

What are the annual filing requirements of government affiliates exempt under 501(c)(3)?

Section 3 of Revenue Procedure 95-48 is clear that government affiliates do not need to file the annual information return, Form 990. However, an entity having unrelated business income must still file Form 990-T to report that taxable income, even though it does not file form 990.

Section 6033(a)(1) of the IRC generally requires the filing of annual information returns (990s) by exempt organizations. Section 6033(a)(2)(A) provides certain exceptions from filing these returns. Section 6033(a)(2)(B) provides discretionary exceptions when the Secretary “determines such filing is not necessary to the efficient administration of the internal revenue laws.” Rev. Proc. 83-23 established a list of organizations exempted from filing 990s at that time. It was supplemented by Rev. Proc. 95-48, which is an exercise of the commissioner’s discretionary authority from section 6033, and which specifies that governmental units and affiliates of governmental units are not required to file annual information returns (990s). The IRS explained it was providing this exemption because the information required on the 990 was available from other sources at both the state and federal levels. It was an attempt to relieve colleges and universities of some paperwork requirements. (1994 DTR 175 d9).

Helpful Sources

Guthry, Peter. Dealing with government related entities—A brave new world. ALI-ABA CLE (1991)

Aprill, Ellen P. The Integral, the essential and the instrumental: Federal Income tax treatment of governmental affiliates, 23 J. Corp. L. 803 (1998)

McCray, Richard A. Sr. and Marvin Fridlander, “Organizations closely affiliated with state or Indian tribal governments reference guide”, IRS Exempt Organizations CPE TIP FY 2004

**Internal Revenue Service Exempt Organizations Continuing
Professional Education (Cpe)
Technical Instruction Program Fy 2004
Organizations Closely Affiliated
with State or Indian Tribal
Governments Reference Guide**

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Guide sheet for Section 501(c)(3) Organizations Closely Affiliated with State or Indian Tribal Governments

Instructions -- This guide sheet is designed to assist in the processing of an IRC 501(c)(3) exemption application submitted by an organization that is closely affiliated with state government (including federally recognized Indian tribal governments). See the Reference Guide for assistance in completing this guide sheet. Contact EO Technical for additional help.

Yes/No

1. Is the applicant a corporation, association, or trust? (A "Yes" response is favorable. A "No" response indicates that a problem exists.)
2. Does the organization meet the organizational test? (A "Yes" response is favorable. A "No" response indicates that a problem exists.)
3. Is the organization a wholly owned integral part of a state or local government? (A "Yes" response indicates that a problem exists. A "No" response is favorable.)
4. Is the organization a federally recognized Indian tribal government or a political subdivision of a federally recognized Indian tribal government? (A "Yes" response indicates that a problem exists. A "No" response is favorable.)
5. Does the organization have substantial regulatory or enforcement powers (sovereign powers)? (A "Yes" response indicates that a problem exists. A "No" response is favorable.) If "Yes," are they regulatory or enforcement powers that are specifically excepted from disqualifying an organization under IRC 501(c)(3)?
 - Determining a tax rate (Rev. Rul. 74-15)
 - Conducting campus policing (Rev. Rul. 177-165)A "Yes" response is favorable. A "No" response indicates that a problem exists.)
6. Has the organization requested an exception from the Form 990 filing requirement under Rev. Proc. 98-45? If "Yes," continue.
7. Has the organization requested an exception from filing Form 990 because it is a governmental unit under Section 4.01 of Rev. Proc. 95-48, or because it is an affiliate of a governmental unit under either Section 4.02(a) or Section 4.02(b) of Rev. Proc. 95-48? (If "Yes," must meet a, b or c below.)

- a. Does the organization meet Section 4.01 because it is a governmental unit (1) as defined in Reg. 1.103-1(b), (2) an organization described in IRC 170(c)(1), or (3) an Indian tribal government or a political subdivision of an Indian tribal government under IRC 7701(a)(40) and 7871?
- b. Does the organization meet Section 4.02(a) because it possesses a ruling or determination from the Service that (1) its income is excluded from gross income under IRC 115, (2) it is entitled to receive deductible contributions under IRC 170(c)(1), or (3) it is a wholly owned instrumentality of a state or political subdivision of a state for employment tax purposes under sections 3121(b)(7) and 3306(c)(7)?
- c. Does the organization meet Section 4.02(b) because (1) the organization is controlled by a governmental unit, (2) it satisfies at least two of the five affiliation factors listed in Section 4.03, (3) its filing of Form 990 is not otherwise necessary for efficient tax administration.