



Exempt Organizations Technical Guide

TG 3-3 Exempt Purpose, Charitable IRC 501(c)(3)

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I. Overview

A. Introduction

- (1) This Technical Guide (TG) discusses tax law issues related to charitable purposes of organizations exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (2) Organizations qualifying for federal income tax exemption described under Section 501(c)(3) must meet several requirements. An organization described under Section 501(c)(3) must be organized and operated exclusively to further Section 501(c)(3) exempt purposes.
- (3) The exempt purposes specified in Section 501(c)(3) are:
 - a. Religious
 - b. Charitable
 - c. Scientific
 - d. Testing for public safety
 - e. Literary
 - f. Educational
 - g. Fostering national or international sports competition
 - h. Prevention of cruelty to children or animals
- (4) Treasury Regulation (Treas. Reg.) 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3).
- (5) In many instances an exempt organization may qualify for exemption under more than one purpose and/or activity. Charitable purposes and/or activities will, oftentimes, be combined with religious, educational, literary and/or prevention of cruelty to children and animals.

B. Background and History

- (1) After the 16th Amendment to the United States Constitution allowing for the levying of income tax was ratified on February 3, 1913, Congress enacted the Revenue Act of 1913, Ch. 16, 38 Stat. 114, on October 3, 1913, also known as the Underwood Tariff Act. This act established “charitable” as a purpose that is exempt from federal income tax.

B.1. Charitable as an Exempt Purpose

- (1) In 1939 the Internal Revenue Code was codified, and organizations pursuing charitable activities were exempt from taxation under Section 101(6). The recodification of the Code in 1954, as the Internal Revenue Code of 1954, redesigned and reordered the code to designate organizations exempt from

federal income tax under Section 501(c)(3) where “charitable” remained an exempt purpose. Section 501(c)(3) of the Internal Revenue Code of 1986 provides for the exemption of organizations organized and operated exclusively for “charitable” purposes.

- (2) Charity is an evolving concept that changes with societal needs. The concept of charity was developed in the common law long before the term was included in the Internal Revenue Code (IRC). Therefore, legal precedent for analyzing whether an activity is charitable is not limited to interpretations under Section 501(c)(3). Treas. Reg. 1.501(c)(3)-1(d)(2) provides that the term “charitable” is used in Section 501(c)(3) in its generally accepted legal sense.
- (3) Charity is not limited to reducing poverty. The regulation lists the following examples of purposes which are charitable in the generally accepted legal sense:
 - a. Relief of the poor and distressed or of the underprivileged
 - b. Advancement of religion, education or science
 - c. Erection or maintenance of public buildings, monuments or works
 - d. Lessening the burdens of government
- (4) Charity also includes the promotion of social welfare which may be accomplished by the following:
 - a. Lessening neighborhood tensions
 - b. Eliminating prejudice and discrimination
 - c. Defending human and civil rights secured by law
 - d. Combating community deterioration and juvenile delinquency
- (5) Promoting health and wellness also furthers a charitable purpose. The promotion of health is one of the purposes in the general law of charity that is deemed beneficial to the community. See Revenue Ruling (Rev. Rul.) 69-545, 1969-2 C.B. 117 and Restatement (Second), Trusts, sec. 368 and sec. 372; IV Scott on Trusts (3rd ed. 1967), sec. 368 and sec. 372.

B.2. Who is Needy?

- (1) Treas. Reg. 1.170A-4A(b)(2)(ii)(D) defines the term needy. Specifically, a needy person is a person who lacks the necessities of life, involving physical, mental, or emotional wellbeing, because of poverty or temporary distress.
- (2) The following are examples of one who is needy:
 - a. Impoverished, low income and lacking resources
 - b. Hungry and homeless, lacking food and shelter or the means to provide
 - c. Victim of a natural disaster, such as a fire or flood

- d. Victim of a civil disaster, such as a war or riot
- e. Victim of a violent crime or physically abused
- f. Refugee or immigrant who is experiencing language, cultural, or financial difficulties
- g. An orphaned minor child
- h. A former prisoner or former patient of a mental institution

B.3. Charitable Class

- (1) The group of individuals that may properly receive assistance from a charitable organization is called a charitable class. A charitable class must be either large enough that the potential beneficiaries cannot be individually identified or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people benefits when a charity provides assistance. See Rev. Rul. 67-367, 1967-2 C.B. 188.
- (2) Assistance to pre-selected, specifically named individuals will preclude exemption. See *Wendy L. Parker Rehab. Found., Inc. v. Comm'r*, 52 T.C.M. 51. In *Charleston Chair Co. v. United States*, 203 F. Supp. 126 (E.D.S.C. 1962), the court found “the narrow class of persons who might benefit, the more restricted group that did benefit and the preference given to the son of the director, stockholder and trustee disclose that the Foundation was not operated exclusively for charitable purposes.”
- (3) However, the mere limiting of assistance to a relatively small membership of a restricted class will not necessarily preclude exemption. For example, a charitable class could consist of the individuals in a city, county, or state. This charitable class is large enough that the potential beneficiaries can't be individually identified and providing benefits to this group would help the entire community. See Rev. Rul. 56-403, 1956-2 C.B. 307.
- (4) If the group of eligible beneficiaries is limited to a smaller group, such as the employees of a particular employer, the group of persons eligible for assistance must be indefinite. For example, the activity to benefit an indefinite class; the proposed relief program must be both:
 - a. Open-ended
 - b. Include employees affected by a current disaster and may be affected by future disasters
- (5) Therefore, if a charity follows a policy of helping employees who are victims of all disasters, present or future, it will aid an indefinite charitable class. If a charity's facts and circumstances indicate that its newly established disaster relief program is intended to benefit only victims of a current disaster without intending to help victims of future disasters, the organization wouldn't benefit a charitable class.

B.4. Charitable Group

- (1) In general, a charitable class may include, but is not limited to, any of the following groups of individuals:
 - a. Poor: Persons who are at or below federal poverty guidelines.
 - b. Elderly: Generally defined as persons at least 62 years of age.
 - c. Handicapped: Persons afflicted with a physical or mental handicap.
 - d. Distressed: Individuals who have suffered from a disaster.
 - e. Youth: Children under the age of eighteen.

See Treas. Reg. 1.170A-4A(b)(2)(ii).

C. Organizational and Operational Test

- (1) To be exempt from taxation under Section 501(c)(3) a corporation, trust or community chest must be organized and operated exclusively for certain specified exempt purposes, such as religious, charitable, or educational purposes.
- (2) These two requirements are known as the organizational and operational tests. If an organization fails to meet either the organizational or operational test, it is not described in Section 501(c)(3). While the organizational test relates to an organization's organizing document, the operational test relates to the organization's operations and activities. See Treas. Reg. 1.501(c)(3)-1(a).

C.1. Organizational Test

- (1) The organizational test, according to Treas. Reg. 1.501(c)(3)-1(b), relates to an entity's organizing documents, including
 - a. Articles of incorporation
 - b. Charter
 - c. Articles of association
 - d. Trust document
 - e. By-laws.
- (2) The organizing document must:
 - a. Limit the purpose of the organization to one or more exempt purposes.
 - b. Not empower the organization to engage in activities, other than which are not in furtherance of an exempt purpose.
- (3) The organizational test can only be satisfied if the organizing documents meets the requirements of the regulations.
- (4) The organizing documents, to meet the requirements of Section 501(c)(3), should contain the following:

- a. An acceptable purpose clause describing the primary activity accomplishing one or more exempt purposes
 - b. Prohibit earnings to inure to private shareholders or individuals
 - c. Prohibit political activity
 - d. Limit legislative activity
 - e. An acceptable dissolution clause, unless state law provides for the distribution of assets for exempt purposes upon dissolution
- (5) The organization may amend its articles during the determination process to meet the requirements in accordance with the provisions of Revenue Procedure (Rev. Proc.) 2022-5.6(5), or its successor. In general, any defects within the organizing documents may not be corrected by the organization's operations or by referencing other documents such as Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, by-laws or other statements made by the taxpayer. As noted above, a dissolution provision within an organization's by laws but not in its articles is sufficient to meet the organizational test provided that state law gives effect to such a dissolution provision. See *Colorado State Chiropractic Society v. Commissioner* 93 T.C. 487 (1989).
- (6) Follow IRM 4.75.11.8.1(3) for applicable procedures.
- Note:** Exempt Organizations Determinations (EOD) has implemented a streamlined processing of applications for exemption. Under this process, instead of waiting to receive the amended organizing documents, EOD began to accept attestations from certain organizations under penalties of perjury that the conforming changes have been made. See IRM 7.20.2.3.4(3) for preparing Letter 1312, Additional Information Request.
- (7) The organizational test is discussed in full detail in EOD Training Unit 1A L8, Introduction to Section 501(c)(3) and the Organizational Test. Follow IRM 4.75.11.8.1(3) if the exempt organization under examination fails the organizational test.

C.2. Operational Test

- (1) Under Treas. Reg. 1.501(c)(3)-1(c) an organization satisfies the operational test if it meets the following three requirements:
- a. **Primary activities:** The organization engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3).
 - b. **Distribution of earnings:** The organization's net earnings do not inure in whole or in part to the benefit of private shareholders or individuals.
 - c. **Action organizations:** The organization is **not** operated exclusively for one or more exempt purposes if a substantial part of its activities is attempting to influence legislation by propaganda or if it participates or

intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

- (2) Under the operational test, it is the purpose and not the nature of the activities, which is critical. If a non-exempt purpose exists, the examiner must determine if the non-exempt purpose is substantial.
 - a. If the non-exempt purpose is substantial, the organization will not meet the operational test for exemption under Section 501(c)(3).
 - b. If the non-exempt activity is incidental and less than substantial, it will not result in denial or revocation of exemption.
- (3) The operated exclusively for exempt purposes test and the private inurement test are separate requirements, although there is substantial overlap as found in *Church of the Transfiguring Spirit, Inc. v. Commissioner*, 76 T.C. 1, 5 (1981), and in *Wendy L. Parker Rehab. Foundation, Inc. v. Commissioner*, 52 T.C.M. 51 (1986).
 - a. To operate exclusively for exempt purposes, an organization must serve a public rather than a private interest. Consequently, an organization that operates for the benefit of private interests such as the creator or the creator's family does not operate exclusively for exempt purposes. See *Treas. Reg. 1.501(c)(3)-1(d)(1)(ii)*.
 - b. An organization operates exclusively for exempt purposes if it engages primarily in activities which accomplish such purposes. See *Treas. Reg. 1.501(c)(3)-1(c)(1)* and *Elderly v. Comm'r*, 64 T.C.M. 376 (1992).
 - c. The prohibition against private inurement, in contrast, is complete, and the amount and extent of such inurement is not determinative. Inurement of any kind is prohibited and will adversely affect the organization's exempt status. See *Church of the Transfiguring Spirit*, 76 T.C. at 5.

D. Relevant Terms

- (1) **Charitable purpose:** the word 'charitable' is variable in its connotation depending upon whether it is used in the narrow or broad sense. "Charity in its narrow sense includes only gratuities bestowed upon the needy or for the relief of suffering. In its broader meaning, charity is not so limited but also embraces any benevolent or philanthropic objective not prohibited by law or public policy which tends to advance the well-doing and wellbeing of man." *Isabel Peters v. Commissioner*, 21 T.C. 55 (1953) acq. 1959-2 C.B. 146 (citing *Turnure v Comm'r* 9 B.T.A. 871 (1927)).
- (2) **Charitable class:** a group of individuals that may properly receive assistance from a charitable organization and must be either large enough that the potential beneficiaries cannot be individually identified or sufficiently indefinite that the community as a whole benefits when a charity provides assistance.
- (3) **Low-income families:** families whose incomes do not exceed 80 percent of the median family income for the area, as adjusted for family size.

- (4) **Very low-income families:** families whose incomes do not exceed 50 percent of the median family income for the area, as adjusted for family size. See Rev. Proc. 96-32, 1996-1 C.B. 717
- (5) **Needy person:** a person who lacks the necessities of life, involving physical, mental, or emotional wellbeing, because of poverty or temporary distress.
- (6) **Care of the needy:** the alleviation or satisfaction of an existing need.

E. Law / Authority

- (1) Section 501(c)(3)
- (2) Section 170(b)(1)(A)
- (3) Treas. Reg. 1.170A-2
- (4) Treas. Reg. 1.170A-4A
- (5) Treas. Reg. 1.501(a)-1(c)
- (6) Treas. Reg. 1.501(c)(3)-1(d)(2)

II. Charitable Purpose

- (1) As had been previously discussed, charitable purpose is viewed by the IRS and the courts in its most expansive meaning.
- (2) Treas. Reg. 1.170A-4A(b)(2)(ii)(E) defines the care of the needy as the alleviation or satisfaction of an existing need. Where an organization distributes funds for the purpose of relieving financial distress, generally it must be a distribution based on the demonstrated need of the individual. This aspect follows from Treas. Reg. 1.501(c)(3)-1(d)(2) which includes as charitable relief of the poor and distressed. This would include indigent persons or individuals who are financially needy. Therefore, an organization should have in place, prior to any disbursement of funds, a “needs test” or criteria by which it can objectively make distributions to financially distressed individuals.

