



# Exempt Organizations Technical Guide

## TG 25: Multiple-Parent Title-Holding Organizations – IRC Section 501(c)(25)

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## I. Overview

- (1) This Technical Guide discusses exemption qualification for title-holding organizations described under Section 501(c)(25) of the Internal Revenue Code.
- (2) Generally, tax-exempt title-holding organizations provide a practical means for exempt organizations to transfer title to property in order to address legal considerations outside of exemption, such as limiting liability exposure, enhancing borrowing ability, or complying with state law requirements. Two types of title-holding organizations are exempt under the Code:
  - a. Single-parent title-holding corporations, described under Section 501(c)(2)
  - b. Multiple-parent title-holding corporations and trusts, described under Section 501(c)(25)
- (3) Title-holding organizations are commonly used as investment vehicles. Section 501(c)(25) was added to the Code in 1986. It allows unrelated tax-exempt organizations, such as pension trusts, to pool investments and invest in real property through a title-holding organization.
- (4) To increase real estate investing, Section 514 was amended to exclude unrelated business income tax (UBIT) on debt-financed properties for certain types of Section 501(c)(25) shareholders or beneficiaries.

## A. Background / History

- (1) The statutory provision exempting title-holding corporations has remained substantially the same through successive enactments beginning with Section 11(a) Twelfth of the Revenue Act of 1916, in which it originated.
- (2) The legislative history surrounding the original enactment of the provision makes no specific reference to the provision or to the purpose it was intended to serve. The general observation is made, however, that organizations given exemption in the 1916 Act were difficult to secure returns from, and that the Treasury collected little or no revenue from them. See H. Rep. No. 922, 64th Cong., 1st Sess.
- (3) The statute has always authorized the turning over of income by title-holding corporations to any organization exempt under Section 501(a) (or its predecessors). The provision for the exemption of a title-holding corporation related to an exempt organization recognizes the existence of a number of factors that might lead an exempt organization to segregate its investments and property in separate corporations. These factors include:
  - a. Limitation of liability from potential damage suits;
  - b. Enhancement of ability to borrow;
  - c. Limitations imposed in gifts and bequests to exempt organizations that effectively require such gifts to be kept in separate entities;

- d. Clarity of title;
  - e. Accounting simplification; and
  - f. Limitations imposed by various state laws on organizations that would be recognized as exempt under the federal revenue laws.
- (4) Beginning with the earliest interpretations of the statutory provision, only companies acting as investment and holding companies, as opposed to operating companies, have been exempt under this section. Where the active operation of any business other than the rental of real estate has been involved, exemption has consistently been denied.
- (5) Regulations under Section 501(c)(2) were first written in response to the Revenue Act of 1950, which imposed the unrelated business income tax on these organizations. The Congressional Record states, “[S]ince these organizations are presently limited to holding title to property, collecting income from it, and turning the proceeds over to other exempt organizations, the only trade or business in which they can engage is the rental of property.” See the 81st Congress Congressional Record: 96 Congressional Record 15602 (1950). Thus, the rental of real property was clarified as being a permissible activity, which preserved the exemption from tax for those title-holding corporations already in existence that engaged in the rental of real property by excluding them from the feeder provisions of Section 502. Other types of investments are also permissible, including stocks and bonds.
- (6) In 1980, Treasury Regulation (Treas. Reg.) 1.501(c)(2)-1(a) was amended to address the problems of applying the revisions in the unrelated business income tax provisions made by the Tax Reform Act of 1969 (Pub.L. 91-172, 83 Stat. 543) to exempt title-holding corporations. The regulation provides exceptions to the general prohibition against title-holding corporations engaging in unrelated business by permitting title-holding corporations to retain exemption (even though they would still be subject to tax on their unrelated business taxable income (UBTI)) in cases where they have certain enumerated types of unrelated business taxable income.
- (7) The Tax Reform Act of 1986 (Pub.L. 99-514) enacted Section 501(c)(25) with subparagraphs (A)-(D), which provide for the tax exemption for multiple-parent title-holding organizations. The Committee Reports explain that Section 501(c)(25) allows (conceivably smaller) tax-exempt organizations to pool their investment funds for purposes of investing in real estate and so obtain the same tax treatment that larger tax-exempt organizations have with a Section 501(c)(2) subsidiary. See S. Rep. No. 313, 99th Cong., 2d Sess. 885 (1986), 1986-3 (Vol. 3) C.B. 885; H.R. Rep. No. 841, 99th Cong., 2d Sess. II-824 (1986), 1986-3 (Vol. 4) C.B. 824.
- (8) Congress capped the number of shareholders or beneficiaries of a Section 501(c)(25) organization at 35. Testimony at the hearings suggests that a reason for the cap was to ensure that the owners are sufficiently small as a group in

order that they, instead of the investment advisor, actually control the organization. See, for example, House Comm. on Ways and Means, "Miscellaneous Tax Bills," Hearings before the Subcommittee on Select Revenue Measures, May 12 and 19, H.R. Doc. No. (Serial) 98, 99th Cong. 2d Sess. 189, 267 (1986) (Statement of Richard D'Avino, Acting Deputy Tax Legislative Counsel, Treasury Department).

- (9) Section 501(c)(25) originally permitted a Section 501(c)(25) organization to be owned by another Section 501(c)(25) organization. This provision appeared to allow for multi-tier or pyramid arrangements that would effectively circumvent the 35-shareholder limitation in Section 501(c)(25). For instance, a Section 501(c)(25) organization that held real property could have up to 35 shareholders that were Section 501(c)(25) organizations, each of which was held by 35 more shareholders. For this reason, in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Congress eliminated 501(c)(25) organizations as permissible shareholders generally, but added subparagraph (E), allowing for qualified subsidiaries. Overall, TAMRA modified subparagraphs (A) and (D) and added subparagraphs (E) and (F).
- (10) Congress ascertained that Section 501(c)(25) (and 501(c)(2)) title-holding organizations commonly held real property assets such as shopping centers, office buildings, and apartment buildings. These real estate investments typically generate rental income, which generally is not considered unrelated business taxable income, but may also generate small amounts of income which could be treated as unrelated business taxable income (for example, money collected from laundry machines used by tenants, or from vending machines offered as a convenience to the patrons of a shopping center). Thus, Congress concluded that tax-exempt title-holding organizations should not lose their exemption merely because they receive small amounts of unrelated business taxable income that is incidentally derived from the holding of real property. As a result, in 1993, the Omnibus Budget Reconciliation Act of 1993, Pub.L. 103-66, August 10, 1993, 107 Stat 312, added paragraph (G) to Section 501(c)(25). Section 501(c)(25)(G) allows a tax-exempt title-holding organization to receive unrelated business income (UBI) of up to 10% of its gross income, if that unrelated business income is incidentally derived from the holding of real property. Additionally, if the amount of unrelated business income incidentally derived from the holding of real property is more than 10%, the organization may avoid disqualification if they establish to the satisfaction of the Secretary that the excess was inadvertent, and the organization is correcting the situation.

