

NMDC Fiscal Agent Information

In Revenue Ruling 68-489, 1969-2 C.B. 210, the IRS held that a 501(c)(3) organization can distribute funds to organizations that have not, themselves, received IRS recognition of 501(c)(3) status if certain steps are taken to insure that the funds are used only for charitable, educational or other 501(c)(3) purposes.

Only a few guidelines are outlined in the ruling:

- funds must be used for specific projects in furtherance of the sponsor's own exempt purposes
- the sponsoring organization must retain control and discretion as to the use of the funds
- the sponsoring organization must maintain records establishing that the funds were used for section 501(c)(3) purposes

Based on this ruling, many 501(c)(3) organizations have sponsored other, non-exempt organizations or projects. These arrangements are called by many names - umbrella, fiscal agent, fiscal sponsorship...

In a typical arrangement, the non-exempt organization solicits grants or donations, donors make out their checks to the tax-exempt sponsor, and the sponsor pays expenses on behalf of, or makes a grant to, the non-exempt organization, sometimes taking a percentage of the donation as a fee. The sponsor may also take care of reporting for the non-exempt organization's employees, allow the use of its bulk mailing permit, and/or provide office space, use of office equipment or clerical help.

Many of these arrangements go far beyond the scope of what is described in Revenue Ruling 68-489. While not necessarily illegal, these kinds of arrangements can be risky, precisely because they are carried on within a gray area of the law. Many small or newly formed non-profit organizations could not exist without sponsorship of this kind, but it should not be relied on for a lengthy period of time, or if substantial amounts of money are involved.

Generally, tax law does not permit charitable contribution deductions for gifts to non-exempt organizations. Suppose the IRS perceives a fiscal agent arrangement as a strategy to circumvent the law. In the case of a conduit or pass-through arrangement, every party involved - the sponsor, the non-exempt organization, and the donor - can end up with tax problems.

At a minimum, an organization offering to act as a fiscal agent should adopt a written internal policy governing sponsorship arrangements, require written proposals from sponsorees, enter into formal sponsorship agreements with them, and establish ongoing oversight and follow-up procedures.