A. Relief of the Poor and Distressed

- (1) Relief of the poor, distressed, and/or the underprivileged is a charitable purpose, as expressly noted in Treas. Reg. 1.501(c)(3)-1(d)(2).
- (2) Relief can be provided in many ways including, but not limited to:
 - a. Assistance to low-income families
 - b. Self-help programs
 - c. Assisting the aged
 - d. Assisting the sick and handicapped
 - e. Fire, rescue and emergency services
 - f. Low-income legal assistance

A.1. Assistance to Low-Income Families

- (1) Relief of the poor and underprivileged is listed as a charitable purpose under Treas. Reg. 1.501(c)(3)-1(d)(2). Relief may consist of what is considered basic charity of providing food, clothing and shelter to those who are too impoverished to afford such basic necessities of life.
- (2) Providing housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed. The IRS has long held that poor and distressed beneficiaries must be needy in the sense that they cannot afford the necessities of life. As discussed previously, the individuals who receive care from a charitable organization must meet the definition of a charitable class. It has been determined that low-income individuals meet the requirements of a charitable class.
- (3) The definition of low-income most commonly cited by housing organizations finds its genesis in the U.S. Housing Act of 1937, as amended. The Act, which is enforced and implemented by the Department of Housing and Urban Development (HUD), defines low-income families as families whose incomes do not exceed 80 percent of the median family income for the area, as adjusted for family size. Under Rev. Proc. 96-32, 1996-1, C.B. 717 the IRS states that low-income and very low-income families will be identified in accordance with income limits published by HUD.
- (4) **Area median family income:** Is determined in a manner consistent with the determinations of median family income under section 8 of the Housing Act of 1937, as amended.
 - a. Taxpayers must use the annual estimates of median family income released by HUD and may rely on those figures until 45 days after HUD releases a new list of income limits, or Until HUD' s effective date for the new list, whichever is later.
 - b. HUD sets income limits that determine eligibility for assisted housing programs including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 housing for the elderly, and Section 811 housing for persons with disabilities programs. HUD develops income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county. This information can be found at the following website for each year starting in 1990:
<https://www.huduser.gov/portal/datasets/il.html>.
- (5) **Low-income family income:** Adjusted for family size, is not more than-
 - a. For metropolitan areas, 80 percent of the area median family income.
 - b. For non-metropolitan areas, the greater of 80 percent of the area median family income, or 80 percent of the statewide non-metropolitan area median family income.

An individual's family income is determined using any one of the following three methods for measuring family income:

- a. Household income as measured by the U.S. Census Bureau.
 - b. Adjusted gross income under Section 62 as reported on Internal Revenue Service Form 1040, U.S. Individual Income Tax Return. Adjusted gross income must include the adjusted gross income of any member of the individual's family, as defined in Section 267(c)(4) if the family member resides with the individual regardless of whether the family member files a separate return.
 - c. Household income determined under Section 8 of the Housing Act of 1937, as amended.
- (6) **Very low-income families:** Defined by the US Housing Act as families whose incomes do not exceed 50 percent of the median family income for the area, once again, as adjusted for family size. The major active, low income, HUD assisted housing programs are the Public Housing program and the section 8 certificate and voucher program. HUD also administers the section 202 program, which provides assistance to the elderly and/or handicapped.
- (7) **Low-income housing:** Rev. Proc. 96-32, 1996-1, C.B. 717 provides guidance on qualification for tax-exemption under section 501(c)(3) to those organizations that provide low-income housing and sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in Section 501(c)(3) because they relieve the poor and distressed as described in Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations.
- This revenue procedure also describes the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations described in Section 501(c)(3)
- (8) **Safe harbor:** Rev. Proc. 96-32 includes a safe-harbor procedure to determine qualification. In support of national housing policy, the safe harbor identifies those low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed.
- a. The safe harbor permits a limited number of units occupied by residents with incomes above the low-income limits to assist in the social and economic integration of the poorer residents and, thereby, further the organization's charitable purposes.
 - b. To avoid giving undue assistance to those who can otherwise afford safe, decent, and sanitary housing, the safe harbor requires occupancy by significant levels of both very low-income and low-income families.

- (9) Providing housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed. The following Revenue Rulings refer to the determination of whether individuals are poor and distressed along with the type of housing assistance provided.
- a. Rev. Rul. 67-138, 1967-1 C.B. 129: A nonprofit organization created to provide instruction and guidance to low-income families in need of adequate housing and interested in building their own homes may be exempt from federal income tax under section 501(c)(3).
 - b. Rev. Rul. 70-585, 1970-2 C.B. 115: Finds nonprofit housing organizations created to aid low- and moderate-income families by lessening neighborhood tensions, eliminating prejudice and discrimination, and combatting community deterioration may qualify for exemption under section 501(c)(3).
 - c. Rev. Rul. 76-408, 1976-2 C.B. 145: A nonprofit organization that provides interest-free home repair loans in a badly deteriorated urban residential area to low-income homeowners who are unable to obtain loans elsewhere qualifies for exemption under section 501(c)(3) of the Code as operated exclusively for charitable purposes.
- (10) Congress has enacted low-income housing tax credits under Section 42 as a means to encourage new construction and rehabilitation of existing buildings as low-income rental housing for households with income at or below specified income levels. Tax credits provided to private developers are outside the purview of this guide. See Audit Technique Guide (ATG) IRC 42, Low-Income Housing Credit for additional information on housing credits.
- (11) **Credit counseling:** Section 501(q) establishes special rules for credit counseling organizations to qualify for exemption under Sections 501(c)(3) or 501(c)(4).
- a. In *Solutions Plus, Inc. v. Commissioner*, TC Memo 2008-21, the Tax Court found that the organization was not exempt under Section 501(c)(3), for its primary purpose was marketing debt management programs, which is not, an educational or charitable purpose.
 - b. Rev. Rul. 69-441, 1969-2 C.B. 115: An organization formed to help reduce personal bankruptcy by providing information to the public on budgeting, buying practices, and the sound use of consumer credit, and assisting low-income individuals and families who have financial problems by providing, without charge, counseling, and, if necessary, budget plans for liquidation of indebtedness, qualifies for exemption.
- (12) **Childcare, Section 501(k):** Operating a day care center for children of needy working parents is an exempt activity under Sections 501(k) and 501(c)(3) as charitable and educational. Although the following rulings precede the passage of 501(k), the IRS found that childcare provided to needy families is a charitable activity under Section 501(c)(3).

- a. Rev. Rul. 68-166, 1968-1 C.B. 255: A nonprofit organization was formed to operate a day care center for young children of needy working parents who have no means to provide care for their children during the day. Although the organization charges a nominal fee for its services, it is not self-supporting and must depend upon public contributions. The IRS held the organization is exempt from federal income tax under Section 501(c)(3).
 - b. Rev. Rul. 70-533, 1970-2 C.B. 112: An educational day care center operated in conjunction with an industrial company that enrolls children on a basis of family financial need and the child's needs for the care and development program of the center is exempt under Section 501(c)(3).
- (13) Prior to the enactment of Section 501(k), the IRS's position was that nonprofit day care centers could only be recognized as exempt under Section 501(c)(3) under two situations:
- a. Where enrollment was limited to children from low income families, or
 - b. Where the center provided preschool children with a comprehensive educational program through a professional staff of qualified teachers, in essence, where the center was a school.
- (14) With the passage of the Deficit Reduction Act of 1984, Congress established Section 501(k) which defines the term **educational purposes** to include providing childcare to children away from their homes if:
- a. **Substantially all** of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and
 - b. The services provided by the organization are available to the general public.
- (15) Definitions of terms in Section 501(k)
- a. **Gainfully employed** includes:
 - Any employee
 - Any self-employed person
 - Any enrolled student or vocational school trainee
 - Any individual actively seeking employment.
 - b. **Substantially all** means 85% of the services of the organization must be provided to the children of the individuals named above.
 - c. **Available to the general public** means the services must be made accessible to the populace within a set geographic boundary.
- (16) A childcare organization exempt under Sections 501(k) and 501(c)(3) is not recognized as a school under Section 170(b)(1)(A)(ii). It will, however, meet the public charity requirements under Section 509(a)(2), for the organization will most likely receive the majority of its income from childcare services, even if supported by government payments.

(17) For additional information on child care organizations see EO CPE 1989-H, IRC 501(k) – Child Care Organizations

A.2. Self-Help Programs

- (1) Self-help programs are often used to aid the poor and distressed. Supplying these programs with materials and services may be considered a charitable activity. How the organization operates is usually a critical factor in determining whether it is a charitable activity rather than a commercial enterprise.
 - a. Rev. Rul. 68-167, 1968-1 C.B. 255: An organization created to market needy women's cooking and needlework was determined to be exempt under Section 501(c)(3), even though it receives a small commission on each sale. The court found the organization serves a charitable class, operates in a noncommercial manner, and serves women who are not otherwise able to support themselves. The commissions charged were insufficient to support the organization, and it relied on public contributions.
 - b. Rev. Rul. 75-472, 1975-2 C.B. 208: A halfway house, organized to provide room, board, therapy, and counseling for persons discharged from alcoholic treatment centers, which also operates a furniture shop to provide full-time employment for its residents with any profits applied to operating costs of the halfway house, qualifies for exemption and is not conducting an unrelated trade or business.
- (2) Section 501(c)(3) doesn't limit exemption to only organizations relieving the poor and distressed in the United States. Nonprofit organizations formed and operated to assist needy families in "developing" countries may be exempt from federal income tax under section 501(c)(3)
 - a. Rev. Rul. 68-117, 1968-1 C.B. 251: A nonprofit domestic corporation formed to help poor rural inhabitants of developing countries by conducting guided self-help programs for social and economic development in the rural areas of these countries are exempt under Section 501(c)(3).
 - b. Rev. Rul. 68-165, 1968-1 C.B. 253: A domestic organization, joining with a foreign organization to promote student and cultural exchanges, in addition to providing technical and material assistance for self-help projects in foreign countries for needy inhabitants are exempt under Section 501(c)(3). The activities include providing advice and training in administering various social welfare programs studying agricultural, educational, transportation, and water resource issues, proving solutions and implementing a plan of action. The organization's activities were directed to improve the capabilities of the individual and instruct the public on subjects beneficial to the community. Therefore, these activities are educational. Furnishing the tools and material to help improve living

conditions of the underprivileged is charitable within the meaning of Section 501(c)(3).

- (3) In some cases, there may be issues with deductibility of contributions under Section 170(c)(2)(A) to charities organized in the United States which transmit some or all of their funds to a foreign charitable organization.
 - a. Rev. Rul. 63-252, C.B. 1963-2 C.B. 101: Special earmarking of the use or destination of funds paid to a qualifying charitable organization may deprive the donor of a deduction. In *S.E. Thomason v. Commissioner*, 2 T.C. 41 (1943), the court held that amounts paid to a charitable organization were not deductible where the contributions were earmarked for the benefit of a particular ward of the organization.
 - b. Rev. Rul. 66-79, C.B. 1966-1: Contributions to a domestic charity described in Section 170(c)(2) which are solicited for a specific project of a foreign charitable organization are deductible under Section 170 where the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and has control and discretion as to the use of the contributions.

A.3. Assistance to the Elderly

- (1) It is generally recognized that the elderly, apart from considerations of financial distress, have special needs due to their advanced years. Satisfying those needs may be a charitable activity.
- (2) **Historical Perspective:** For many years, the Service took the position that old age homes were not charitable unless they were operated for the relief of poverty. See the following historical references:
 - a. Rev. Rul. 57-467, 1957-2 CB 313: A home for aged people, which does not accept charity guests, and which requires the discharge of guests who fail to make certain required monthly payments, is not organized and operated exclusively for charitable purposes under Section 501(c)(3) of the Internal Revenue Code of 1954.
 - b. Rev. Rul. 61-72, 1961-1 CB 188: An organization, providing care and housing for aged people at established rates which are **substantially less** than the actual costs of the services furnished, is entitled to exemption under Section 501(c)(3) of the Internal Revenue Code of 1954.
 - c. Rev. Rul. 64-231, 1964-2 CB 139: An entrance fee and lump sum life-care payment, as a prerequisite to obtaining direct personal services and residence in home for the aged, must be included as income in determining whether the home renders services to all or a reasonable proportion of its residents at substantially less than it cost to meet the requirements of Section 501(c)(3) of the Internal Revenue Code of 1954.
- (3) **Current Perspective:** With the publication of Rev. Rul. 72-124, 1972-1 C.B. 145 the position held by the IRS on the exempt status of an organization

providing assistance to the elderly is not predicated on the individual's financial position.

- a. Rev. Rul. 72-124, 1972-1 C.B. 145 provides that exemption under 501(c)(3) is no longer conditioned upon whether an organization relieves the financial distress of aged persons by providing care and housing for them on a gratuitous or below cost basis. This ruling holds a home need not provide direct financial assistance to the elderly in order to be "charitable," since poverty is only one form of distress to which the elderly as a class is particularly susceptible.
- b. Rev. Rul. 72-124 provides that an organization which devotes its resources to the operation of a home for the aged will qualify for charitable status if it operates in a manner designed to satisfy the three primary needs of the elderly. These are:
 - **Need for housing:** residential facilities that are specifically designed to meet some combination of the physical, emotional, recreational, social, religious, and similar needs of the elderly.
 - **Need for health care:** either directly provides some form of health care, or in the alternative, maintains some continuing arrangement with other organizations, facilities, or health personnel, designed to maintain the physical, and if necessary, mental wellbeing of its residents.
 - **Need for financial security:** established policy, whether written or in actual practice, of maintaining in residence any persons who become unable to pay their regular charges, and to provide its services to the aged at the **lowest feasible cost**, taking into consideration such expenses as the payment of indebtedness, maintenance of adequate reserves sufficient to insure the life care of each resident, and reserves for physical expansion commensurate with the needs of the community and the existing resources of the organization.

(4) This issue is addressed in the following General Counsel Memoranda (GCM):

- a. Homes for the Aged, GCM 34073, I-2836 (Mar. 12, 1968), and the supplement dated May 1, 1969.
- b. Homes for the Aged, GCM 34720, I-2836 (Dec. 21, 1971).

(5) **Qualifying Activities:** The following are examples of organizations meeting the requirements for Section 501(c)(3) whose primary exempt purpose is to serve the elderly:

- a. Rev. Rul. 79-18 1979-1 C.B. 194: A nonprofit organization that provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become

unable to pay its monthly fees is an organization operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

- b. Rev. Rul. 75-198, 1975-1 C.B. 157: An organization that establishes a senior citizen center to provide information, referral, and counseling services relating to health, housing, finances, education, and employment qualifies for exemption under Section 501(c)(3). The center also provides recreational activities for the seniors and doesn't require membership to participate.
- c. Rev. Rul. 66-257, 1966-2 C.B. 212: A nonprofit employment agency that operates free of charge for the elderly was found to be charitable because it performed its services primarily for those of limited means.
- d. Rev. Rul. 77-246, 1977-2 C.B. 190: An organization that provides, upon request, low-cost bus transportation to senior citizens and handicapped persons in a community where public transportation is unavailable or inadequate was recognized as exempt under Section 501(c)(3).
- e. Rev. Rul. 77-42. 1977-1 C.B. 142: A nonprofit organization that sets up closed-circuit radio transmitting equipment in multiple residence structures such as nursing homes, rest homes, and convalescent homes, providing senior citizens within the buildings an opportunity to listen to free, noncommercial and educational broadcasts concerning their special needs, is operated exclusively for charitable and educational purposes and qualifies for exemption.