## B. Relevant Terms

- (1) **Holding title:** Owning, as in having ownership of, an asset. In the case of a tax-exempt title-holding organization, the title is commonly transferred without monetary consideration.
- (2) **Multiple-parent title-holding organization:** An entity that allows certain types of unrelated tax-exempt organizations, such as pension trusts and Section

501(c)(3) organizations, to pool investments and invest in real property through a title-holding organization with up to 35 shareholders or beneficiaries.

- (3) **Personal property:** An asset other than real property. It is movable and not permanently fixed to one place. It is also sometimes called *personalty*.
- (4) **Qualified subsidiary:** Any corporation that, at all times during its existence, 100% of its stock was held directly by the Section 501(c)(25) organization itself.
- (5) **Real property:** Real estate (including land, buildings upon it, landscape, water, and subterranean oil and minerals) plus the owner's property rights. Treas. Reg. 1.856-10 defines *real property* as land and improvements to land, which are inherently permanent structures and their structural components.
- (6) **Single-parent title-holding corporation:** An organization tax-exempt under Section 501(a) that transfers title to property to a related corporation. Such a transaction might be employed to address legal considerations outside of exemption, for instance limiting liability exposure, enhancing borrowing ability, or complying with state law requirements.
- (7) **Trade or business:** As described in Section 513(c), any activity carried on for the production of income from the sale of goods or the performance of services.
- (8) **Unrelated trade or business:** As described in Section 513(a), any trade or business the conduct of which is not substantially related (aside from the need for income) to the performance by such organization of its purpose constituting the basis for its exemption, unless the trade or business meets one of the exceptions, including:
  - a. Substantially all the work in carrying on such trade or business is performed for the organization without compensation;
  - b. Carried on by the organization primarily for the convenience of its members, such as items sold through vending machines or by snack bars;
  - c. Selling merchandise, substantially all of which the organization received as gifts or contributions; or
  - d. Other exceptions specifically named in Section 513.
- (9) **Unrelated business taxable income:** As described in Section 512(a)(1), generally, the gross income derived by any organization from any unrelated trade or business (as defined in Section 513) it regularly carries on, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in Section 512(b).

## C. Law / Authority

- (1) Section 501(c)(25) of the Internal Revenue Code describes, as a category exempt from federal income tax under Section 501(a):
  - (A) Any corporation or trust which--

- (i) has no more than 35 shareholders or beneficiaries,
- (ii) has only 1 class of stock or beneficial interest, and
- (iii) is organized for the exclusive purposes of--
  - (I) acquiring real property and holding title to, and collecting income from, such property, and
  - (II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term “real property” shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

- (B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).
- (C) An organization is described in this subparagraph if such organization is--
  - (i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),
  - (ii) a governmental plan (within the meaning of section 414(d)),
  - (iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or
  - (iv) any organization described in paragraph (3).
- (D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries--
  - (i) to dismiss the corporation’s or trust’s investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and
  - (ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:
    - (I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or
    - (II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.



(E)

(i) For purposes of this title--

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

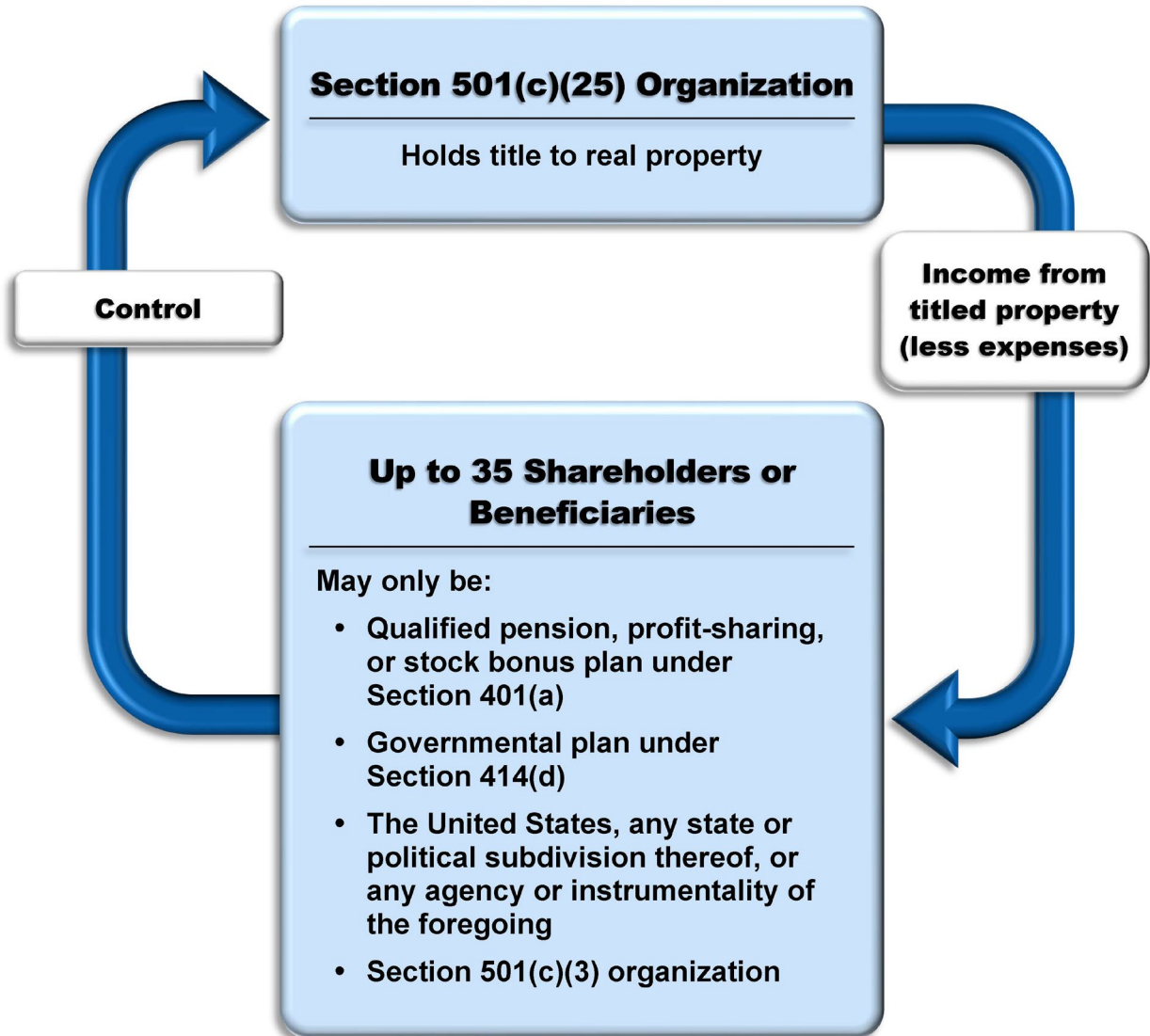
(G)

(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

## II. Exemption Considerations

- (1) Section 501(c)(25) establishes very specific requirements for exemption. If the organization doesn't satisfy every one of these requirements, it won't qualify for exemption. See below for detailed explanations of these requirements.



