



Online CLE

# IRS Rules for Classifying Private Foundations and Public Charities

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# Chapter 1

## IRS Tests for Public Charity and Private Foundation Status

DAVID ATKIN  
Center for Nonprofit Law  
Eugene, Oregon

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## **I. INTRODUCTION**

In this presentation I'm going to discuss the IRS regulations and tests classifying 501(c)(3) organizations as either public charities or private foundations, with a focus on the two tests in IRC Section 509(a)(1) – the “mechanical test” and the “backup facts and circumstances” alternative test that is available for organizations using the test in Section 509(a)(1). I will also briefly summarize the tests in IRC Section 509(a)(2) and 509(a)(3). In addition, I am going to discuss the IRS criteria for designating certain donations as “unusual grants” in the process of calculating an organization's level of public support. Finally, I am going to explain the IRS tests for being classified as a private operating foundation (POF), instead of being classified as the more common non-operating private foundation.

The IRS classifies every 501(c)(3) organization as either a private foundation or a public charity. The burden of proving an organization qualifies to be classified as a public charity is on the organization itself. There are a number of different tests that can be used to prove an organization qualifies for public charity status, and the organization must select which test it wishes to use.

Certain special organizations are automatically treated as public charities by the IRS: Churches, associations of churches, schools and colleges, hospitals and medical research organizations, governmental units, public safety organizations and supporting organizations defined in IRC Section 509(a)(3). All other organizations that wish to be classified as 501(c)(3) public charities must prove that they qualify for that status by showing that they satisfy either of the two tests in IRC Section 509(a)(1) because they are a publicly supported organization (PSO), or they satisfy the test IRC Section 509(a)(2) because they are a fees and activities supported organization (FSO), or they satisfy the requirements for being one of the three types of supporting organizations described in IRC Section 509(a)(3). If they fail to satisfy one of these tests, then they will be classified as private foundations – either as the more common private non-operating foundation, or if they can qualify for it they can request the less common but generally more favorable status of private operating foundation (POF).

The rationale behind the tests in IRC Section 509(a)(1) and 509(a)(2) is that if an organization receives at least one-third of its revenue from public sources of support, as defined by the IRS, then Congress and the IRS believe it can likely be trusted to operate in the interests of the public. If an organization receives so much money from a wealthy individual, a wealthy family or a business, that it fails the public support tests, then Congress and the IRS are concerned that the founders or major donors could easily use it as a tax shelter, or operate it for their own personal purposes and to pay what would be considered their own personal expenses, or to pursue their personal political and social agendas.

Accordingly, organizations that receive less than one-third of their revenue from public sources may be classified as Private Foundations, for which there are extra rules, restrictions, regulations, reporting requirements, and the possibility of penalties and taxes, and for which certain kinds of transactions are prohibited in order to prevent the misuse of their tax exempt status by their wealthy founders.

The most commonly used and most favorable test to prove an organization's public charity status is found in IRC section 509(a)(1) and is called the "One-third Public Support Test." This test involves calculations of the public nature of the organization's contributions and grants and membership fees. The organizations that satisfy this test are called "Publicly Supported Organizations" (PSOs). The second most common test is in the next section of the Code, section 509(a)(2), and is called the "One-third and one-third Public Support Test." This test allows the organization to include income it earns by charging for some of its programs and activities. Organizations that satisfy this test are often called "Fees and Activities Supported Organizations" (FASOs). I will start with the rules and calculations required to prove public charity status in Section 509(a)(1), the "one-third public support test."

## **II. THE ONE-THIRD PUBLIC SUPPORT TEST IN IRC SECTION 509(a)(1)**

The "one third public support test" (also called the "Mechanical Test") for public charity status uses a five (5) year period to determine whether an organization "normally" receives at least one-third of its revenue from public sources of support as defined by the IRS. Every year all 501(c)(3) organizations with gross revenue over \$50,000 in the previous tax year must file an annual report to the IRS on Form 990 EZ, and those with gross revenue over \$200,000 must file on Form 990. They are required to also file Schedule A to Form 990, and Part I of Schedule A is titled "Reason for Public Charity Status." So each and every year the organization must prove that it still qualifies to be classified as a public charity, using information about the sources of its income during the tax year being reported on and the previous four (4) years.