(6) **Non-Qualifying Activities:** The following are examples of organizations serving the elderly which did not meet the requirements for Section 501(c)(3):

- a. In *Senior Citizens Stores v. United States*, 602 F.2d 711 (5th Cir. 1979), an organization whose stated purpose was to provide training, jobs, and recreation for senior citizens by operating retail stores didn't qualify for exemption under Section 501(c)(3). Although it incidentally served the needs of senior citizens, the evidence indicated that the retail sales business was no different than many typical family operated businesses in which the excess of income over expenses is paid to various family members as rents or salaries. The court found that the organization's primary activity was the operation of the retail store, which wasn't devoted exclusively to charitable purposes.
- b. In *Federation Pharmacy Services, Inc. v. Commissioner*, 625 F.2d 804 (8th Cir. 1980) aff'g 72 T.C. 687 (1979), the Appellate Court held that a pharmacy was not exempt as a charitable organization because it was operated for the substantial commercial purpose of selling prescription drugs to the public. Although it provided exclusive discounts for handicapped and senior citizens, it didn't provide any drugs below cost or free to indigent persons. Therefore, although its services did improve health in the area, it was primarily a commercial venture operated in competition with other area pharmacies.

- c. GCM 39487 (Mar. 21, 1986): A proposed ruling concludes that the sale of housing units on a fee simple basis in connection with the operation of a continuing care community does not meet the ‘financial security’ requirement of Rev. Rul. 72-124, 1972-1 CB 145, and Rev. Rul. 79-18, 1979-1 CB 194; therefore, the organization does not qualify for exemption under section 501(c)(3).

A.4. Assistance to Sick and Handicapped

- (1) Helping the sick, handicapped, or disabled is a form of relief that is charitable. The organizations providing such care may also relieve the burdens of the poor, distressed, or underprivileged. The following revenue rulings provide examples of entities whose primary exempt purpose is to alleviate the suffering of the sick and disabled:
 - a. Rev. Rul. 79-17, 1979-1 C.B. 193: A nonprofit hospice, providing both inpatient and outpatient care to ease the physical and mental distress of the terminally ill was determined to be operated exclusively for charitable purposes per Section 501(c)(3).
 - b. Rev. Rul. 79-19, 1979-1 C.B. 195: A nonprofit organization that provides specially designed housing for physically handicapped persons at the lowest feasible cost and maintains in residence tenants who become unable to pay monthly fees was found to be operated exclusively for charitable purposes per Section 501(c)(3).
 - c. Rev. Rul. 81-28, 1981-1 C.B. 328: An organization that provides housing, transportation, and counseling to hospital patients’ relatives and friends who travel to help and comfort the patients was determined to be exempt under Section 501(c)(3).
 - d. Rev. Rul. 79-358, 1979-2 C.B. 225: An otherwise qualifying organization that provides private hospital rooms to patients who can benefit medically from a private room but who can’t afford the expense was found to be exempt under Section 501(c)(3) as a charitable organization.
- (2) Helping the sick or handicapped must benefit a charitable class, not predetermined individuals, or relations of the founders or those who control the organization. See *Wendy L. Parker Rehab. Found., Inc. v. Comm’r*, 52 T.C.M. 51 (1986).

Note: Charitable class is addressed previously in this Technical Guide. See Section I.B.3, Charitable Class.

A.5. Fire, Rescue and Emergency Services

- (1) Providing fire, rescue, or emergency services for the community can be a charitable purpose because it lessens the burdens of government and serves the social welfare by providing a benefit to the community. See *Treas. Reg. 1.501(c)(3)-1(d)(2)*.

- (2) Rev. Rul. 74-361, 1974-2 C.B. 159: Considered a volunteer fire company that provides fire and ambulance services to a community. Except for two full-time firefighters, the organization is staffed by volunteers who are on call to perform duties as firefighter, ambulance driver, or paramedic. The organization has regular recruiting and training programs and offers recreational facilities for its volunteers when they aren't on fire calls or performing other duties. The recreational facilities aren't open to the public. It derives income from dues and weekly public dances by volunteers from its membership.
 - a. The ruling found that the organization qualifies for exemption under Section 501(c)(3) and notes that it could've applied for and been recognized as a social welfare organization under Section 501(c)(4). Under the circumstances described, the social and recreational activities didn't disqualify the organization under Section 501(c)(3).
 - b. The recreational facilities for members served exempt purposes rather than a nonexempt social purpose. The facilities helped prevent the boredom that could drive out volunteers and fostered fellowship and a spirit of cooperation necessary for an effective firefighting unit. The weekly dances weren't an unrelated trade or business because the work was conducted by unpaid volunteers.
- (3) Rev. Rul. 69-174, 1969-1 C.B. 149: A non-profit organization that gives free emergency rescue services for stranded, injured, or lost persons is exempt under Section 501(c)(3).
- (4) Rev. Rul. 70-590, 1970-2 C.B. 116: An organization operating a drug rescue center and a telephone drug crisis hotline is operated for charitable purposes.

A.6. Low-income Legal Assistance and Public Interest Law Firms

- (1) Rev. Proc. 71-39, 1971-2 C.B. 575 provides guidelines for the issuance of advance rulings of exemption to public interest law firms and for testing the charitable character of such organizations already holding favorable rulings.
- (2) Rev. Proc 92-59, 1992 2 C.B. 411 supersede Rev. Proc. 71-39, 1971-2 C.B. 575, to modify and supersede Rev. Proc. 75-13, 1975-1 C.B. 662, to revoke Rev. Rul. 75-75, 1975-1 C.B. 154, and to amplify Rev. Rul. 75-76, 1975-1 C.B. 154, by providing procedures under which a public interest law firm may accept fees for its services.
- (3) Providing legal services to those unable to pay is a form of relief of the poor and distressed. The following rulings provide guidance:
 - a. Rev. Rul. 75-283, 1975-2 C.B. 201: a statewide association of public housing tenant groups was formed to promote the rights and welfare of public housing tenants. It advises member organizations on the rights and responsibilities of tenants and the laws and regulations on public housing and represents local groups before state and federal housing authorities.

The ruling determined that the organization relieves the poor and distressed per Section 501(c)(3).

- b. Rev. Rul. 69-161, 1969-1 C.B. 149: a non-profit legal aid society that gives free legal services to indigent persons was recognized as exempt under Section 501(c)(3).
- c. Rev. Rul. 78-428, 1978-2 C.B. 177 amplifies Rev. Rul. 69-161: describing a qualifying organization that provides legal services to indigent persons for a fee. The fees are based on the indigent clients' ability to pay rather than the type of services rendered.
- d. Rev. Rul. 72-559, 1972-2 C.B. 247: an organization that provides substantial free legal services to low-income residents of economically depressed communities by subsidizing recent law graduates who've been admitted to the bar was determined to be exempt under Section 501(c)(3).
- e. Rev. Rul. 78-310, 1978-2 C.B. 1973: an organization that helped a school's law students, chosen based on merit and interest, to obtain practical experience with exempt public interest law firms and legal aid societies was found to qualify for exemption under Section 501(c)(3). It supplemented the nominal salaries the participating firms and societies paid. In addition to promoting the law students' educations, the organization's payments constituted indirect support of the firms and societies that employed the students.
- f. Rev. Rul. 76-21, 1976-1 C.B. 147: the posting of bail bonds or the payment of bondsmen's fees for indigent persons has been found to be a charitable purpose. An organization that posts its own money or property as total or partial bail for indigent defendants may qualify under Section 501(c)(3). The bail is posted directly with the court and is part of its integrated program of providing legal, rehabilitative, employment, and other services to persons accused of crimes.
- g. Rev. Rul. 76-22, 1976-1 C.B. 148: An organization that gives free legal services and funds necessary to pay the commercial bondsmen's fees for indigent persons accused of crimes was determined to be operated exclusively for charitable purposes.
- h. Rev. Rul. 73-285, 1973-2 C.B. 174: An organization that provides funds to defend members of a religious sect in legal actions involving substantial constitutional issues of state abridgement of religious freedom is exempt under 501(c)(3).

B. Advancement of Religion

- (1) Section 501(c)(3) provides for the exemption of organizations organized and operated exclusively for "religious" purposes. Because activities often serve more than one purpose, an organization that is "advancing religion" within the meaning of Treas. Reg. 1.501(c)(3)-1(d)(2) may also qualify under Section 501(c)(3) as a charitable or educational organization.

- (2) Rev. Rul. 71-447, 1971-2 C.B. 230 states that under common law, the term “charity” encompasses all three major categories of religious, educational, and charitable purposes. All charitable trusts, educational or otherwise, including religious trusts, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy.

B.1. Promoting Religion

- (1) The promotion and advancement of religion and the religious may be an exempt activity under Section 501(c)(3).
- (2) Advancement of religion is a broad standard in terms of charity. First Amendment considerations prevent Congress and the Service from establishing a concise or objective definition of the term religion.
- (3) To determine whether an organization meets the religious purposes test of Section 501(c)(3) , the IRS maintains two basic guidelines:
 - a. That the particular religious beliefs of the organization are truly and sincerely held.
 - b. That the practices and rituals associated with the organization’s religious belief or creed aren’t illegal or contrary to clearly defined public policy.
- (4) This means that in considering the ‘facts and circumstances’ of an organization claiming that its activities further a religious purpose or that its activities advance religion, we must keep an open mind.
- (5) **Qualifying Activities:**
 - a. Rev. Rul. 68-306, 1968-1 C.B. 257: Organization that publishes a newspaper primarily devoted to news, articles, and editorials relating to church and religious matters may qualify for exemption from federal income tax under Section 501(c)(3). By disseminating information about church activities and by publishing inspirational articles, the organization improves communication between the churches and their members and stimulates the religious interests of its readers. Therefore, the organization is accomplishing a charitable purpose by contributing to the advancement of religion.
 - b. Rev. Rul. 68-72, 1968-1 C.B. 250: Organization that operates a supervised facility to bring together young people of college age with church leaders, educators, and leading businessmen of the community for the purpose of holding discussions on religion, current events, and social problems and providing personal counselling to young adults on their social and vocational problems may be exempt under Section 501(c)(3). In this ruling, it was determined that the organization is advancing religion and education by providing an environment in which young adults are brought together with church leaders and other community leaders for meaningful discussions and counselling on religion and other matters of

moral and intellectual value. The social aspects of the organization are merely incidental to and in furtherance of its purpose

- c. Rev. Rul. 74-575, 1974-2 C.B. 161: Nonprofit organization, that supervises the preparation and inspection of food products prepared commercially in a particular locality to ensure that they satisfy the dietary rules of a particular religion thereby assisting the individual members of the religion to comply with its tenets and dictates, qualifies for exemption.
- d. Rev. Rul. 77-430, 1977-2 C.B. 194: Organization that conducts weekend religious retreats, which were open to diverse Christian denominations and charged no fee, is exempt under Section 501(c)(3) as operating exclusively for religious purposes. The opportunity for participants to relax and enjoy the facilities of the lake house where the retreats were held did not affect its tax-exempt status.
- e. Rev. Rul. 75-282, 1975-2 C.B. 201: Organization formed and controlled by an exempt conference of churches that borrows funds from individuals and makes mortgage loans at less than the commercial rate of interest to affiliated churches to finance the construction of church buildings qualifies for exemption.
- f. Rev. Rul. 79-359, 1979-2 C.B. 226: Qualifying organization, whose purpose is to provide traditional burial services that directly support and maintain basic tenets and beliefs of a religion regarding burial of its members, is operated exclusively for charitable purposes and is exempt from tax.

(6) Non-Qualifying Activities:

- a. Rev. Rul. 73-164, 1973-1 C.B. 223: Church-controlled commercial printing corporation whose business earnings are periodically paid to the church, but which has no other significant charitable activity, is a feeder organization and does not qualify for exemption.
- b. Rev. Rul. 77-366, 1977-2 C.B. 192: Nonprofit organization that arranges and conducts winter-time ocean cruises, during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities, is not operated exclusively for exempt purposes and does not qualify for exemption.

B.2. Illegal Conduct or Contrary to Public Policy

- (1) The Constitutional protections afforded religious beliefs do not prevent government from regulating conduct or actions when it has a compelling interest to do so. Thus, the First Amendment does not prevent the government from requiring compliance with general laws designed to effectuate a compelling governmental policy or objective even though compliance may be contrary to an individual's sincerely held religious beliefs.

- (2) A notable application of this doctrine is *Bob Jones University v. United States*, 461 U.S. 574 (1983) and *Goldsboro Christian Schools v. United States*, 461 U.S. 574 (1983). In this case the Supreme Court upheld revocation of the exemption under Section 501(c)(3) of a religious and educational institution on the grounds that its religiously motivated policy forbidding interracial dating violated a fundamental public policy against racial discrimination. The Court concluded that educational institutions, that practice racial discrimination based on religious beliefs, are not charitable in the generally accepted legal sense and thus do not qualify for federal tax exemption.
- (3) Rev. Rul. 75-384, 1975-2 C.B. 204: An organization formed to promote world peace that planned and sponsored protest demonstrations at which members were urged to commit acts of civil disobedience didn't qualify as tax-exempt.

C. Advancement of Education and Science

- (1) An organization whose primary purpose is to promote and advance education may be exempt under Section 501(c)(3). This advancement of education may take on the form of grants, scholarships and awards, promotion of the arts, humanities and science, job training, publishing scientific journals and advocacy.

