

TAX SEMINAR PRESENTED TO CHRISTIAN LEGAL SOCIETY**OCTOBER 9, 2025, AT THE INTERCONTINENTAL HOTEL****NEW ORLEANS, LOUISIANA****CHARITABLE ORGANIZATIONS AND THE UNRELATED****BUSINESS INCOME TAX****NONPROFIT ENTITIES' USE OF FOR-PROFIT****ENTITIES TO GENERATE INCOME****1. GENERAL TAX RULES APPLICABLE TO CHARITABLE ORGANIZATIONS**Organizational Test

A charitable entity must be organized exclusively for one or more exempt purposes set forth in Internal Revenue Code ("Code") §501(c)(3). The entity's governing documents must so limit its purposes and cannot expressly empower the entity to engage in activities that do not further such purposes, unless the activities are insubstantial. The entity's governing documents cannot expressly empower it to devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, directly or indirectly, or 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.

Operational Test

The operational test requires the entity to be operated exclusively for exempt purposes under Code §501(c)(3) meaning that it must engage primarily in activities that accomplish one or more of those purposes. This test also incorporates the private inurement prohibition of Code §501(c)(3), i.e., that no part of the net earnings may inure in whole or in part to the benefit of private shareholders or individuals. "Private shareholders or individuals" are defined as persons having a personal and private interest in the activities of the entity.

2. ADDITIONAL TAX RULES APPLICABLE TO PRIVATE FOUNDATIONS

Unlike a public charity, a private foundation usually grants funds to other tax-exempt entities, governmental entities or individuals and does not operate charitable programs and services. Because of the lack of public oversight and participation, a private foundation is closely

regulated under federal tax laws to safeguard against operation for private benefit and ensure operation in furtherance of charitable purposes.

A. Annual Minimum Distribution Requirement

A private foundation must distribute certain amounts annually to avoid an excise tax on undistributed income.

B. Excise Tax on Net Investment Income

1. Imposition of Excise Tax on Net Investment Income

A private foundation will be subject to a tax each year equal to two percent of its “net investment income.” Net investment income is the amount by which the entity’s “gross investment income” and “capital gain net income” exceeds allowed deductions.

C. Self-Dealing

The Code’s self-dealing rules prohibit acts of direct or indirect self-dealing¹

D. Taxable Expenditures

The private entity taxable expenditure rules prohibit the foundation from making a “taxable expenditure.”² Any taxable expenditure made by the entity will subject the entity to a twenty percent (20%) initial tax.

¹ Although there are a number of statutory and regulatory exceptions, acts of self-dealing are generally defined as:

- Any sale, exchange, or leasing of property between the entity and a disqualified person.
- Any lending of money or other extension of credit between the entity and a disqualified person.
- Any furnishing of goods, services, or facilities between the entity and a disqualified person.
- The payment of compensation or reimbursement of expenses by the entity to a disqualified person.
- Any transfer to, or use by or for the benefit of, a disqualified person of the entity’s income or assets.
- Any agreement to make any payment of money to a government official.

The definition of self-dealing is deliberately broad. Actual transactions between the entity and a disqualified person, such as a sale or lease, are clearly covered. But other transactions that result in a benefit to a disqualified person derived from payments or other activities of the entity can be included within the scope of the provision prohibiting any transfer to, or use by or for the benefit of, a disqualified person of the entity’s income or assets.

² Taxable expenditures are defined as:

- Expenditures to carry on propaganda or otherwise attempt to influence legislation.
- Expenditures to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive.
- Grants to an individual for travel, study, or other similar purposes unless the grant is awarded on an objective and nondiscriminatory basis and under a process that is approved in advance by the Service.
- Grants to an organization other than one that is a public charity described in Code §509(a)(1), (2), or (3) (but not including a nonfunctionally integrated Type III supporting organization), a governmental unit, or an exempt operating entity (as defined in Code §4940(d)(2)).

E. Excess Business Holdings

Excise taxes are imposed on the “excess business holdings” in a “business enterprise” during any tax year. The tax is ten percent (10%) of the value of the excess business holdings.

Generally, the “permitted holdings” of the foundation in any incorporated business enterprise are twenty percent (20%) of the voting stock of such business enterprise, reduced by the percentage of the voting stock owned by all disqualified persons. In certain cases, the twenty percent (20%) amount in the definition can be increased to thirty-five percent (35%).

F. Private Foundation Scholarships

A grant by a private foundation to an individual for travel, study, or other similar purpose by such individual is a “taxable expenditure” for purposes of Code §4945 unless such grant satisfies the requirements of Code §4945(g).³

The foundation must be careful in granting scholarships to the employees or relatives of related entities. When educational grants are preferentially made available by an employer to its employees, the employer-employee relationship suggests that the grant is compensatory.⁴ The Internal Revenue Service (“Service”) will, however, permit the entity’s program if the availability of grants to children of related entities’ employees falls outside the pattern of employment.

3. UNRELATED BUSINESS INCOME TAX

A nonprofit organization is subject to unrelated business income tax (“UBIT”) if part of its revenues consists of unrelated business taxable income. This occurs if the organization regularly carries on a trade or business that is unrelated to its exempt purposes.

