

## **N. VOLUNTEER FIREFIGHTERS' RELIEF ORGANIZATIONS**

by

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### 1. Overview

Typical volunteer firefighters' relief organizations are created to provide ancillary benefits to volunteer firemen that are similar to benefits often paid by municipal fire departments. Such benefits may include disability and accident insurance, life insurance, and pensions. In addition, these organizations often purchase fire equipment and supplies for the volunteer fire department.

In a 1981 revenue ruling, the Service published its position that a member supported mutual benefit organization was not exempt under section 501(c)(4) where the primary beneficiaries were the members and their families, and the community benefited only incidentally. The private benefit inherent in this type of relief organization also precluded exemption under section 501(c)(3). This position was affirmed in Police Benevolent Association of Richmond v. U.S., 661 F. Supp. 765 (E.D. Va. 1987). In the past few years, however, the Service has received an increasing number of applications for exemption from separately incorporated relief organizations that can be distinguished from our earlier published precedent.

Using a "lessening the burdens of government" rationale, some firefighters' relief organizations may qualify for exemption under IRC 501(c)(3). Using a similar "community benefit" rationale, they may also qualify under IRC 501(c)(4). This article will discuss the circumstances in which exemption may be recognized under those sections. Also discussed is whether IRC 501(m) precludes exemption for some of these organizations. Alternative avenues of exemption, such as IRC 501(c)(5) and IRC 501(c)(9) are explored. This article also considers the effect charitable gaming may have on an organization's exempt status.

A statistically valid sampling of local associations of employees was undertaken in the 1994 National Compliance Project to determine compliance levels among these organizations. We believe that many fire relief associations have been mistakenly classified as local associations of employees and granted exemption under IRC 501(c)(4). Because questions may arise in the review of these entities through the examination program, we have included a discussion of the requirements for exemption under IRC 501(c)(4) as a local association of

employees.

## 2. Historical Perspective

Some volunteer fire companies have been recognized as exempt from federal income tax under IRC 501(c)(3). Others have been recognized as exempt under IRC 501(c)(4). Many qualify under both sections and may choose to file either Form 1023 or Form 1024. Public services, like police protection and fire and rescue protection, are recognized burdens of government, and organizations created to perform them serve public interests and lessen such burdens. These same activities are considered to promote social welfare within the broader parameters of IRC 501(c)(4) in that they promote the common good and general welfare of the community.

Volunteer fire companies often provide more than fire protection and ambulance services to the community. Besides owning and operating the firehouse, fire engines, and ambulance and related equipment, they may provide recreational facilities for use by members when not fighting fires and during their off-duty times. They may serve as a community's social center by sponsoring various activities such as the weekly public dances conducted by unpaid volunteers in Rev. Rul. 74-361, 1974-2 C.B. 159, or conduct weekly bingo games. Not all of the activities carried on by volunteer fire departments are related to charitable purposes or constitute social welfare activities. Thus, the conclusion in Rev. Rul. 74-361, supra, indicates that holding public dances for which admission fees are charged is the conduct of unrelated trade or business within the meaning of IRC 513.

The trend toward separately incorporated relief associations raises different issues that call for a different analytical approach. Unlike municipal and volunteer fire departments, firefighters' relief associations exist primarily to provide a support system to the firefighters, rather than to the general community. Providing adjunct support services, i.e. relief benefits, previously provided by the fire company, is both the primary purpose and activity of these organizations.

## 3. Rev. Rul. 81-58

In 1981, the Service stated clearly that independent relief organizations were not tax exempt under IRC 501(c)(4). Rev. Rul. 81-58, 1981-1 C.B. 331, concludes that a nonprofit association of municipal police officers primarily engaged in providing retirement benefits to members and death benefits to

beneficiaries of members (funded through public contributions and fundraising events) does not qualify for exemption under IRC 501(c)(4). The benefits of the organization are limited to its members, while there is only an incidental benefit to the community. The benefits being provided were supplemental to the civil service benefit provided by the political subdivision in which the police officers were employed.