C.1. Grants, Scholarships and Awards

- (1) Treas. Reg. 1.501(c)(3)-1(d)(3) provides that the term educational relates to
 - a. The instruction or training of the individual for the purpose of improving or developing his capabilities, or
 - b. The instruction of the public on subjects useful to the individual and beneficial to the community.
- (2) An organization may provide limits or restrictions in awarding scholarships.
 - a. Rev. Rul. 77-380, 1977-2 C.B. 419: Grants or awards for recognition of past achievement, with the funds being unrestricted or earmarked for subsequent travel or study, was found to promote education.
 - b. Rev. Rul. 66-103, 1966-1 C.B. 134: A nonprofit organization providing awards and grants, including scholarships and fellowship grants, to needy individuals to continue their education or their work in the creative arts, with no monetary benefit to the donor, is exempt from tax under Section 501(c)(3).
 - c. Rev. Rul. 66-146, 1966-1 C.B. 136: A corporation organized to examine and evaluate the achievements and contributions of citizens of a particular State toward the progress and betterment of human endeavor and to make awards to such citizens is exempt from tax as a charitable organization which benefits the community.
 - d. Rev. Rul. 56-403, 1956-2 C.B. 307: The awarding of scholarships by a foundation solely to undergraduate members of a designated fraternity will not preclude it from exemption as an educational organization.

- e. Rev. Rul. 53-96, 1953-1 C.B. 264: A trust may distribute funds to a charitable and/or educational public organization, even though some students at the local school who may benefit from the distributions by the trust are children of employees of the creator corporation.
- f. Rev. Rul. 69-538, 1969-2 C.B. 116: An organization that operates a college book and supply store serving exclusively members of the faculty and student body of the college and refunds its excess earnings to members in proportion to their purchases qualifies for exemption.
- g. In *Edward Orton, Jr. Ceramic Foundation*, 56 T.C. 147 (1971), action on dec. (Apr. 21, 1972), a foundation was established under a will and testament providing:
 - Primarily for the continuance of the pyrometric cone manufacturing business, and
 - Secondly for the advancement of the ceramic arts and industries.

Under the will, approximately 80 percent of the business gross income would be required to meet manufacturing costs and other expenses and the remaining 20 percent would be spent in research in the field of ceramics through fellowships granted to selected graduate students.

The court found the foundation carried on exempt activities under Section 501(c)(3) through its fellowship and grant programs and was not obligated to distribute funds or equipment to or through specific institutions.

C.2. Promotion of the Arts & Sciences

- (1) Promotion of the arts and sciences is an exempt activity under Section 501(c)(3) as a charitable and educational purpose.
 - a. Rev. Rul. 64-174, 1964-1 C.B. 183: A foundation formed to create interest in the development of the American theatre by aiding local communities to establish their own charitable and educational repertory theatres qualifies for exemption under Section 501(c)(3).
 - b. Rev. Rul. 64-175, 1964-1 C.B. 185: A nonprofit corporation which is organized exclusively for charitable, scientific, literary, or educational purposes and more specifically, to stimulate, promote and develop the interest of the American public in the dramatic arts and which operates a permanent repertory theatre in furtherance thereof qualifies for exemption.
 - c. Rev. Rul. 65-270, 1965-2 C.B. 160: A nonprofit organization formed to operate a school to teach the art of dancing, particularly contemporary dancing, and that maintains a regular faculty and curriculum with a regularly enrolled body of students is exempt from tax.
 - d. Rev. Rul. 66-178, 1966-1 C.B.138: A nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified

judges for viewing and are gratuitously displayed is exempt from tax as promoting education to the community.

- e. Rev. Rul. 67-392, 1967-2C.B. 191: A nonprofit organization which encourages and promotes the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts by the artists, and securing paid engagements for the artists to improve their professional standing may be exempt from tax.
- f. Rev. Rul. 73-45, 1973-1 C.B. 220: A nonprofit organization created to develop a community appreciation for drama and musical arts by sponsoring professional presentations such as plays, musicals, and concerts qualifies for exemption.
- g. Rev. Rul. 75-471, 1975-2 C.B. 207: A nonprofit organization formed to promote the art of filmmaking, by conducting annual festivals to provide unknown independent filmmakers with opportunities to display their films and by sponsoring symposiums on filmmaking, qualifies for exemption.
- h. Rev. Rul. 66-220, 1966-2 C.B. 209: A nonprofit corporation organized exclusively for educational purposes to operate a noncommercial educational broadcasting station presenting educational, cultural, and public interest programs is exempt from tax.

C.3. Educational and Scientific Journals and Publications

(1) The publishing of educational or scientific journals and other publications may be an exempt activity under Section 501(c)(3).

(2) **Qualifying Activities:**

- a. Rev. Rul. 66-147, 1966-1 C.B. 137: An organization formed to survey medical and scientific articles published throughout the world and to abstract selected articles of note in a monthly publication, that is distributed free is exempt from tax.
- b. Rev. Rul. 65-60, 1965-1 C.B. 231: An organization formed for the primary purpose of developing and disseminating a body of new knowledge relating to the social sciences, whose activities consist of the performance of scientific research under the contracts with governmental agencies, qualifies for exemption. The results were communicated to the public through seminar courses, lectures, and public discussions, and through publications distributed free to depositary libraries.
- c. Rev. Rul. 67-4, 1967-1 C.B. 121: An organization formed to encourage basic research in specific types of physical and mental disorders, improve educational procedures for teaching those afflicted with those disorders, and disseminate educational information about such disorders by the publication of a journal, containing current technical literature relating to these disorders, may qualify for exemption.

(3) **Non-Qualifying Activities:**

- a. Rev. Rul. 60-351, C.B. 1960-2 C.B. 169 is distinguished from Rev. Rul. 67-4: As the ruling holds, publishing and public subscription sales of a literary magazine is a business activity and not an exempt activity under Section 501(c)(3).

C.4. Job Training

- (1) Providing instructional job training may be deemed to be an exempt activity under certain circumstances. See the following revenue rulings:
 - a. Rev. Rul. 77-272, 1977-2 C.B. 191: An organization, formed and operated by a labor union at the request of the Bureau of Indian Affairs to provide apprentice training in a skilled trade to American Indians, is operated exclusively for charitable and educational purposes and qualifies for exemption.
 - b. Rev. Rul. 72-101, 1972-1 C.B. 144: A nonprofit organization, created as a result of collective bargaining agreements to train individuals desiring to acquire skills in an industry, is exempt under section 501(c)(3) as an educational organization.

C.5. Advocacy may be Considered Educational

- (1) In applying Treas. Reg. 1.501(c)(3)-1(d)(3) the IRS has attempted to eliminate or minimize the potential for any public official to impose his or her preconceptions or beliefs in determining whether the particular viewpoint or position is educational.
- (2) It has been, and it remains, the policy of the IRS to maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization. See Rev. Proc. 86-43, 1986-2 C.B. 729.
- (3) **Qualifying Activities:** An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion.
 - a. In *National Association for the Legal Support of Alternative Schools v Commissioner*, 71 T.C. 118 (1978), Acq., 1981-36 I.R.B. 5 the Tax Court found a nonprofit membership corporation founded to promote better education for children through expanded private educational opportunities and to provide, at little or no cost, the public with information on alternatives to public education is operated exclusively for educational purposes and qualifies for exemption.
 - b. Rev. Rul. 64-195, 1964-2 C.B. 138: A nonprofit educational organization may conduct non-partisan study, research, and assembly of materials in connection with prospective legislation relating to court reform and the dissemination of such materials to the public.

- c. Rev. Rul. 64-192, 1964-2 C.B. 136: A nonprofit organization, formed for the purpose of educating the public as to the quality of radio and television programs by means of opinion polls, teaching evaluation guides, newsletters, and study kits to better their understanding and judgement of radio and television programs and thereby encourage broadcasters to fulfill their obligations to better serve the public interest, may qualify for exemption.
 - d. Rev. Rul. 74-615, 1974-2 C.B.165: A nonprofit organization, whose purpose is to educate the public concerning the accuracy and fairness of news coverage by local newspapers and by educational methods encourage the newspapers to meet high standards of journalism, qualifies for exemption.
- (4) **Non-Qualifying Activities:** An organization is not educational if its principal function is the mere presentation of unsupported opinion.
- (5) Rev. Proc. 86-43, 1986-2 C.B. 729 sets forth the criteria to be used in determining whether advocacy is educational under section 501(c)(3). The advocacy of particular viewpoints or positions may serve an educational purpose. This is the case even when the viewpoints or positions advocated are unpopular or not generally accepted.
- The method used by the organization will not be considered educational if:
- a. it fails to provide a factual foundation for the viewpoint or position being advocated, or
 - b. it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process.
- (6) *Nationalist Movement v. Commissioner*, 102 T.C. 558 (1994), *aff'd*, 37 F.3d 216 (5th Cir. 1994), applied the factors in Rev. Proc. 86-43 and held that the method used by the organization to advocate its viewpoints or positions is not educational if:
- a. The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications,
 - b. The facts that purport to support the viewpoints or positions are distorted,
 - c. The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than on objective evaluations, or
 - d. The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.
- (7) **Note:** This approach to determine whether the organization's advocacy is educational is a factor test. The presence of any one of these factors is

indicative that the method used by the organization is not educational. To that end, not all factors must be present to conclude the method is not educational.

- (8) Rev. Rul. 75-231, 1975-1 C.B. 158: Organizations, including churches, that conduct schools with a policy of refusing to accept children from certain racial and ethnic groups will not be recognized as tax-exempt charities.
- (9) Rev. Rul. 73-439, 1973-2 C.B. 176 superseding Rev. Rul. 64-117, 1964-1 C.B. 180: An organization, which selects its membership from the junior class of a college primarily on the basis of compatibility without regard to scholarship and holds closed meetings at which speeches based on personal opinion, experience, ideas and conjecture with discussions following are carried on by the speaker-members, is not operated for exclusively educational purposes and does not qualify for exemption. See

D. Erecting Public Buildings, Monuments or Works

- (1) Erecting or maintaining public buildings, monuments, or works is a charitable purpose, as expressly noted in Treas. Reg. 1.501(c)(3)-1(d)(2). Organizations may qualify for exemption based upon the community benefit provided by their activities or their education of the public. These activities do not directly advance education or religion or relieve the needy. However, the charitable purpose of these types of activities comes from the fact that they provide facilities to the entire community. Organizations meeting the requirements for exemption under these categories are considered to be carrying out a charitable purpose within the meaning of Section 501(c)(3). In the general law of charity, the promotion of the happiness or wellbeing of the members of the community is a charitable purpose. See Restatement (Second) of Trusts 373 (1959); IV A. Scott, *The Law of Trusts* 373 (3d ed. 1967).

D.1. Public Parks and Recreation

- (1) Maintaining public parks, public monuments, other kinds of public works, and providing community recreational facilities for the entire community furthers charitable purposes. See *Isabel Peters v. Commissioner*, 21 T.C. 55 (1953), acq. 1959-2 C.B. 146.
- (2) Providing parks and recreational facilities is not a charitable activity in and of itself. It is charitable only if it provides a community-wide benefit. Organizations whose activities are exclusionary or discriminatory will not be deemed to be operating in the public interest. Therefore, they will not be exempt from income tax under Section 501(c)(3).
- (3) **Qualifying Activities:**
 - a. Rev. Rul. 70-186, 1970-1, C.B. 129: An organization formed to preserve a lake as a public recreational facility is exempt as a charitable organization.
 - b. Rev. Rul. 78-85, 1978-1 C.B. 150: An organization formed by the citizens of a community to maintain a park in the center of the city that is open to

the public and commonly used by the residents of the city is exempt under IRC section 501(c)(3).

- c. Rev. Rul. 59-310, 1959-2 C.B. 146: An organization formed to establish, maintain, and operate a public swimming pool, playground and other recreation facilities for the children and other residents of a community is exempt under Section 501(c)(3). Residents of the community consist principally of low-income groups who can't pay the cost of privately sponsored recreation facilities.
- d. Rev. Rul. 68-14, 1968-1 C.B. 243: A nonprofit organization formed to promote and assist in city beautification projects and to educate the public in the advantage of street tree planting may be exempt from tax. Distinguished by Rev. Rul. 75-289, 1975-2 C.B. 210.
- e. Rev. Rul. 76-147, 1976-1 C.B. 151 modifying Rev. Rul. 67-6 1967-1 C.B. 135: An organization formed to improve conditions in an area of a city where the income level is higher and housing better than in other areas of the city and whose activities include providing general information on methods of counteracting housing deterioration and ways of improving homes may qualify for exemption under Section 501(c)(3), as distinguished from Rev. Rul. 67-6 which found such activities are exempt under Section 501(c)(4).
- f. Rev. Rul. 67-391, 1967-2 C.B. 190: A nonprofit organization formed to develop and distribute a community land-use plan may be exempt under Section 501(c)(3).
- g. TAM 201151928 (December 23, 2011) provides a full analysis on whether parks and recreation are exempt purposes. The analysis centered on the question, "Do the facilities serve a public or private interest?"

(4) Non-Qualifying Activities:

- a. Rev. Rul. 67-325, 1967-2 C.B. 113: An organization providing recreational facilities to residents of a community isn't organized and operated exclusively for charitable purposes for it excluded members of the community based on race.
- b. Rev. Rul. 75-286, 1975-2 C.B. 210: Exemption under Section 501(c)(3) denied to an organization who maintained property which abutted their residences of its members because the activity provided a personal benefit to the property owners which outweighed public benefit. The organization did qualify for exemption under Section 501(c)(4).
- c. Columbia Park & Recreation Association, Inc. v. Commissioner, 88 T.C. 1 (1987) held that the organization operated for the substantial non-exempt purpose of providing comfort and convenience to a certain community's property owners doesn't satisfy the operational test.

- d. *Benedict Ginsberg and Adele W. Ginsberg v. Commissioner*, 46 T.C. 47 (1966) held that an organization that paid to dredge waterways was organized and operated primarily for the benefit of persons owning property adjacent to the waterways, such that charitable contributions to the organization were not deductible.