Note that because this is a five (5) year test, the IRS does not apply the test to newly established organizations until they have completed their first five (5) tax years. This is very helpful for many organizations because newly established organizations often have a higher percentage of their initial support from their founders or other major donors, and could not easily pass this test in the first year or two of their existence. Because the test is not applied by the IRS until they have completed their first five (5) tax years, it gives organizations that wish to be public charities a long period of years to make and implement a plan for fundraising that will allow them to achieve that one-third level of public support by the time the test is applied.

The one-third public support test itself is calculated by putting the “qualified public support” in the numerator, on the top of the fraction, and the total support in the denominator, on the bottom of the fraction.

### **CALCULATING TOTAL SUPPORT:**

The first step in determining if an organization satisfies the one-third public support test is to calculate the organization’s total support for the year and the preceding four years using the rules in Treas. Reg. §1.170A-9(f)(7)(i). An organization’s total support is the sum of:

1. Gifts, grants, contributions, or membership fees;
2. Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;
3. The sum of the gross amount of interest, dividends, payments with respect to securities loans, rents, and royalties, but not including any such income to the extent such income was used in computing the unrelated business income tax;
4. Tax revenues levied for the benefit of an organization and either paid or expended on behalf of such organization;
5. The value of services or facilities furnished by a governmental unit, but not including the value of any such services offered to the general public. IRC §509(d)-(e) as amended by Treas. Reg. §1.170A-9(f)(7)(i)

Additionally, an organization’s total support does not include any amount received by an organization from any activity which is substantially related to the furtherance of its exempt purpose, or any amount attributable to the contribution of services for which a deduction is not allowed. Treas. Reg. 1.170A-9(f)(7)(i)(A)-(B). An organization’s total support will then be used as the denominator in the calculation of the one-third public support test.

### **CALCULATING THE QUALIFIED PUBLIC SUPPORT:**

A Publicly Supported Organization (PSO) is an organization that normally receives at least one-third of its financial support from the following sources of

Qualified Public Support:

1. Grants from a governmental unit: One hundred percent (100%) of the contributions that come as grants from a governmental unit are included in the numerator. (Unless the funds for the grant came from some other party and were earmarked for delivery to the organization, in which case it is counted as coming directly from the original donor);

2. Direct Contributions from the public, subject to a two-percent 2% limitation, which is explained below (excluding “unusual grants” which are defined below);
3. Indirect Contributions from the public received in the form of grants or contributions from any other nonprofit organizations that are themselves publicly supported organizations (PSOs), or are classified as public charities and would qualify to be a PSO (such as a church, a school or university, or a hospital that could pass the one-third public support test themselves).

### **THE TWO-PERCENT (2%) LIMITATION:**

Contributions received from individuals, businesses or organizations that are not publicly supported organizations (PSOs) can be included as qualified public support up to a two-percent 2% limit, as follows:

A person or donor (and their related parties if they are a disqualified person) may gift, grant, or contribute as much as they want to, but no more than two percent (2%) of the organization’s total support over the five year “normalcy” period can be counted as qualified public support. However, if a person contributes more than two-percent (2%) of the organization’s total support over the five (5) year period, all of the person’s donations must be combined and the amount that can be counted as qualified public support is the amount of their combined gifts that are not greater than two-percent (2%) of the organization’s total support over that five (5) year “normalcy” period.

When determining the amount of the gifts, grants, contributions, or membership fees that can be included in the numerator and counted as qualified public support, multiply the total support figure in the denominator, which is the total support for the entire five (5) year “normalcy” period, excluding unusual grants, by two percent (2%). The resulting figure is the amount of any gift by a donor and their related parties that can be included as qualified public support. For example, if a donor gives \$2,000 per year, in five (5) years they will have given \$10,000. If the organization received \$20,000 per year in total support, its total support would be \$100,000. Two-percent (2%) of \$100,000 is \$2,000. The first \$2,000 from that individual donor would count as qualified public support, and the remaining \$8,000 would be included in total support in the denominator but cannot be included in the numerator as qualified public support.