This was not the first time the Service considered relief benefits as a bar to exemption. Rev. Rul. 63-190, 1963-2 C.B. 212, holds that a nonprofit organization (not operated under the lodge system) that maintains a social club for members and also provides a sick and death benefit for members and their beneficiaries, does not qualify for exemption under IRC 501(c)(7), IRC 501(c)(4) or IRC 501(c)(8). Rev. Rul. 75-199, 1975-1 C.B. 160, concludes that a nonprofit organization that (a) restricts its membership to individuals of good moral character and health who belong to a particular ethnic group and reside in a state geographical area and (b) provides sick benefits to members and death benefits to beneficiaries of deceased members does not qualify for exemption under IRC 501(c)(4). In general, where the benefit from an organization is limited to its members and there is only minor and incidental benefit to the community as a whole, the Service has concluded that an organization is a mutual benefit society and does not qualify for exemption from federal income tax under IRC 501(c)(4) as an organization promoting the common good and welfare of the community.

The Service's position on relief organizations was strengthened by the decision in Police Benevolent Association of Richmond v. U.S., 661 F.Supp. 765 (E.D. Va. 1987). The court applied a substantial purpose test to conclude that a police benevolent association that provided retirement benefits to its members did not qualify as a tax-exempt organization operated for either charitable purposes under IRC 501(c)(3) or for the promotion of social welfare under IRC 501(c)(4).

The Police Benevolent Association (PBA) argued that it was described in IRC 501(c)(3) because its activities lessened the burden of government. The provision of supplemental pension benefits, it was argued, assisted the Richmond Bureau of Police in recruiting better police officers, keeping them on the force, and improving officer morale. The security provided by the supplemental pension resulted in happier police officers who performed better and stayed longer, thereby reducing the Bureau's need to recruit and train new officers or pay higher pension benefits or other incentives to raise morale and retain officers. The court did not dismiss the possibility that an organization providing relief benefits to a class of public servants might be relieving the burden of government but its opinion was

based on other grounds.

PBA was limited by its articles of incorporation to providing supplemental pension benefits to retired active members of the corporation. Should an active member leave the police force before retiring, the articles entitled him to recover his contributions. Further, only officers who voluntarily joined and paid annual dues were eligible for pension benefits. Based on these facts, the court concluded that PBA was organized to serve the private interests of its active members in obtaining a larger pension upon retirement. Since membership was limited and voluntary, the public purposes served were only incidental. PBA was not organized and operated exclusively for charitable purposes and could not be recognized as exempt under IRC 501(c)(3). In addition, PBA was essentially a mutual self-interest type of organization and did not qualify for exemption under IRC 501(c)(4) either.

The Service's position that relief organizations were not exempt under IRC 501(c)(3) or IRC 501(c)(4) remained unchallenged for only a few more years.

#### 4. Lessening the Burdens of Government Revisited

In the early 1980's, the Service received several cases that required further thinking regarding "relieving the burden of government" as a basis for exemption. The culmination of our efforts resulted in the publication of Rev. Rul. 85-1, 1985-1 C.B. 177 and 85-2, 1985-1 C.B. 178. (For more information on relieving the burden of government and the application of the two-part test, see the 1984 CPE text, p. 217, the 1987 CPE text, p. 139, the 1992 CPE text, p. 158 and the 1993 CPE text, p. 17).

In Rev. Rul. 85-2, supra, the Service set forth standards for organizations claiming exemption on the basis that their activities relieve the burdens of government. The arguments made in Police Benevolent Association of Richmond, supra, regarding the organization's role in assisting the Richmond Bureau of Police in recruiting and retention were foreshadowed. The earlier rationale for exempting volunteer fire companies echoed in the background.