Diagrammatic Overview of Section 501(c)(25) Operations

### A. Form of Organization

- (1) A Section 501(c)(25) organization can be formed as either a corporation or a trust. A corporation, as defined in Section 7701(a)(3), also includes an association. Whether the organization forms as a nonprofit corporation or a for-profit corporation will not affect qualification.

## B. Organizational Requirements

- (1) Section 501(c)(25)(A) establishes some organizational requirements, including that a qualifying Section 501(c)(25) organization must:
  - a. be a corporation or trust,
  - b. have no more than 35 shareholders or beneficiaries,
  - c. have only one (1) class of stock or beneficial interest, and
  - d. be organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the entire amount of income from such property (less expenses) to one or more permissible shareholders or beneficiaries.
- (2) Notice 87-18, 1987-1 C.B. 455, underscores and expands on organizational requirements for Section 501(c)(25) organizations. The articles of incorporation or trust document must contain the following provisions:

The organization must:

- a. Be organized for the exclusive purpose of acquiring, holding title to, and collecting income from real property; and remitting the entire amount of such income (less expenses) to one or more permissible shareholders or beneficiaries described in Section 501(c)(25)(C), as follows:
  1. a qualified pension, profit-sharing, or stock bonus plan that meets the requirements of Section 401(a);
  2. a governmental plan described in Section 414(d);
  3. the United States, any state or political subdivision thereof, or any agency or instrumentality of the foregoing; or
  4. an organization described in Section 501(c)(3).
- b. Have no more than 35 shareholders or beneficiaries (as per Section 501(c)(25)(A))
- c. Have only one class of stock or beneficial interest (as per Section 501(c)(25)(A))
- d. Permit the organization's shareholders or beneficiaries to dismiss the Section 501(c)(25) organization's investment advisor upon a vote of the shareholders or beneficiaries holding a majority interest in the Section 501(c)(25) organization (as per Section 501(c)(25)(D)(i))
- e. Permit the shareholders or beneficiaries to terminate their interests by either or both of the following:
  1. by selling or exchanging their stock or beneficial interest to any permissible shareholder or beneficiary described in Section 501(c)(25)(C), provided the sale does not result in an increase in the number of shareholders or beneficiaries above 35; or

2. by having their stock or beneficial interest redeemed by the Section 501(c)(25) organization within 90 days notice.

Note: Notice 87-18 was published prior to the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), which eliminated the possibility for another Section 501(c)(25) organization to be a shareholder of a Section 501(c)(25) organization. So, that reference is no longer valid, although that part of the Notice was not formally updated.

- (3) Notice 88-121, 1988-2 C.B. 457, modifies and supplements Notice 87-18. Notice 88-121 provides that if state law prevents a corporation from including the provisions required by Notice 87-18 (summarized above) in its articles of incorporation, then the bylaws of the corporation must include the provisions instead. Additionally, a Section 501(c)(25) organization can be organized as a non-stock corporation if its articles of incorporation or bylaws provide members with the same rights as described above.
- (4) Many Section 501(c)(25) organizations are formed under general corporation laws and are not nonprofit corporations. As long as the organizational requirements are met, it does not matter what type of corporation is used. For non-stock corporations the term *member* is used and is considered synonymous with shareholder. A Section 501(c)(25) organization may be organized as a non-stock corporation if its articles of incorporation or bylaws provide members with the same rights as required by Notice 87-18.
- (5) Section 501(c)(25)(B) provides that it does not matter whether or not the corporation or trust is coordinated (“organized”) by a permissible organization described in Section 501(c)(25)(C). Only the organization’s shareholders or beneficiaries must be described in Section 501(c)(25)(C). As a result, it is not uncommon to have real estate investment management firms organize these title-holding organizations.

## C. Holdings and Activities

- (1) Section 501(c)(25)(A)(iii) limits a tax-exempt multiple-parent title-holding organization’s activities exclusively to acquiring and holding title to real property, collecting income from such property, and remitting the entire income (less expenses) to one or more permissible shareholders or beneficiaries.
- (2) However, this description becomes more complex as additional restrictions on permissible holdings and allowable activities are established in other parts of Section 501(c)(25), explained below.

### C.1. Permissible Holdings and Allowable Activities

- (1) A Section 501(c)(25) organization may only participate in activities specifically described thereunder, including:
  - a. **Real property.** Though Section 501(c)(25) does not directly define *real property*, Section 501(c)(25) does reference real property rules set forth in Section 856. Treas. Reg. 1.856-10 defines *real property* as land and

improvements to land, which are inherently permanent structures and their structural components.

- b. **Personal property leased with real property.** Section 501(c)(25)(F) expands the term *real property* to also include personal property leased with real property, but only if the rent from the personal property (determined under the rules of Section 856(d)(1)) does not exceed 15% of the total rent from both the real and personal property for the taxable year. This provision permits, for example, the lease of office furniture as part of a lease for office space. Under the rules of Section 856(d)(1), the 15% personal property limitation is applied to leases individually, not in the aggregate. As an example, office furniture could be leased with office space if that portion did not exceed 15% of the total lease amount.
- c. **Options to purchase real property.** An option to purchase real property is a “contractual provision by which an owner of realty enters an agreement with another allowing the latter to buy the property at a specified price within a specified time, or within a reasonable time in the future, but without imposing an obligation to purchase on the person to whom it is given,” according to Black’s Dictionary. (See Option (5), Black’s Law Dictionary (11th ed. 2019)). Notice 88-121 provides that a Section 501(c)(25) organization may acquire options to purchase real estate, provided the options are purchased in accordance with a plan to purchase the particular real estate involved, and not for purposes of options trading.
- d. **Reasonable cash reserves.** Notice 88-121 provides that a Section 501(c)(25) organization may hold reasonable cash reserves sufficient to meet its operational requirements. Whether the amount and the time for holding cash reserves is reasonable will depend upon the facts and circumstances in each case. However, it will be considered reasonable if initial subscriptions are held for less than one year before the investment in real estate.

The reserves must be held as cash or in short-term investments. Short-term investments include:

- Certificates of deposit,
- Bankers’ acceptances,
- Interest-bearing savings accounts,
- Commercial paper,
- Government obligations, and
- Shares in money market funds.

In no case will an investment be considered short-term if the period to maturity exceeds ninety-one days.

The allowance for reasonable cash reserves allows shareholders or beneficiaries to pool their assets to invest in real property.