### **COMBINED TREATMENT OF DONATIONS FROM CERTAIN DISQUALIFIED PERSONS:**

A special rule applies, to donations from certain disqualified persons, which requires that their donations must be lumped together with donations from



their related parties, and then the two-percent (2%) limitation is imposed on all the combined donations from them and their related parties. Disqualified persons for this purpose are defined as:

1. The Foundation Managers of the organization: The disqualified persons include the directors, officers and managers of the organization
2. Family Members of the Managers of the organization: The lineal descendants, lineal ancestors and the spouses of the foundation managers are also treated as disqualified persons
3. Substantial contributors: Disqualified persons also include any person, corporation, trust, estate or association that has given a total of more than \$5,000 to the organization, if that total amount of their contributions during the entire existence of the organization is also more than two-percent (2%) of the total contributions and bequests your organization has received during the entire existence of your organization, from the beginning of your organization's existence to the end of the tax year in which donation was made
4. Twenty-Percent (20%) Owners: Disqualified persons also include any person / entity who is an owner of more than twenty-percent (20%) of the voting power of any corporation which is a substantial contributor, or the owner of twenty-percent (20%) or more of the profits of a partnership which is a substantial contributor, or the owner of more than twenty-percent (20%) of the beneficial interest of a trust or unincorporated association which is a substantial contributor.
5. Thirty-Five Percent (35%) Disqualified persons / entities – defined as any entity, corporation, partnership or estate that made a donation, if any person who is a foundation manager, a family member of a manager, a substantial contributor, or twenty-percent (20%) owner, also owns thirty-five percent (35%) or more of that entity.

### **III. UNUSUAL GRANTS**

The one-third public support test analyzes the past five (5) years of an organization's gross income to determine if at least one-third of the organization's support is normally derived from the public. However, if an organization receives an unusually large donation or an unusually large grant from a private foundation, that single donation or grant could cause the organization to fail the test, because only a relatively small percentage of the donation or grant would qualify to be counted as "public support." When this occurs, the IRS refers to it as a donation that is "tipping" an organization towards private foundation status. To prevent this outcome, the IRS rules allow an organization to designate certain donations and grants as "unusual

grants” and exclude them from being included in the one-third public support test, thereby protecting their public charity status.

Treas. Reg. §1.509(a)-3(c)(3) allows for “unusual grants” to be removed from the one-third public support test completely and such sums will not be included in either the numerator or the denominator of the test.

“Unusual Grants” are grants or contributions to a public charity which are:

(1) from disinterested parties; (2) attracted by reason of the publicly supported nature of the organization; and (3) are unusual or unexpected in amount; and (4) by reason of their size, would adversely affect the status of the organization under the one-third public support test. Treas. Reg. §1.509(a)-3(c)(3). The determination of whether a specific grant or contribution is “unusual” depends on all of the facts and circumstances and no single factor is dispositive. Treas. Reg. §1.509(a)-3(c)(4). Notwithstanding the foregoing, the regulations list nine non-exclusive factors which tend to show that a grant or contribution is “unusual”:

1. The contribution is not made by a person who created the organization, previously contributed a substantial part of the organization’s support, stands in a position of authority in the organization (officer, director, trustee, or key employees), or by a person related to any of the foregoing persons. Treas. Reg. §1.509(a)-3(c)(4)(i); IRC §4946(a). For the purposes of this factor, a substantial contributor is any person who during a single tax year contributes an aggregate amount of more than \$5,000 if such amount is more than two-percent (2%) of the total contributions received by the organization during that tax year. IRC §4946(a)(1)(A). A contribution made by any person described in this paragraph will be given less favorable consideration than contributions made by a person not named in this paragraph. Treas. Reg. §1.509(a)-3(c)(4)(i).
2. The contribution was a bequest and not an inter vivos transfer, as a bequest will ordinarily be given more favorable treatment. Treas. Reg. §1.509(a)-3(c)(4)(ii).
3. The contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization. Treas. Reg. §1.509(a)-3(c)(4)(iii).
4. Prior to the contribution, the organization carried on an actual program of public solicitation and exempt activities and has been able to attract a significant amount of public support. Treas. Reg. §1.509(a)-3(c)(4)(iv).
5. Subsequent to the contribution, the organization may reasonably be expected to attract a significant amount of public support and such expectation does not rely on the continued receipt of unusual grants to

fund the organization's operating expenses. Treas. Reg. §1.509(a)-3(c)(4)(v).

