

ISSUE

Is an organization that institutes and maintains environmental litigation as a party plaintiff, under the circumstances described below, operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code?

FACTS

The organization, which otherwise qualifies for exemption under section 501(c)(3) of the Code, was organized for the purpose of protecting and restoring environmental quality. Its activities include educational activities within the meaning of section 501(c)(3). Its principal activity, however, consists of instituting litigation as a party plaintiff under state and federal environmental legislation. Typical of its litigation is a suit it filed against a local manufacturer and the state environmental protection agency. The organization sought thereby to enjoin the manufacturer from emitting certain air contaminants from its plant in violation of the state air-quality legislation and to require the state agency to enforce that legislation.

The organization does not have its own staff of attorneys and does not provide legal representation to others. Instead, it employs private attorneys to represent it in bringing and maintaining environmental litigation. Such lawsuits are not brought in cases where a substantial purpose is to benefit a private party or interest. The organization's litigation program is financed through membership dues and contributions from the public.

LAW AND ANALYSIS

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that an organization cannot be exempt under section 501(c)(3) of the Code unless it meets both an organizational and operational test. That is, the organization must be both organized and operated exclusively for charitable purposes.

In determining whether an organization meets the operational

test, the issue is whether the particular activity undertaken by the organization is appropriately in furtherance of the organization's exempt purpose, not whether that particular activity in and of itself would be considered charitable. Moreover, the fact that the activity reflects a particular viewpoint or opinion on a controversial issue does not preclude the organization from qualifying for exemption under section 501(c)(3) of the Code. See section 1.501(c)(3)-1(d)(2) of the regulations. Two organizations having the same charitable purpose may both be recognized as exempt even though their viewpoints on the subject may differ, and they may be undertaking differing, even conflicting, means to accomplish that charitable objective. See Restatement (Second) of Trusts, section 374, comment 1 (1959).

The law of charity provides no basis for weighing or evaluating the objective merits of specific activities carried on in furtherance of a charitable purpose, if those activities are reasonably related to the accomplishment of the charitable purpose, and are not illegal or contrary to public policy.

Therefore, in making the determination of whether an organization's activities are consistent with exemption under section 501(c)(3) of the Code, the Service will rely on a three-part test. The organization's activities will be considered permissible under section 501(c)(3) if:

- (1) The purpose of the organization is charitable;
- (2) the activities are not illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions; and
- (3) the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.

It is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public constitute a charitable purpose within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. The promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit. See, e.g., the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 (1976). See also Rev. Rul. 76-204, 1976-1 C.B. 152, and the authorities cited therein. Thus, the organization's overall purpose is charitable.

Second, the organization's program of environmental litigation as party plaintiff clearly is not illegal, contrary to a clearly defined and established public policy, or violative of express statutory limitations, including the restrictions contained in section 501(c)(3) of the Code prohibiting inurement of net earnings, substantial legislative activities, and participation or intervention in political campaigns.

In fact, Congress has provided for private litigation to enforce federal laws in numerous environmental statutes. See, e.g., the authorization for private suits to enforce the Clean Air Act, 42 U.S.C.A. section 7604 (1979); see also the citizen suit provision of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. section 1365 (1976). These provisions indicate Congressional approval of private litigation as a desirable and appropriate means of enforcing environmental statutes. Many state statutes contain similar provisions. In some instances, litigation under such a statute serves to assist the government in enforcing the statute. In other cases, the litigation facilitates judicial review of important issues and ensures that the statute is correctly interpreted and administered. See also *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 271 (1975).

In view of the above authorities, it is also clear that the organization's litigation activities are a reasonable means of accomplishing its exempt purposes. Accordingly, the organization's activities meet the third part of the test; that is, its program of litigation as party plaintiff under state and federal environmental statutes furthers the organization's exempt purposes and is reasonably related to the accomplishment of the charitable purposes for which the organization was formed.

Compare the facts of this ruling with the three situations in which the Service has previously recognized organizations that engage in litigation as being described in section 501(c)(3): (1) legal aid societies providing legal assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) organizations operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) public interest law firms providing legal representation on issues of significant public interest (Rev. Rul. 75-74, 1975-1 C.B. 152, Rev. Rul. 75-75, 1975-1 C.B. 154, Rev. Rul. 75-76, 1975-1 C.B. 154, Rev. Rul. 76-5, 1976-1 C.B. 146, Rev. Proc. 71-39, 1971-2 C.B. 575, and Rev. Proc. 75-13, 1975-1 C.B. 662). These types of organizations generally have staff attorneys providing legal representation to outside clients or groups, as distinguished from the organization itself being the plaintiff in litigation.

HOLDING

An organization that institutes and maintains environmental litigation as party plaintiff, under the circumstances described above, is operated exclusively for charitable purposes and qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

APPLICATION INSTRUCTIONS

Even though an organization considers itself within the scope of this revenue ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be

recognized by the Service as exempt under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.508-1(a) of the regulations.

In accordance with the instructions to Form 1023, the application should be filed with the District Director of Internal Revenue for the key district indicated therein.