## C.2. Prohibited Holdings and Activities

- (1) A Section 501(c)(25) organization may not participate in activities outside of those specifically described thereunder, including:
  - a. **Ordinary trade or business.** Engaging in a trade or business activity is not operating exclusively for purposes under Section 501(c)(25) because it would be beyond the purpose of acquiring and holding title to real property and collecting income from such property. Additionally, the income derived from the operation of a trade or business is not covered under the exception of income incidental to holding title of real property under Section 501(c)(25)(G).
  - b. **Tenancy in common.** Section 501(c)(25)(A)(iii) states that the term *real property* does not include any direct or indirect interest as a tenant in common (or similar interest). Tenancy in common occurs when two or more persons share ownership rights in one piece of real property. So, a Section 501(c)(25) organization may not share in the ownership of a piece of real property with another person (entity or individual).
  - c. **Holding interests in partnerships or real estate investment trusts.** An organization is not described under Section 501(c)(25) if it holds interests in partnerships or real estate investment trusts, according to Notice 88-121, 1988-2 C.B. 457.
  - d. **Making mortgage loans.** An organization is not described under Section 501(c)(25) if it makes mortgage loans, according to Notice 88-121, 1988-2 C.B. 457.
  - e. **Options trading.** An option is a contract for the right to buy or sell a product (usually a financial product) at a stated price for a certain period of time. An organization is not described under Section 501(c)(25) if it participates in the business of options trading, according to Notice 88-121, 1988-2 C.B. 457.

## D. Permissible Shareholders or Beneficiaries

- (1) Section 501(c)(25)(A)(i) sets a strict limit on the number of shareholders or beneficiaries, sometimes referred to as parents, to no more than 35. Although Section 501(c)(25) organizations are often referred to as multiple-parent title-holding organizations, there is no prohibition against having one parent. For nonprofit or non-stock corporations, the term *member* might be used rather than the term *shareholder*.

- (2) Only specific types of organizations are permitted to be a parent. Section 501(c)(25)(C) limits shareholders or beneficiaries to the following types of organizations:
  - a. A qualified pension, profit sharing, or stock bonus plan that meets the requirements of Section 401(a),
  - b. A governmental plan (within the meaning of Section 414(d)),
  - c. The United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or
  - d. An organization described in Section 501(c)(3).
- (3) Additionally, there must be a relationship between the Section 501(c)(25) organization and its shareholders (or beneficiaries). Section 501(c)(25)(D) explicitly requires the Section 501(c)(25) organization to be controlled by its shareholder organizations. Specifically, according to Section 501(c)(25)(D)(i) and (ii), the shareholder organizations must be able to:
  - a. Dismiss the Section 501(c)(25) organization's investment adviser, and
  - b. Terminate their interest in the Section 501(c)(25) organization.

## D.1. Qualified Pension, Profit Sharing, Stock Bonus Plans

- (1) Section 501(c)(25)(C)(i) permits a qualified pension, profit sharing, or stock bonus plan that meets the requirements of Section 401(a) to be a shareholder. A copy of the shareholder's determination letter will establish whether it is a qualified organization. Master trusts and group trusts are commonly encountered trusts pertaining to pensions and require some additional explanation.
  - a. **Master trust.** A master trust is established for the purpose of investing and administering the assets of its constituent plans, which may be pension plans described in Section 401(a). A master trust is not itself a pension plan, and therefore, will not have a determination letter from the Service. However, if each of a master trust's constituent plans has a determination letter establishing that it is described in Section 401(a), copies of the constituent determination letters will establish that the master trust is an entity described in Section 501(c)(25)(C)(i). The master trust must be the trust for each constituent plan without any intervening trusts between the plans and the master trust. The master trust may not contain provisions for individual retirement accounts (IRAs) which are exempt pursuant to Section 408(c), not Section 401(a), and thus are not permitted parents. Copies of the master trust's trust document will establish whether the master trust is the trust for each constituent plan. The trust indenture will identify each of the plans covered by the master trust.
  - b. **Group trust.** A group trust is another commonly occurring shareholder. There is a significant difference in the operations of a group trust and a master trust. In a group trust, there are intervening trusts between the



group trust and its constituent plans, while a master trust is the trust for each of its constituent plans. Unlike a master trust, a group trust will have a determination letter issued by IRS Employee Plans Rulings and Agreements. A copy of the plan determination letter will establish whether the group trust is a permissible shareholder organization.

- (2) For more detailed information on master trusts, group trusts, and employee plan determinations, see Rev. Proc. 2024-4, 2024-1 I.R.B. 160 (updated annually).

## D.2. Governmental Plans

- (1) Section 501(c)(25)(C)(ii) permits a Section 414(d) governmental plan to be a shareholder. According to Section 414(d), the term *governmental plan* refers to a plan established and maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.
- (2) The term *governmental plan* also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed from contributions required under the Act, and any plan of an international organization that is exempt from taxation by reason of the International Organizations Immunities Act.
- (3) Additionally, the term *governmental plan* includes a plan established and maintained by an Indian tribal government (as defined in Section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with Section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions, but not in the performance of commercial activities (whether or not an essential government function).
- (4) Proof that a shareholder is a governmental plan within the meaning of Section 414(d) includes a copy of the letter issued to the shareholder recognizing it as a governmental plan within the meaning of Section 414(d). However, many governmental plans do not request or receive determination letters. These governmental plans are usually created by state or local law. If a shareholder did not receive a determination letter, a copy of the statute creating the retirement plan may be used to establish the shareholder is a governmental entity within the meaning of Section 501(c)(25)(C)(iii), as discussed more fully in the section below.

## D.3. Governmental Entities

- (1) Section 501(c)(25)(C)(iii) permits the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing, to be a shareholder in a Section 501(c)(25) organization. Following are descriptions of each of these types of governmental entities:



**a. Political subdivisions**

Treas. Reg. 1.103-1(b) defines a *political subdivision* as “any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.” There are three generally acknowledged sovereign powers: the power to tax, the power of eminent domain, and the power to police. An entity is a political subdivision only if it has a substantial sovereign power. It need not have all three sovereign powers, but possessing only an insubstantial amount of any or all of the sovereign powers is insufficient. See Rev. Rul. 77-165, 1977-1 C.B. 21.

Political subdivisions are generally local governments of states. Each state constitution describes in detail a procedure for establishing local governments, and in most cases, the state legislature must approve the creation or incorporation of a local government. Local government units bear a variety of names, such as city, county, township, village, parish, district, etc. The legal significance of these terms may vary from state to state.

**b. Agencies**

While not defined in the Code or Regulations, agency, also termed government agency, is defined in Black’s Law Dictionary as an “official body, especially within the government, with the authority to implement and administer particular legislation.”

Federal agency is defined as a “department or other instrumentality of the executive branch of the federal government, including a government corporation and the Government Printing Office. The Administrative Procedure Act defines the term agency negatively as being any U.S. governmental authority that does not include Congress, the courts, the government of the District of Columbia, the government of any territory or possession, courts-martial, or military authority. 5 USCA Section 551. The caselaw on this definition focuses on authority: generally, an entity is an agency if it has authority to take binding action. Other federal statutes define agency to include any executive department, government corporation, government-controlled corporation, or other establishment in the executive branch, or federal regulatory board.” See Agency (3), Black’s Law Dictionary (11th ed. 2019) (non-precedential).

