

PUBLIC SUPPORT TEST

Definitions, resources and links

In support of Standard and Practice 2C

Recommendation: Educate board members now and as needed in the future about the IRS public support test. The tests ensure that the organization continues to qualify as a public charity and not a private foundation. Include in board orientation materials and discussion, information on the requirements for maintaining federal tax-exempt status.

What is the public support test for a public charity?

There are two public support tests for public charities: one for organizations described in sections 509(a)(1)- publicly supported charities and 170(b)(1)(A)(vi) of the Internal Revenue Code, and one for organizations described in section 509(a)(2)- activity supported charities [probably does not apply to most land trusts]. Both tests measure public support over a five-year period. If an organization does not meet the public support test, the IRS will treat it as a Private Foundation, which carries with it a set of different standards related to taxation. For more information on this subject, please visit www.foundationcenter.org

Generally, the 509(a)(1) test requires that the organization receive at least one-third of its support from contributions from the general public, or meet the 10 percent [facts and circumstances test](#). In this case, your organization may attempt to qualify as a public charity if it can establish that, under all the facts and circumstances, it normally receives a substantial part of its support from governmental units or the general public. To establish this support, your organization should provide on Part IV of the [Schedule A](#), a description of the facts and circumstances which establish that your organization is in the nature of an organization that is publicly supported.

Generally, the 509(a)(2) test requires that the organization receive more than one-third of its support from contributions from the general public and/or from gross receipts from activities related to its tax-exempt purposes. Under the 509(a)(2) test, an organization can receive no more than one-third of its support from gross investment income and unrelated business taxable income.

More details on the public support tests under sections 170(b)(1)(A)(vi) and 509(a)(2) are set forth in the [instructions](#) to Form 990, Schedule A.

Resources:

- Internal Revenue Service: <http://www.irs.gov/charities/article/0,,id=215090,00.html>
- The Foundation Center: http://foundationcenter.org/getstarted/faqs/html/pub_sup_test.html
- *IRS Pub. 557: Tax-Exempt Status for Your Organization*, details how to calculate public support (see pp. 29-35, "Qualifying as Publicly Supported") through definitions, scenarios and examples. Also, most handbooks on establishing a nonprofit organization have a section on calculating public support.
- Internal Revenue Code Section 509: Private Foundation defined: http://www.taxalmanac.org/index.php/Internal_Revenue_Code:Sec._509._Private_foundation_defined