Most longstanding private shelters have established their credentials when it comes to their 501(c)(3) status. But for smaller rescue and fostering groups, which are often loosely knit groups of private individuals doing the work in their spare time and often in a piecemeal manner, taking on the paperwork involved may seem daunting. And even well-established nonprofits may confront circumstances in which their status is challenged or questioned, and they need to demonstrate their tax-exempt status—for example, when applying for grants from private foundations or seeking other major financial donations.

Some are intimidated by the process for obtaining exempt status. And for small organizations that don’t own any property, don’t do public fundraising, and don’t feel the need to take charitable contributions deductions for costs they incur for their rescue work, obtaining formal tax exemption may not be valuable. But groups that accept donations will find that most supporters expect, or even demand, that the organization be tax-exempt as a condition of making donations.

People rarely get involved in animal welfare work to experience the joy of filling out federal tax paperwork, but if you want to be able to save more of your money and accept donations from those who want to support your work for animals, it may be worth establishing that your group is a bona fide nonprofit. Proof of federal tax-exempt status may be needed or useful for obtaining state or local income, sales, or property tax exemptions; qualifying to receive grants from private foundations; facilitating large donations from the public; and obtaining tax-exempt postal rates for the times when you want to send out materials to your donors and supporters.

In certain instances, establishing and demonstrating tax-exempt status may be difficult for some organizations. This is particularly true of small groups without paid employees that do not have staff to complete the tax filings and to maintain compliance with public disclosure rules. If you want the benefits of 501(c)(3) status, however, it’s smart to have a strategy to quickly respond to requests for proof of your legitimacy. While it is common for legitimately tax-exempt organizations to not receive a tax determination letter, this can create difficulty at certain points, particularly when private foundation grants are in play. It’s better to have this documentation in place and not need it than to suddenly need it as you’re cramming on a grant proposal, and not be able to get it in time.

Eligibility for Tax Exemption

Generally, tax exemption and the right to receive deductible charitable contributions are available to certain types of organizations, including churches; state and local governments and controlled agencies; colleges and universities; and organizations described under Internal Revenue Code Section 501(c)(3), which perform a charitable purpose and otherwise meet the described requirements.
The law also provides that organizations are not considered to be tax-exempt unless the IRS has overtly issued a ruling approving their tax exemption after the organization has applied using Form 1023, the application for tax-exempt status.

In addition, there are certain organizations that aren’t required to request specific IRS recognition of their tax exemption, including churches, state and local governments, organizations formed on or before Oct. 9, 1969, and organizations that normally earn gross receipts (from donations, adoption fees, sales, or other activities) of $5,000 or less—a characteristic that may be relevant for some rescue and trap-neuter-return groups. These organizations would be treated as tax exempt as long as they are formed, organized, and operated so as to meet the legal requirements of Section 501(c)(3), even if they have not received a ruling from the IRS.

Documentation
If your group is required to file for recognition—or chooses to, to be on the safe side—the successful result of filing Form 1023 is the receipt of a “determination letter” from the IRS declaring its recognition of your organization’s exemption. Hold on to this letter. Do not lose it. Do not let the cats shred it or the dogs eat it. It’s the easiest and best document you’ll have to prove your tax-exempt status.

Organizations that do not require specific IRS approval may need to do one or more of the following:

- Consider whether a group exemption exists. Organizations that are controlled by a larger organization (breed rescue groups that are chapters of a larger national organization, for example) may have obtained a group exemption that can be used to prove tax exemption. You should note, however, that your organization is only included under that group exemption if the central organization includes you in its filings with the IRS, so you should consult with them to determine your inclusion in group exemption.

- Consider whether you are a governmental agency or instrumentality (which functions not as a core responsibility of government but operates with government oversight, funding, and control). Municipal animal control operations, police departments, and departments of public safety or health can generally easily prove themselves to be tax-exempt by referring to the state or local laws or ordinances that created them and demonstrating their relationship within the governmental structure.

- Draft an affidavit. Once you determine that you qualify for tax exemption but are exempt from the requirement to request specific IRS determination, work with an attorney to draft an affidavit that can be provided when needed to justify your eligibility for tax exemption and your exemption from requesting specific IRS determination. An effective affidavit would contain an express statement of the law...
that the organization is relying on for its exemption and an explanation of how it meets that provision. It may also need to be signed by an officer under penalties of perjury.

- Obtain a listing in IRS Publication 78. The IRS maintains a listing of all organizations that it recognizes as tax exempt under Section 501(c)(3), known as “Publication 78” which is searchable on the IRS website to provide timely information on the formal tax status of multitudes of organizations.

- Request reissuance of the determination letter. If you have previously received a determination letter but you cannot find a copy, you may ask the IRS to reissue it. This is not considered to be a determination of tax-exempt status, but is merely a copy of the original letter.

- Request initial recognition of status determination. Even if your organization is exempt from the requirements to file Form 1023, you can voluntarily file the form, and the IRS will make an official determination of tax-exempt status and issue a determination letter.

**After Receipt of the Determination Letter**

Organizations that have received determination of tax exemption under Section 501(c)(3) are required to make available to the public their determination letters, Forms 1023, and any supporting work papers. If a member of the public requests the documents in person or by showing up at your facility, copies should be provided immediately; if the request is made in writing, copies should be provided within 30 days. You are legally permitted to charge a copying fee (currently set at 20 cents per page), but are required to inform the requestor of the total cost of the copies. If an organization fails to provide copies of the determination letter, exemption application, and work papers when they are requested, it may be subject to a penalty of $20 per day for as long as the failure continues, with no maximum penalty. Thus, it can be very expensive if you fail to provide copies of these documents upon request. The law does provide alternative structures for providing the documents by posting them on the organization’s website, on a third-party website, and other mechanisms—however, organizations must still provide copies to those who request them in person.

In summary, tax-exempt organizations can frequently be called upon by donors, media outlets, public stakeholders, and even government agencies to prove their eligibility for tax-exempt status. If you don’t have a determination letter, and you are not required to obtain one, there are still ways you can justify your tax-exempt status to requesters. For those organizations that have received tax-exempt determination letters, you are required to provide copies of those documents to anyone who requests them, subject to certain conditions. Ideally, each organization should have a written policy as to what will be provided, and when and how that will be done, in order to avoid public relations issues that could impact your ability to raise funds. Failure to have a working procedure for how to respond to requests for proof of exemption can lead to imposition of penalties by the IRS. But, more importantly, it can also undermine the credibility of the organization in the eyes of the media, donors, and the public.

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Lester Thompson is a certified public accountant who, for nearly 25 years, has provided tax and accounting advice to charities of all sizes and types, including humane societies, hospital systems, colleges and universities, and everything in between. He serves as a volunteer on The HSUS National Disaster Animal Response Team and is a volunteer instructor with Humane Society University. He is on the board of the World Animal Awareness Society, where he has produced a series of videos on tax topics for nonprofit organizations, which can be seen at wa2s.org.