State agency is defined as an “executive or regulatory body of a state. State agencies include state offices, departments, divisions, bureaus, boards, and commissions.” See Agency (3), Black’s Law Dictionary (11th ed. 2019) (non-precedential).

Local agency is defined as a “political subdivision of a state. Local agencies include counties, cities, school districts, etc.” See Agency (3), Black’s Law Dictionary (11th ed. 2019) (non-precedential).

### c. Instrumentalities

An instrumentality is an organization created by or pursuant to statute and operated for public purposes. Generally, an instrumentality is closely affiliated, by government ownership or control, with a state or local government and performs governmental functions, but does not have the full powers of a government, which is taxation, eminent domain, and police authority.

Federal instrumentalities are only those corporations organized under an Act of Congress and exempt under Section 501(c)(1).

What constitutes an instrumentality of a state or political subdivision is determined by considering certain factors provided in Rev. Rul. 57-128, 1957-1 C.B. 311:

- Whether it is used for a governmental purpose and performs a governmental function;
  - Whether it performs its function on behalf of one or more states or political subdivisions;
  - Whether private interests are involved, or whether states or political subdivisions have the powers and interests of an owner;
  - Whether control and supervision of the organization is vested in public authority or authorities;
  - Whether express or implied statutory or other authority is needed to create and/or use the entity; and
  - The degree of the organization's financial autonomy and the source of its operating expenses.
- (2) There must be sufficient information to establish the shareholder is one of the government entities provided for in Section 501(c)(25)(C)(iii). Sufficient information may include a ruling recognizing it as a governmental entity within the meaning of Section 115 or a ruling that the entity qualifies for an annual filing exception under Section 6033(a)(3)(B) in accordance with Rev. Proc. 95-48, 1995-2 C.B. 418. For others, such as hospital boards, boards of regents, and retirement plans of states, cities, towns, and counties that do not have a ruling, sufficient information might include a copy of the statute creating the entity to see whether it establishes it as a governmental entity.

### D.4. Section 501(c)(3) Organizations

- (1) Section 501(c)(25)(C)(iv) permits any organization described in Section 501(c)(3) to be a shareholder. It is important to note that no other type of organization described under Section 501(c) is a permissible shareholder.
- (2) Evidence the shareholder is described under Section 501(c)(3) includes its determination letter. Organizations not subject to Section 508(a) notification requirements, that is, those not required to formally apply for exemption to be

recognized as tax-exempt, such as churches, may provide other sufficient information to establish that they would qualify for exemption if they applied.

## E. Turning Over Income

- (1) Section 501(c)(25)(A)(iii)(II) states the title-holding organization must remit the entire amount of income from the real property it holds (less expenses) to its permissible shareholders or beneficiaries.
- (2) Regarding the timing of when the title-holding organization must turn over its income, Notice 88-121, 1988-2 C.B. 457, provides some guidance. The Notice states:

An organization described in section 501(c)(25) may hold reasonable cash reserves sufficient to meet its operational requirements. Whether the amount and the time for holding cash reserves is reasonable will depend upon the facts and circumstances in each case. However, it will be considered reasonable if initial subscriptions are held for less than one year before investment in real estate. The reserves must be held as cash or in short term investments. Short term investments include certificates of deposit, bankers' acceptances, interest-bearing savings accounts, commercial paper, government obligations, and shares in money market funds, but in no case will an investment be considered short term if the period to maturity exceeds ninety-one days.

- (3) The allowance for reasonable cash reserves allows shareholders (or beneficiaries) to pool their assets to invest in real property.

## F. Qualified Subsidiaries

- (1) Section 501(c)(25) title-holding organizations generally may not own stock, as stock is not real property. Stock is intangible personal property. (See Property, Am. Jur. 2d, Corporations, 431, 432; Property (1), Black's Law Dictionary, (11th ed. 2019) (non-precedential).) The sole exception to this rule is Section 501(c)(25)(E), which permits a title-holding organization to own all the stock of a qualified subsidiary.
- (2) Section 501(c)(25)(E)(i) provides that a corporation that is a qualified subsidiary will not be treated as a separate corporation for tax purposes. All assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary are treated as assets, liabilities, etc., of the Section 501(c)(25) organization.
- (3) Section 501(c)(25)(E)(ii) provides that the term *qualified subsidiary* means any corporation that, at all times during its existence, 100% of its stock was held directly by the Section 501(c)(25) organization itself. Thus, a qualified subsidiary must be a direct subsidiary of a Section 501(c)(25) organization, and it may not be a direct subsidiary of one of the permissible Section 501(c)(25)

shareholders or beneficiaries. Additionally, a Section 501(c)(25) organization cannot acquire a pre-existing corporation.

- (4) A Section 501(c)(25) organization may have more than one qualified subsidiary. The statute contains no express limit on the number of qualified subsidiaries a Section 501(c)(25) organization may hold directly.
- (5) In order for the Section 501(c)(25) organization to retain its exemption, any qualified subsidiary must comply with all rules of Section 501(c)(25). The activities of any qualified subsidiary are considered along with the other activities of the Section 501(c)(25) organization (and any other qualified subsidiaries).

If, for example, a qualified subsidiary received unrelated business taxable income from parking, and such income was incidentally derived from its holding of real property, but did not exceed 10% of the combined gross income of the Section 501(c)(25) organization and all its qualified subsidiaries (per Section 501(c)(25)(G)), then the Section 501(c)(25) organization would retain its exemption along with its qualified subsidiaries.

However, if a qualified subsidiary conducted an unrelated trade or business, which was not incidental to its holding of real property (and also not covered under the exceptions in Section 501(c)(25)(G)(ii)), the activity would cause the Section 501(c)(25) organization and, therefore, all the organization's qualified subsidiaries to lose exemption.

- (6) Because a qualified subsidiary is not treated as a separate entity for federal tax purposes, it does not have to obtain its own employer identification number (EIN). A qualified subsidiary does not file a separate Form 990-series or other federal tax or information return. Also, because a qualified subsidiary is not treated as a separate entity for tax purposes, the Service does not issue a ruling to a qualified subsidiary recognizing it as such. However, to meet the requirements of some state tax authorities that a qualified subsidiary have its own exemption letter to qualify for exemption from state tax, the Service has issued rulings to the Section 501(c)(25) organization that its subsidiaries are qualified subsidiaries under Section 501(c)(25)(E).