Rev. Rul. 85-2, supra, describes an organization created and operated for the sole purpose of providing legal counsel and training to volunteers who serve as guardians ad litem in juvenile court dependency and deprivation proceedings. Through a program operated by the juvenile court, volunteers are chosen from the community at large and appointed by the court to serve as guardians ad litem in

cases involving neglected or abused children. The volunteers investigate the facts of the cases, provide the court with comprehensive evaluations, and make recommendations as to a course of action that would be in the child's best interest.

The law of the state in which this organization is incorporated authorizes, and the local court's rules of practice require, the appointment of a guardian ad litem to represent a child's interest in a proceeding related to child abuse. In fact, for several years before the volunteer program was started, the court appointed and paid attorneys to fulfill this function. Because of problems in the appointment of attorneys, the court initiated the volunteer program.

This organization employs attorneys to provide legal advice and representation to the lay volunteers, and operates a training program for the volunteers on how best to represent the interests of the abused and neglected children. The organization is supported in part by grants from the juvenile court.

The Service, in analyzing these facts, laid out a two part- test for determining whether an organization is lessening the burdens of government. First, an organization must establish that its activities are activities that a governmental unit considers to be its burden. Second, an organization must establish that its activities actually lessen such burden. Thus, we are drawn into a facts and circumstances analysis.

In considering whether an activity is a burden of government, the ruling tells us to look for an objective manifestation by the government that it considers such activity to be part of its burden. The fact that the organization is engaged in an activity that is sometimes undertaken by the government, or that the government expresses approval of the organization and its activities is not enough to establish that the government considers the activity to be its burden. The interrelationship between the organization and the government may provide such evidence, however.

In determining whether an organization is actually lessening the burdens of government, the ruling resorts again to a facts and circumstances analysis. A favorable working relationship between a government and an organization is strong evidence that the organization is actually lessening the burdens of the government.

Applying the two-part test to the organization, the ruling finds an objective manifestation of governmental burden in the state requirement for the appointment

of a guardian ad litem and in the court's previous undertaking to appoint and compensate attorneys to serve in that capacity. The court also initiated the volunteer program and utilizes the volunteers trained by the organization. In determining that the organization lessens the burden of the government, the ruling considered the fact that the training of the lay volunteers is integral to their fulfillment of their responsibilities as guardians ad litem. Without this organization's activities, the government could not continue its present program unless it undertook to train the volunteers itself. Thus, the organization established that it is actually lessening the burden of government, and is exempt under IRC 501(c)(3).

Rev. Rul. 85-2, supra, created the framework for the "lessening the burdens of government" analysis. The Service used this framework immediately in considering the organization described in Rev. Rul. 85-1, supra. This organization assists municipal law enforcement agencies in policing illegal narcotics traffic more effectively. The organization provides funds that allow the municipality's undercover narcotics agents to buy drugs in the course of their efforts to apprehend persons engaged in the illegal drug traffic. The organization plays no other role in the apprehension or prosecution of the drug dealers. No government funds are available for this purpose. Officers of the organization include the municipality's district attorney, sheriff, and medical examiner. The organization is supported by contributions from the general public.

In applying the two-part test, the ruling finds an objective manifestation of governmental burden in the fact that the municipality treats this funding as an integral part of its program to prevent drug trafficking. The organization lessens the burden of government by allowing law enforcement agencies to engage in certain aspects of drug enforcement without the appropriation of additional governmental funds.

Without specifically addressing whether an organization lessening the burden of government within the meaning of IRC 501(c)(3) also promotes social welfare within the meaning of IRC 501(c)(4), the Service applied the two-pronged test of Rev. Rul. 85-2, supra, to a firefighters' relief association in Rev. Rul. 87-126, 1987-2 C.B. 150.

This relief association was established and maintained by the local government. The association's funding, financing, and eligibility requirements were governed by state law. Membership in the association was automatic for those individuals who satisfied the applicable eligibility conditions, and the local

government retained authority over its significant activities. The benefits provided by the association were also the exclusive retirement benefits provided to firefighters hired before the civil service retirement system was instituted by the state and local governments. The benefits paid were similar to those provided to firefighters hired after the effective date of the civil service retirement system, and in other communities by other state and local governments.

