

[Exemptions]

[Federal income tax exempt status issued by IRS &/or as declared by Taxpayers]

26 U.S. Code § 501 (c)(3)



Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations

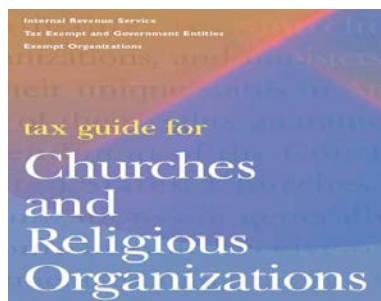


Exempt Purposes - Internal Revenue Code Section 501(c)(3)

The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

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<https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501%28c%29%283%29>





Part 7. Rulings and Agreements

Chapter 25. Exempt Organizations Determinations Manual

Section 3. Religious, Charitable, Educational, Etc., Organizations

7.25.3 Religious, Charitable, Educational, Etc., Organizations

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7.25.3.1 (02-23-1999)

Overview

1. This section discusses religious, charitable, educational and other organizations under IRC 501(c)(3).

7.25.3.1.1 (02-23-1999)

Statute

1. IRC 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, 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 subsection (i)), 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.

7.25.3.1.2 (02-23-1999)

IRC 501(c)(3) and Private Foundation Provisions

1. Under the Tax Reform Act of 1969, certain types of organizations described in IRC 501(c)(3) are classified as private foundations. Foundation classification is made at the time an organization is recognized exempt under IRC 501(c)(3).

2. The Act subjects private foundations to several restrictions and requirements in addition to those imposed on IRC 501(c)(3) organizations generally.
3. The basic private foundation provisions are IRC 507, 508, 509, and 4940 through 4948.
4. The kinds of IRC 501(c)(3) organizations that are classified as private foundations as well as the additional restrictions and requirements they are subject to under the Tax Reform Act of 1969 are discussed in the Private Foundations Manual, IRM 7.26, or in the Exempt Organizations Tax Manual, IRM 7.27.

7.25.3.1.3 (02-23-1999)

Collateral Benefits

1. In addition to exemption from the payment of federal income tax, organizations recognized as exempt under IRC 501(c)(3), may enjoy collateral benefits under the Internal Revenue Code, as well as under state or local income, property, sales, use, or other tax provisions.

7.25.3.1.3.1 (02-23-1999)

State of Local Tax Benefits

1. Many state and local jurisdictions accept the Internal Revenue Service's determination for their own exemption requirements, or require exemption from federal income tax under IRC 501(c)(3) as a prerequisite to granting exemption under state or local provisions.
2. To promote efficient enforcement of the respective tax laws, IRC 6104(c) provides an exception to the general confidentiality provisions of IRC 6103 that allows the Service to share information with appropriate state officials regarding organizations that have been denied recognition of exemption under IRC 501(c)(3) or that have had recognition of exemption under IRC 501(c)(3) revoked.

7.25.3.1.3.2 (02-23-1999)

Deductibility of Contributions

1. Most organizations exempt under IRC 501(c)(3) are eligible to receive deductible charitable contributions, as the provisions that govern deductibility of charitable contributions from income tax (IRC 170(c)), estate tax (IRC 2055(a)(2) and IRC 2106), and gift tax (IRC 2522(a)(2)), contain language substantially similar to IRC 501(c)(3).
2. A ruling or determination letter recognizing the exemption of an organization under IRC 501(c)(3) should discuss the organization's status under these provisions as well.
 - A. Especially if the organization, for example, an entity organized outside the United States or its territories or possessions, is not described in IRC 170(c).

7.25.3.1.3.3 (02-23-1999)

Employment and Excise Tax Benefits

1. Before January 1, 1984, services performed for an IRC 501(c)(3) organization were often exempt from taxes under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA).
2. The Social Security Act Amendments of 1983, Public Law 98-21, extended mandatory social security coverage (FICA) to all employees of nonprofit organizations beginning January 1, 1984.

The rules regarding FUTA remain unchanged. Some organizations may also enjoy exemption from certain federal excise taxes.

7.25.3.1.3.4 (02-23-1999)

Preferred Postal Rates

1. Section 134.5 of the United States Postal Service Regulations, 39 U.S.C. 3626–27 (1970), includes religious, educational, scientific, and philanthropic (charitable) organizations among those eligible to mail at preferred postal rates.
2. Not all IRC 501(c)(3) organizations are eligible for preferred postal rates, however, so exemption from federal income tax is evidence of qualification for preferred postal rates but is not controlling.

7.25.3.1.3.5 (02-23-1999)

Employee Retirement Benefits

1. Organizations exempt under IRC 501(c)(3) can offer employees the benefit of special annuity tax provisions under IRC 403(b). This helps them attract and retain qualified personnel.
2. Section 1107 of the Tax Reform Act of 1986 amended IRC 457 to allow any exempt organization to offer its employees qualified IRC 457 unfunded deferred compensation plans adopted after December 31, 1986. Previously, IRC 457 plans were available only to employees of state and local governments.
3. Exempt organizations **may not** maintain qualified IRC 401(k) plans adopted after July 2, 1986. IRC 401(k) plans provide a cash or deferred payment option. Plans adopted before that date are not affected by the amendment, which was made by section 1116 of the Tax Reform Act of 1986.
4. For plan years beginning after December 31, 1985, an exempt organization can adopt a qualified profit-sharing plan under IRC 401(a)(27) for its employees. This semantic anomaly of "profit" being produced by a nonprofit organization was authorized by section 1136 of the Tax Reform Act of 1986, which amended IRC 401(a)(27) to provide that the determination of whether an employee plan is a profit sharing plan is made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization. The Service held in one case that maintaining a qualified profit-sharing plan would not adversely affect the exemption of the organization.

7.25.3.1.3.6 (02-23-1999)

Limits of Exemption Under IRC 501(c)(3)

1. All organizations exempt under IRC 501(c)(3) are subject to the unrelated business income tax imposed by IRC 511. This included churches as of 1976, except for any business carried on by a church or a convention or association of churches that was carried on before May 27, 1969.
2. The Tax Reform Act of 1969 repealed IRC 503 and 504 with respect to organizations described in IRC 501(c)(3), for taxable years beginning after December 31, 1969. These sections concerned prohibited transactions and unreasonable accumulations of income.
3. An organization that was organized after October 9, 1969, must satisfy the notice requirements of IRC 508(a) or it will not qualify under IRC 501(c)(3). The requirements of IRC 508(a) are discussed in IRM 7.25.3.14.

7.25.3.1.4 (02-23-1999)

The Dual Test: Organized and Operated

1. IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either the organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1).
2. The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

7.25.3.2 (02-23-1999)

Organizational Test

1. IRC 501(c)(3) covers only corporations, community chests, funds, and foundations. This means that some kinds of groupings can qualify and some cannot. Evidently, an individual cannot be exempt. Neither can a partnership. By the same token, a formless aggregation of individuals cannot be exempt.

