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This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Staying Tax-Exempt: How To Support Organizations In Other Countries Without Losing Your 501(c)(3) Status

Nonprofit or non-governmental organizations based in countries outside of the U.S. are often ineligible to receive tax-exempt status under Internal Revenue Code §501(c)(3). These organizations may choose to form a U.S.-based §501(c)(3) organization or to partner with an existing U.S.-based §501(c)(3) organization with a similar mission in order to be able to obtain tax-deductible donations from U.S. taxpayers. But U.S.-based §501(c)(3) organizations risk losing their tax-exempt status if they accept donations on behalf of organizations based in other countries without meeting certain IRS requirements.

There are three key factors that the IRS considers when determining whether a §501(c)(3) nonprofit can accept donations on behalf of an organization based in another country. The first is whether the funds will further the §501(c)(3)'s mission if donated to the organization based in another country. The second is the level of control that the §501(c)(3) organization maintains over donated funds, their use and evidence of that use. The third is the extent of the §501(c)(3) organization's activities within the United States.

A U.S.-based §501(c)(3) tax-exempt organization will be seen as a conduit organization by the IRS if it passes money from its donors to a separate, non-exempt organization without maintaining an appropriate level of control and discretion over those funds. A §501(c)(3) organization that is acting as a conduit organization can lose its §501(c)(3) tax-exempt status.

In order to avoid being viewed as a conduit organization, the board of directors of the U.S.-based §501(c)(3) organization must actively decide how to use any funds received on behalf of another organization. The board must ensure that the use of the funds aligns with the mission and goals of their organization. It cannot simply flip that money over to another organization without deciding how such monies should be used.

In addition, the U.S.-based §501(c)(3) organization must conduct its own charitable or mission-related activities other than fundraising in order to meet its operational requirements under §501(c)(3). Such activities can include educating the public about the plight of the people where the non-governmental organization is located, conducting mission trips to the country where the non-governmental organization is located, or more expansive activities including working in the country such as growing gardens, providing healthcare services, etc.

For example, Friends of NGO G is a U.S.-based §501(c)(3) organization whose only activities are raising donations and sending those donations immediately to NGO G, a non-exempt, international organization. Friends of NGO G is acting as a conduit organization because it does not really control the funds. It simply passes any funds on to NGO G, and it does not have any domestic activities which further its mission. Friends of NGO G would therefore be at risk of losing its §501(c)(3) status.

However, if the §501(c)(3) organization maintains control and discretion over donated funds and uses some of the funds for domestic activities or its own foreign activities, then the U.S.-based §501(c)(3) organization is not at risk of being considered a conduit and losing its §501(c)(3) status.

A good way to maintain appropriate control over donated funds is by establishing grant agreements with the international organization. The agreements should describe the project or projects that are being funded and should ensure compliance with the Foreign Corrupt Practices Act and Office of Foreign Asset Control requirements, to make sure that the donated money is not being used for unlawful or inappropriate purposes. The U.S.-based §501(c)(3) organization's board of directors should approve each grant agreement.

Other best practices to ensure appropriate control include:

- Requiring a pre-grant application and approval for projects to make certain the funds will be used to further the shared mission or purpose of the organizations.
- Requiring a detailed description of projects before funding is given.
- Requiring that the partner international organization provides an accounting of how funds are spent.