In concluding that the association was distinguishable from Rev. Rul. 81-58, supra, and Police Benevolent Association of Richmond v. U.S., supra, dealing with organizations set up as private voluntary associations to pay benefits to their dues-paying members, the Service determined that the association "lessened the burdens of government." The local government clearly recognized its activities as a legitimate function of government, as evidenced by its willingness to fund its activities and by the establishment of a civil service retirement program to provide comparable benefits. By administering the program for firefighters retired before the implementation of the civil service program, the organization relieved the government of its obligation to do so, thus lessening its burden. Because its activities clearly served the common good and general welfare of the people of the community within the meaning of Reg. 1.501(c)(4)-1(a)(2)(i), the association was recognized as exempt under IRC 501(c)(4).

Depending on its structure, the law in the state in which it is located, and the interrelationship between the relief association and the local government, some firefighters' relief organizations may satisfy the criteria set forth in Rev. Rul. 85-2, supra, and Rev. Rul. 87-126, supra, and be recognized as exempt under IRC 501(c)(3) or IRC 501(c)(4).

## 5. Special Situations

We have received numerous applications for exemption from firefighters' relief associations located in Minnesota and Pennsylvania relying on the rationale of Rev. Rul. 87-126. Although factual differences exist from case to case and from state to state, our initial inquiry focuses on the search for an objective manifestation by the government that the payment of the relief benefits is a governmental obligation.

As demonstrated by the discussion below, in both Minnesota and Pennsylvania, exemption under IRC 501(c)(4) or IRC 501(c)(3) may be established on the theory that, by implementing the state statute, volunteer firefighters' relief organizations are relieving the burdens of government. Other

states may have similar legislation, and the inquiry must be made on a locale by locale basis to determine whether such associations satisfy the requirements of Rev. Rul. 85-2, supra.

#### A. Minnesota

In Minnesota, volunteer firefighters' relief associations are incorporated as nonprofit organizations under Chapter 317, authorized to receive state aid under Chapter 69, and regulated on how to operate in accordance with Chapter 424A of the Minnesota Statutes. Section 424A (in part) defines "relief association" as a governmental entity that receives and manages public money to provide retirement benefits for individuals providing the governmental services of firefighting and emergency first response. Chapter 69 limits the use of public funds received by a relief association to (1) the relief of sick, injured and disabled members of the relief association, their surviving spouses and orphans; (2) the payment of disability and service pensions to members of the relief association; and (3) the payment of certain administrative expenses.

The pension coverage offered by these relief associations is governed by a complex web of statewide and local rules covering both the investment of the organizations' assets and the manner and method of payment of lump sum retirement benefits. Each relief association is required to have municipal representation on its board of trustees, and is under a fiduciary duty to the state, taxpayers and firefighters/beneficiaries to comply with the statutory scheme. Each relief association receives the bulk of its support through municipal and state funding. The municipal governing bodies retain the ultimate power of approval over all changes in benefit plans which must be made through amendments to the relief associations' articles of incorporation or bylaws. Relief associations are also audited yearly by the state auditor or by local independent auditors under procedures and requirements established by the state auditor.

The complex statutory scheme clearly provides the objective manifestation that Minnesota considers the provision of retirement benefits to volunteer firefighters its burden. By operating as permitted under the statute, relief associations receive funds the state has designated for their operation and invest those funds to create the investment pool from which permissible benefits are paid. The payment of such benefits not only satisfies the state's obligation to pay pension benefits, but also furthers the larger goal of encouraging firefighters to join and stay with the fire department, insuring a quality fire service without the direct investment of operating municipal fire departments. Thus, the organizations

actually relieve the burden of government by fulfilling the state's obligation to provide such services.