## **F.1. Disqualified Subsidiaries**

- (1) If a situation arises when a Section 501(c)(25) organization holds less than 100% of a qualified subsidiary's stock, that corporation is no longer a qualified subsidiary, and the remaining stock held by the Section 501(c)(25) organization is no longer a permissible type of property to hold. Recall that stock is not real property, and once the subsidiary is no longer a qualified subsidiary described in Section 501(c)(25)(E), the corresponding exception for stock as a permissible asset is no longer applicable. Thus, if a Section 501(c)(25) organization transfers any of its qualified subsidiary's stock to another person, or if a qualified subsidiary issues stock to a person other than its Section 501(c)(25) organization, the qualified subsidiary will become disqualified.

- (2) Section 501(c)(25)(E)(iii) provides that if a qualified subsidiary ceases to meet the requirements of Section 501(c)(25)(E)(ii), it will be treated as a new corporation and acquire all of its assets (and assume all of its liabilities) from its Section 501(c)(25) organization immediately before the date it ceased to be a qualified subsidiary in exchange for its stock. When a qualified subsidiary becomes disqualified, the rules governing corporate reorganizations put forth in Section 351, among others, become applicable.

## **F.2. Non-Qualified Subsidiary Example**

- (1) X is a state retirement board and is a permissible parent under Section 501(c)(25)(C), but is not a Section 501(c)(25) organization. X is the sole shareholder of several corporations, S1 through S5, each of which owns a single piece of real property. X requests a ruling that S1 through S5 are qualified subsidiaries.
- (2) S1 through S5 cannot be qualified subsidiaries because X is not itself a Section 501(c)(25) organization. As X owned their stock before X ever received any type of determination as a Section 501(c)(25) organization, they can never comply with the requirement that at all times their stock has been owned by a Section 501(c)(25) organization. S1, S2, S3, S4, and S5 may, however, be able to separately qualify for exemption under Section 501(c)(25) if they otherwise meet the requirements of the Statute.

## **G. Unrelated Business Income**

- (1) Because Section 501(c)(25) organizations have an organizational requirement that they limit their permissible activities exclusively to certain specified exempt purpose activities, the conduct of any activity outside those purpose-furthering activities will jeopardize their qualification for exemption. In other words, the organization cannot be exempt from taxation if it engages in any activity other than that of holding title to real property, collecting the income, and remitting it to its shareholders or beneficiaries. Therefore, in general, the receipt of Section 512 unrelated business income by a Section 501(c)(25) organization will subject the organization to the loss of exempt status. However, for Section 501(c)(25) organizations, there are some exceptions to that general rule, explained below.

### **G.1. Income from Personal Property**

- (1) Section 501(c)(25)(F) states the term *real property* includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of Section 856(d)(1)) for the taxable year does not exceed 15% of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease. In other words, as long as the personal property portion of the lease is not more than 15% of the total lease, the whole amount of the lease is considered rent from real property, which means the income is exempt purpose income and not UBI. Under the rules of Section 856(d)(1), the 15% personal property limitation is applied to leases

individually, not in the aggregate. If such rent for an individual lease exceeds the 15% limitation, the organization's exempt status will be jeopardized.

## G.2. Debt-Financed Property Income Exclusion

- (1) Section 512(b)(4) provides that, generally, income from debt-financed property is considered UBI as described under Section 514. However, under Section 514(c)(9), income from debt-financed property for certain qualified organizations, including Section 501(c)(25) organizations, is excluded from UBI. Specifically for Section 501(c)(25) organizations, this UBI exclusion is applied at the shareholder or beneficiary level, and not to the Section 501(c)(25) organization itself.

The Section 501(c)(25) organization's permissible shareholders (or beneficiaries) are subdivided, for the purpose of this UBI exclusion, into two groups – *qualified shareholders* and *disqualified shareholders*. This exclusion only applies to the qualified shareholders.

Qualified shareholders are educational organizations described under Section 170(b)(1)(A)(ii), their affiliated Section 509(a)(3) supporting organizations, and qualified trusts under Section 401. The other types of shareholders are deemed disqualified shareholders for the purpose of this UBI exclusion and do not receive the exclusion. See Section 514(c)(9)(F)(iii).

- (2) When a Section 501(c)(25) organization has both qualified and disqualified shareholders, the UBI is allocated to the disqualified shareholders' pro rata share as set forth in the rules under Section 514(c)(9)(F).

Note: For real property interests acquired prior to June 10, 1987 (or interests acquired later under a binding contract in effect on that date), Section 514(c)(9)(F) does not apply. See Pub.L. 100-647, Nov. 10, 1988.

- (3) Notice 88-121, 1988-2 C.B. 457, clarifies that while a Section 501(c)(25) organization's exempt status will not be affected by the receipt of debt-financed income which is treated as unrelated business taxable income solely because of Section 514, income derived from the conduct of a business operation or the business of acquiring, improving, and selling real property or trading options, is income from an unrelated trade or business and will result in the loss of exempt status for an organization described under Section 501(c)(25).

## G.3. Income Incidentally Derived from Holding Real Property

- (1) While, generally, unrelated business income will disqualify a Section 501(c)(25) organization from exemption, Section 501(c)(25)(G) allows the organization to receive unrelated business income of up to 10% of their gross income, *if* that unrelated business income is incidentally derived from the holding of real property. Examples of incidentally derived income are parking revenue and income from vending machines located on real property owned by a title-holding company. Income from manufacturing, for example, would *not* be considered incidental to the holding of real property. See Omnibus Budget



Reconciliation Act of 1993, 1993-3 C.B. 393 (I.R.S. 1993), for the Conference Report.

- (2) Section 501(c)(25)(G)(i) is not an exclusion from the tax on unrelated business income for title-holding organizations, but is a test, or threshold, to determine whether exemption will be jeopardized. Title-holding organizations receiving incidentally derived unrelated business income must still pay unrelated business income tax on that income.
- (3) In the event the income incidentally derived from the holding of real property exceeds 10% of the organization's gross income, Section 501(c)(25)(G)(ii) provides that limitation will not apply if the organization establishes to the satisfaction of the Secretary of the Treasury that the excess UBI was inadvertent, and reasonable steps are being taken to correct the circumstances causing the excess unrelated business income.

### **III. Other Considerations**

#### **A. Applying for Exemption**

- (1) An organization seeking recognition of exemption under Section 501(c)(25) must electronically file Form 1024, Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code, including its Schedule A, with the correct user fee and all required supplemental documents through Pay.gov. See Rev. Proc. 2024-5, 2024-1 I.R.B. 262 (updated annually).
- (2) Adverse rulings may be appealed. After December 2015, organizations described in Section 501(c)(25) may institute a declaratory judgment proceeding in court in response to an adverse ruling under the rules of Section 7428. See Section 9, Procedures for Adverse Determination Letters, and Section 10, Declaratory Judgement Provisions of Section 7428, of Rev. Proc. 2024-5, 2024-1 I.R.B. 262 (updated annually).

#### **B. Return Filing Requirements**

##### **B.1. Filing Requirements**

- (1) Organizations that are tax-exempt under Section 501(c)(25) are generally required to electronically file an annual Form 990-series return or notice (that is, Form 990, Return of Organization Exempt From Income Tax; Form 990-EZ, Short Form Return of Organization Exempt From Income Tax; or 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ) to report certain information required by Section 6033.

