

# Exempt Organizations and Activity Fund Money



In an effort to provide understanding regarding exempt status, fundraising, and usage of fundraising monies, we have gathered various excerpts from TEA's Financial Accountability System Resource Guide (FASRG), Texas Civil Statutes Tax Code, and the Internal Revenue Service (IRS). Also included is a synopsis of a discussion with a TASB attorney and some specifics regarding activity fund accounts.

## FASRG

### Section 5.5, Activity Fund Accounting:

Activity funds are defined as funds consisting of resources received and held by the school as trustee to be expended or invested in accordance with conditions of the trust. Specifically, they are funds accumulated from various school-approved money-raising activities and the receipt of student dues or fees, commissions, investment interest and donations. These funds are to be used to promote the general welfare of the school and the educational development and morale of all students. All funds collected by school district personnel from students are defined as activity funds and must be handled through the activity funds accounts.

Section 5.5.1 of the FASRG addresses the separation of activity funds into Campus Activity Funds (CAF) and Student Activity Funds (SAF) accounts.

If persons besides the students involved in the activity fund (teachers, sponsors, principals, administrators, etc.) have access to activity fund money to use in a manner that does not directly benefit the students involved in the activity funds, then the money should be accounted for as CAF. If activity fund financial **decisions rest solely with the students**, then the money should be accounted for as SAF. **SAFs serve as an agency account for student club or class funds (the spirit groups and all clubs are accounted for as SAF accounts).**

SAFs are funds that the school holds in trust for the student groups. The money does not belong to the campus. The students in the SAF organization determine how the money is spent. The sponsors and school administrators assist with ensuring that the funds are properly accounted for, but have no involvement in determining how the money is spent.

Section 5.5.5 of the FASRG addresses Taxable Status of Purchases:

**All items purchased by a public school for the school's own use qualify for an exemption from sales tax if the items purchased relate to the educational process.** The school, school district or an authorized agent should provide the seller a tax exemption certificate. To be valid, the certificate must state that the merchandise being purchased is for the organization's own use in providing education, is being made in the name of the organization, and that payment shall be made from the organization's own funds. The school district should not reimburse employees for sales tax they paid on purchases made on the behalf of the school district. **Purchases for their own use by individuals, even though**

**connected with a school or school organization, are not exempt from the tax.**

As an example, cheerleaders purchasing their own uniforms, teachers purchasing computer equipment, band members purchasing their own instruments and athletic teams purchasing their own jackets are not tax exempt. (Also included in non-tax exempt are purchases from the faculty fund.)

Section 5.5.6 of the FASRG addresses Definition of Fund-Raising Activities for a School: Fund-raising activities are not confined to regular school hours but are considered an extension of the school program. **When fund-raising activities are in the name of the school, all funds raised become school funds, belonging to the school-sponsored group responsible for raising the money.**

### **Texas Civil Statutes Tax Code**

According to Section 3.322, **Exempt Organizations**, (Tax Code, sections. 151.309, 151.310, 151.337; Texas Civil Statutes, Article 342-908)

(b) Entities that must prove exempt status. Entities or organizations that may qualify for exempt status.....

(2) a nonprofit **educational** organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum that uses the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities that solely consist of presentation of discussion groups, forums, panels, lectures, or other similar programs, may qualify for the exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. An organization cannot qualify for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. **No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization.** Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption as educational organizations, they may **qualify for the exemption under the Tax Code, sec. 151.310(a)(2), if they obtain an exemption from the IRS under the IRC, sec. 501(c);**

(c) **Entities always exempt.** The following entities and organizations are exempt under the law and are **not required to request and prove exempt status** except to send information as requested by the comptroller to verify its exempt status under this subsection:

**(4) the State of Texas, its unincorporated agencies and instrumentalities;**

(5) any county, city, special district or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(d) Qualification requirements. **To qualify for exempt status** under subsection (b) of this section, an organization must satisfy all of the following requirements.

(1) An organization must be organized or formed solely to conduct one or more exempt activities. The Comptroller will consider all documents necessary to prove the purpose for which an organization is formed.

(2) An organization must devote its operations exclusively to one or more exempt activities.

(3) An organization must dedicate its assets in perpetuity to one or more exempt activities.

**(4) No profit or gain may pass directly or indirectly to any private shareholder or individual.** All salaries or other benefits furnished officers and employees must be commensurate with the services actually rendered.

(e) How to obtain exempt status.

(1) To apply for and obtain a letter of exemption from the comptroller, an organization must submit to the comptroller a written statement that details the nature of the activities conducted or to be conducted and the following documentation:

(B) if the claimed exemption is under sec. 501(c)(3), (4), (8), (10), or (19) of the IRC, a copy of all pages of a determination letter or a group exemption ruling letter from the IRS.

**(g) Purchases by an exempt organization.**

(1) The purchase, lease, or rental of a taxable item that relates to the purpose of an exempt organization listed in subsection (b)(1), (2), (3), or (5) of this section is exempt from tax when the organization or an authorized agent of the organization pays for the item and provides the vendor an exemption certificate in the form prescribed by the comptroller.