Although the fire relief associations in Minnesota may be lessening the burdens of government, two issues still remain. The self-funded retirement benefits payable under the statute are similar to life insurance and may bar exemption by virtue of IRC 501(m). An additional issue in Minnesota is the effect of legal pull-tab gambling activities on exemption. Both of these issues are currently under consideration in Headquarters and will be discussed briefly in this article.

## B. Pennsylvania

In Pennsylvania, firefighters relief associations are governed by the Volunteer Firemen's Relief Association Act, (codified at 53 Pa. Cons. Stat. Ann. 8501 et. seq. (1991), commonly referred to as Act 84. The Act establishes criteria and standards to ensure that funds are available for the protection of volunteer firefighters and their families. The Municipal Pension Plan Funding Standard and Recovery Act, No. 205, P.L. 1005 (Act 205), provides for a tax on foreign fire insurance premiums to fund the activities of relief associations.

A volunteer firemen's relief association is defined as an organization formed primarily for the purpose of affording financial protection to volunteer firemen against the consequences of misfortune suffered as a result of their participation in the fire service. The purpose of the statute, (8503) is to encourage individuals to take part in the fire service as volunteer firemen. Funds are made available for the following purposes:

- (1) to provide financial assistance to volunteer firemen who may suffer injury or misfortune by reason of their participation in the fire service;
- (2) to provide financial assistance to the widow, children or other dependents of volunteer firemen that die as a result of their participation in the fire service;
- (3) to provide, either by insurance or by the operation of a beneficial fund, for the payment of a sum certain to the designated beneficiaries of a participating member in such fund following the death of such member for any

cause, and to establish criteria which members must meet in order to qualify as participants in such death benefit fund;

- (4) to provide safeguards for preserving life, health and safety of volunteer firemen;
- (5) to provide financial assistance to volunteer firemen who, after having actively participated in the fire service for a specified minimum term, are no longer physically able to continue such participation and are in need of financial assistance;
- (6) to provide funds to aid the rehabilitation of volunteer firemen who have suffered an impairment of their physical capacity to continue to perform their normal occupations; and
- (7) in any event, to provide sufficient funds to ensure the efficient and economical handling of the business of the association in accomplishing its objectives.

Each relief association is under a fiduciary duty to the state, taxpayers and firefighter/beneficiaries to comply with the statutory scheme. Each relief association receives the bulk of its support through municipal and state funding. Relief associations are also audited yearly by the state auditor or by local independent auditors under procedures and requirements established by the state auditor. Copies of all audits are furnished to the governor. If a volunteer firemen's relief association has used funds for any purpose other than those authorized by Act 84, the state may decline to approve any further payments and request reimbursement of an amount equal to that improperly spent by the association (8507).

The complex statutory scheme governing the creation and operation of firefighter relief organizations in Pennsylvania demonstrates the state's acknowledgement of its responsibility to provide the specified relief benefits. By providing the funding for such benefits the state achieves its goal of encouraging individuals to become volunteer firemen, thus insuring a quality fire service without the direct investment of operating municipal fire departments. By administering the relief funds, relief associations relieve the burden of government

by fulfilling the state's obligation to provide such benefits.

In Pennsylvania, as in Minnesota, there are some additional issues to consider before a relief organization may establish that it is exempt under IRC 501(c)(3) or IRC 501(c)(4). The purposes permissible under the Act, for instance, may be broader than permitted under IRC 501(c)(3). An organization seeking exemption under that section must limit its purposes through its articles of incorporation. In addition, the death benefit permitted under 8503(3) of the Act, if self-insured, raises issues under IRC 501(m) and, if substantial, may preclude exemption.

Most of the associations that have applied for exemption in the past three years provide for insurance against members' losses due to injury suffered in the fire service through the purchase of a commercial accidental death & dismemberment policy. Many also provide for protection of widows and dependents in the event of death through the purchase of commercial life insurance. Commercial health insurance may be secured as well. Only a self-funded benefit arguably falls within the definition of "commercial-type insurance" for purposes of IRC 501(m). In cases where no self-funded benefits are provided or in which such benefits are "insubstantial," favorable rulings have been issued.