D.2. Conservation of Natural Resources

- (1) Organizations engaged in the development, conservation and protection of natural resources for the benefit of the entire community may be exempt as charitable organizations under Section 501(c)(3).
- (2) **Qualifying Activities:**
 - a. Rev. Rul. 67-292, 1967-2 C.B. 184: holds organizations formed for the purpose of developing a sanctuary for wild birds and animals for the education of the public may be exempt under Section 501(c)(3).
 - b. Rev. Rul. 80-278, 1980-2 C.B. 175: An organization formed to protect and restore environmental quality for the benefit of the public is operated exclusively for charitable purposes and qualifies for exemption. The organization's principal activity is to initiate litigation as a party plaintiff under state and federal environmental legislation. Lawsuits are not brought in cases where a substantial purpose is to benefit a private party or interest.
 - c. Rev. Rul. 67-292, 1967-2 C.B. 184: An organization formed for the purpose of developing a sanctuary for wild birds and animals for the education of the public may be exempt as an educational organization.
 - d. Rev. Rul. 76-204, 1976-1 C.B. 152: An organization which preserved the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land qualifies for exemption under Section 501(c)(3). The organization either maintains the land, transfers it to a government conservation agency or sells it outright at cost.
 - e. Rev. Rul. 66-179, 1966-1 C.B. 139: Holds in Situation 1, a garden club formed to instruct the public on horticultural subjects and stimulate interest in the beautification of geographic areas may qualify for exemption under Section 501(c)(3). The organization's activities include maintaining a free library of materials, instructing the public on correct gardening procedures, and making awards for civic achievements in conservation and horticulture.
 - f. Rev. Rul. 80-279, 1980-2 C.B. 176: An organization engaged in legal research concerning various means of adjusting and resolving international environmental disputes may qualify for exemption under Section 501(c)(3).

(3) **Non-qualifying Activities:**

- a. Rev. Rul. 78-384, 1978-2 C.B. 174: An organization which restricts the use of its farmland that doesn't change the environment doesn't qualify for exemption when the land isn't ecologically significant.

E. Lessening the Burdens of Government

- (1) Treas. Reg. 1.501(c)(3)-1(d)(2) includes lessening of the burdens of government in the definition of the term charitable. The organization must demonstrate that its activities serve a public rather than a private interest within the meaning of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).
- (2) The following revenue rulings discuss how activities of an organization may lessen the burden of government:
 - a. Rev. Rul. 74-246, 1974-1 C.B. 130: An organization assisting the police department in the apprehension and conviction of criminals by making funds available for use in offering rewards qualifies for exemption under Section 501(c)(3).
 - b. Rev. Rul. 76-418, 1976-2 C.B. 145: A nonprofit organization, which initiates and develops plans and programs to reduce vehicle deaths and injuries, which qualifies for exemption. It provides free expert opinions to local government officials regarding hazardous traffic conditions in the community and conducts programs designed to inform the public about traffic safety.
 - c. Rev. Rul. 71-99, 1971-1 C.B. 151 finds a nonprofit organization formed to provide food and drink to firemen, policemen, and other emergency employees at the scene of fires, riots, and other disasters qualifies for exemption.

E.1. Requirements to Demonstrate Lessening of Burdens

- (1) Rev. Rul. 85-1 1985-1 C.B. 177 holds that an activity is a burden of government if there is an objective manifestation by the governmental unit that it considers activities of the organization to be its burden. This objective indicator may be evident in the interrelationship between the organization and the governmental unit. The organization's activities are an integral part of a larger governmental program and the organization funded governmental expenses.
- (2) The organization must demonstrate that a governmental unit considers the organization to be acting on the government's behalf, thereby actually freeing up government assets that would otherwise have to be devoted to that particular activity. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish the governmental burden.

- (3) Rev. Rul. 85-2, 1985-1 C.B. 178 sets forth two requirements for an organization to qualify for exemption under Section 501(c)(3) by lessening the burdens of government. These requirements are:
- a. An objective manifestation by the governmental unit that it considers an organization's activities to be part of its burden.
 - b. The activities of the organization must actually lessen such governmental burdens.
 - c. The determination whether an activity actually lessens the burden of government is based on all relevant facts and circumstances.

(4) **Non-qualifying Activities:**

- a. In *Quality Auditing Co. v. Comm'r*, 114 T.C. 498 (2000) exemption was not granted to taxpayer whose primary activity consisted of performing audits of steel fabricators who had applied for quality certification from another nonprofit organization, despite taxpayer's contention that it operated exclusively for charitable purposes of lessening burdens of government and encouraging safe construction for benefit of general public. No evidence was presented that the governmental units considered it their burden to inspect or certify quality control procedures at facilities of private fabricators and would have developed a program or conducted audit inspections. See *Treas. Reg. 1.501(c)(3)-1(d)(1)(ii)*.
- b. In *Pub. Indus., Inc. v. Comm'r*, 61 T.C.M. 1626 (1991), the court found that an organization that purchased goods and services from prison industries for resale didn't qualify for exemption under Section 501(c)(3) because its activities were not shown to be a burden of government. The court held, "the mere fact that such activities might improve the general economic wellbeing of the Nation or a State or reduce any adverse impact from the failure of Government to carry out such activities is not enough."

E.2. Relevant Factors

- (1) The government must formally recognize the organization and its functions to be considered a governmental burden.
- (2) GCM 39682, (Sept 14, 1987), specifies relevant factors used to determine if the government unit has made the necessary **objective manifestation** that the government considers the activity of the organization to be a burden of government.
- (3) The following are relevant factors that may be considered to determine if an objective manifestation exists:
 - a. The activity was previously conducted by a governmental unit.
 - b. A statute specifically creates the organization and clearly defines the organization's structure and purposes.

- c. The activity is an integral part of a larger governmental program or is conducted jointly with a governmental unit.
- d. The governmental unit controls the activities of the organization, such as appointing all the board members.
- e. The organization pays governmental expenses.
- f. The organization's activities are supported by typical government funding such as grants, or general obligation bonds backed with the full faith and credit of the governmental unit (as opposed to general revenue bond financing).
- g. The governmental unit is not prohibited from performing the particular activity.

(4) Qualifying Activities

- a. GCM 39852 (June 19, 1991) describes an economic development organization subsidized by state tax revenue as exempt under Section 501(c)(3) as a public charity that lessens the burdens of government.
- b. PLR 200624068 provides an example where a city through statute identified recreational activities and promotion of tourism and economic development as part of its governmental burden. An organization created to operate racetrack and related facilities lessened such burden and its exemption under Section 501(c)(4) was not adversely affected even when city used funds generated by organization's activities to fund police and fire departments, mass transit, and libraries.

E.3. Instrumentality

- (1) Rev. Rul. 57-128, 1957-1 C.B. 311 sets forth the following factors to determine whether an entity is an instrumentality of one or more governmental units:
 - a. Whether the organization is used for a governmental purpose and performs a governmental function.
 - b. Whether performance of its function is on behalf of one or more states or political subdivisions.
 - c. Whether there are any private interests involved, or whether the states or political subdivisions have the powers and interests of an owner.
 - d. Whether control and supervision of the organization is vested in a public authority or authorities.
 - e. Whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists.
 - f. The degree of financial autonomy of the entity and the source of its operating expenses.

E.4. Subsidized Mass Transit

- (1) **Qualifying activities:** Rev. Rul. 74-117, 1974-1 C.B. 128 states, “The government is the party best qualified to decide whether a particular activity is sufficiently in the public interest to warrant its recognition as a legitimate function of government.”
- (2) Rev. Rul. 78-68, 1978-1 C.B. 149 identifies the functions constituting the burdens of government.
 - a. An organization supplements a city subsidized bus service by covering routes not serviced by the city system and by providing service to a nearby city at times when the city service would not be running, enabling residents to maintain employment.
 - b. The rationale is that providing such services was conferring a benefit on the entire community. In the general law of charity, certain purposes beneficial to the community as a whole are charitable.
 - c. In conclusion, the Bus Company qualified as lessening the burdens of government.
- (3) Rev. Rul. 78-68 emphasized the concept that the organization was assisting the municipal government and conferring a benefit upon the entire community by providing transportation to residents under the authority of the federal and local governments. Great emphasis was placed on the organization's connections with the local and federal governments.
- (4) Rev. Rul. 77-246, 1977-2 C.B. 190: A nonprofit organization that provides, upon request, low-cost bus transportation to senior citizens and handicapped persons in a community where public transportation is unavailable or inadequate qualifies for exemption as operated exclusively for charitable purposes.
- (5) Rev. Rul. 71-29, 1971-1 C.B. 150: A grant to a city transit authority for the purpose of maintaining a mass transportation system qualified as a charitable disbursement in furtherance of an organization's exempt purposes.
- (6) **Non-qualifying activities:** Rev. Rul. 69-175, 1969-1 C.B. 149: A nonprofit organization, formed by parents of pupils attending a private school, provides school bus transportation for its members' children. Thus, it serves a private rather than a public interest and does not qualify for exemption under Section 501(c)(3).

E.5. Volunteer Fire Company

- (1) Rev. Rul. 74-361, 1974-2 C.B. 159: A non-profit volunteer fire company providing fire protection and ambulance services for a community has been held by state courts (and the Tax Court) to be a charitable purpose because it lessens the burden of government and qualifies for exemption as a

charitable organization under section 501(c)(3) of the Code. As a result, contributions made to the organization are deductible under Section 170.

The organization may also qualify for exemption as a social welfare organization under Section 501(c)(4). Furthermore, conducting weekly public dances does not constitute an unrelated trade or business under Section 513(a)(1), due to the volunteer labor exception.

Rev. Rul. 74-361 cites the following cases holding activities of a volunteer fire company to be lessening a governmental burden because providing fire and rescue service for the general community is a charitable purpose.

- a. *Sherman v. Richmond Hose Co.*, 230 N.Y. 462, 130 N.E. 613 (1921)
 - b. *Magill v. Brown*, Fed. Case No. 8952, 16 F. Cas. 408 (C.C. E.D. Pa., 1833)
 - c. *Roy G. McKenna*, 5 T.C. 712 (1945), acq., 1950-2 C.B. 3.
- (2) Rev. Rul. 69-174, 1969-1 C.B. 149: A nonprofit organization formed to provide free rescue and emergency services to distressed persons may be exempt under Section 501(c)(3). The organization provides emergency rescue services to stranded, injured, or lost persons. It also provides emergency services to persons suffering because of fire, flood, accident, or other disaster. No charge is made for any of these services. The organization is financed by public contributions and dues from the volunteer members. It uses its funds for purchasing equipment and for paying expenses of operation.
- (3) Rev. Rul. 71-47, 1971-1 C.B. 92, holds that contributions to nonprofit volunteer fire companies, whether organized under Section 501(c)(3) or Section 501(c)(4), are deemed to be for the use of a political subdivision of a State for exclusively public purposes and are deductible under Section 170(c)(1). Rev. Rul. 74-361 clarifies Rev. Rul. 71-47 to remove any implication that contributions to a volunteer fire company described in Section 501(c)(3) would not be deductible under Section 170(c)(2).
- (4) **Social Hall:** In Rev. Rul. 74-361, the question arose, "Whether the organization's provision of recreational facilities for members is in furtherance of its charitable purpose?"
- a. By providing recreational facilities for members, the organization helps to forestall the tedium that could eventually drive volunteers out of the fire-fighting service and make it difficult to recruit new ones. Availability of these facilities to all members, whether on-duty or off-duty, fosters a camaraderie and spirit of cooperation that is important to the operation of an effective fire-fighting unit. It is not uncommon for tax-supported fire companies in large cities to provide similar facilities for their paid firemen.
 - b. The organization's provision of recreational facilities for members does not disclose an independent social purpose. Rather, this provision is in

furtherance of its charitable purpose. As a result, the organization is operated exclusively for charitable purposes and, accordingly, it is exempt from Federal income tax under Section 501(c)(3).

- (5) A question arises, “What constitutes a charitable deduction?”
- a. In *Patel v Commissioner*, 138 T.C. 395 (2012), a taxpayer had given permission to its local fire departments to conduct active fire training sessions on a house as part of the demolition process to construct a new structure on the property. The taxpayer retained title to the premises throughout the demolition and building process.
 - b. The court denied the taxpayer’s charitable deduction for allowing volunteer fire departments to conduct training exercises, for the fire department merely acquired a revocable license to perform an act. No property interest or ownership vested or was transferred to the fire department.

E.6. Research and Analysis for Community Revitalization

- (1) Rev. Rul. 70-79, 1970-1 C.B. 127: a nonprofit organization qualified for exemption under 501(c)(3) where it helped a metropolitan area’s local governments by researching solutions for common regional problems, such as water and air pollution, waste disposal, water supply, and transportation. Membership consisted of the chief elected officers of the local jurisdictions. Receipts included tax assessments on the local jurisdictions.
- (2) Several factors indicated the existence of a burden of government:
 - a. The interrelationship between the local governments and the organization.
 - b. The organization’s funding from government assessments.
 - c. The development and implementation of plans and policies for regional problems is an activity normally conducted by governmental units.

E.7. Accreditation Society

- (1) Rev. Rul. 81-276, 1981-2, C.B. 128: Professional standards review organization established pursuant to a federal statute to:
 - a. Review practitioners' and institutions health care services
 - b. Review items for which payment is made under Medicare and Medicaid
 - c. Determine whether the quality of services met professionally recognized standards of care.

The IRS ruled that by taking on the government's burden of reviewing the quality of services provided under Medicare and Medicaid, the organization lessened the burdens of government within the meaning of Section 1.501(c)(3)-1(d)(2). Any benefit to members of the medical profession from such activities was incidental to the benefit the organization provided in lessening the burdens of government.

