



LIBRARY AS 501(c)3 ENTITY

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It would appear from research into IRS regulations as well as a general news search, this it is indeed possible for a Public Library to become a 501(c)3 entity.

I have listed (and in some cases excerpted) relevant IRS authorities below. Where possible, I have linked the material to a free source.

Please consult your attorney should you decide to establish a library, or if you have specific questions concerning how this information may affect your library.

For purposes of convenience an explanation of abbreviations:

IRC = Internal Revenue Code

RR = Revenue Ruling

GCM – General Counsel Memo

CFR = Code of Federal Regulations

An IRS publication by the Tax exempt & Government entities section from 1996:

From:

<https://www.irs.gov/pub/irs-tege/eotopicf96.pdf>

“A fire department, public library, hospital district, state college, or port authority are examples of state institutions that may be created, controlled by, or closely affiliated with government. And their income may be exempt from federal income tax pursuant to IRC 115(a), (see Appendix), except for unrelated business income tax for certain state colleges and universities under IRC 511(a)(2)(B). Nevertheless, each may also qualify for exemption as a clear counterpart of an organization described in IRC 501(c)(3), if it is not an integral part of a state or a political subdivision, and it otherwise satisfies the organizational and operational tests. The term "instrumentality" has been applied to this type of organization as a kind of shorthand. Technically the term "instrumentality" only has application under the FICA and FUTA (social security tax) provisions. However, for convenience, this article will also refer to these organizations affiliated with governments as instrumentalities.
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An older version of this publication provided a useful overall explanation:

<https://www.irs.gov/pub/irs-tege/eotopicl84.pdf>

“in Rev. Rul. 60-384, 1960-2 C.B. 172, which in pertinent part is excerpted below.....Thus, such an organization may be exempt under section 501(c)(3) of the Code if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals. A state or municipality itself, however, would not qualify as an organization described in section 501(c)(3) since its purposes are clearly not exclusively those described in section 501(c)(3) of the Code. See for example, Estate of John C. F. Slayton v. Commissioner, 3 B.T.A. 1343. It follows, therefore, that where the particular branch or department under whose jurisdiction the activity in question is being conducted is an integral part of a state or municipal government the provisions of section 501(c)(3) would not be applicable. For example, where a public school, college, university or hospital is an integral part of a local government, it could not meet the requirements for exemption under section 501(c)(3) of the Code. On the other hand a wholly-owned state or municipal instrumentality which is a counterpart of an organization described in section 501(c)(3) of the Code such as a separately organized school, college, university, or hospital may qualify for exemption under section 501(c)(3) of the Code. If the organization conducting the activity, although a separate entity, is clothed with powers other than those described in section 501(c)(3) it would not be a clear counterpart of a section 501(c)(3) organization. For example, where a wholly-owned state or municipal instrumentality exercises enforcement or regulatory powers in the public interest such as health, welfare, or safety, it would not be a clear counterpart of an organization described in section 501(c)(3) of the Code even though separately organized since it has purposes or powers which are beyond those described in section 501(c)(3). In order for a wholly-owned instrumentality to establish an exemption under section 501(c)(3) of the Code, it is necessary to file an application on Form 1023, Application for Exemption, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the Income Tax Regulations. Revenue Ruling 55-319, C.B. 1955-1, 119, is hereby amplified.

Therefore, if an unincorporated nonprofit instrumentality possesses at least four of the six corporate characteristics, it will be an association for federal tax purposes and, therefore, may be considered to be an organization distinct from its creator and constitutes a separate entity for purposes of IRC 501(c)(3), and more specifically Rev. Rul. 60-384.”

A 1990 version of this publication also exists:

<https://www.irs.gov/pub/irs-tege/eotopice90.pdf>

As does an index of other, similar publications:

<https://www.irs.gov/pub/irs-tege/cpeindexbytopic.pdf>

(look under “instrumentalities”)

Contact info for the IRS Tax exempt & Government entities section:

<https://www.irs.gov/charities-non-profits/how-to-contact-the-tax-exempt-and-government-entities-division>

In addition to the Tax Exempt and government entities section, there are other IRS authoritative materials that seem to indicate the possibility of 501(c)3 status for public libraries:

IRS Revenue Ruling

Rev. Rul. 74-15 (IRS RRU), [1974-1 C.B. 126](#), (see pg. 126).

“26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

****1 Public library.** A public library organized as a separate entity under a State statute, without power to impose taxes for its operation but whose funds are obtained by certification of a tax rate needed for its operation to the rate-making authority, qualifies for exemption under section 501(c)(3) of the Code.*

Advice has been requested whether the nonprofit county library described below is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

A corporation was separately organized under a State statute to maintain a public library for the people of a particular county. The statute confers upon the library board, its governing body, a limited power to determine the tax rate necessary to support its operations within specified maximum and minimum rates. The effect of the statute is not to grant the library board the power to impose or levy taxes. Instead, the board submits the tax rate so determined to the county auditor who certifies the tax rate to the county adjustment board in the same manner as other tax rates are certified. All of these taxes are collected by the county treasurer who transmits to the library its share of revenue.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Rev. Rul. 55-319, 1955-1 C.B. 119, holds that a wholly-owned State instrumentality may, under certain circumstances, qualify for exemption from Federal income tax under section 501(c)(3) of the Code. This position is amplified in Rev. Rul. 60-384, 1960-2 C.B. 172, which holds that a wholly-owned instrumentality must be organized and operated exclusively for section 501(c)(3) purposes in order to qualify for exemption under section 501(c)(3). Thus, an organization clothed with regulatory or enforcement powers, or other powers beyond those of an organization described in section 501(c)(3), would not be a clear counterpart of an organization described in section 501(c)(3).

Although the library is wholly-owned by a political subdivision of a State, it is a separate entity and is otherwise a counterpart of an organization exempt from Federal income tax under section 501(c)(3) of the Code. The power regarding the tax rate described above is not a regulatory or enforcement power within the meaning of Rev. Rul. 60-384, since it merely involves the determination, subject to specified limits, of a tax rate necessary to support the library's operation. Therefore, this organization is not considered to be clothed with a power beyond those of an organization described in section 501(c)(3). See Rev. Rul. 67-290, 1967-2 C.B. 183. Compare with Rev. Rul. 74-14, page 125, this Bulletin which holds that the power to issue subpoenas and take proof under oath are regulatory or enforcement powers of the type considered in Rev. Rul. 60-384.

**2 Accordingly, the organization qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.*

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the Income Tax Regulations.”

Internal Revenue Manual

Part 7 - Rulings and Agreements

Chapter 7.25 - Exempt Organizations Determinations Manual

[7.25.3 - Religious, Charitable, Educational, Etc., Organizations](#)

7.25.3.12.2 (02-23-1999)

[Powers Other Than Those Described in IRC 501\(c\)\(3\)](#)

“Compare Rev. Rul. 74–15, 1974–1 C.B. 126, in which a public library organized as a separate entity under a State statute has the authority to certify the tax rate needed for its operation to the rate-making authority. The library was held to qualify for exemption under IRC 501(c)(3). Since the State statute conferred only a limited power upon the public library to determine the tax rate necessary to support its operations, the power regarding the tax rate was not a regulatory or enforcement power within the meaning of Rev. Rul. 60–384.”

IRS Publication on 501(c)3 entities

https://www.irs.gov/publications/p557/ch03.html#en_US_201602_publink1000200025

Other sources:

News article about Kent District library obtaining 501(c)3 status:

<http://www.grbj.com/articles/80463-irs-approves-nonprofit-status-for-kent-district-library>

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