## 6. Bars to Exemption

### A. IRC 501(m) -- "Commercial-Type Insurance"

Both Minnesota and Pennsylvania statutes provide for self-funded relief benefits. These benefits are arguably "commercial-type insurance" under IRC 501(m). See Rev. Rul. 92-93, 1992-2 C.B. 45. Rev. Rul. 87-126, supra, does not address the impact of IRC 501(m) on organizations providing self-funded benefits pursuant to a state statute.

IRC 501(m) was enacted in 1986 to change the treatment of organizations providing "commercial-type insurance" that were exempt under 501(a) and described in IRC 501(c)(3) and IRC 501(c)(4). Under IRC 501(m), these organizations qualify for exemption only if no substantial part of their activities consists of providing "commercial-type insurance". (See, 1988 CPE text at pp. 22 and 150 and 1992 CPE text at 258.) Whether or not an activity is substantial is determined on the basis of all the facts and circumstances. If insurance-type benefits are not a substantial part of an organization's activities, it may qualify for

exemption, but its insurance activities will be treated as an unrelated trade or business. In lieu of the tax imposed by IRC 511 with respect to such activity, IRC 501(m)(2)(B) provides that the insurance portion of the organization's activity is treated as if it were an insurance company and is subject to taxation under Subchapter L. If the provision of "commercial-type insurance" is a substantial part of the organization's activities, IRC 501(m)(1) precludes exemption. In Pennsylvania, as discussed above, a high percentage of the fire relief associations provide permissible benefits under Act 84 exclusively through the purchase of commercial insurance coverage. Many of these organizations provide no self-funded benefits. The associations that do provide a self-funded death benefit, do so as an insubstantial part of their activities. Therefore, IRC 501(m) is not a bar to exemption. The self-funded benefit may be subject to tax under Subchapter L, but since this does not affect exemption where it is insubstantial, a determination letter may be issued.

In cases where many of the relief benefits meet the definition of "commercial-type insurance", exemption under IRC 501(c)(3) or IRC 501(c)(4) is precluded unless one of the exceptions applies. IRC 501(m)(3)(A) excludes from the definition of "commercial-type insurance", insurance provided at substantially below cost to a class of charitable recipients.

Whether a basis exists for concluding that the insurance benefits provided by firefighters' relief organizations in Pennsylvania and Minnesota fall within the IRC 501(m)(3)(A) exception is currently under study in Headquarters. All cases in which the payment of self-funded welfare benefits is a substantial purpose and activity of a relief association should continue to be referred for consideration in the National Office.

## B. Charitable Gaming

In some states fire relief organizations are permitted to raise funds through charitable gaming. For example, in 1986, Minnesota permitted organizations described in IRC 501(a) to engage in fund-raising through the sale of state regulated pull-tabs (instant winner lottery tickets.) Many of the firefighters' relief associations that have applied for exemption under IRC 501(c)(3) and IRC 501(c)(4) have chosen to participate in this activity and receive substantial income from this source. Pursuant to the statute, the funds raised may be used for an independent charitable grant-making program or may be used internally for an organization's own exempt purposes.

Charitable gaming, conducted directly or through commercial agents, is an unrelated trade or business within the meaning of IRC 513. See, Ann. 89-138, 1989-45 I.R.B. 41. IRC 501(c)(4) precludes exemption for organizations for whom the conduct of such activities is the primary activity. See Reg. 1.501(c)(4)-1(a)(2)(i). Whether charitable gaming activities are the primary activity must be determined based on an examination of all the facts and circumstances.

Charitable gaming activities also raise substantial legal issues for firefighters' relief associations applying for exemption under IRC 501(c)(3). The gambling activities may be so substantial as to evidence a non-exempt purpose or be conducted in such a way as to result in impermissible inurement or benefit to private parties. The use of the funds to supplement relief benefits raises additional private benefit concerns. Questions remain as well regarding the effect of any gaming income on an organization's public support determination.

