

# Legal Fundamentals for Scholarship Providers

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National Scholarship Providers Association | October 10, 2016

# Agenda

- Overview
- Taxation of Scholarships
- Donor Participation in Scholarship Process
- Scholarship Plans
- Charitable Solicitations
- Record Collection & Retention



# Overview

Taxation of Scholarships

Donor Participation in Scholarship Process

Scholarship Plans

Charitable Solicitations

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Overview

# Taxation of Scholarships

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# Two Questions

- 1 Is the scholarship taxable or tax-free?
- 2 Is tax reporting or withholding required?



# 1 Summary

## Scholarships are tax-free *only* if:

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- a. Funds are used for **qualified education expenses**,
  - b. Student is a **candidate for a degree**,
  - c. Student studies at an **educational institution**, *and*
  - d. Award is **non-compensatory**
- 

**Otherwise, they are taxable!**

– See IRS Publication 970



## 2 Summary

Requirement to report to IRS and withhold taxes depends on whether:

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- a. Student is **U.S.** or **foreign** taxpayer, *and*
  - b. Scholarship is **compensatory** or **non-compensatory**
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Tax treaty may change outcome for foreign students



Overview

Tax Treatment of Scholarships

# Donor Participation in Scholarship Process

Scholarship Plans

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# Public Charities: Donor Participation



**Warning:** when a public charity allows donor participation in the scholarship process, take pause, because we're in sensitive territory!



# Summary

## **Donor participation:**

- » Structured well, represents a win, win, win proposition (good for students, donors and sponsors)
  - » Structured poorly, creates risk and results in penalties
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## **Remember to always evaluate if:**

- » If donor participation creates a DAF
- » And if so, whether the DAF meets the requirements for a Qualifying Scholarship Fund



Overview

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# Two Questions

- 1 Who must have a scholarship plan?
- 2 What must a scholarship plan include?



# Summary

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- » Private Foundations and Qualifying Scholarship Funds **must** have a pre-approved plan
  - » But all providers **should** have a scholarship plan
  - » Several required elements, but central is inclusion of objective and non-discriminatory selection process
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Overview