- (2) Rev. Rul. 74-146, 174-1 C.B. 129: Organization of educational institutions, whose membership includes a small number of proprietary schools, and whose activities include the preparation of accreditation standards, identification of schools and colleges meeting these standards, and the dissemination of accredited institution lists is exempt as an educational organization.
- (3) Rev. Rul. 76-455, 1976-2 C.B. 150: Organization formed to encourage and assist in establishment of nonprofit regional health data systems, to conduct studies and propose improvements with regard to quality, utilization, and effectiveness of health care and health care agencies, and to educate those involved in furnishing, administering, and financing health care is operated exclusively for scientific and educational purposes and qualifies for exemption.

F. Promotion of Social Welfare

- (1) Charitable purposes under Treas. Reg. 1.501(c)(3)-1(d)(2) include the promotion of social welfare by organizations that conduct the following activities:
 - a. Lessen neighborhood tensions,
 - b. Eliminate prejudice and discrimination,
 - c. Defend human and civil rights secured by law, or
 - d. Combat community deterioration and juvenile delinquency.
- (2) In applicable revenue rulings, when we see social welfare relied upon as a charitable purpose, it is often stated along with at least one of the different subparts.
- (3) Social welfare is not a term directly referenced by the revenue rulings as it pertains to Section 501(c)(3) organizations. Rather, the rulings specifically address each of the activities stated above. The following are rulings segregated by primary purpose with a brief explanation of each.

F.1. Lessening Neighborhood Tensions

- (1) Lessening neighborhood tensions through reducing poverty, improving racial harmony and alleviating community strife and discontent is a charitable endeavor under Section 501(c)(3), as demonstrated by the following rulings:
 - a. Rev. Rul. 67-250, 1967-2 C.B. 182: Educating the public about the need for making housing available to everyone on a non-discriminatory basis and encouraging investment in this housing helps to eliminate prejudice and discrimination are charitable activities within the meaning of Treas. Reg. 1.501(c)(3)-1(d)(2).
 - b. Rev. Rul. 70-585, 1970-2 C.B. 115: An organization provides the housing needs of minority groups by building housing units for sale to persons of low and moderate income on an open occupancy basis.

- Constructing new housing that is available to members of minority groups with low and moderate income who are unable to obtain adequate housing because of local discrimination.
- These housing units are so located as to help reduce racial and ethnic imbalances in the community.
- They are sold at or below cost to low- or moderate-income families or rented, with options to purchase, to families who cannot presently afford to purchase. Preference is to be given to families previously located in blighted areas.
- The organization also informs the public regarding integrated housing as a means of minimizing potential misunderstanding and stabilizing integrated neighborhoods.
- It is financed by contributions from the general public and by funds obtained under federal and state housing programs.

As the organization's activities are designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, it is engaged in charitable activities within the meaning of Section 501(c)(3).

- c. Rev. Rul. 74-587, 1974-2 C.B. 162: An organization whose primary purpose is to eliminate prejudice, reduce neighborhood tensions, relieve poverty and fight community deterioration through a program of financial assistance by providing low cost or long-term loans to, or purchasing equity interests in various businesses in economically depressed areas is exempt under Section 501(c)(3).

Although some of the individuals receiving financial assistance in their business endeavors may not themselves qualify for charitable assistance, that fact does not detract from the charitable nature of the program. The recipients of the loans are merely the instruments by which the charitable purposes are sought to be accomplished.

- d. Rev. Rul. 81-284, 1981-2 C.B. 130 amplifies Rev. Rul. 74-587 1974-2 C.B. 162: A small business investment company licensed under Section 301(d) of the Small Business Investment Act of 1958 and formed to relieve poverty, eliminate prejudice and discrimination, reduce neighborhood tensions, and combat community deterioration by providing low-cost or long-term loans to businesses not able to obtain funds from conventional commercial sources, with preference given to businesses that provide training and employment opportunities for the unemployed or under-employed residents of economically depressed areas, may qualify for exemption under Section 501(c)(3).
- e. Rev. Rul. 68-15, 1968-1 C.B. 244: An organization that, under described circumstances, investigates causes of community tension, discrimination, physical deterioration, and juvenile delinquency, disseminates its findings,

and attempts to educate the public as to means of correcting such conditions is exempt under Section 501(c)(3).

F.2. Eliminating Prejudice and Discrimination

- (1) The pursuit of eliminating prejudice and discrimination is a charitable exempt activity under Section 501(c)(3). The following revenue rulings provide a description of activities found to be in furtherance of a charitable exempt purpose under Section 501(c)(3):
 - a. Rev. Rul. 68-438, 1968-2 C.B. 209: The organization's activities lessens neighborhood tension by investigating the existence of discrimination and seeking compliance with applicable laws directly contribute to the elimination of prejudice and discrimination and the defense of human and civil rights secured by law. The organization through its activities qualifies for exemption under Section 501(c)(3) as having a charitable purpose.
 - b. Rev. Rul. 68-70, 1968-1 C.B. 248: A nonprofit organization that studies employment conditions and informs the public of the advantages of non-discriminatory hiring is eliminating prejudice and discrimination in the community and is an exempt charitable purpose under Section 501(c)(3) .
 - c. Rev. Rul. 68-655 1968-2 C.B. 213: A nonprofit organization formed to promote racial integration in housing, to lessen neighborhood tensions, and to prevent deterioration of neighborhoods may qualify for exemption under Section 501(c)(3) by educating the public about integrated housing and making loans to minority homeowners to purchase homes in formerly all-white neighborhoods.
 - d. Rev. Rul. 70-585, Situation 2: An organization that educates the public about integrated housing and constructs new housing that is designed to reduce racial and ethnic imbalances within a community qualifies for exemption under Section 501(c)(3).

F.3. Defending Human and Civil Rights

- (1) Treas. Reg. 1.501(c)(3)-1(d)(2)(iii) includes defending human and civil rights secured by law under the term charitable.
- (2) **Human rights** are generally thought of as the most fundamental rights. Human rights are those that individuals enjoy because they are human. No government body, group or person can deprive human rights to an individual. Some of the basic human rights are the right to life, education, fair trial, protection from torture and freedom of expression.
- (3) **Civil rights**, on the other hand, are those rights that one enjoys by virtue of citizenship in a particular nation or state. In America, civil rights have the protection of the U.S. Constitution and the Civil Rights Act of 1964. Civil rights protect citizens from discrimination and grant certain freedoms, like free speech, due process, equal protection, the right against self-incrimination, and so forth. Civil rights can be thought of as the agreement

between the nation, the state, and the individual citizens that they govern. It's worth noting that Civil and Human rights are often one in the same. They are not mutually exclusive.

- (4) The Bill of Rights consists of the first ten amendments of the United States Constitution. Some of the rights granted include freedom of religion, freedom of speech, freedom of the press, the right to peacefully assemble, the right to a jury trial, and the right to due process of law. These are our civil liberties. Civil liberties are the freedom of a citizen to exercise customary rights, such as freedom of speech or assembly, without unwarranted or arbitrary interference by the government.
- (5) Section 1 of the fourteenth amendment to the Constitution expressly states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- (6) The Civil Rights Act of 1964 outlawed discrimination based on race, color, religion, sex, or national origin. These rights included the:
 - a. Right to vote.
 - b. Right to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations.
 - c. Right to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education.
 - d. Right to extend the Commission on Civil Rights.
 - e. Right to prevent discrimination in federally assisted programs.The Act also establishes a Commission on Equal Employment Opportunity.
- (7) Rev. Rul. 75-285, 1975-2 C.B. 203: A nonprofit organization formed to eliminate discrimination against members of minorities seeking employment in the construction trades by recruiting, educating, and counseling workers, providing technical assistance to attorneys involved in suits to enforce workers' rights, and acting as court-appointed monitor after successful suits, is organized and operated exclusively for charitable and educational purposes is exempt under Section 501(c)(3).
- (8) Rev. Rul. 72-228, 1972-1 C.B. 148: An organization formed to promote equal rights for women by investigating instances of discrimination in employment and other economic opportunities and to aid women in recognizing and dealing with discrimination qualifies for exemption under Section 501(c)(3).

F.4. Civil and Human Rights Issues

- (1) GCM 38468 (Aug. 12, 1980) took on the daunting task of identifying civil and human rights as they would apply under 501(c)(3) or 501(c)(4). GCM 38468

supersedes and revokes GCM 37283 (Sept. 30, 1977), which previously addressed the issue.

- (2) GCM 37283 proposed that the term “human rights” was construed to mean only the rights enumerated in the Bill of Rights and the fundamental rights guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments. While these fundamental rights are not written in the Constitution, they are limited to those rights considered “essential to ordered liberty.”
- (3) GCM 38468 expanded the concept of human rights by stating, “Since we [authors] believe that the term ‘human rights’ includes, but is broader than, the term ‘civil rights,’ however, we think the real problem is to determine the proper scope to be ascribed to the term “human rights” in the context of charity law.

We [authors] believe that for purposes of section 501(c)(3) it is reasonable to read the term “human rights” in Treas. Reg. § 1.501(c)(3)-1(d)(2)(iii) as connoting those individual freedoms and privileges involving human dignity that are guaranteed by the Constitution, either explicitly or implicitly, as rights ‘essential to the orderly pursuit of happiness by free men.’”

- (4) GCM 38468 further supports this position by asserting,
 - a. “The term ‘human and civil rights secured by law’ should not be construed by the Service so as to include only those rights which are clearly guaranteed under the fifth, thirteenth, and fourteenth amendments. We [authors] believe that the scope of the term ‘human and civil rights secured by law’ should be construed quite broadly to include such rights not only by the Constitution of the United States or of a state, but also by federal or state statutes.
 - b. However, any organization whose purpose is to defend these rights must also comply with all of the other rules governing charitable entities. This includes Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) that the organization must serve a public rather than a private purpose to qualify as a charitable organization under Section 501(c)(3).”

F.5. Combating Community Deterioration and Juvenile Delinquency

- (1) Combating community deterioration is an exempt purpose within the meaning of Section 501(c)(3). See Treas. Reg. 1.501(c)(3)-1(d)(2).
- (2) Organizations combating community deterioration in a charitable manner provide economic development activities in which the good received by the general public outweighs the private benefit afforded to the beneficiaries.
- (3) This community involvement includes remedial action to eliminate the physical, economic, and social causes of such deterioration. Organizations that combat community deterioration typically convert deteriorated properties or blighted land into economically useful structures for individuals in need.

- a. See Rev. Rul. 70-585, 1970-2 C.B. 115, Situation 3, and
 - b. Rev. Rul. 76-419, 1976-2 C.B. 146.
- (4) Activities of organizations whose primary purpose is combating community deterioration may include: :
- a. Housing assistance
 - b. Economic development
 - c. Historic preservation
 - d. Prevention of deterioration
 - e. Planning and enforcement
- (5) To be charitable, the benefits of the organization's activities must flow principally to the general public. Any private benefit should be incidental to the exempt purposes.
- (6) **Qualifying Activities:**
- a. Rev. Rul. 76-419, 1976-2 C.B. 146: An organization that purchased blighted land in a depressed area, converted it into an industrial park, and encouraged businesses to locate in the park to offer employment opportunities for the area's low-income residents. The organization is publicly funding under a federal law that provided for the establishment of these programs in areas with urban blight, little industry, and high unemployment and underemployment of low-income persons. This organization was found to be exempt under Section 501(c)(3).
 - b. Rev. Rul. 67-391, 1967-2 C.B. 190: An organization that develops and distributes a community land use plan may be exempt.
 - c. Rev. Rul. 72-560, 1972--2 C.B. 248: An organization formed to educate the public regarding environmental deterioration due to solid waste pollution and operated with contributions and proceeds from sale of collected solid waste such as old newspapers, glass containers, and metal cans for recycling qualifies for exemption under Section 501(c)(3).
 - d. Rev. Rul. 67-138, 1967-1 C.B. 129: An organization that operated a self-help home building program for low-income families who need adequate housing was recognized as exempt under Section 501(c)(3). In addition to combating community deterioration, the organization's activities provided relief to the underprivileged, lessened the burdens of government, and were educational in nature.
 - e. Rev. Rul. 70-79, 1970-1 C.B. 127: An organization assisting local governments of a metropolitan area by conducting research to develop solutions for common regional problems, but not advocating any legislative action to implement its findings qualifies for exemption under Section 501(c)(3).

(7) Non-qualifying Activities:

- a. Rev. Rul. 75-286, 1975-2 C.B. 210 finds an organization with membership limited to residents and businesses on a city block formed to preserve and beautify public areas in the block was not exempt under Section 501(c)(3). The IRS determined that the benefits to private individuals who owned property on the block outweighed the benefits to the general public. The ruling also found, however, that the organization may qualify for exemption under Section 501(c)(4) as an organization formed to promote social welfare.
- b. Rev. Rul. 77-111, 1977-1 C.B. 144 holds an organization formed, to increase business patronage in a deteriorated area by providing information about the area's shopping opportunities, is not operated for charitable purposes and is not exempt under Section 501(c)(3). The organization's activities promoted business interests rather than exclusively Section 501(c)(3) purposes.

F.6. Advocating for Social Change

- (1) Treas. Reg. 1.501(c)(3)-1(d)(2) states, "the fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an action organization."
- (2) An action organization is an organization that engages in substantial lobbying. A substantial part of the activities of an action organization is attempting to influence legislation by propaganda or otherwise. Similarly, an organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of, or in opposition to, any candidate for public office. See Treas. Reg. 1.501(c)(3)-1(c)(3).

G. Promotion of Community Health

- (1) To qualify for exemption from Federal income tax under Section 501(c)(3) of the Code, a nonprofit hospital must be organized and operated exclusively in furtherance of some purpose considered "charitable" in the generally accepted legal sense of that term, and the hospital may not be operated, directly or indirectly, for the benefit of private interests.
- (2) In the general law of charity, the promotion of health is considered to be a charitable purpose. Restatement (Second), Trusts, sec. 368 and sec. 372; IV Scott on Trusts (3rd ed. 1967), sec. 368 and sec. 372. A nonprofit organization whose purpose and activity are providing hospital care is promoting health and may, therefore, qualify as organized and operated in furtherance of a charitable purpose. See Rev. Rul. 69-545, 1969-2 C.B. 117.