7.25.3.2.1 (02-23-1999)

Corporations

1. Corporations are the most common form of organization specified in IRC 501(c)(3). A corporation is a creature of state law whose existence is evidenced by a charter or certificate of incorporation issued by the State under whose laws it was incorporated. The Service rarely questions the validity of the corporate status of an organization that has satisfied the formal requirements of the law governing its creation.
2. In Emerson Institute v. United States, 356 F.2d 824 (D.C. Cir. 1966), however, the Service successfully challenged a claim of *de facto* corporate status based on judicial decree. In Emerson, an exempt school corporation dissolved and became a partnership, with the former directors as the partners. When the Service became aware of this, it revoked exemption and assessed tax against the surviving partner. The surviving partner obtained a consent judgment under local law voiding the earlier corporate dissolution on certain technical grounds. He then sought a refund of taxes on the grounds that the corporation had never legally dissolved, that it, not he, was entitled to the school's earnings, and that it was exempt. The court held that there was no *de facto* corporation during the years after the dissolution, but, even if there was one for nontax purposes, the local court decree was not binding on the Service, as it had not been a party to the proceeding.

7.25.3.2.2 (02-23-1999)

Trusts

1. Fifth-Third Union Trust Co. v. Commissioner, 56 F.2d 767 (6th Cir. 1932), clearly established that a trust is included in the terms "fund or foundation." Thus, a trust is an acceptable form of organization exempt status under IRC 501(c)(3).

7.25.3.2.3 (02-23-1999)

Associations

1. Unincorporated associations have historically presented difficulty for the Service, as determining exempt status requires finding that there is an entity separate from the individuals who created it.
2. In Trippe v. Commissioner, 9 TCM (CCH) 622 (1950), the Tax Court clarified a formless aggregation of individuals without some organizing instrument, governing rules, and regularly chosen officers would not be a "corporation, community chest, fund, or foundation" for purposes of IRC 501(c)(3). But *Cf.* Morey v. Riddell, 205 F Supp. 918 (S.D. Cal. 1962), in which the court found organizing documents sufficient to support a finding that an entity was created.
3. The typical nonprofit association formed under a constitution or bylaws, with elective officers empowered to act for it, would be treated as a corporation for purposes of IRC 501(c)(3). Of course, an association's organizing documents must satisfy the organizational test before the association can qualify under IRC 501(c)(3).

7.25.3.2.4 (02-23-1999)

Practical Applications

1. Copies of the corporate charter, constitution, or other articles of organization must be submitted as part of an application for exemption. Where the purported organizing instrument is in the form of a constitution or articles of association, there must be evidence that it was signed by people who thereby associated themselves under its terms. Unlike a trust, an association cannot be formed by a single individual, thus one individual cannot promulgate articles of association. This may be significant where, as in Hewitt v. Commissioner, T.C. Memo. 1957-112, exemption is sought for the activities of an individual who has a coterie of followers who are not really "associates."
2. Informal aggregations of individuals who state that they "just came together" or that they "never had articles of organization" are not tax entities to which a ruling may be issued. (Trippe v. Commissioner, supra.) Accordingly, if it is determined that no organization exists, the applicant should be advised that no ruling or determination letter can be issued.
3. An association's constitution or articles of association should be signed by at least two persons.
 - A. If an unsigned copy is submitted, but there is evidence that the original was signed by two or more persons, the copy is acceptable, if, as provided by Rev. Proc. 68-14, 1968-1 C.B. 768, it is accompanied by a declaration, signed by an individual authorized to sign for the organization, that it is a complete and correct copy of the original and that the original was signed by at least two persons.
 - B. If the copy indicates that the original was not signed, submission of the declaration will not cure the defect. In that case, the application should be returned to the applicant with a request for proof that the organizing document has been adopted. Such a document will be acceptable only if the association can establish that it has operated in a manner clearly showing ratification by two or more persons. For example, if the document is accompanied by an affidavit from two officers that the association did adopt the organizing document and has been operating in accordance with its terms, the instrument will be acceptable.

7.25.3.3 (02-23-1999)

Organizational Test Requirements

1. Reg. 1.501(c)(3)–1(b)(1)(i) provide that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:
 - Limit the purposes of such organization to one or more exempt purposes; and
 - Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.
2. In addition, the organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law. Reg. 1.501(c)(3)–1(b)(4).
3. IRC 508(e) imposes additional requirements for governing instruments of private foundations. These are discussed in the Private Foundations Manual.
4. The term "articles" includes "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Reg. 1.501(c)(3)–1(b)(2).
5. The organizational test cannot be met by any document that is not the creating document.
 - A. A corporation's bylaws cannot remedy a defect in its corporate charter. A charter can be amended only in accordance with the State's nonprofit corporation law. States generally require that any amendments be filed with and approved by the chartering authority.
 - B. In the case of a trust, operating rules cannot substitute for the trust indenture.
 - C. For an unincorporated association, the test must be met by the basic creating document, whatever it is called, and any amendments. Subsidiary documents that are not amendments to the creating document may not be relied on.
6. An organization recognized as exempt under IRC 501(c)(3) before July 27, 1959, is not required to meet the organizational requirements of IRC 501(c)(3) unless it seeks a new determination of its status; nor will its exemption be revoked solely for failure to meet these requirements. Reg. 1.501(c)(3)–1(b)(6).

7.25.3.3.1 (02-23-1999)

Specified Purposes

1. To meet the organizational test, the organization's purposes must be specified in its articles. They may be as broad as, or more specific than, the purposes stated in IRC 501(c)(3). Reg. 1.501(c)(3)–1(b)(1)(ii).
2. The following examples provide illustrations of broad and narrow purposes clauses that meet the test:
 - A. Charitable and educational purposes within the meaning of IRC 501(c)(3),
 - B. To grant scholarships to deserving junior college students residing in Gotham City

7.25.3.3.2 (02-23-1999)

Ambiguous Purposes

1. The purpose stated in the articles must be a purpose that necessarily falls within the purposes stated in IRC 501(c)(3). For example, a purpose "to operate a hospital" does not meet the

organizational test since it is not necessarily within the purposes stated in IRC 501(c)(3). A hospital may or may not be exempt, depending upon the manner in which it is operated.

2. Under no circumstances may the organizational purposes be broader than the purposes of IRC 501(c)(3). They may, however, be narrower. For example, the charter may recite as purposes "charitable and educational purposes within the meaning of IRC 501(c)(3)." It may also recite a narrow specific purpose such as "to grant scholarships to deserving junior college students residing in Gotham City." Reg. 1.501(c)(3)-1(b)(1)(iv).

7.25.3.3.3 (02-23-1999)

Nonexempt Purposes

1. Organizations that are organized for both exempt and nonexempt purposes fail to meet the test. The following two revenue rulings provide examples:
 - A. In Rev. Rul. 69-279, 1969-1 C.B. 152, an irrevocable inter vivos trust, which provides that a fixed percentage of the income must be paid annually to the settlor with the balance of the income to charity does not meet the organizational test;
 - B. In Rev. Rul. 69-256, 1969-1 C.B. 151, a testamentary trust established to make annual payments to exempt charities and to use a fixed sum from annual income for the care of the testator's burial lot is not organized for charitable purposes.