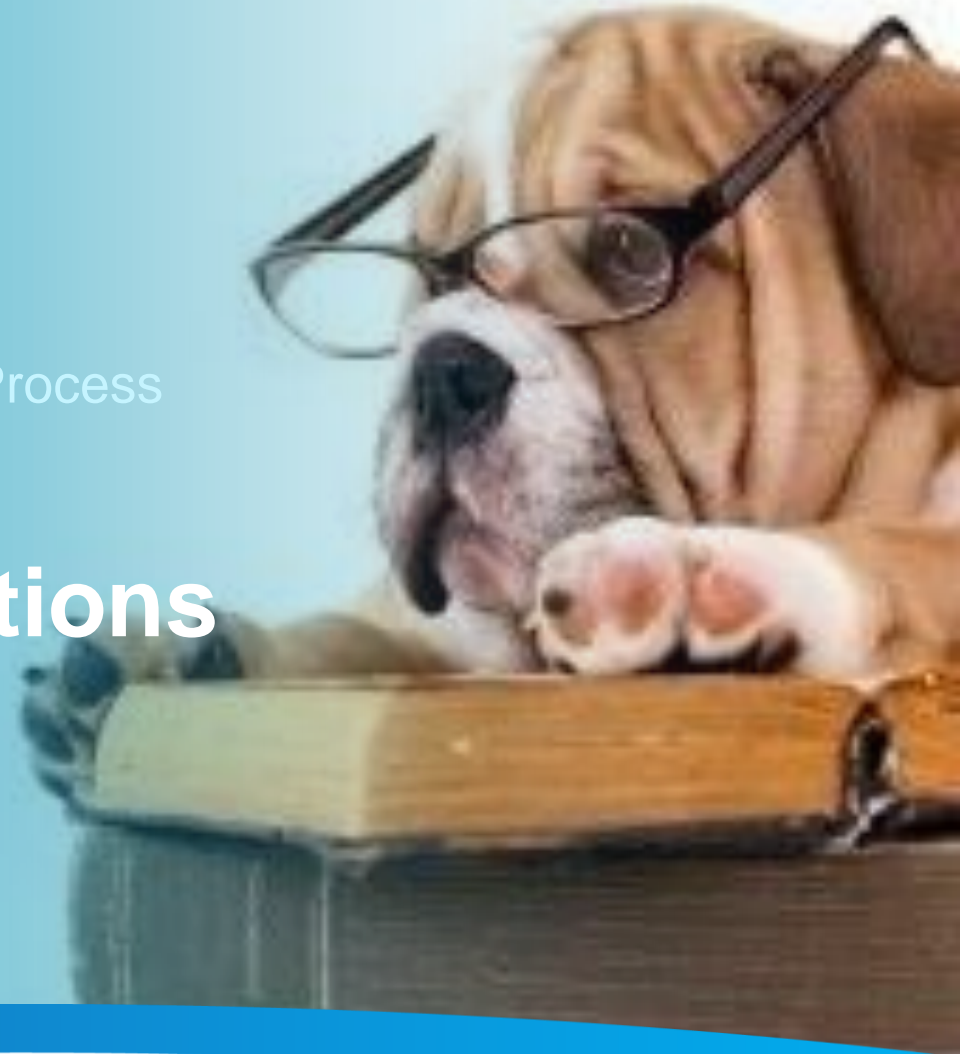
Tax Treatment of Scholarships

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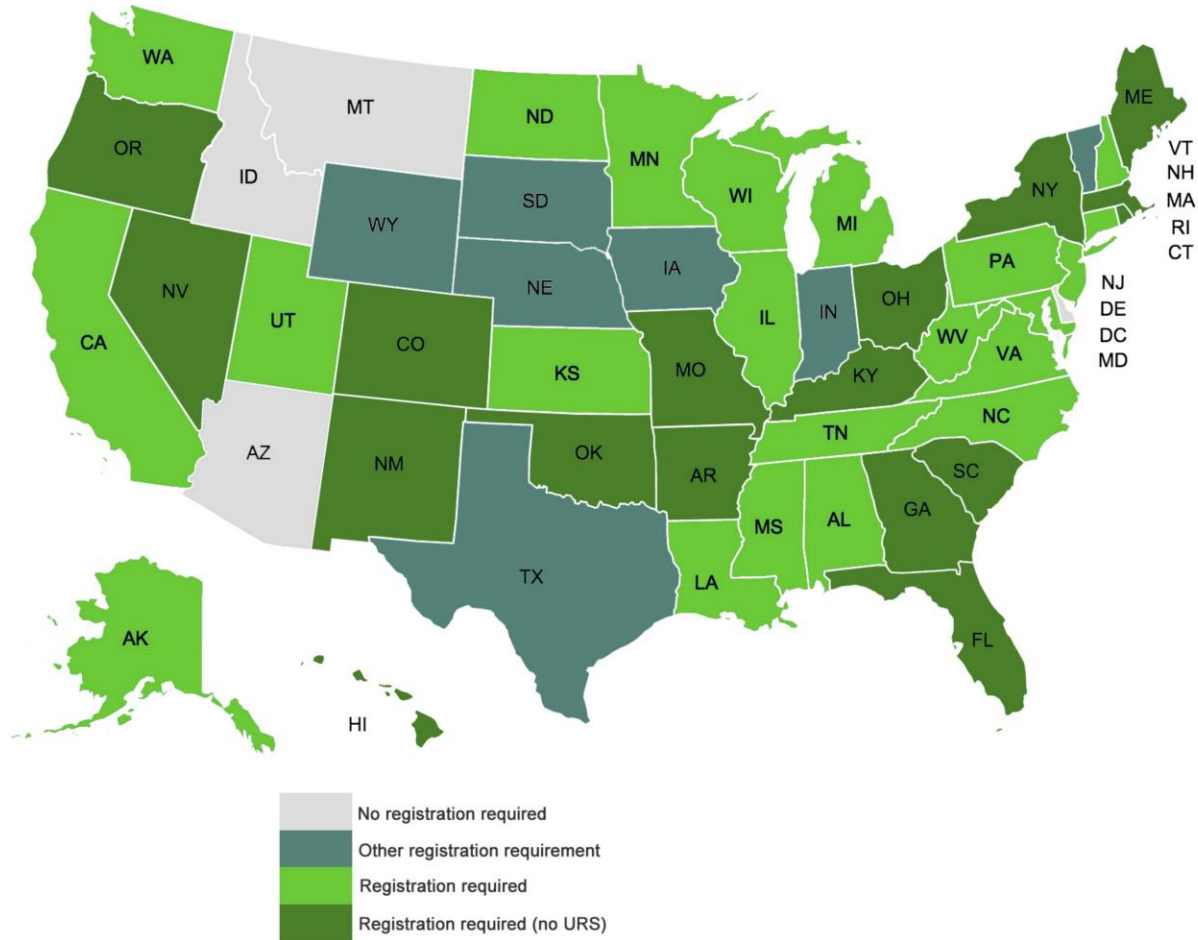
Scholarship Plans

