

810-3-32-.02. Proof of Exemption.

(1) (a) An organization is not exempt from tax merely because it is not organized and operated for profit. It must establish its exemption by filing an affidavit showing the character of the organization, the purpose for which it was organized, its actual activities, the sources of its income and the disposition of such income, whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption. To the affidavit shall be attached a copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code or regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization.

(b) In addition to the information specifically called for in the preceding subparagraph, the Department may require additional information necessary for a proper determination of entitlement to an exemption pursuant to § 40-18-32.

(c) The status of a corporation claiming exemption under Sec. 40-18-32 will be determined by the Department on the basis of the facts in each individual case, and the taxpayer will be notified of the findings of the Department. The exemption statute will be strictly construed, and an organization not qualifying under a specific subsection of Sec. 40-18-32 will be held to be subject to tax.

(d) If an organization is exempt under both federal and state law, approved federal forms establishing exemption for federal income tax purposes will be acceptable as proof of exemption for state income tax purposes.

(2) Subject to revocation as a result of changes in the law, regulations, or other good cause, an organization that has once established its exemption may rely upon this determination and need not reestablish its exemption so long as there are no substantial changes in the organization's character, purposes, or methods of operation.

(3) This exemption does not extend to unrelated business taxable income of an exempt organization. See Reg. 810-3-32-.03.

(4) An organization is organized exclusively for one or more exempt purpose only if its articles of organization:

(a) limit the purposes of such organization to one or more exempt purposes; and

(b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(5) An organization will be regarded as "operated exclusively" for one or more exempt purpose only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Sec. 40-18-32; and no more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(6) The Federal Internal Revenue Code contains provisions similar to those in this section. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section.

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