(5) An employee of an exempt organization cannot claim an exemption from tax when the employee purchases taxable items of a personal nature even though the employee receives an allowance or reimbursement from the organization.

(6) A person who travels on official business for an exempt organization must pay sales tax on taxable purchases whether reimbursed on a per diem basis or reimbursed for actual expenses incurred.

**(h) Sales by an exempt organization.**

(1) An exempt organization that sells taxable items must obtain a sales tax permit and is responsible for collection and remittance of tax on all sales of taxable items that the organization makes, unless such sales are otherwise exempt from the tax.

## **IRS**

Information and Publication 557

**As noted above, a school district is statutorily exempt. If we were not, we would apply for and follow the rules as a 501 c (3) exempt organization as noted below:**

### **Educational Organizations and Private Schools**

If your organization wants to obtain recognition of exemption as an educational organization, you must submit complete information as to how your organization carries on or plans to carry on its educational activities, such as by conducting a school, by panels, discussions, lectures, forums, radio and television programs, or through various cultural media such as museums, symphony orchestras, or art exhibits. In each instance, you must explain by whom and where these activities are or will be conducted and the amount of admission fees, if any. You must submit a copy of the pertinent contracts, agreements, publications, programs, etc. If you are

organized to conduct a school, you must submit full information regarding your tuition charges, number of faculty members, number of full-time and part-time students enrolled, courses of study and degrees conferred, together with a copy of your school catalog.

**Qualifying organizations.** The following types of organizations may qualify as educational:

1. An organization, such as a primary or **secondary school**, a college, or a professional or trade school, that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on,

IRS Questions On Line

**Can I take a deduction for a charitable contribution I make to any tax-exempt organization? No. Only certain categories of exempt organizations are eligible to receive tax-deductible charitable contributions. These include charities described in section 501(c)(3) of the Internal Revenue Code, and, in some circumstances, fraternal organizations described in section 501(c)(8) or section 501(c)(10), cemetery companies described in section 501(c)(13), and some veterans organizations described in section 501(c)(4) or 501(c)(19).**

**Note: This and the note above regarding no individual benefit or personal gain are important because when we fundraise, people and organizations that fundraise or donate to us may claim their donation as a tax-deductible donation. If the rules are not followed and people are directly given funds that they helped raise, then the company cannot claim the deduction.**

### **TASB Attorney Discussion**

In 2003, we spoke with an attorney at Texas Association of School Boards (TASB), and they indicated that there are no written state guidelines regarding payment of activity fund money. However, they do contend that activity fund money does not belong to, nor should it be paid back to, individuals who raised the funds. Fisd cannot pay the parents for work that was done in the name of fundraising for the group.

Without written state or local guidelines, Fisd should continue to follow standard practice. Once donated money is received, it is owned by the school or the members of the SAF account. When a parent pays money into the SAF account from their personal funds for the child's expenses, and then later raises funds to cover those expenses, the parent can be reimbursed only the amount the parent paid for that child's expenses. At no time will the SAF account pay a parent for more than the amount of the child's expenses. It is not standard practice that Fisd (or its related groups) pay money to, or reimburse Booster Clubs, PTAs, or individuals who have made donations to our schools.

### **Fisd SAF Accounts**

Each school has activity funds for the various groups. The accounting system maintains one balance per SAF account. Some activity fund groups track the individual balances because funds are paid into the activity fund, and because they raise funds to defray the costs of the educational activity. However, this individual accounting does not give the members of the SAF group individual rights to the funds or the additional funds raised after they are no longer members of the SAF group for which the funds were raised.

Money that students earn through fund-raising, both for team and individual accounts, will remain in the SAF organization. If a student leaves the organization, or is not selected to the organization for the following year, the money in the account remains in the student activity fund. Transfer **may not** be made to another student organization. Although funds are tracked separately for team and individual expenses, all funds raised in the name of the SAF organization belong to the organization as a whole rather than to individual students. Refunds may be made only if the parent or student deposited personal funds into the activity fund and there is a balance in the student's individual account that reflects this deposit; refunds may not exceed the deposit of personal funds. A summary of individual accounts should be provided at the end of each six-weeks.

Based on the following statements taken from the rules above,

**No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. No profit or gain may pass directly or indirectly to any private shareholder or individual.**

it may appear that the groups should only track individual accounts to the extent that funds have been placed into the activity fund by the student or the parents, and that fundraised money should be put into a general pot for all students in the activity fund to use. **However, we contend that the individuals are not getting a direct or indirect benefit; they are participating in an educational event that furthers the educational process of the student. We are statutorily exempt because we are a school district, and we are merely following the intent of the exempt organization. If it were argued that using fundraised money for the students in the organization is a benefit to the students personally, then the money could not be used at all on the students, and that would be in direct conflict with the purpose of an activity fund of a school district. Additionally, we contend that the reason that fundraised moneys are tracked as sub-accounts of the activity fund is so that all students can participate in extracurricular educational activities without a financial hardship. If students could not fundraise to offset the expenses for the educational activity, then underprivileged students may not be able to participate in the educational extracurricular activity and that would be a detriment to the group as a whole.**