



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Ken Buck  
Member, U.S. House of Representatives  
900 Castleton Road, Suite 112  
Castle Rock, CO 80109

Attention:

Dear Representative Buck:

This letter responds to your request for information dated November 6, 2018. On behalf of a constituent, you asked for written guidance about the federal tax laws governing international grants domestic charitable organizations make. We spoke with a member of your staff who indicated your constituent would appreciate citations to relevant authorities in this guidance.

Section 501(a) of the Internal Revenue Code provides for exemption from income tax of organizations described in Section 501(c)(3). Section 501(c)(3) describes organizations that are organized and operated exclusively for religious, charitable, scientific, educational, or certain other specified purposes.

The Treasury Regulations provide that to be exempt as an organization described in Section 501(c)(3), an organization must engage primarily in activities which accomplish one or more exempt purposes, such as religious or charitable purposes (including the advancement of religion).<sup>1</sup>

In *The Church in Boston v. Commissioner*, 71 T.C. 102 (November 1, 1978), the Tax Court considered a charity's grant program to individuals, for purposes of the definition of "charitable" under Section 501(c)(3). The Tax Court noted the charity, "was unable to furnish any documented criteria which would demonstrate the selection process of a

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<sup>1</sup> 26 CFR §1.501(c)(3)-1(a)(1); 26 CFR §1.501(c)(3)-1(c)(1); 26 CFR §1.501(c)(3)-1(d)(1)(i); 26 CFR §1.501(c)(3)-1(d)(2).

deserving recipient, the reason for specific amounts given, or the purpose of the grant.” Id. at 107.

The court noted the inadequacy of the charity’s records of its grants to individuals where: “The only documentation contained in the administrative record is a list of grants made during 1975 which included the name of the recipient, the amount of the grant, and the ‘reason’ for the grant which was specified as either unemployment, moving expenses, school scholarship, or medical expense.” Id. at 107. The court concluded the lack of information provided by the charity prevented the IRS from determining whether, among other things, the distribution of the grants was made in furtherance of an exempt purpose. Id. at 107.

Revenue Ruling 71-460, 1971-2 C.B. 231, provides that a domestic organization that conducts some or all its activities outside the United States is not prohibited from qualifying for exempt status under Section 501(c)(3). See also Rev. Rul. 68-117, 1968-1 C.B. 252, and Rev. Rul. 68-165, 1968-1 C.B. 253.

Rev. Rul. 68-489, 1968-2 C.B. 210, provides that an exempt organization under Section 501(c)(3) does not jeopardize its exempt status by distributing funds to organizations not themselves exempt under Section 501(c)(3), provided the exempt organization:

- Retains control and discretion as to the use of the funds
- Maintains records establishing the funds were used for Section 501(c)(3) purposes
- Limits distributions to specific projects that further its own exempt purposes

Rev. Rul. 68-489 was published before the enactment of the Tax Reform Act of 1969,<sup>2</sup> which established a distinction between charities whose primary activities are grantmaking (“private foundations”) as opposed to public charities, such as churches. The 1969 tax reform also added provisions to the Internal Revenue Code that govern international grantmaking by private foundations.<sup>3</sup> Though public charities are not subject to these provisions, they must conduct any international grantmaking activities in accordance with Section 501(c)(3). Rev. Rul. 68-489 provides guidance for conducting international grantmaking for organizations described in Section 501(c)(3), such as public charities. The revenue ruling continues to reflect the IRS’s official interpretation of Section 501(c)(3) in the context of international grantmaking that public charities conduct.

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<sup>2</sup> Pub. L. 91-172.

<sup>3</sup> See 26 U.S.C. §§ 4942 and 4945; 26 CFR §53.4942(a)-3(a)(6), §53.4945-5(a)(5).

In addition to the statutes, regulations, case law, and revenue rulings cited above, your constituent may find the Internal Revenue Manual (IRM), the IRS website ([www.irs.gov](http://www.irs.gov)), and the Treasury Department website helpful in identifying steps to take to minimize the risk of diversion of charitable funds to terrorism.<sup>4</sup> The Treasury Department's website maintains the Resource Center for Protecting Charitable Organizations,<sup>5</sup> which includes the Treasury Department's "Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities." You can find on [www.irs.gov](http://www.irs.gov) a list of sample questions the IRS might ask an applicant for exempt status that is engaged in international activities, including foreign grantmaking.<sup>6</sup>

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling.<sup>7</sup>

I hope this information is helpful. If you have any additional questions, please contact our office at .

Sincerely,

Andrew F. Megosh, Jr.  
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Exempt Organizations, Branch 2  
(EEE Associate Chief Counsel)

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<sup>4</sup> See, e.g., Internal Revenue Manual, Section 7.20.6.2 (Exempt Organizations' Role in Anti-Terrorism); "Updated Procedures for Terrorism Screening of Exemption Applications Tax Exempt and Government Entities Division", February 22, 2019 (Control No: TEGE-07-0219-0003); [www.irs.gov](http://www.irs.gov) (Charitable Organizations -- Sample Questions – International Activities).

<sup>5</sup> [www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-index.aspx](http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-index.aspx)

<sup>6</sup> <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-organization-sample-questions-international-activities>

<sup>7</sup> See Revenue Procedure 2019-1, §2.04, 2019-01 IRB 1 (January 2, 2019).