6. Prior to the year in which the unusual grant was received, the organization met the one-third public support test without the benefit of any exclusions of unusual grants. Treas. Reg. §1.509(a)-3(c)(4)(vi).
7. Neither the contributor nor persons related to the contributor are able to exercise direct or indirect control over the organization. Treas. Reg. §1.509(a)-3(c)(4)(vii).
8. The organization has a representative governing body. Treas. Reg. §1.509(a)-3(c)(4)(viii). An organization has a "representative governing body" if the organization has a governing body which is comprised of public officials or individuals chosen by public officials while acting in their capacity as public officials, persons having special knowledge in the particular field or discipline in which the organization is operating, community leaders such as elected officials, clergymen, or educators, or in the case of a membership organization, individuals elected pursuant to the organization's bylaws by a broadly based membership. Treas. Reg. §1.509(a)-3(d)(3)(i).
9. Whether material restrictions or conditions (within the meaning of Treas. Reg. §1.507-2(a)(7)) have been imposed by the contributor upon the contributee in connection with the contribution. Treas. Reg. §1.509(a)-3(c)(4)(ix). A contributor will be deemed to have placed material restrictions or conditions on a contribution if the contributor places restrictions or conditions on the contribution which prevents the transferee organization from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of the organization's exempt purposes based on all of the facts and circumstances. Treas. Reg. §1.507-2(a)(7)(i). The regulations go on to list four (4) nonexclusive significant factors to be considered when determining if the contributor imposed material restrictions or conditions which include: (A) whether the public charity is the owner in fee of the assets it receives from the private foundation; (B) whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its tax exempt purposes; (C) whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and (D) whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor. *Id.* Treasury Regulation §1.507-2(a)(7) goes on to list various factors which will be considered favorable or detrimental to the determination of material restrictions, the most important, however, is set forth in sections (iv)(A)(1) and (iv)(A)(2)(v). Essentially, these two subsections state

the opposite of each other and combine to state the receiving organization must have, and the transfer instrument must specifically state, that the public charity has the ultimate discretion and authority to use the funds or assets in its sole discretion and is not bound by the advice of the donor. Treas. Reg. §§1.507-2(a)(7)(iv)(A)(1), 1.507-2(a)(7)(iv)(A)(2)(v).

#### **IV. THE BACK UP FACTS AND CIRCUMSTANCES TEST**

The Internal Revenue Code allows organizations that seek public charity status under the test in Section 509(a)(1) of the Code but that fail the “one-third public support test,” to seek classification as a Publicly Supported Organization (PSO) through an alternate test, known as the “Facts and Circumstances Test.” Under this test, if an organization’s qualified public support equals at least ten-percent (10%) of total revenue, and if the organization is organized and operated in such a way as to attract public support, then it can try to establish that it should be classified as a Publicly Supported Organization rather than a Private Foundation by demonstrating that it satisfies five (5) additional factors.

##### **THE TWO THRESHOLD REQUIREMENTS.**

1. **Percent of Public Support.** An organization must satisfy the threshold requirement of at least ten-percent (10%) public support.
2. **A Program to Attract Public Support.** In order to satisfy the other threshold requirement, an organization must demonstrate that it has a continuous and genuine program for soliciting funds from qualified public sources. These include systematic efforts to raise funds from membership fees, small public contributions, grants from other nonprofit organizations with PSO status, grants from governmental units, and other sources of direct and indirect public support.

##### **THE FIVE ADDITIONAL FACTORS.**

If the organization meets the above two (2) minimum requirements, then the following five (5) additional factors will be considered by the Internal Revenue Service to determine if the nonprofit should be classified as a Publicly Supported Organization. These factors include:

- Financial support percentages
- Support sources
- Representative government board
- Public facilities, services, programs, policies and participation
- Membership relations

**1. FINANCIAL SUPPORT PERCENTAGE.** The IRS gives great weight to the exact amount of public support the organization receives. The closer to one-third the organization's "qualified" support is, the less public support it has to show through the other additional factors. Conversely, the closer it is to the ten-percent (10%) bottom line, the greater burden it will have with regard to the other factors. It also helps to show the IRS that the organization's percentage of public support has generally increased each year following the organization's initial incorporation.

**2. SUPPORT SOURCES.** Favorable consideration is given to organizations that receive financial support from a large number of diverse sources of funding. It is unfavorable if an organization's financial support comes from a small number of individuals, or from the members of a single family. Factors that can be considered in determining whether the organization receives financial support from an adequately large and diverse set of funders include the following:

- The type of organization (the nature of its purposes and activities)
- Length of time it has existed (has it had time to gather wide support?)
- Whether it limits its activities to a particular community or region (so then it only has to show wide support within that region)
- Whether it limits its activities to a special field which can be expected to appeal to a limited number of persons (then it only has to show wide support from people within that field)

It also helps to show that the number and diversity of the organization's donors has been increasing as the organization has grown and matured.