The organization's gross receipts and its total assets determine which Form 990-series return it must file. Webpage "Form 990 Series - Which Forms Do Exempt Organizations File - Filing Phase In" on IRS.gov provides a chart on gross receipts and asset levels.

- (2) Organizations with UBTI must electronically file Form 990-T, Exempt Organization Business Income Tax Return, and electronically pay any required periodic estimated tax payments.
- (3) Organizations with employees must file employment tax returns and unemployment tax returns and electronically pay any required periodic tax deposits. See Publication 15 (Circular E), Employer's Tax Guide, for more information.

## **B.2. Automatic Revocation**

- (1) In 2006, Congress enacted a law that requires, with very limited exceptions, that all tax-exempt organizations file an annual return or notice with the IRS beginning with the 2007 tax year. The law also provides that any organization that fails to file a required annual return or notice for three consecutive years will automatically lose its tax-exempt status, effective as of the due date for the third missed return. This automatic revocation is by operation of law, and not by a determination made by the IRS.
- (2) Section 501(c)(25) organizations are subject to automatic revocation.
- (3) See webpage "Automatic Exemption Revocation for Non-Filing: Frequently Asked Questions" on IRS.gov for more information.

## **C. Non-Deductibility of Contributions**

- (1) Contributions to Section 501(c)(25) organizations are not allowable as deductions under Section 170. Section 6113 requires certain tax-exempt organizations that are ineligible to receive tax deductible charitable contributions to disclose, in "an express statement (in a conspicuous and easily recognizable format)," the non-deductibility of contributions during fundraising solicitations. Section 6710 provides penalties for failure to comply with Section 6113 without reasonable cause. Organizations whose annual gross receipts do not normally exceed \$100,000 are excepted from this disclosure requirement. See Notice 88-120, 1988-2 C.B. 454.

## **IV. Examination Techniques**

- (1) The information in this section is intended to guide the examiner in identifying and developing issues particular to Section 501(c)(25) multiple-parent title-holding organizations. These guidelines are meant to supplement the guidelines provided by IRM 4.70, TE/GE Examinations, and are not all-inclusive nor meant to limit the examiner in identifying issues nor using additional examination and legal resources (for example, CPE articles, examination tools and techniques, etc.) that are not included here.



## A. Planning the Examination

- (1) In preparing for an examination, the examiner will check Integrated Data Retrieval System (IDRS) to see if the organization filed an application for tax exemption. If so, they will request the administrative file.
- (2) When the examiner receives the administrative file, they will determine whether the organization has included all the required language in its organizing documents, as specified in Notice 87-18, 1987-1 C.B. 455 and Notice 88-121, 1988-2 C.B. 457.
  - a. Review the organizing documents to determine whether the organization is organized for the exclusive purpose of acquiring and holding title to real property and collecting income from that property and distributing the income to its shareholders or beneficiaries.

Note: If state law prevents a corporation from including the required language in its articles of incorporation, the organization must include such language in its bylaws.
  - b. Review articles of incorporation and other corporate documents (or trust instrument) to ensure the organization has no more than 35 shareholders or beneficiaries and only one class of stock or beneficial interest.
- (3) The examiner will research IDRS to verify that the organization's shareholders or beneficiaries are described in Section 501(c)(25)(C). If the examiner is unable to determine which entities are the shareholder(s), the examiner should request documentation, such as determination letters in the initial Information Document Request (IDR).
- (4) If the application for tax exemption describes the real property to be held, the examiner will research to:
  - a. Determine whether the property still exists,
  - b. View aerial images of property to estimate whether the applicant's description of any property is still accurate,
  - c. Determine if there is a property management company operating the facility,
  - d. Retrieve any current and/or revised corporate information from the appropriate state regulatory agency.
- (5) The examiner will obtain any prior year or subsequent year Form 990-series returns and any Forms 990-T, Exempt Organization Business Income Tax Return.
  - a. Review the Forms 990-T to determine the sources of income reported.
  - b. Using the Forms 990-T as a guide, add to the initial IDR any items on the Form 990-T that merit review, including items such as property records.

- c. Review the Forms 990 to identify the list of shareholders (or beneficiaries), if provided.
  - d. Match the income and expenses reported on the Form 990-series to the Form 990-T. Note any differences, and whether there may be allocation issues.
  - e. Perform the standard risk analysis, identifying the large, unusual, and questionable items for inclusion on the initial IDR.
- (6) Using these records, the examiner should plan their initial interview accordingly. They will interview the officers and/or managers who run the title-holding organization. At a minimum, they will consider asking the following questions:
- a. Who are the shareholders (or beneficiaries) of the organization?
  - b. Are the shareholders (or beneficiaries) all exempt under Section 501(c)(3), or do they include governmental units or pension plans?
  - c. What kind of property does the organization hold?
  - d. Does the organization use a property management company?
  - e. Who among the shareholders (or beneficiaries) has the right to terminate the management company, or is it a group decision?
  - f. Does the organization collect any form of income other than rent?
  - g. How many tenants does each property held by the organization have?
  - h. If there are subsidiaries, who owns the stock of the subsidiaries?
  - i. Do the subsidiaries (if any) generate any income of their own?
  - j. Are there any mortgages against any of the properties owned by the organization (and any subsidiaries)?

## **B. Executing the Examination**

- (1) The examiner will determine whether the shareholders or beneficiaries control the title-holding organization, as specified in Section 501(c)(25)(D) by:
  - a. Reviewing the organizing documents,
  - b. Reviewing the minutes,
  - c. Reviewing the contracts and agreements, and
  - d. Interviewing the officials.
- (2) The examiner will obtain any revised organizing documents not already included in the administrative file, even if previously attached to Form 990-series returns.
- (3) The examiner will identify any changes to the number of shareholders, classes of stock, or other structural elements in the articles of incorporation and bylaws.

- (4) The examiner will inspect all sources of income, such as the cash receipts journal and bank statements, to determine whether the organization receives income from unrelated business activities. If so, they will verify the amount of this income:
  - a. Is incidental to the holding of real property,
  - b. Doesn't exceed 10% of the organization's gross income, and
  - c. Matches the amount reported on Form 990-T.
- (5) The examiner will:
  - a. Review lease agreements to identify rental of personal property and determine whether the rental of real property includes personal property. If rental of real property includes personal property, determine whether the amount attributable to personal property exceeds the 15% of total rental income.
  - b. Determine whether the organization is receiving income from the business of acquiring, improving, and selling real property or trading options. This income is unrelated trade or business income and results in the loss of exempt status.
  - c. Analyze the organization's balance sheet to identify all assets.
  - d. Analyze financial records and interview officials to determine whether the organization owns options and if the purpose of owning the options is to purchase real estate.
  - e. Review minutes, correspondence, files, and agreements to determine whether the organization owns one or more qualified subsidiaries and has not transferred stock to any person.
  - f. Determine whether the organization is improperly accumulating income.