7.25.3.3.4 (02-23-1999)

Express Powers that Cause Failure of Organizational Test

1. An organization does not meet the organizational test if its articles expressly empower it:
 - A. To devote more than an insubstantial part of its activities to influence legislation by propaganda or otherwise (Reg. 1.501(c)(3)-1(b)(3)(i));
 - B. Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office (Reg. 1.501(c)(3)-1 (b)(3)(ii));
 - C. To have objectives and to engage in activities which characterize it as an "action" organization (Reg. 1.501(c)(3)-1 (b)(3)(iii));
 - D. To carry on any other activities (unless they are insubstantial) which are not in furtherance of one or more exempt purposes (Reg. 1.501(c)(3)-1(b)(1)(i)(a)).

7.25.3.3.5 (02-23-1999)

Express Powers for IRC 501(h)

1. An organization's articles will not violate the organizational test even though they expressly empower it:
 - A. To make the IRC 501(h) election; and
 - B. If it so elects, to make lobbying and grass roots expenditures within the applicable ceiling amounts (1.501(c)(3)-1(b)(3)).

7.25.3.3.6 (02-23-1999)

Dedication of Assets

1. An organization does not meet the organizational test unless its assets are dedicated to an exempt purpose. Reg. 1.501(c)(3)-1(b)(4). The two ways an organization's can be dedicated for an exempt purpose are:
 - A. A provision in the organization's articles;
 - B. By operation of state law.

7.25.3.3.6.1 (02-23-1999)

Proper Recipients on Dissolution

1. An organization's assets will be considered properly dedicated, for example, if on dissolution, they would, by reason of a provision in the organization's articles, be distributed:
 - A. for one or more exempt purposes;
 - B. to the federal government or a state or local government, for a public purpose; or
 - C. to another organization by a court to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

7.25.3.3.6.2 (02-23-1999)

Improper Recipients on Dissolution

1. An organization's assets are not properly dedicated if its articles or the law of the state in which it was created provide that its assets would, on dissolution, be distributed to its members or shareholders.

7.25.3.3.6.3 (02-23-1999)

Example of Dissolution Provision

1. The following language illustrates a dissolution provision that properly dedicates an organization's assets: "Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."

7.25.3.3.6.4 (02-23-1999)

Operation of State Law a/k/a "The Cy Pres Doctrine"

1. If an organization's articles do not expressly provide for proper distribution of its assets on dissolution, state law may intervene to provide for distribution. If assets are properly dedicated by operation of law, no amendments to the articles are needed.
2. Rev. Proc. 82-2, 1982-1 C.B. 367, identifies four areas of state law, depending on the form of entity, that can provide for dissolution:
 - A. The *cy pres* doctrine as to *inter vivos* charitable trusts;
 - B. The *cy pres* doctrine as to testamentary charitable trusts, which can exist in a particular state by case law or statute;

- C. State corporate law provisions that provide for the distribution of assets upon the dissolution of nonprofit corporations;
 - D. State law by court decision or statute that govern unincorporated associations.
3. The *cy pres* doctrine is a principle of law that courts use to save a charitable trust from failing when a charitable objective is originally, or later becomes, impossible or impracticable to fulfill. *Cy pres*, which comes from French law and means "so near" or "as near as possible", is based on the theory that a court has the power to revise a charitable trust if the maker (also called the creator, settlor, or—if under a will—testator) had a charitable intent to meet unexpected emergencies or changes in conditions that threaten the trusts existence. The court may substitute another charitable object it believes will approach the original charitable purpose as closely as possible.
 4. Courts do not automatically apply the *cy pres* doctrine to charitable trusts. They usually first need to find that the testator had a general charitable intent in creating the trust. If it appears that the testator wanted only to accomplish a particular purpose and did not have a general intent to benefit charity, the majority of courts will presume that the testator would prefer to have the trust fail if the particular purpose is or becomes impossible to accomplish.
 5. In contrast, the majority of courts apply the *cy pres* doctrine when a testator makes a general bequest for charity, or for general charitable purposes, without specifying a particular purpose or beneficiary. In such a case, the court will choose a particular purpose for the disposition of the property consistent with the testator's general charitable intent. The following example shows how a state court might apply *cy pres*: X bequeathed his residuary estate to Hospital A for the benefit of tubercular children. When X died, Hospital A no longer existed. His heirs filed suit claiming that the legacy lapsed and the residuary estate passed to them by intestacy. The court held that the gift to Hospital A was a charitable bequest because the gift was not intended for a particular institution, but for the benefit of tubercular children as a class with the hospital as trustee. As the trust's purpose (treatment of tubercular children) still existed, even though the hospital did not, the legacy did not lapse because *cy pres* applied. The court awarded the legacy to another local hospital as trustee for the benefit of tubercular children.

7.25.3.3.6.4.1 (02-23-1999)

Dissolution Provision Required

1. In the instances listed below, an adequate dissolution provision is required to properly dedicate assets. In other words, state law will not substitute for a missing provision.
2. *Inter vivos trusts*: An *inter vivos* trust created in any state other than Delaware must have an adequate dissolution provision. Delaware is the only State whose courts always apply the *cy pres* doctrine to keep an *inter vivos* charitable trust from failing.
3. Charitable testamentary trusts: Any charitable testamentary trust in Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, South Carolina, Utah, or Wyoming, must have an adequate dissolution provision, no matter the intent of the testator. These states have either expressly rejected or have never applied the *cy pres* doctrine to a charitable testamentary trust.
4. Charitable testamentary trusts with no general intent to benefit charity: Unless the testator has manifested a general intent to benefit charity, a charitable testamentary trusts in any of the

following states must have an adequate dissolution provision: Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

- The courts in these states will apply the *cy pres* doctrine to keep a charitable testamentary trust from failing when the language of the trust instrument demonstrates that the trust's creator had a general intent to benefit charity, and not merely a specific intent to benefit a particular institution.
 - The courts in the following states always apply *cy pres* or the similar doctrine of equitable approximation to keep a charitable testamentary trust from failing. Thus, Reg. 1.501(c)(3)-1(b)(4) is satisfied by charitable testamentary trusts in Alabama, Delaware, Louisiana, Pennsylvania, South Dakota, Virginia, and West Virginia (However, a state court decision has held that *cy pres* does not apply to a scientific organization in West Virginia.)
5. Charitable corporations: Any corporation incorporated under the nonprofit laws of a state other than Arkansas, California, Louisiana, Massachusetts, Minnesota, Missouri, Ohio, or Oklahoma must have a proper dissolution provision in its articles of incorporation to satisfy the organizational test. The eight states listed are the only states that have statutes applicable to nonprofit charitable corporations that satisfy the organizational test.
 6. All unincorporated nonprofit associations must have a proper dissolution provision in the governing instrument, as no state, nor the District of Columbia provides certainty by statute or case law, for the distribution of assets upon the dissolution of an unincorporated nonprofit association.
 7. Provisions in an organization's governing instrument that satisfy the requirements of IRC 508(e), for purposes of qualification for exemption under IRC 501(a) as a private foundation, are not in themselves sufficient to meet the requirement of Reg. 1.501(c)(3)-1(b)(4) that, upon dissolution, the organization's assets be dedicated to an exempt purpose. Requirements set out in IRC 508(e) in regard to private foundations, are additional to those found in IRC 501(c)(3). Rev. Rul. 85-160, 1985-2 C.B. 162. For a discussion of governing instrument requirements for private foundations, see Private Foundations Manual, IRM 7.26.1.
 8. The following language illustrates a dissolution provision that satisfies Reg. 1.501(c)(3)-1(b)(4): "Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."
 9. The information contained in this section has been published as Rev. Proc. 82-2, 1982-1 C.B. 367. The application of the doctrine of *cy pres* is subject to change by statute or court decision. We will attempt to update this section in the future to reflect such changes as they are brought to our attention.

