

# Tipping

## *What is Tipping?*

Most public charities receive their status based on receipt of at least one-third of their total support from a broad base of the general public (e.g., individuals, government, other publically supported charities); this is known as *public support* or passing a *public support test*. Most public charities must maintain this level of public support and report it annually on Form 990.

A large private foundation grant can accidentally and quite easily tip a public charity into private foundation status due to the way private foundation grants are calculated in the public support tests. In addition, a recent change to accounting rules may make it even easier to tip a grantee into private foundation status. The new rules require grantees using accrual basis accounting to use that basis in calculating public support, which often requires them to count the entire sum of a multiyear grant in the first year.

## *How to Avoid Tipping*

It is critical to calculate your public support. These complex calculations should be done with the help of a knowledgeable attorney or accountant. If the calculations show a potential to be tipped, there are several options for foundations and grantees:

- **Decrease the amount of the grant.** a simple solution in many cases is a slightly smaller grant that allows the organization to meet its public support test.
- **Give the grant as a matching grant.** Agree to fund the organization at a significant level if it builds up enough public support from other sources to meet its public support test.
- **Count the grant as an unusual grant.** If certain criteria are met, the IRS will regard a grant as *unusual* and exclude the grant from the calculation of total support. A grant is generally deemed unusual if it is a substantial contribution or bequest from an individual with no connection to the organization; was attracted by reason of the publicly supported nature of the organization; is unusual or unexpected with respect to the amount; and would, by reason of its amount, result in the organization's failure to meet its public support test.

If an organization wants to treat a grant as unusual, it is recommended that the organization rely on legal counsel to draft such an opinion.

- **Rely on the facts and circumstances test.** If the organization is a 509(a)(1), it may be able to rely on a fallback *facts and circumstances test* to maintain its public charity status.

To pass the test, the organization must demonstrate that its public support equals or exceeds 10% of total support for the period in question. The entity must also be organized and operated to attract new and additional public support on a continuous basis. In addition, all pertinent facts and circumstances surrounding the organization's operations will be considered, including the percentage of public support, diversity of the sources of support, representativeness of the governing body, availability of the public facilities or services, and/or level of public participation in programs or policies.

*Taken from Association of Small Foundation's quarterly newsletter Essentials, "Tipping the Scales With a Large Grant", Summer 2009.*