting Organization Status

\_\_\_\_\_ [NAME OF SUPPORTING ORGANIZATION] hereby represents that it qualifies as a public charity because it is a supporting organization as defined by Internal Revenue Code Section 509(a)(3).

1) The organization supports:

\_\_\_\_\_  
Name of Supported Organization(s)

2) The organization represents that it is the following type of supporting organization:

- \_\_\_\_\_ Type I “Operated, supervised, or controlled by” one or more publicly supported organizations – a majority of the governing board is elected or appointed by the supported organization(s).
- \_\_\_\_\_ Type II “Supervised or controlled in connection with” one or more publicly supported organizations – a majority of the governing board consists of individuals who also serve on the governing board of the supported organization(s).
- \_\_\_\_\_ Type III “Operated in connection with” one or more publicly supported organizations – not a Type I or Type II.

3) Describe the process by which your governing board is appointed and elected.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach Articles of Incorporation, Bylaws, or other documents which detail the process. Please highlight the article(s) or section(s) of the material which prescribes the process.

*If the organization is a Type I or Type II supporting organization, skip section 4 and go the to signature section below.*

*If the organization is a Type III supporting organization, complete section 4.*

4) Type III supporting organizations are either functionally integrated or NOT functionally integrated with the organization(s) they support.

a. As a Type III supporting organization, the organization represents that it is

\_\_\_\_\_ functionally integrated with one or more supported organizations.

or

\_\_\_\_\_ not functionally integrated with one of more supported organizations.

*If not functionally integrated, skip remainder of section 4. If functionally integrated, complete rest of section 4.*

b. If the organization represents that it is functionally integrated, identify the one or more supported organizations with which it is functionally integrated:

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c. If the organization represents that it is functionally integrated, it must provide one of the following documents. Please indicate which of the following is attached.

\_\_\_\_\_ A written representation signed by an officer, director or trustee of each of the supported organizations with which the grantee represents that it is functionally integrated, describing the activities of the grantee and confirming that but for the involvement of the grantee engaging in activities to perform the functions of, or to carry out the purposes of, the supported organization, the supported organization would normally be engaged in those activities itself. Such written representation must meet the requirements outlined in Section 3 of IRS Notice 2006-109.

or

\_\_\_\_\_ A reasoned written opinion of counsel representing the organization concluding that the grantee is functionally integrated with Type III supporting organization.

NAME OF SUPPORTING ORGANIZATION

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title or Corporate Office Held

\_\_\_\_\_  
Date

### Corporate Acknowledgement

The State of Texas  
County of \_\_\_\_\_

Before me, the undersigned, a Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation and that he executed the same as the act of such corporation for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public, State of Texas