7.25.3.3.7 (02-23-1999)

Charitable Class Requirement

1. A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable. Thus, a trust to benefit John Jones is not a charitable trust even though the facts may show that John Jones is impoverished. However, an organization set up with the general charitable purpose of benefiting needy individuals in a particular community is a charitable organization and it may select John Jones as a beneficiary.
2. A trust set up for the benefit of an aged clergyman and his wife was held not to be an exempt organization in Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943). The court found the trust to be a private, rather than charitable trust, despite the fact that the elderly gentleman was in financial need.
3. However, an organization may properly have a purpose to benefit a comparatively small class of beneficiaries, provided the class is open and the identities of the individuals to be benefited remain indefinite. It has been held that a foundation set up to award scholarships solely to undergraduate members of a designated fraternity could be exempt as a charitable foundation. Rev. Rul. 56-403, 1956-2 C.B. 307.
4. A trust to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals. Rev. Rul. 57-449, 1957-2 C.B. 622.

7.25.3.3.8 (02-23-1999)

Power to Engage in Nonexempt Activity

1. If the organization is expressly empowered by its articles to carry on, other than as an insubstantial part of its activities, activities that are not in furtherance of exempt purposes, it will not meet the organizational test even though its stated purposes are within the Code. For example, if the articles expressly reserve the power "to engage in a manufacturing business," or "to engage in the operation of a social club," the organizational test is not met. Reg. 1.501(c)(3)-1(b)(1)(iii).
2. Similarly, the regulations preclude exemption if the articles empower the organization to engage in substantial attempts to influence legislation or to intervene in political campaigns. Reg. 1.501(c)(3)-1(b)(3).

7.25.3.3.9 (02-23-1999)

Construction of Terms

1. In the interpretation of an organization's articles of organization or association, State law governs the definition of the respective rights, duties, powers, and immunities of the parties. Where an organization contends that a term has an unusual meaning under State law, clear legal authority should be presented. Reg. 1.501(c)(3)-1(b)(5).

7.25.3.3.10 (02-23-1999)

Certain Practical Applications

1. Articles of organization that fail to meet the organizational test are ordinarily amendable. After amendment, exemption may be retroactive to the period before amendment. Therefore, in most cases, the status of an organization depends ultimately on the operational test.
2. This has several implications. The resolution of the organizational test question is only the first step in determining whether an organization is exempt. It is not a substitute for ascertaining the

specific activities of an organization and determining whether they are within the scope of IRC 501(c)(3).

7.25.3.3.11 (02-23-1999)

Digests of Precedent Rulings

1. Charitable Class— A foundation set up to award scholarships solely to undergraduate members of a designated fraternity may be exempt. Rev. Rul. 56-403, 1956-2 C.B. 307.
2. Charitable Class— A trust to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals. Rev. Rul. 57-449, 1957-2 C.B. 622.
3. Organizational Test— A testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not organized for charitable purposes. Rev. Rul. 69-256, 1969-1 C.B. 151.
4. Organizational Test— an irrevocable inter vivos trust which provides that a fixed percentage of the income must be paid annually to the settlor with the balance to charity is not organized and operated exclusively for charitable purposes. Rev. Rul. 69-279, 1969-1 C.B. 152.

7.25.3.4 (02-23-1999)

Operational Test

1. To satisfy the operational test, an organization must be operated exclusively for one or more of the following purposes:
 - religious
 - charitable
 - scientific
 - testing for public safety
 - literary
 - educational
 - fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
 - prevention of cruelty to children or animals
2. Reg. 1.501(c)(3)-1(c)(1) provide that an organization is operated exclusively for charitable purposes only if it engages primarily in activities that accomplish those purposes in (1) above. It is not so operated if more than an insubstantial part of its activities do not further those purposes.

7.25.3.4.1 (02-23-1999)

Meaning of "Operated Exclusively"

1. The regulations' terms "exclusively," "primarily" and "insubstantial" present difficult conceptual problems. Questions involving the application of these terms can more readily be resolved on the

basis of the facts of a particular case. It is therefore important that all the facts and circumstances be fully developed.

7.25.3.4.2 (02-23-1999)

Public v. Private Purposes

1. Reg. 1.501(c)(3)–1(d)(1)(ii) provide that to meet the operational test, an organization must be engaged in activities furthering "public" purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who created it. The purposes specified in IRC 501(c)(3), which are all "public" purposes, are separately analyzed below.

7.25.3.5 (02-23-1999)

Charitable Organizations— Definition

1. Reg. 1.501(c)(3)–1(d)(2) provide that the term "charitable" is used in IRC 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.
2. The concept of charity was developed in the common law long before the term was incorporated into the Internal Revenue Code. Scott on Trusts, section 368 (3rd ed. 1967), provides a thorough analysis of the generally accepted legal interpretation of the term "charitable" . Thus, legal precedent for analyzing whether an activity is charitable is not limited to interpretations under IRC 501(c)(3) or its predecessor provisions.
3. One example of the Service's application of the common law definition of charitable is Rev. Rul. 67–325, 1967–2 C.B. 113. In that case the Service considered whether an organization providing recreational facilities for a community that restricted access to its facilities on the basis of race was charitable within the meaning of IRC 501(c)(3). The Service applied the general law of charity, which holds that providing a community recreational facility is a charitable activity only if all members of the community are eligible for direct benefits, by organizations designed to accomplish any of the above purposes, or lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; or combating community deterioration and juvenile delinquency.

7.25.3.5.1 (02-23-1999)

Relief of the Poor and Distressed or Underprivileged

1. Reg. 1.501(c)(3)–1(d)(2) expressly provides that relief of the poor, or distressed, or underprivileged is a charitable purpose. Relief can be provided in many ways.

7.25.3.5.1.1 (02-23-1999)

Assistance to Low Income Families

1. Assisting low income individuals or families to obtain adequate housing can be a charitable activity. Thus, an organization formed to construct new housing and to renovate existing housing for sale to low income families on long-term, low payment plans was recognized as exempt under IRC 501(c)(3). (See Rev. Rul. 70–585, 1970–2 C.B. 115, and Rev. Rul. 67–138, 1967–1 C.B. 129.)