- (3) The promotion of health is deemed beneficial to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit from the activities does not include all members of the community, provided that the class is not so small that its relief is not of benefit to the community.

G.1. Community Benefit Standard

- (1) The community benefit standard is the test used for determining if a health care provider is operated to promote health in a way that accomplishes a charitable purpose. The community benefit standard was first applied to hospitals. However, the IRS and the courts have applied this standard to non-hospital health care providers as well.
- (2) Rev. Rul. 69-545, 1969-2 C.B. 117: The IRS applied the community benefit standard to determine to determine a hospital was operating to promote health in a way that accomplishes a charitable purpose.

A hospital was considered to be organized and operated for the charitable purpose of promoting health as it met the community benefit standard set forth in Rev. Rul. 69-545. The ruling identified the following factors that demonstrate community benefit:

- a. Operating an emergency room open to all, regardless of ability to pay.
 - b. Maintaining a board of directors drawn from the community.
 - c. Maintaining an open medical staff policy.
 - d. Providing hospital care for all persons in the community able to pay the cost either directly or through third party reimbursements, including Medicaid and Medicare.
 - e. Using surplus funds to improve the quality of patient care, expand facilities, and advance medical training, education, and research programs.
- (3) In considering whether a nonprofit hospital meets the community benefit standard, the IRS weighs all relevant facts and circumstances in each case. Additional factors, such as whether a hospital provides financial assistance to those not able to pay, are relevant in determining whether the community benefit standard is met. See *St. David's Health Care Sys. v. United States*, 2003-2 349 F.3d 232 (5th Cir. 2003),
 - (4) Rev. Rul. 83-157, 1983-2 C.B. 94 had amplified and revised the community benefit standard of Rev. Rul. 69-545 by clarifying that not all factors need to be present to demonstrate community benefit. The ruling identified that certain specialized hospitals, such as eye hospitals and cancer hospitals, offer medical care limited to special conditions unlikely to necessitate emergency care and do not, as a practical matter, maintain emergency rooms. These organizations may also qualify under Section 501(c)(3) if there are present similar, significant factors that demonstrate that the hospitals operate exclusively to benefit the community.

- (5) The Affordable Care Act added Section 501(r) to the Code, providing additional requirements for tax exemption for hospitals while not changing the underlying requirements that were already in existence, including the Community Benefit Standard. Examples of Section 501(r) rules and requirements are community health needs assessment rules, financial assistance policy rules, charge limitations, along with billing and collection rules.

G.2. Partnership Agreement with For-Profit Organization

- (1) In the ever-changing environment of healthcare mergers and acquisitions, partnerships between for-profit hospital systems may enter into partnership agreements with tax-exempt charity hospitals. See *St. David's Health Care Sys. v. United States*, 349 F.3d 232 (5th Cir. 2003)
- (2) Rev. Rul. 98–15, 1998–1 C.B. 718 provides that a tax-exempt hospital can demonstrate control, and thus, remain tax-exempt by showing the following:
 - a. The governing documents of the partnership expressly require it operate all of its hospitals in a manner that furthers charitable exempt purposes.
 - b. If there is a conflict between the charitable purpose and any duty to maximize profits, the charitable purpose takes priority.
 - c. The partnership agreement gives the non-profit organization majority representation on the partnership's governing board.

If the partnership is managed by a management company, the management company is an independent company unrelated to either partner to ensure that the partnership is managed in conformity with the founding documents for charitable purposes.

- (3) In *Housing Pioneers v. Commissioner*, 65 T.C.M. (CCH) 2191 (1993), aff'd, 49 F.3d 1395 (9th Cir. 1995), amended 58 F.3d 401 (9th Cir. 1995), the organization entered into partnership as a one-percent co-general partner of existing limited partnerships for the purpose of splitting the tax benefits with the for-profit partners. The Tax Court held that the organization didn't qualify for exemption under Section 501(c)(3) because its role as co-general partner in for-profit limited partnerships substantially furthered a non-exempt purpose and served private interests.
- (4) In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068 (6th Cir. 1974), a non-profit hospital with an independent board of directors executed a contract with a medical partnership composed of seven physicians. The contract gave the physicians control over care of the hospital's patients and the stream of income generated by the patients while also guaranteeing the physicians thousands of dollars in payment for various supervisory activities. The court held that the benefits derived from the contract constituted sufficient private benefit to preclude exemption.

G.3. Non-Hospital Healthcare Organizations

- (1) In determining whether non-hospital healthcare organizations qualify as organizations described in Section 501(c)(3), a flexible community benefit standard derived from Rev. Rul. 69-545, 1969-2 C.B. 117 should be applied.
 - a. In *Sound Health Association v. Commissioner*, 71 T.C. 158 (1978), acq. recommended by RE: SOUND HEALTH ASSOCIATION, AOD-1981-127 (IRS AOD June 10, 1981), and acq., IRS Announcement Relating to: Sound Health Ass'n (IRS ACQ Dec. 31, 1981), the court held that the promotion of health is beneficial to the community if the class of people benefitted is large enough to benefit the community as a whole. In support of its holding the court stated that the policy behind the community benefit standard is "insuring that adequate health care services are actually delivered to those in the community who need them."
 - b. In *Geisinger Health Plan v. Commissioner of Internal Revenue*, 985 F.2d 1210 (3d Cir.1993) the third circuit overruled a determination by the Tax Court that a health maintenance organization qualified for exemption under the community benefit standard. The third circuit concluded that "the mere presence of the subsidized dues program" for the poor did not alone establish that the organization benefitted the community, where the amount of benefit the program actually conferred was minuscule.
 - c. The third circuit distinguished the *Geisinger Health Plan* from the HMO in *Sound Health Ass'n v. Commissioner*, 71 T.C. 158 (1978), which provided health care services itself to members of the general public through an outpatient clinic which treated all emergency patients regardless of ability to pay.
 - d. The Court of Appeals held that a health maintenance organization that provided no significant benefits to anyone other than its paying subscribers did not qualify for tax-exempt status as business organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.
- (2) Organizations promoting health under Section 501(c)(3) are not necessarily hospitals. They may be small clinics, usually in rural or inner-city settings. They may be organized to treat patients suffering from a wide range of illnesses or only those suffering from a particular condition. Such organizations may not have the need for an emergency room or for a wide variety of staff practicing different specialties as are generally found in true hospitals.
 - a. Rev. Rul. 73-313, 1973-2 C.B. 174 affirms that building and leasing a medical facility can be an activity in furtherance of charitable purposes. The Revenue Ruling holds that an organization, which erected a building suitable as a doctor's office and leased the building equipped as a doctor's office for an amount less than would be necessary to provide a normal

return on investment, qualifies as a charitable organization. The organization was formed and acted to induce a doctor to locate in a community without adequate medical service.

- b. Rev. Rul. 77-69, 1977-1 C.B. 143 affirms that a Health Systems Agency organized and operated pursuant to the National Health Planning and Resources Development Act of 1974 to establish and maintain a system of health planning and resources development aimed at providing adequate health care for a specified geographic area is operated exclusively for charitable purposes.
- c. Rev. Rul. 69-631 1969-2 C.B. 119 holds an organization is exempt under Section 501(c)(3) by carrying on a charitable program of benefit to the hospital. In furtherance of this purpose the organization provides scholarships and similar financial assistance to interns and residents during the course of their medical training, purchases new equipment for the hospital, and establishes various research grants.
- d. Rev. Rul. 70-590, 1970-2 C.B. 116 holds that an organization operating a clinic to aid victims of hallucinatory drugs and disseminating information concerning such drugs qualifies for exemption under Section 501(c)(3). It operates a drug rescue center staffed by volunteer counselors experienced in dealing with drug abuse, maintains a 24-hour telephone crisis service and provides speakers to local high schools to speak on the problem of drug abuse.
- e. Rev. Rul. 73-313, 1973-2 C.B. 174 holds that an organization that was formed by residents of an isolated rural community to provide a medical building and facilities at a reasonable rent to attract a doctor who would provide medical service to the entire community is exempt under Section 501(c)(3). Although it was understood that the doctor would be professionally independent and would charge for his services, the doctor agreed to treat patients requiring emergency care and, within reasonable limits on his time, to provide services for those unable to pay.
- f. Rev. Rul. 72-209, 1972-1 C.B. 148 holds that a home health agency formed to provide low-cost home health care for people of a community qualifies for exemption under Section 501(c)(3).
- g. Rev. Rul. 75-197, 1975-1 C.B. 156 holds that an organization that operates a free computerized donor authorized retrieval system to facilitate transplantation of body organs upon a donor's death qualifies for exemption under Section 501(c)(3).
- h. Rev. Rul. 75-387, 1975-2 C.B. 216 holds that hospitals receiving blood from a nonprofit blood bank under an agreement making each hospital responsible for collecting payment for the blood and remitting the payments to the blood bank, and requiring the hospital to pay for the blood if it fails to collect from the patient, are acting as agents for the blood bank. These amounts the hospital collects are treated as received by the blood

bank directly from patients in determining if it satisfies the one-third support test under section 509(a)(2).

- i. Rev. Rul. 76-452, 1976-2 C.B. 60 describes an exempt organization that primarily provides health services to sick persons in their own homes under the direction of their private physicians and provides only incidental patient treatment at the organization's office, which is not equipped to serve as an outpatient facility on a continuing basis.
- j. Rev. Rul. 66-323, 1966-2 C.B. 216, modified by Rev. Rul. 78-145, 1978-1 C.B. 169 holds that a nonprofit blood bank that establishes and operates permanent facilities for the collection, storage, and distribution of blood for the benefit of the public and to conduct related research is a charitable organization within the meaning of Section 501(c)(3). The blood bank provides a variety of services for the community at large and for health agencies within the community. However, the organization is subject to unrelated business income tax on sales of blood to commercial laboratories.

G.4. Counseling

- (1) The following revenue rulings consider counseling as a charitable and educational purpose under Section 501(c)(3).
 - a. Rev. Rul. 78-99, 1978-1 C.B. 152: A nonprofit organization formed to provide individual and group counseling to widows to assist them in overcoming legal, financial, and emotional problems caused by the death of their husbands and that provides the widows with information on available benefits and services is considered to be operated exclusively for educational purposes and qualifies for exemption under section 501(c)(3)
 - b. Rev. Rul. 74-595, 1974-2 C.B. 164: An organization that provides free counseling to men concerning methods of voluntary sterilization, assists them in obtaining sterilization operations, and distributes pamphlets and brochures explaining the effectiveness of sterilization in family planning is exempt under Section 501(c)(3) of the Code.
 - c. Rev. Rul. 75-472, 1975-2 C.B. 208 provides a halfway house, organized to provide room, board, therapy, and counseling for persons discharged from alcoholic treatment centers, which also operates a furniture shop to give transitional employment for its residents with any profits applied to the halfway houses' operating costs, qualifies for exemption.
 - d. Rev. Rul. 68-73, 1968-1 C.B. 251: Organization created to minister to the non-medical needs of patients in a proprietary hospital qualifies for exemption as an organization described in Section 501(c)(3).
 - e. Rev. Rul. 73-569, 1973-2 C.B. 178: An organization that provides free counseling to women on methods of resolving unwanted pregnancies, including lawful abortion, delivering, and placing the child for adoption, and

delivering and keeping the child, qualifies for exemption as an educational organization under Section 501(c)(3).

- f. Rev. Rul. 70-640, 1970-2 C.B. 117: A nonprofit organization that provides personal marriage counseling services and conducts workshops and seminars on the subject of marital adjustment qualifies for exemption under Section 501(c)(3).

H. Financial Support to Other Organizations

- (1) Many charitable foundations do not engage in active charitable undertakings themselves, but rather assist the work of religious, charitable, educational, or similar organizations by contributing money to them through grant making, indirect support, and support through non-exempt organizations.

H.1. Grant Making Organizations

- (1) Grant-making organizations are sometimes controlled by corporate and individual taxpayers who use them as channels for their charitable contributions. Some have large endowments and make grants totaling millions of dollars annually.
- (2) This indirect form of charitable activity provides a basis for recognition of exemption under Section 501(c)(3).
 - a. Rev. Rul. 67-149, 1967-1 C.B. 133: An organization is exempt from tax to provide financial assistance to different types of exempt organizations and carries on no operations other than to receive contributions and incidental investment income, which is not accumulated, and to make distributions of income to such organizations at periodic intervals.
 - b. Rev. Rul. 69-572, 1969-2 C.B. 119, an organization formed to construct and maintain a building to house member agencies of a community chest may be providing a form of indirect support of charitable activities. The space was leased to member agencies at rates substantially below fair rental value and there was a close connection between the organization and the charitable functions of the member agencies. The organization was found to be dedicated to carrying out the charitable endeavors of the community chest and its member agencies and was held to be exempt under Section 501(c)(3).

H.2. Support of Charity Through Non-Exempt Organizations

- (1) Some charitable organizations make distributions to non-exempt organizations. These funds must be used for specific projects that further the purposes of the charitable organization.
 - a. Rev. Rul. 68-489, 1968-2 C.B. 210: An organization that distributes funds to nonexempt organizations may hold its exempt status as long as the organization retains **discretion and control** over the use of the funds and

maintains records establishing that the funds are used for charitable purposes.

- b. An organization's failure to document that funds distributed to non-exempt organizations or persons were used for exempt purposes could, if substantial, cause the organization to be operated for a substantial non-exempt purpose which will jeopardize its exempt status.

III. Application for Recongnition of Exemption and Filing Requirements

- (1) Organizations seeking recognition of exemption from federal income tax under Section 501(c)(3), other than those excluded under Section 508(c), must apply on Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code or under certain circumstances, Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

A. Application Requirements

- (1) A complete application consists of the following:
 - a. The correct user fees
 - b. Properly prepared Form 1023, with all applicable pages and schedules
 - c. A conformed organizing document; for example, articles of incorporation, articles of association, or trust document
 - d. Bylaws, if adopted
 - e. Applicable financial information
 - f. A full description of the organization's activities

A.1. Form 1023-EZ Application

- (1) Small organizations, with annual gross receipts of \$50,000 or less and \$250,000 or less in assets may be allowed to submit a short version Form 1023-EZ which is a fully electronic version of submission through pay.gov.
- (2) An eligibility worksheet is provided on the irs.gov website at <https://www.irs.gov/instructions/i1023ez> where, if all the questions are answered in the negative, the organization is eligible to complete the short form.
- (3) If any question on the eligibility worksheet is answered affirmatively, a full Form 1023 application with supporting documentation is required.