**3. REPRESENTATIVE GOVERNING BODY.** Here the Internal Revenue Service is looking for a large and diverse Board of Directors which represents the interests of the public, rather than the personal or private interests of a limited number of donors or officers. They will be satisfied with a Board made up of:

- Public officials
- Directors selected by public officials
- Experts in the field in which the organization is operating
- Community leaders representing a broad cross-section of the community
- Persons selected by a broadly-based membership according to procedures established in Articles or Bylaws

**4. PUBLIC FACILITIES, SERVICES, PROGRAMS, POLICIES AND PARTICIPATION.** It helps establish the organization's classification as a Publicly Supported Organization if it can demonstrate to the IRS that the

organization's activities clearly meet public needs. The IRS will consider factors such as the following:

- Does the organization provide a service or facility for the general public; for example—museums or libraries
- Regular publication of studies that are widely used by colleges or the public
- Participation in or sponsorship of programs by civic or community leaders or experts in the field
- Maintaining a well-defined ongoing program to accomplish charitable work in the community
- Receiving a significant part of the organization's funds from a public charity or governmental unit to which the organization is held accountable as a condition of the grant or contract

**5. MEMBERSHIP RELATIONS.** The Internal Revenue Service considers an organization more likely to be “Publicly Supported” if it has a program to attract a large and active membership. Factors the IRS will consider include:

- Whether solicitation for members is designed to enroll a large number of people in the community or area of special interest
- Whether the individual membership charge is affordable by many persons and not what only a few could afford
- Whether the activities of the organization will be likely to appeal to persons having a broad common interest, such as educational activities, musical activities, etc.

It is also helpful to show the IRS that the organization has an active and systematic program designed to attract new members, and that the number of members has consistently been growing since the organization was incorporated.

Note that the organization does not have to show favorable facts under every category, and in each case, the importance of each factor will be different depending on the nature and purpose of the organization and how long it has existed. The ultimate objective is to find out whether the organization is “publicly supported.”

**V. ALTERNATE TESTS: THE 1/3 AND 1/3 PUBLIC SUPPORT TEST IN IRC 509(a)(2) AND THE SUPPORTING ORGANIZATION TESTS IN IRC SECTION 509(a)(3).**

If an organization is unable to prove they qualify for public charity status as a publicly supported organization using the most common test described above, there are two other options.



1. The “One-Third and One-Third Test” in IRC Section 509(a)(2).

If an organization earns a large amount of its revenue in the form of related income, meaning the gross receipts it earned by carrying out its exempt purposes, then it can use this test and count its related earned income as part of its proof that it is qualified for public charity status. To do so it must prove that at least one-third of its support comes from any combination of its donations, gifts and grants, membership fees AND its gross receipts from its related business activities.

Further, it must be able to show that not more than one third of its support comes from the sum of its gross investment income, plus the amount of its unrelated business taxable income, minus the amount it paid as unrelated UBIT taxes on its unrelated business income.

Organizations that can satisfy this alternate test are known as FASO organizations (Fees and Activities Supported Organizations), instead of PSOs (Publicly Supported Organizations).

There is no backup “Facts and Circumstances Test” available for FASO organizations that opt to prove they qualify for public charity status using this test.

The calculations involved in proving that an organization meets the one-third support test under this section of the Code are similar to those for PSOs in IRC Section 509(a)(1), but with important differences in what can be included as qualified support in the numerator and what must be included in total support in the denominator, and in addition they can only count \$5,000 or one percent (1%) of the support from any person or governmental bureau, in calculating qualified support. The rules for these calculations are described in IRC Section 509(a)(2).

2. Supporting Organizations under IRC Section 501(a)(3).

Finally, if an organization wants to be classified and treated as public charity but cannot do so under the rules in IRC Section 509(a)(1) or 509(a)(2), then they can be set up to operate as a “supporting organization” that supports a separate organization that does qualify to be a public charity. There are three different versions of this test, and the organizations using it are called “Type 1 supporting organizations,” “Type 2 supporting organizations” or “Type 3 supporting organizations.” The rules for proving public charity status as a supporting organization are found in IRC Section 509(a)(3).

## VI. PRIVATE OPERATING FOUNDATION STATUS

If an organization has failed to pass any of the above tests for public charity status, it will be classified as a private foundation. However, if it can qualify as a private operating foundation (POF), it will nonetheless very likely still be able to carry out its planned programs and activities and accomplish its exempt mission and purposes in a manner much like how a public charity would operate.