2. Rev. Rul. 69-441, 1969-2 C.B. 115, provides that an organization that assists low income individuals and families with individual financial counseling, and assists them in establishing budget plans where necessary, may be exempt.
3. A statewide association of local public housing tenant groups that advises its member groups on topics such as the rights and responsibilities of tenants and the laws and regulations concerning public housing, and that represented local groups before State and federal housing authorities, was held to be charitable by relieving the poor in Rev. Rul. 75-283, 1975-2 C.B. 201.
4. Operating a day care center for children of needy working parents was held to be exempt under IRC 501(c)(3) in Rev. Rul. 68-166, 1968-1 C.B. 255, and Rev. Rul. 70-533, 1970-2 C.B. 112.

7.25.3.5.1.2 (02-23-1999)

Self-Help Programs

1. Self-help programs are often used to ameliorate the problems of poverty. Supplying materials and services for use in these programs can also be a charitable activity. How the organization operates is usually a critical factor in determining whether it is charitable rather than a commercial venture. For example, in Rev. Rul. 68-16, 1968-1 C.B. 255, an organization created to market the cooking and needlework of needy women was held to be exempt even though it received a small commission on each sale. The organization served a charitable class, and operated in a noncommercial manner. The women it served could not otherwise find an outlet. In addition, the commissions it charged were insufficient to support the organization and it relied on public contributions.
2. IRC 501(c)(3) does not limit exemption to organizations relieving the poor and distressed in the United States. Rev. Rul. 68-117, 1968-1 C.B. 251, and Rev. Rul. 68-165, 1968-1 C.B. 253, hold domestic organizations providing technical and material assistance to foreign self-help programs to be exempt under IRC 501(c)(3).
3. Rev. Rul. 67-138, 1967-1 C.B. 129, held an organization that helped low-income families construct or rehabilitate housing to be operated for exclusively charitable purposes.

7.25.3.5.1.3 (02-23-1999)

Assisting the Aged

1. It is now generally recognized that the aged, apart from considerations of financial distress, have special needs because of their advanced years. Satisfying those needs can be a charitable activity.
2. An organization operating a home for the aged may be exempt under IRC 501(c)(3) as a charitable organization if it operates in a manner designed to satisfy the three primary special needs of aged persons. These are the need for—
 - housing,
 - health care, and
 - financial security.
3. The needs for housing and health care will generally be satisfied if two conditions exist. (See Rev. Ruls. 72-124, 1972-1 C.B. 145 and 79-18, 1979-1 C.B. 194.)

- The organization must be committed to an established policy of maintaining residents who become unable to pay.
 - The organization must provide its services to residents at the lowest feasible cost.
4. A publicly supported organization that operates a rural rest home to provide, at a nominal charge, two-week vacations for elderly poor people from nearby metropolitan areas was recognized as exempt under IRC 501(c)(3) in Rev. Rul. 75-385, 1975-2 C.B. 205.
 5. An organization that establishes a service center providing information, referral, and counseling services relating to health, housing, finances, education, and employment, as well as a facility for specialized recreation for a particular community's senior citizens, who need not become members to obtain the services or participate in the activities, was held to qualify for exemption under IRC 501(c)(3) in Rev. Rul. 75-198, 1975-1 C.B. 157.
 6. A nonprofit employment agency operated free of charge for the elderly was held to be charitable based on the finding that it performed its services primarily for those of limited means in Rev. Rul. 66-257, 1966-2 C.B. 212.
 7. An organization providing, 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 IRC 501(c)(3) in Rev. Rul. 77-246, 1977-2 C.B. 190.
 8. An organization whose stated purpose was to provide training, jobs, and recreation for senior citizens by operating retail stores did not qualify for exemption under IRC 501(c)(3). Although it incidentally served the needs of senior citizens, the evidence indicated that the retail sales operation was an end in itself. Proceeds from the business were used almost exclusively for its perpetuation. Thus, the organization's primary activity was the operation of the retail store, which was not devoted exclusively to charitable purposes. Senior Citizens Stores v. United States, 602 F.2d 711 (5th Cir. 1979).
 9. 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 nonprofit pharmaceutical service was not exempt as a charitable organization because it was operated for the substantial commercial purpose of providing pharmacy services to the general public. Although it provided special discount rates for handicapped and senior citizens in its area, it was not committed to providing 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.

7.25.3.5.1.4 (02-23-1999)

Assisting the Sick or Handicapped

1. An organization ministering to the nonmedical needs of patients in a proprietary hospital may be exempt under IRC 501(c)(3). Nonmedical needs include reading to patients, writing letters for them and providing other similar personal services. See Rev. Rul. 68-73, 1968-1 C.B. 251.
2. A hospice, providing both inpatient and outpatient care to alleviate the physical and mental distress of the terminally ill was held to be operated exclusively for charitable purposes within the meaning of IRC 501(c)(3) in Rev. Rul. 79-17, 1979-1 C.B. 193.
3. A nonprofit organization that provides specially designed housing for physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently

become unable to pay its monthly fees was held to be operated exclusively for charitable purposes within the meaning of IRC 501(c)(3) in Rev. Rul. 79-19, 1979-1 C.B. 195.

4. An otherwise qualifying organization that subsidizes private hospital rooms for patients who can benefit medically from a private room but who cannot afford the expense of such a room was held exempt under IRC 501(c)(3) as a charitable organization in Rev. Rul. 79-358, 1979-2 C.B. 225.
5. Rev. Rul. 81-28, 1981-1 C.B. 328 recognized an organization that provides housing, transportation, and counseling to hospital patients' relatives and friends who travel to the locality to assist and comfort the patients as exempt under IRC 501(c)(3).

7.25.3.5.1.5 (02-23-1999)

Fire, Rescue, and Emergency Services

1. Providing fire, rescue, or emergency services for the general community is a charitable purpose because it lessens the burdens of government. It also serves the social welfare. However, many volunteer fire companies also provide recreational facilities or social events. Whether those activities preclude the organization from being operated exclusively for the charitable purpose of providing fire, rescue or emergency services is a question of fact.
2. Rev. Rul. 74-361, 1974-2 C.B. 159, considered the qualification for exemption of a volunteer fire company that provided fire and ambulance services to a community. Except for two full-time firefighters, the organization was staffed by volunteers who were on call to perform duties as firefighter, ambulance driver, or paramedic when needed. This organization maintained regular recruiting and training programs. It maintained recreational facilities available to its volunteers, whether on or off-duty, but not available to the general public. It also held weekly public dances conducted by volunteers drawn from its membership. All income was spent for exempt purposes. Rev. Rul. 74-361 held that the organization qualified for exemption under IRC 501(c)(3), and noted that it could have applied for and been recognized as a social welfare organization under IRC 501(c)(4). Under the particular facts, the social and recreational activities did not disqualify the organization under IRC 501(c)(3).
 - A. The recreational facilities for members served exempt purposes rather than a nonexempt social purpose. Under the circumstances, the facilities helped forestall the tedium that could drive out volunteers, and fostered comradery and a spirit of cooperation necessary for an effective fire fighting unit.
 - B. The weekly dances were not unrelated trade or business because all the work in carrying them on was performed without compensation.
3. Rev. Rul. 70-590, 1970-2 C.B. 116, holds that an organization operating a drug rescue center and a telephone drug crisis hot line for persons with drug problems is operated for charitable purposes.