## **C. Resolving the Examination**

- (1) The examiner will determine whether the organization continues to qualify for exemption under Section 501(c)(25).
- (2) They will prepare a report of examination revoking the organization if:
  - a. The organization has any shareholders (or beneficiaries) who are neither a qualified pension, profit sharing, or stock bonus plan that meets the requirements of Section 401(a); a governmental plan (per Section 414(d)); the United States, any State or political subdivision thereof; or any agency or instrumentality of any of the foregoing; nor any organization described in Section 501(c)(3).
  - b. It is no longer organized for the exclusive purposes of acquiring real property and holding title to, and collecting income from, this property, and remitting the entire amount of income from such property (less expenses) to its shareholders or beneficiaries described above.

- c. It is a corporation with more than 35 shareholders or a trust with more than 35 beneficiaries.
- d. Any shareholder or beneficiary has more than one class of stock or beneficial interest.
- e. The corporation or trust does not permit its shareholders or beneficiaries to dismiss the corporation's or trust's investment adviser, via the shareholders' or beneficiaries' majority vote.
- f. The shareholders or beneficiaries are unable to terminate their interest in the corporation or trust by selling or exchanging their stock in the corporation or interest in the trust to any organization described above so long as the sale or exchange does not increase the number of shareholders or beneficiaries in that corporation or trust above 35.
- g. The shareholders or beneficiaries are unable to terminate their interest in the corporation or trust by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.
- h. Any shareholder or beneficiary has terminated their interest in the organization by selling or exchanging their stock with an organization not described above.
- i. The organization derived more than 15% of the total rent for the taxable year from rent attributable to personal property which was leased under or in connection with a lease of real property.
- j. The organization derived more than 10% of its gross income from otherwise disqualifying income which was incidentally derived from the holding of real property.
- k. The organization fails to remit the entire amount of income from such property (less expenses) to one or more organizations which are shareholders of such corporation or beneficiaries of such trust at least annually.
- l. Any qualified subsidiaries cause the organization to lose exemption through actions of their own.

## V. Exhibits

### A. Chart: Comparison of Section 501(c)(2) and 501(c)(25) Requirements

Criteria	501(c)(2) Organization	501(c)(25) Organization
<b>Form of Organization</b>	Corporation (incl. Association)	Corporation (incl. Association) or Trust
<b>Purpose</b>	Holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under Section 501(a)	Acquiring real property and holding title to, and collecting income from, such property, and remitting the entire amount of income from such property (less expenses) to its shareholders or beneficiaries
<b>Number of shareholders or beneficiaries (aka, parents, distributees)</b>	1	1 to 35
<b>Permissible shareholders or beneficiaries</b>	Must be exempt under Section 501(a)	Must be: <ul style="list-style-type: none"> <li>• a qualified pension, profit-sharing, or stock bonus plan that meets the requirements of Section 401(a);</li> <li>• a governmental plan described in Section 414(d);</li> <li>• the United States, any state or political subdivision thereof, or any agency or instrumentality of the foregoing; or</li> <li>• an organization described in Section 501(c)(3)</li> </ul>
<b>Permissible holdings and sources of income</b>	Assets that produce passive income, such as: <ul style="list-style-type: none"> <li>• Rent from real property</li> <li>• Personal property leased with real property (subject to limitations)</li> <li>• Passive investments</li> <li>• Oil or mineral production payments</li> </ul>	Real property and: <ul style="list-style-type: none"> <li>• Personal property leased with real property (up to 15%)</li> <li>• Options to purchase real property</li> <li>• Reasonable cash reserves</li> </ul>
<b>Prohibited holdings and sources of income</b>	Include: <ul style="list-style-type: none"> <li>• Operating a trade or business</li> <li>• Leasing only personal property</li> <li>• Income incidental to holding title exceeding limits</li> </ul>	Include: <ul style="list-style-type: none"> <li>• Ordinary trade or business</li> <li>• Tenancy in common</li> <li>• Holding interests in partnerships or real estate investment trusts</li> <li>• Making mortgage loans</li> </ul>

Criteria	501(c)(2) Organization	501(c)(25) Organization
		<ul style="list-style-type: none"> <li>Options trading</li> <li>Income incidental to holding title to real property exceeding limits</li> </ul>
<b>Unrelated business taxable income / Unrelated business income</b>	Will not qualify for exemption if it has UBTI, other than a few specified exceptions	Will not qualify for exemption if it has UBI, other than a few exceptions
<b>Related TG</b>	TG 2: Single-Parent Title-Holding Corporations – IRC Section 501(c)(2) has more detailed information.	TG 25: Multiple-Parent Title-Holding Organizations – IRC Section 501(c)(25) has more detailed information.

## B. Scenario and Discussion

### (1) Scenario

U is a commercial real estate management company. The owners of U have learned that many tax-exempt organizations are unwilling to accept donations of real property because of the practical difficulties in managing or selling such property. The owners of U have therefore created B to accept donations of real property on behalf of various unrelated charities. The owners of U are B's officers and directors. Individual donors will donate real property to B for the benefit of a named charity. The charity will direct B to either sell the property or to hold it. If the property is sold, the proceeds, net of any commissions and other fees charged by B and/or U, will be turned over to the named charity. B has applied for exemption under Section 501(c)(3).

B has also established Y, a title-holding organization. It has the same officers and directors as B. Y's sole shareholder will be B. When the unrelated charities wish to retain real property (rather than sell it immediately), it will be transferred to Y. Y will hold the property under a contract with the unrelated charity, collect the income from it, and turn the net income over to B for distribution to the charities. U will provide property management and other services to both B and Y at normal commercial rates. Y has applied for exemption under Section 501(c)(25).

### (2) Discussion of Scenario

B's sole activity is providing property management and sales services to unrelated exempt organizations for a fee. Providing such commercial services does not further an exempt purpose, unless the fee charged is substantially below B's costs. Since U is charging normal commercial rates for its services, this test is not met. Furthermore, there is substantial private benefit to U in the form of fees and commissions for its services.

Even if B qualified for exemption under Section 501(c)(3), it is unlikely that Y is described in Section 501(c)(25). First, it is not clear that Y actually holds title to real property. Y's "ownership" of the property is limited by the terms of the contracts with the unrelated charities. For example, Y cannot sell the property absent permission of the charity. Second, the statute clearly requires that Y's shareholders and the recipients of its income be the same organizations. In this case, the ultimate recipients of the income are not Y's shareholders. Although Y's income is passed through B on its way to the ultimate charitable recipients, B has no legal right to keep the income from the property. Finally, it appears that Y's contractual relationships may be a means of avoiding the 35-shareholder limit of Section 501(c)(25), because there is no limit on the number of charities on whose behalf Y can hold property.