A.2. Form 1023 Application

- (1) Under Section 508(a) an organization (except for organizations noted in Section 508(c)) must provide notice to the IRS that it's applying for recognition of Section 501(c)(3) exempt status. Treas. Reg. 1.508-1(a)(2)(i)

states the notice is given by submitting a properly completed and executed exemption application Form 1023 or applicable Form 1023-EZ.

- (2) Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Codes divided into eleven parts and requests detailed information on the organization's structure, governance, activities, income streams, expenditures, history, and other specific questions depending on foundation status under Sections 509(a) and 170(b)(1)(A).
- (3) For a full description of the application process, see:
 - a. IRM 7.20.1, Exempt Organizations Determinations Processing Overview
 - b. Exempt Organization Technical Guide, TG 3-1: IRC 501(c)(3) Overview, Application, Exemption Requirements
 - c. Instructions to Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

A.3. Organizing Documents

- (1) An exempt organization may be organized as a corporation, an unincorporated association, a trust or a Limited Liability Company (LLC). See Notice 2021-56 for additional guidance on LLC.
- (2) The organizing documents for each type of entity is listed as follows:
 - a. **Articles of Incorporation:** The organizing document for a corporation is known as articles of incorporation. Articles of incorporation are filed and approved by a variety of state officials in accordance with state law. The most common form of organization is a non-profit corporation; however, some states don't designate corporations between for-profit and non-profit entities. For states that have a single corporate structure, a distinction is often drawn between for-profit and non-profit corporations. For example, the State of Delaware has a single corporation code for both for-profit and non-profit corporations.
 - If non-profit statutes exist in a state, an organization seeking exemption under section 501(c)(3) of the Code must be incorporated under the non-profit statutes and must not contain a provision for the issuance of stock to shareholders that would take ownership in the corporation and share in the earnings.
 - A limited exception exists for organizations formed in states with corporate practice of medicine law that require certain medical organizations to form under a state's professional service corporation laws.
 - Articles of incorporation and any amendments that the organization submits must be a copy of what was filed with the state. The document must be signed by the incorporator and show evidence that they have

been filed with and approved by the state in which the organization is incorporated.

- b. **Association:** The organizing document for an association may be one of the following: articles of organization, articles of association, constitution, by-laws, code of regulations. At the minimum, the association must contain the name of the organization, purpose clause, date of adoption, and signatures of two individuals.
- c. **Trust Document:** A trust is a three-party arrangement in which the grantor of the trust transfers legal title of the trust property to a trustee or fiduciary, to hold and to manage for the trust's beneficiary in accordance with the intent of the grantor. The beneficiary holds beneficial interest in the property.

There are two types of trusts:

- Testamentary trust: One created under a will which is formed upon the testator's death
- Inter vivos trust: Created during the grantor's life and which to qualify under Section 501(c)(3), must be irrevocable.

Charitable organizations created through a trust document are primarily private foundations.

- (3) The organizing document of a charitable organization exempt under Section 501(c)(3) **must** include:
 - a. An acceptable purpose clause under Treas. Reg. 1.501(c)(3)-1(b)(1)(i)(a),
 - b. A powers clause which is not too broad as expressed in Treas. Reg. 1.501(c)(3)-1(b)(1)(i)(b), and
 - c. A limitation on lobbying and prohibition on political activity under Treas. Reg. 1.501(c)(3)-1(b)(3),
 - d. An acceptable dissolution clause under Treas. Reg. 1.501(c)(3)-1(b)(4).
- (4) Referencing these clauses only in the bylaws is generally not acceptable, although a dissolution provision contained in the by-laws may satisfy the organizational test if state law would give effect to such a provision.

IV. Examination Techniques

- (1) The following techniques are specific to the identified issues, examples of documents to request, key interview questions, observations during the tour of business, inspections of books and records, and other known sources of relevant information.

A. Determining Exemption under Section 501(c)(3)

- (1) During examinations of 501(c)(3) organizations, examiners are responsible for determining if the organization:

- a. Meets the requirements for exemption
 - b. Has the proper foundation status
 - c. Has filed all required tax and information returns
 - d. Has reported information and tax liabilities on filed returns completely and accurately
- (2) In conducting an examination of an organization exempt under Section 501(c)(3) and developing the facts of the case, it is best practice to follow the Internal Revenue Manual; IRM 4.75.13, Issue Development and Conclusion.

B. Conducting the Organizational and Operational Tests

- (1) As part of a thorough determination and examination of an exempt organization it is imperative to determine if the organization is organized and operated consistently with the provisions of Section 501(c)(3) and Treas. Reg. 1.501(c)(3)-1.
- (2) To be exempt as an organization described in Section 501(c)(3), an entity must be both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

B.1. Conducting the Organizational Test

- (1) The organizational test relates to an entity's organizing document which should limit the purpose of the organization to one or more exempt purposes and not allow the organization to engage in, other than an "insubstantial part," of its activities which in themselves are not in furtherance of its exempt purposes ("non-exempt activities").
- (2) Exempt purposes as described in Section 501(c)(3) include, but are not limited to, religious, charitable, scientific, and educational purposes. An organization must be operated exclusively for one or more of these purposes to satisfy the operational test.
- (3) Upon reviewing the organizing documents and directors' minutes, conduct the organizational test in accordance with Treas. Reg. 1.501(c)(3)-1(b) as described below.

Determine if:

- a. Exempt purpose listed in organizational documents meet requirements of Treas. Reg. 1.501(c)(3)-1(d)(1).
- b. Organizing documents provide for activities that are not exclusively for exempt purposes (determine whether non-exempt activities, if any, are insubstantial.)
- c. Organized for the benefit of the public rather than private interests as defined by Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).

- d. Articles restrict legislative activities and prohibit political activities as defined by Treas. Reg. 1.501(c)(3)-1(b)(3).
 - e. Organizing documents contain a dissolution clause in compliance with Treas. Reg. 1.501(c)(3)-1(b)(4).
 - f. **Note:** In some states, state law may provide for the distribution of assets for exempt purposes. See Rev. Proc. 82-2, 1982-1 C.B. 367, Correction of Rev. Proc. 82-2, Announcement 82-30 (1982), Correction of Rev. Proc. 82-2, Announcement 82-50 (1982), and Clarification of Rev. Proc. 82-2, Announcement 82-91 (1982).
- (4) Upon completing the organizational test, expand examination scope to address any non-compliance issues with the organizing documents, discuss your findings with your manager, and determine if the organization can be brought into compliance, or if revocation is necessary.

B.2. Conducting the Operational Test

- (1) To be considered operating in accordance with Section 501(c)(3) the organization must meet the requirements of Treas. Reg. 1.501(c)(3)-1(c), the Operational Test. The operational test is related to an organization's activities. The organization must engage primarily in activities that further its exempt purpose.
- (2) Upon review of the organization's activities the examiner must determine if:
 - a. The organization is operated exclusively for exempt purposes
 - b. The net earnings inure to individuals. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals
 - c. The organization is an "action organization" as defined by Treas. Reg. 1.501(c)(3)-1(c)(ii), (iii) or (iv), if a substantial part of its activities is:
 - Attempts to influence legislation
 - Participates or intervenes in any political campaign on behalf of or in opposition to any candidate for public office, or
 - Attains its main objective only by legislation (or the defeat of proposed legislation)
 - Advocates for the attainment of such objectives

An organization is not operated exclusively for one or more exempt purposes if it's an action organization.

B.3. Tips on Determining the Exempt Purpose

- (1) An organization must demonstrate that its activities further an exempt purpose to continue to be recognized as exempt from income tax under Section 501(c)(3).

- (2) Form 990 requests the following information concerning the organization's primary exempt activities by:
- a. Providing the organization's mission statement or most significant activities of the year.
 - b. Reporting the organization's program service accomplishments. A program service is an activity of an organization that accomplishes its exempt purpose. Examples of program service accomplishments can include: a section 501(c)(3) organization's charitable activities such as a hospital's provision of charity care under its charity care policy, a college's provision of higher education to students under a degree program, a disaster relief organization's provision of grants or assistance to victims of a natural disaster, or a nursing home's provision of rehabilitation services to residents.
 - c. Reporting program service revenue that primarily forms the basis of an organization's exemption from tax. Program service revenue includes income earned by the organization for providing a government agency with a service, facility, or product that benefited that government agency directly rather than benefiting the public as a whole. Program service revenue also includes tuition received by a school, revenue from admissions to a concert or other performing arts event or to a museum; royalties received as author of an educational publication distributed by a commercial publisher.
 - d. Payments from governmental units whether in grant form or contract are reported as contributions if the general public receives the primary and direct benefit from the payment and any benefit to the governmental unit is indirect and insubstantial as compared to the public benefit.
 - e. A 501(c)(3) exempt organization is required to report its expenditures and allocate expenses to program services, which are mainly those activities that further the organization's exempt purposes. Fundraising expenses are not reported as program service expenses even though one of the organization's purposes is to solicit contributions.
 - f. Analyzing the revenue and expenditures of the organization provides an understanding of its primary activities and one may determine if these activities promote or further its exempt purpose.

V. Additional Information

- (1) Additional information are IRS and other government resources to assist with the determination and examination process.

A. Resources

- (1) Resources and training materials are provided to aid the examiner in conducting a thorough determination of exempt status and examination of exempt organizations.

A.1. Internal Revenue Manual

- (1) IRM references concerning identifying and resolving exemption issues.
 - a. IRM 4.10.8, Examination of Returns, Report Writing
 - b. IRM 7.20.1, Exempt Organizations Determination Letter Program
 - c. IRM 7.20.2, Determination Letter Processing of Exempt Organizations
 - d. IRM 7.21.1, Exempt Organizations Determinations Processing
 - e. IRM 4.75.13 Exempt Organizations Examination Procedures, Issue Development and Conclusion
 - f. IRM 4.75.15, Exempt Organizations Examination Procedures, Closing Letters and Examination Reports
 - g. IRM 4.75.16, Exempt Organizations Examination Procedures, Case Closing Procedures

A.2. Exempt Organizations, Determinations Training

- (1) Classroom training sessions are provided to newly hired trainees to EO Determinations. Training material is found on TE/GE Connect SharePoint Training page.
 - a. EOD Training Unit 1A, L6, Introduction to Form 1023 Application – Overview
 - b. EOD Training Unit 1A, L8, Introduction to Section 501(c)(3) and the Organizational Test
 - c. EOD Training Unit 1A, L10A, Charitable Organizations, Purposes and Types
 - d. EOD Training, Unit 1A, L12A, Educational Organizations
 - e. EOD Training Unit 1A, L10B, Other Activities Considered Charitable
 - f. EOD Training Unit 1A, L12C., Schools and Scholarships
 - g. EOD Training Unit 2, L2, Lessing the Burden of Government
 - h. EOD Training Unit 2, L3, Low-income, Elderly and Student Housing
 - i. EOD Training Unit 2, L12A, Donor Advised Funds
 - j. EOD Training Unit 2, L12C, Conservation Easements

A.3. Continuing Professional Education (CPE)

- (1) Continuing Professional Education Training (CPE) is provided to all EO Examination Revenue Agents. CPE is conducted on a continuous basis and presented virtually using a virtual platform. Prior to 2006 CPE was conducted as classroom training and training manuals were published. CPE is now conducted virtually and presented as a PowerPoint slide deck. CPE training is found on the TE/GE Connect SharePoint Training page.

- a. EO CPE 1979, Rental Housing for the Elderly under IRC 501(c)(3)
- b. EO CPE 1981, Health Care Organizations under IRC 501(c)(3)
- c. EO CPE 1982, Promotion of Fine Arts and the Performing Arts
- d. EO CPE 1984, Instrumentalities – Lessening the Burdens of Government
- e. EO CPE 1985, The Organizational Test under IRC 501(c)(3)
- f. EO CPE 1994, Low-income Housing Update
- g. EO CPE 1996, Recent Developments in Housing Regarding Qualification Standards and Partnership Agreements
- h. EO CPE 1996, Volunteer Firefighters’ Relief Organizations
- i. EO CPE 1997, Education, Propaganda and the Methodology Test
- j. EO CPE 1999, Disaster Relief and Emergency Hardship Programs
- k. EO CPE 2000, Volunteer Firefighters’ Relief Organizations
- l. EO CPE 2003, Housing Partnership Agreements
- m. EO CPE 2020, Human and Civil Rights

A.4. Publications

- (1) IRS publications are informational booklets, written in plain language to provide guidance to taxpayers on specific subjects as it pertains to tax law and tax compliance.
 - a. Publication 526, Charitable Contributions
 - b. Publication 557, Tax-Exempt Status for your Organization
 - c. Publication 1771, Charitable Contributions, Substantiation and Disclosure Requirements
 - d. Publication 3833, Disaster Relief, Aiding through Charitable Organizations
 - e. Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities
 - f. Publication 5464, Conservation Easements Audit Technique Guide
- (2) Congressional research service reports (CRS) are research projects conducted under Congressional oversight and directed by members of Congress on specific issues. The CRS reports are made public, available on <https://crsreports.congress.gov>, and are included as additional research material.
 - a. CRS IF1335, The Low-Income Housing Tax Credit: Policy Issues
 - b. CRS IF11604, Reliance on Treasury Department and IRS Tax Guidance
 - c. CRS IN11141, Charitable Conservation Contributions: Potential for Abuse?
 - d. CRS R42595, An Analysis of Charitable Giving and Donor Advised Funds

- e. CRS R45922, Tax Issues Relating to Charitable Contributions and Organizations
- f. CRS R46178, The Charitable Deduction for Individuals: A Brief Legislative History