7.25.3.5.1.6 (02-23-1999)

Legal Assistance to Low Income Persons

1. Providing legal services to persons financially incapable of paying for them is a form of relief of the poor and distressed. Thus, a non-profit legal aid society providing free legal services to indigent persons may be exempt under IRC 501(c)(3). See Rev. Rul. 69-161, 1969-1 C.B. 149.

Rev. Rul. 69-161 was amplified in Rev. Rul. 78-428, 1978-2 C.B. 177, which provides that an organization providing legal services to indigents for a fee may qualify for exemption under IRC 501(c)(3) if the fees are based on the indigent clients' ability to pay rather than the type of services rendered.

2. An organization that provides substantial free legal services to low income residents of economically depressed communities by subsidizing recent law graduates who have been admitted to the bar was held to be exempt under IRC 501(c)(3) in Rev. Rul. 72-559, 1972-2 C.B. 247. Similarly, in Rev. Rul. 78-310, 1978-2 C.B. 1973, an organization that assisted a school's law students, chosen on the basis of merit and interest, to obtain practical experience with exempt public interest law firms and legal aid societies by supplementing the nominal salaries paid by the participating firms and societies was held to qualify for exemption under IRC 501(c)(3). In addition to promoting the law students' educations, the organization's payments constituted indirect support of the firms and societies that employed the students.
3. However, a nonprofit lawyer referral service, which provides any member of the public with names of lawyers from a list of approved lawyers it maintains and on request can schedule an initial half hour appointment for a nominal charge, does not qualify for exemption under IRC 501(c)(3). Although it provides some public benefit, it has the substantial purpose of promoting the legal profession. Thus, a lawyer referral service may qualify for exemption under IRC 501(c)(6) but not under IRC 501(c)(3). See Rev. Rul. 80-287, 1980-2 C.B. 186.
4. The posting of bail bond or the payment of bondsmen's fees on behalf of indigent persons has been held to be a charitable purpose. Thus, Rev. Rul. 76-21, 1976-1 C.B. 147, holds that an organization that, as part of its integrated program of providing legal, rehabilitative, employment, and other services to persons accused of crimes, posts its own money or property with the court as total or partial bail for indigent defendants qualifies for exemption. Similarly, an organization that provides free legal services and funds necessary to pay the commercial bondsmen's fees for indigent persons accused of crimes was held to be operated exclusively for charitable purposes in Rev. Rul. 76-22, 1976-1 C.B. 148.

7.25.3.5.1.7 (02-23-1999)

Assistance to Employees

1. Financial assistance to employees or retired employees is not, in and of itself, a charitable activity because employees or retired employees as a class are not necessarily "needy and distressed." See Rev. Rul. 56-138, 1956-1 C.B. 202; Watson Exr. v. United States, 355 F.2d 269 (3rd Cir. 1965); and Rev. Rul. 68-422, 1968-2 C.B. 107.
2. Particular individuals who are employees may become needy or distressed in times of natural disaster, civil disorder, or personal calamity such as a serious illness or death in the employee's immediate family. However, employer funded or controlled programs to relieve such distress will generally confer impermissible private benefit on the employer because they enhance the employer's ability to attract and retain employees by offering protection based on an employment eligibility requirement.
3. When a public charity is the employer, the benefit to the employer is not an impermissible benefit to private interests. Therefore, an employee disaster relief or hardship program of a public charity for its own employees will generally not jeopardize the organization's exempt status. Facts and circumstances supporting a favorable conclusion in such a case include the following:

- A. The employer has been recognized as exempt under IRC 501(c)(3) and has been classified as other than a private foundation under IRC 509(a)(1) or (2).
 - B. The class of eligible beneficiaries is sufficiently large and open ended to constitute a charitable class. See Rev. Rul. 56-403, 1956-2 C.B. 307.
 - C. Selection of recipients is made on an objective and nondiscriminatory basis.
 - D. The organization obtains sufficient evidence to verify the need for the type of assistance it provides.
 - E. The award of assistance is discretionary, not a matter of entitlement.
 - F. Employment status is relevant only as an initial qualifier.
 - G. Records are kept of all distributions in accordance with Rev. Rul. 56-304, 1956-2 C.B. 306.
 - H. The organization is not a membership organization.
4. Even though a public charity's program to assist its employees may not jeopardize its exempt status, the assistance received by the employees may still constitute taxable income to them. See IRC 102(c).
 5. A disaster relief or hardship program funded and controlled by employees that functions independently of the employer and is neither controlled nor funded to any significant degree by the employer may be entitled to exemption if the criteria listed above, are satisfied.
 6. If a taxable entity provides assistance to its employees through a controlled, tax exempt private foundation, the private benefit to the taxable employer may cause the employer to be liable for excise taxes on acts of self-dealing under IRC 4941 and the private foundation to be liable for excise taxes on nonexempt purpose expenditures under IRC 4945. The benefit to the employer will not ordinarily be considered to be incidental or tenuous within the meaning of Reg. 53.4941(d)-2(f)(2).

7.25.3.5.2 (02-23-1999)

Digests of Precedent Rulings

1. Public recreation facilities— A nonprofit organization formed for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreation facilities for the children and other residents of a community is exempt from tax. Rev. Rul. 59-310, 1959-2 C.B. 146. But see Rev. Rul. 67-325, 1967-2 C.B. 113, which held that an organization providing recreational facilities to residents of a community is not organized and operated exclusively for charitable purposes because it excluded members of the community on the basis of race.
2. Employment assistance to the elderly— A nonprofit organization that aids unemployed elderly persons of limited means to find employment by providing them free services and educating the public about the employment capabilities of elderly persons qualifies for exemption. Rev. Rul. 66-257, 1966-2 C.B. 212.
3. Blood banks— A nonprofit blood bank that provides a community with permanent facilities for the collection, storage, and distribution of blood, and furnishes a variety of services for the community at large and for health agencies within the community, is charitable within the

meaning of IRC 501(c)(3). However, the organization is subject to unrelated business income tax on sales of blood to commercial laboratories. Rev. Rul. 66-323, 1966-2 C.B. 216.