# Charitable Solicitations

Record Collection & Retention



# 40 States Regulate Charitable Solicitations



# Summary

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## When in doubt, reach out:

- Complex area of law, which varies significantly among states
- Review/refresh applicable law in each state where soliciting
- Err on the side of registration

## Help is available for multi-state filing:

- States are attempting Uniform Registration Statement effort (with limited success)
  - Until then, specialized firms offer support in this area
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Overview

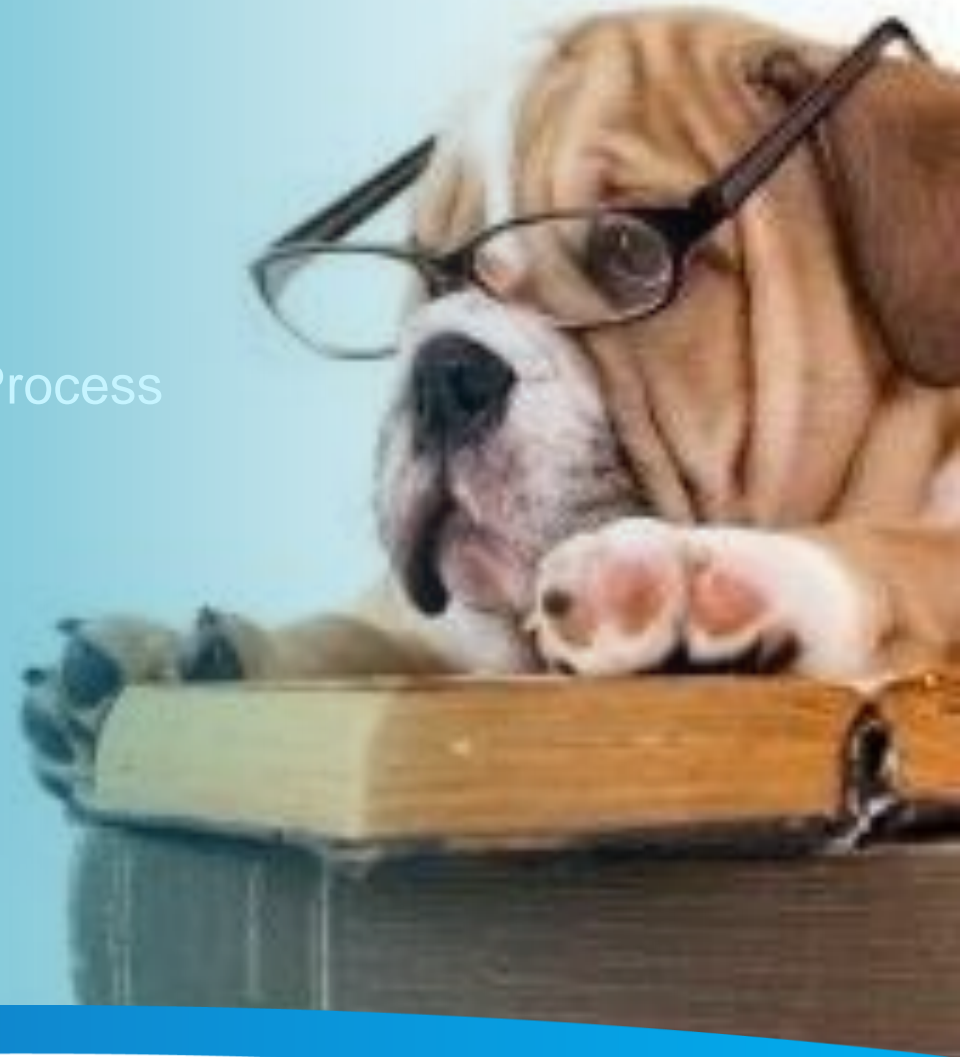
Tax Treatment of Scholarships

Donor Participation in Scholarship Process

Scholarship Plans

Charitable Solicitations

# Record Collection & Retention



# Two Questions

- 1 What information should a scholarship provider collect to meet its tax obligations?
- 2 How long should it keep that information?



# Summary

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- » Record collection and retention requirements are fairly minimal under tax laws
  - » Specific requirements for Private Foundations and Qualifying Scholarship Funds provide good guidance for all providers
  - » Don't forget, many other federal and state laws cover data privacy and security!
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# Thank you! We're done ...



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