Because the issues raised by charitable gambling are substantial and some are unresolved, all applications from firefighters' relief organizations engaged in substantial gambling activities should continue to be referred for National Office consideration. (For additional discussions of gambling activities, see 1990 CPE pp. 292-331 and Topic D of the 1996 CPE).

## 7. Alternative Routes to Exemption

### A. Local Association of Employees

IRC 501(c)(4) provides, in part, for exemption of local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. Thus, a fire relief association that uses its funds only to purchase equipment for or fund the activities of a fire department may qualify for exemption under IRC 501(c)(4) as a local association of employees because its earnings are exclusively devoted to permissible purposes.

Many firefighters' relief organizations that provide for the payment of benefits may be misclassified as local associations of employees. The payment of such benefits is not ordinarily considered a charitable, educational, or recreational purpose. A fire relief organization that can establish that it is "lessening the burden of government," a charitable activity under IRC 501(c)(3), may, however, be

classified under IRC 501(c)(4) as a social welfare organization or a local association of employees.

For a complete discussion of local associations of employees exempt under IRC 501(c)(4), See, 1984 CPE text pp. 225 - 235.

### B. Labor Organizations

Some police and firemen's beneficiary associations perform representational activities or are closely connected with police or firefighters' bargaining units through affiliation, common control, or other factors. For these organizations, the payment of sick, accident, death, or retirement benefits will not preclude exemption under IRC 501(c)(5) as a labor organization. However, Rev. Rul. 62-17, 1962-1 C.B. 87, states clearly that an organization that provides only monetary benefits, performs no other labor activities and has no connection of any kind with more traditional labor unions will not qualify for exemption under IRC 501 (c)(5).

Where a relief association is not connected with a more traditional type of labor organization and its purposes clearly permit representational activities, all the facts and circumstances must be examined to determine whether it does, in fact, perform certain representational tasks. In small localities, where there is no police or firemen's union, it is likely that some of these organizations, at least informally, engage in some aspect of bargaining. Because of the lack of published precedent in this area, applications from relief associations seeking exemption under IRC 501(c)(5) should be referred to the National Office.

### C. Voluntary Employee Benefit Associations

Firefighters' relief organizations may sometimes qualify as voluntary employees beneficiary associations (VEBAs) under IRC 501(c)(9). IRC 501(c)(9) describes as exempt, voluntary employees' beneficiary associations providing for the payment of life, sick, accident or other benefits to members or their dependents or beneficiaries, if no part of the net earnings inure (other than through such payments) to the benefit of any private shareholder or individual. Although the legislative history is quite limited, this section (added to the Internal Revenue Code by the Revenue Act of 1928) was apparently designed to save employee relief associations from tax after the courts had held in various cases that they could not qualify under various other provisions as local associations of employees, fraternal beneficiary organizations, or benevolent life insurance

companies. For a more complete discussion on VEBAs, see 1989 CPE text p. 203 and the 1990 CPE text at p. 159.

Relief associations must limit the benefits they offer to those permissible under IRC 501(c)(9). Pension and other retirement benefits are not considered to be within any of the statutory terms "life, sick, accident or other benefits." See Reg. 1.501(c)(9)-3(g). Thus, consideration of exemption under IRC 501(c)(9) is inappropriate for the relief associations in Minnesota discussed earlier.

## 8. Conclusion

Most firefighters' relief organizations continue to be taxable because they are member supported mutual benefit organizations. In a few states, however, the legislature has provided for the creation, operation, and funding of certain relief organizations benefitting public servants. In these states, relief organizations may be lessening the burden of government and if they otherwise satisfy the requirements, may qualify for exemption under IRC 501(c)(3) or IRC 501(c)(4). Relief associations that are relieving the burden of government may also be local associations of employees within IRC 501(c)(4).

Relief associations in states having no statutory scheme for their creation, operation, or funding, may, under certain circumstances, qualify for exemption under IRC 501(c)(5) or IRC 501(c)(9).