4. Housing guidance to low income families— A nonprofit organization that provides instruction and guidance to low income families in need of adequate housing and interested in building their own homes is exempt from tax. Rev. Rul. 67-138, 1967-1 C.B. 129. See also Rev. Rul. 70-585, 1970-2 C.B. 115; and Rev. Rul. 68-17, 1968-1 C.B. 247.
5. Prisoner rehabilitation— An organization devoted to rehabilitating convicts to help them become self-supporting and useful citizens is exempt under IRC 501(c)(3), as is an organization formed to develop, manage, and operate community correctional centers to rehabilitate prisoners selected by the courts or governmental custodial agencies. Rev. Rul. 67-150, 1967-1 C.B. 133, and Rev. Rul. 70-583, 1970-2 C.B. 114.
6. Promoting nondiscriminatory housing— An organization formed to educate the public about the need to make housing available to members of the public on a nondiscriminatory basis and to encourage investment in such housing may be exempt from tax. Rev. Rul. 67-250, 1967-2 C.B.182.
7. Ministering to the sick— A nonprofit organization created to minister to the nonmedical needs of patients in a proprietary hospital qualifies for exemption as an organization described in IRC 501(c)(3). Rev. Rul. 68-73, 1968-1 C.B. 251.
8. Self-help program— A nonprofit organization formed and operated to assist needy families in "developing" countries may be exempt from tax. Rev. Rul. 68-117, 1968-1 C.B. 251.
9. Self-help program— A nonprofit organization created to market the cooking and needlework of women who are not otherwise able to support themselves and their families may be exempt from tax, even though it receives a small commission on each sale, if the organization is not self-supporting and must depend on public contributions. Rev. Rul. 68-167, 1968-1 C.B. 255.
10. Self-help program— A domestic nonprofit corporation (composed of educational, civic, business, and other groups) that joins with a counterpart group in a country in Latin America to promote student and cultural exchanges and to provide technical and material assistance for self-help projects designed to improve the living conditions of underprivileged people in Latin America may be exempt from tax. Rev. Rul. 68-165, 1968-1 C.B. 253.
11. Pension to retired employees— An organization created pursuant to the will of a stockholder of a company to pay pensions to all retired employees of that company does not qualify for exemption. Rev. Rul. 68-422, 1968-2 C.B. 207. See also Rev. Rul. 56-138, 1956-1 C.B. 202.
12. Legal aid society— A nonprofit legal aid society providing free legal services to indigent persons otherwise financially incapable of obtaining such services qualifies for exemption. Rev. Rul. 69-161, 1969-1 C.B. 149. See also Rev. Rul. 78-428, 1978-2 C.B. 177, which provides that an organization providing legal services to indigents for a fee may qualify for exemption under IRC 501(c)(3) if the fees are based on the indigent clients' limited ability to pay rather than the type of services rendered.
13. Rescue service— A nonprofit organization that conducts emergency rescue services for stranded, injured or lost persons is exempt as an organization described in IRC 501(c)(3). Rev. Rul. 69-174, 1969-1 C.B. 149.

14. Credit counseling service— A nonprofit 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. Rev. Rul. 69-441, 1969-2 C.B. 115.
15. Day care center— 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 need for the care and development program of the center qualifies for exemption. Rev. Rul. 70-533, 1970-2 C.B. 112.
16. Drug rescue center— An organization that maintains a drug rescue center and a telephone drug crisis service for persons with drug problems was held exempt as an organization described in IRC 501(c)(3). Rev. Rul. 70-590, 1970-2 C.B. 116.
17. Community welfare— A nonprofit organization formed to provide food and drink to firemen, policemen, and other emergency personnel at the scene of fires, riots and other disasters qualifies for exemption. Rev. Rul. 71-99, 1971-1 C.B. 151.
18. Housing; elderly— 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 IRC 501(c)(3). Rev. Rul. 79-18, 1979-2 C.B. 194. See also Rev. Rul. 72-124, 1972-1 C.B. 145; Rev. Rul. 61-72, 1961-1 C.B. 188; and Rev. Rul. 64-231, 1964-2 C.B. 139.
19. Legal services corporation— An organization formed to provide substantial free legal services to low income residents of economically depressed communities through subsidization of recent law graduates who have been admitted to the bar is exempt as an organization described in IRC 501(c)(3). Rev. Rul. 72-559, 1972-2 C.B. 247.
20. On-the-job training— An organization that is otherwise qualified for exemption will not fail to qualify because its educational and vocational training of unemployed and underemployed persons is carried out through the manufacturing and selling of toy products. Rev. Rul. 73-128, 1973-1 C.B. 222. See also Rev. Rul. 73-127, 1973-1 C.B. 221; and Rev. Rul. 77-272, 1977-2 C.B. 191.
21. Volunteer fire company— A nonprofit organization that was organized and operated to provide fire protection and ambulance and rescue services to a community qualifies for exemption as a charitable organization under IRC 501(c)(3). Rev. Rul. 74-361, 1974-2 C.B. 159.
22. Senior citizen center— An organization that establishes a service center providing information, referral, and counseling services relating to health, housing, finances, education and employment as well as a facility for specialized recreation for a community's senior citizens, who need not become members to participate in the activity, may qualify for exemption as a charitable organization under IRC 501(c)(3). Rev. Rul. 75-198, 1975-1 C.B. 157.
23. Organization of public housing tenant groups— An organization of public housing tenant groups in a State that was formed to promote the rights and welfare of public housing tenants by providing them information and technical assistance about regulations and laws concerning

public housing, and that acted as the recognized State agent for public housing tenant organizations, qualifies for exemption. Rev. Rul. 75-283, 1975-2 C.B. 201.

24. Rural rest home for elderly poor— A nonprofit, publicly supported organization that operates a rural rest home to provide, at a nominal charge, two-week vacations for elderly poor people from nearby metropolitan areas qualifies for exemption. Rev. Rul. 75-385, 1975-2 C.B. 205.
25. Halfway house operating furniture shop— 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. Rev. Rul. 75-472, 1975-2 C.B. 208.
26. Legal assistance; posting bail bond— An organization that, as part of its integrated program of providing legal, rehabilitative, employment, and other services to persons accused of crimes, posts its own money or property with the court as total or partial bail for indigent defendants unable to provide funds with which to post bail may qualify for exemption. Rev. Rul. 76-21, 1976-1 C.B. 147.
27. Legal assistance; bondsmen's fees— An organization otherwise qualifying for exemption under IRC 501(c)(3) that provides free legal services and funds necessary to pay the commercial bondsmen's fees for indigent persons accused of crimes is operated exclusively for charitable purposes. Rev. Rul. 76-22, 1976-1 C.B. 148.
28. Bus transportation for senior citizens— A nonprofit organization that provides, on request, low cost bus transportation to senior citizens and handicapped persons in a community where public transportation is unavailable or inadequate qualifies for exemption. Rev. Rul. 77-246, 1977-2 C.B. 190.
29. Subsidizing law students' work in legal aid— An organization that assisted a school's law students, chosen on the basis of merit and interest, to obtain practical experience with exempt public interest law firms and legal aid societies by supplementing the nominal salaries paid by the participating firms and societies qualifies for exemption under IRC 501(c)(3). In addition to promoting the law students' educations, the organization's payments constituted indirect support of the firms and societies that employed the students. Rev. Rul. 78-310, 1978-2 C.B. 173.
30. Hospice— A nonprofit hospice, operated on both an inpatient and outpatient basis to alleviate the physical and mental distress of the terminally ill, is operated exclusively for charitable purposes and qualifies for exemption. Rev. Rul. 79-17, 1979-1 C.B. 193.
31. Housing for the physically handicapped— A nonprofit organization that provides specially designed housing to physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is operated exclusively for charitable purposes within the meaning of IRC 501(c)(3). Rev. Rul. 79-19, 1979-1 C.B. 195.
32. Private hospital rooms for the poor— An otherwise qualifying organization that makes private hospital rooms available to patients who can benefit medically from a private room but who cannot afford the expense of such a room is operated exclusively for charitable purposes and qualifies for exemption as an organization described in IRC 501(c)(3). Rev. Rul. 79-358, 1979-2 C.B. 225.