A private operating foundation, described in IRC §4942(j)(3), POF), is an organization which is classified by the IRS as a private foundation but which actively carries on the charitable activities which constitute the basis for its exemption. This contrasts with a private non-operating foundation which gives money in the form of grants to other organizations, who then use those funds to actively carry out their charitable activities.

Private operating foundations are 'hybrid' organizations and have some of the advantages ordinarily only available to public charities. These advantages include the following:

Private operating foundations are not required to make a minimum amount of distributions in the form of grants to grantees, and are not subject to the IRC §4942 excise tax on under-distributions.

Private operating foundations are qualified to be the grantee for receipt of contributions from private non-operating foundations.

Donors to a private operating foundation can take deductions up to fifty-percent (50%) of the donor's adjusted gross income as a charitable deduction, instead of the thirty-percent (30%) limitation on donations applicable to private non-operating foundations.

A private operating foundation will be able to avoid the excise tax on net investment income under IRC §4940, if they meet the additional requirements of an "exempt operating foundation" under IRC §4940(d)(2).

To qualify for private foundation status an organization must pass a specific IRS test, as follows:

### **IRM 4.76.4.15.6.1 (05-30-2010)**

#### **Private Operating Foundation Tests**

To qualify as an "Operating Foundation" a private foundation must meet the "**income test**" and one of three additional tests:

- The "**assets test**,"
- The "**endowment test**," or
- The "**support test**."



**Note:**

Per Treas. Reg. §53.4942(b)-3, compliance with the requirements of these four (4) tests is determined on the basis of satisfying such tests for an aggregation of the current taxable year and three (3) immediately preceding years, or satisfying such tests for any three (3) out of four (4) taxable years in such period.

1. **The Income Test** -To satisfy the income test the foundation must make qualifying distributions for the active carrying on of activities constituting the purpose for which it was organized and operated equal to substantially all of the lesser of:

- Adjusted Net Income (ANI), or
- Minimum Investment Return

For purposes of this section substantially all means eighty-five (85%) or more.

**Adjusted Net Income** -ANI is the excess of gross income over deductions that would be allowable for a taxable corporation. The following special rules apply:

- IRC §103 is not applicable. Interest income from tax exempt municipal bonds is includable in ANI.
- Capital gains and losses included in ANI only to the extent of net short term capital gains.
- Depreciation is allowable only on a straight line basis, and depletion is allowable only on a cost basis.

**Income Modifications in Computing Adjusted Net Income** -The following income modifications are required:

- Prior year qualifying distributions, if repaid, must be included in ANI.
- Proceeds from the sale of property whose purchase was a qualifying distribution, must be included in ANI to the extent the acquisition was taken as a qualifying distribution.
- Set-asides no longer needed for the purpose set-aside must be included in ANI.

2. **The Assets Test** -To meet the assets test, substantially more than half (defined as 65%) of its assets must be:

- Devoted directly to active conduct of activities constituting purposes for which it is organized and operated,
- Functionally-related business assets (Treas Reg. §53.4942(a)-2(c)(3)(iii)),
- Stock of a corporation controlled by the foundation and substantially all of the assets of which are so devoted,
- Any combination of the above

3. **The Endowment Test** -A foundation meets the endowment test by making qualifying distributions for the active conduct of its exempt activities equal to at least two-thirds of its minimum investment return.
4. **The Support Test** - To meet the support test a foundation must meet all three (3) tests below:
  - Get substantially all of its support from the general public and five (5) or more exempt organizations which are not disqualified persons with respect to each other, or with respect to the foundation,
  - Get no more than twenty-five (25%) of its support (other than gross investment income) from any one exempt organization, and
  - Receive no more than fifty-percent (50%) of its support from gross investment income

If an organization that has failed to prove its public charity status can pass this test and receive IRS classification as a private operating foundation, then it can generally count on being able to carry on all or most of the programs and activities it had planned to conduct as a public charity.

## **VIII. CONCLUSION**

The IRS has some very different sets of rules and requirements for Public Charities and Private Foundations. There are numerous different avenues and tests for an organization to choose between and use if it wishes to prove that it is qualified for public charity status. These rules and tests are somewhat complicated, and the attorneys and professionals who advise nonprofit organizations must learn and understand these different rules in order to help their nonprofit clients navigate these tests and gain the status they wish to have.