33. Adoption agency; placement of foreign orphans— A nonprofit organization that arranges the placement of orphan children from foreign countries in the homes of adoptive parents in the United States is operated exclusively for charitable purposes. Rev. Rul. 80–200, 1980–2 C.B. 173.
34. Litigation of environmental issues— An otherwise qualifying organization that was formed to protect and restore environmental quality and whose principal activity consists of instituting litigation as a party plaintiff to enforce environmental legislation is operated exclusively for charitable purposes and qualifies for exemption. Rev. Rul. 80–278, 1980–2 C.B. 175.
35. Lawyer referral service— A nonprofit lawyer referral service, which arranges at the request of any member of the public an initial half-hour appointment for a nominal charge with a lawyer whose name is on an approved list maintained by the organization, does not qualify for exemption under IRC 501(c)(3). Although it provides some benefit to the public, a substantial purpose of the organization is promoting the legal profession. Thus, a lawyer referral service may qualify for exemption as an organization described in IRC 501(c)(6) but not in IRC 501(c)(3). Rev. Rul. 80–287, 1980–2 C.B. 185.
36. Housing, transportation, and counseling for relative of hospital patients— A nonprofit organization that provides housing, transportation, and counseling to hospital patients’ relatives and friends who travel to the locality to assist and comfort the patients qualifies for exemption. Rev. Rul. 81–28, 1981–1 C.B. 328.

7.25.3.6 (02-23-1999)

Religion or Advancement of Religion

1. IRC 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 Reg. 1.501(c)(3)–1(d)(2) may also qualify under IRC 501(c)(3) as charitable or educational organization.

7.25.3.6.1 (02-23-1999)

Constitutional Considerations

1. The First Amendment to the United States Constitution provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. However, the Supreme Court has held that a legislative grant of tax exemption does not violate this prohibition. In Walz v. Tax Commission of the City of New York, 97 U.S. 664 (1970), the Court upheld the constitutionality of property tax exemptions granted by New York City to religious organizations for properties used solely for religious worship. In holding that the exemption of religious organizations, including churches, from tax, is not a law respecting an establishment of religion in violation of the First Amendment, the Court noted that the minimal involvement between church and state created by exemption is far less entanglement than taxation would entail.

7.25.3.6.2 (02-23-1999)

Compliance with Statutory Requirements

1. Any religious organization, including a church, must satisfy the statutory requirements to be exempt under IRC 501(c)(3). As explained by the court in Christian Echos National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. den., 414 U.S. 864 (1973), in which the court upheld denial of tax exemption to a religious organization engaged in substantial legislative

activity, "[i]n light of the fact that tax exemption is a matter of grace rather than right, we hold that the limitations contained in Section 501(c)(3) withholding exemption from nonprofit corporations [that engage in substantial lobbying] do not deprive Christian Echoes of its constitutionally guaranteed right of free speech. The taxpayer may engage in all such activities without restraint, subject, however, to withholding of the exemption, or, in the alternative, the taxpayer may refrain from such activities and obtain the privilege of exemption."

2. Exemption from state or local taxation is neither conclusive nor relevant to the determination whether an organization is operated exclusively for religious purposes under federal tax law. Universal Life Church v. U.S., 721 USTC 9467 (E.D. Cal. 1972).

7.25.3.6.3 (02-23-1999)

Burden of Proof

1. As noted by the court in Church of Spiritual Technology v. United States, 26 Cl. Ct. 713 (1992), which upheld denial of an organization's application for recognition of exemption, in demonstrating their entitlement to exemption, churches and other religious organizations are subject to the same burden of proof requirements as other organizations.
2. The court in Church of Spiritual Technology cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court stated that "[i]ncome tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct."
3. Similarly, the court cited Welch v. Helvering, 190 U.S. 111, 115 (1933), and modern cases following its stricture that "[P]laintiff thus bears the burden of proving its entitlement to an exemption." See also, Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104, 106 (9th Cir. 1981); Freedom Church of Revelation v. United States, 588 F. Supp. 693, 696 (D.D.C. 1984).

7.25.3.6.4 (02-23-1999)

Validity of Religious Belief

1. In making a determination whether a religious organization qualifies for exemption under IRC 501(c)(3), the Internal Revenue Service cannot pass judgment on the merits of the applicant's asserted religious belief.
2. Accordingly, proof of entitlement to exemption does not include proving the validity of the religious doctrines or beliefs of the applicant or its members. It is the government's duty to "make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary." Zorach v. Clausen, 343 U.S. 306 (1952).
3. This concept is also discussed in U.S. v. Ballard, 322 U.S. 78 (1943), in which the Court stated "The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views...The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the

religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain."

7.25.3.6.5 (02-23-1999)

Religious Belief Defined

1. The term "religious" as used in IRC 501(c)(3) is not subject to precise definition. The leading interpretation of the term was made by the Supreme Court in United States v. Seeger, 380 U.S. 163 (1965), in which the Court interpreted the phrase "religious training and belief" as used in the Universal Military Training and Service Act, 50 U.S.C. section 456 (j), in determining an individual's eligibility for exemption from military service on religious grounds. The Court formulated the following definition: "A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition."
2. The Court elaborated upon the Seeger definition in Welsh v. United States, 398 U.S. 33 (1970), stating that "[i]f an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual a place parallel to that filled by... God in the lives of traditionally religious persons." Thus, religious beliefs include many beliefs (for example, Taoism, Buddhism, and Secular Humanism) that do not posit the existence of a Supreme Being in the conventional sense.

7.25.3.6.6 (02-23-1999)

Actions Distinguished from Beliefs

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 an important governmental policy or objective even though compliance may be contrary to an individual's sincerely-held religious beliefs.
2. In Reynolds v. United States, 98 U.S. 145 (1878), the Court upheld a law passed by Congress that made the practice of polygamy by persons residing in United States territories a crime. The Court interpreted the constitutional prohibition in this way: "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." Finding that polygamy had long been considered an offense against society in all the states of the union, the Court held that the statute under consideration was constitutional and valid as prescribing a rule of action for all those residing in the territories. In holding that religious belief did not except persons from operation of the statute, the Court said: "While they [laws] cannot interfere with mere religious belief and opinions, they may with practices."
3. In Cantwell v. Connecticut, 310 U.S. 296 (1940), the Court endorsed Reynolds, stating that "the [First] Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." See also Davis v. Beason, 133 U.S. 33 (1890), and Mormon Church v. United States, 136 U.S. 1 (1890), where the Court grappled with the same issue. While continuing to affirm the right of freedom of religious belief, the Court nevertheless held that legislation for the punishment of actions "inimical to the peace, good order and morals of society" did not violate the First Amendment.

4. A notable recent application of this doctrine is Bob Jones University v. United States, and Goldsboro Christian Schools v. United States, 461 U.S. 574 (1983), in which the Supreme Court upheld revocation of the exemption under IRC 501(c)(3) of religious and educational institutions 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.

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