A. Trade or Business

In defining “unrelated trade or business,” the Treasury regulations use the concept of “trade or business” as used by Code §162, that allows deductions for expenses paid or incurred “in carrying on any trade or business.”⁵ However, the case law does little to clarify the issues. Because expenses incurred in profit-oriented activities not constituting a trade or business are deductible under Code §212,⁶ it is rarely necessary to decide whether an activity conducted for profit is a trade or business. The few cases on the issue under Code §162 generally limit the term “trade or business” to profit-oriented endeavors involving regular activity by the taxpayer.⁷ The Treasury regulations state the term “trade or business” includes “any activity carried on for the production of income from the sale of goods or performance of services.”⁸ The United States Tax Court (“Tax Court”) has applied a “profit motive test,” under which a trade

³ Code § 4945(d)(3) which references Code §4945(g).

⁴ See Bingler v. Johnson, 394 U.S. 741 (1969), 1969-2 C.B. 17.

⁵ Treasury regulation § 1.513-1(b).

⁶ Code §212.

⁷ Cases under § 1221(a)(2), providing that property used in a trade or business is not a capital asset, are another source of authority on the issue.

⁸ Treasury regulation §1.513-1(b).

or business is an activity carried on by an exempt organization with a "motive or intent" of producing income.⁹ Other courts are supportive of this approach.¹⁰ However, a profit motive is sufficient only if coupled with activities in pursuit of that goal. Citing cases under Code §162, the Tax Court concluded that "[w]hile a profit motive is an important factor in the trade or business analysis,...the level of activity remains an important component of the trade or business standard."¹¹

The Treasury regulations provide that the trade or business concept "is not limited to integrated aggregates of assets, activities and goodwill which comprise businesses for the purposes of certain other [Code] provisions."¹² An activity carried on for the production of income from sales of goods or the performance of services "does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization."¹³

B. Regularly Carried On

The UBIT only applies to income of an unrelated trade or business that is "regularly carried on" by an organization. Whether a trade or business is regularly carried on is determined in light of the underlying objective to reach activities competitive with [those of] taxable businesses.¹⁴ The requirement thus is met by activities that manifest a frequency and continuity, and are pursued in a manner generally similar to comparable commercial activities of nonexempt organizations. Short-term activities are exempted if comparable commercial activities of private enterprises are usually conducted on a year-round basis (e.g., a sandwich stand operated by an exempt organization at a state fair), but a seasonal activity is considered regularly carried on if its commercial counterparts also operate seasonally (e.g., a horse-racing track).¹⁵ Also, intermittent activities are ordinarily exempt if conducted without promotional efforts typical of commercial endeavors.¹⁶ Moreover, if an organization conducts an enterprise primarily for beneficiaries of its exempt activities (e.g., a student bookstore), casual sales to outsiders are ordinarily not a "regular" trade or business.¹⁷

⁹ National Water Well Ass'n v. CIR, 92 TC 75, 86 (1989).

¹⁰ American Acad. of Family Physicians v. US, 91 F3d 1155 (8th Cir. 1996) (although taxpayer, as sponsor of group insurance plans underwritten by commercial insurer, was entitled to policy reserves and interest remaining after payment of all claims while held by insurer, there was no trade or business as a result of no profit motive); Professional Ins. Agents v. CIR, 78 TC 246 (1982), aff'd, 726 F2d 1097 (6th Cir. 1984) (any activity engaged in with intent to earn profit is trade or business for this purpose).

¹¹ Ohio Farm Bureau Fed'n, Inc. v. CIR, 106 TC 222, 234 (1996).

¹² Treasury regulation §1.513-1(b).

¹³ Code §513(c); Treasury regulation §1.513-1(b).

¹⁴ Treasury regulation §1.513-1(c)(1).

¹⁵ Treasury regulation §1.513-1(c)(2)(i). See Veterans of Foreign Wars v. CIR, 89 TC 7, 32 (1987) (annual mailings of Christmas cards to organization's members, accompanied by requests for donations in suggested amounts, was trade or business regularly carried on; "[n]onexempt organizations normally conduct greeting card sales business as on a year-round basis, but the Christmas card portion of their activities is on a seasonal basis"); Revenue Ruling 80-297, 1980-2 CB 196 (tennis club run by school for 10 weeks each summer was regularly carried on); Revenue Ruling 68-505, 1968-2 CB 248 (horse racing with pari-mutuel betting, conducted by exempt county fair association for two weeks annually, was unrelated trade or business).

¹⁶ Treasury regulation §1.513-1(c)(2)(ii). But see Revenue Ruling 55-449, 1955-2 CB 599 (one-time construction of eighty houses over period of eighteen months was unrelated trade or business).

¹⁷ Treasury regulation §1.513-1(c)(2)(ii).

C. Unrelated to Exempt Purpose

Income from the regular conduct of a trade or business is subject to the UBIT only if the trade or business is "not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption."¹⁸ A trade or business is "substantially related" for exempt purposes only if its conduct has a "causal relationship to the achievement of" these purposes and this relationship is "substantial."¹⁹ To meet this requirement, "the production or distribution of the goods or the performance of services" comprising a trade or business "must contribute importantly" to the accomplishment of the organization's exempt purposes. The issue is whether a trade or business is conducted "as an end in itself or as the means by which [an organization] accomplishes a charitable purpose other than through the production of income."²⁰ That an organization needs or uses income from a trade or business to discharge exempt functions does not establish a substantial relationship.²¹

Whether a trade or business competes with for-profit businesses is relevant to whether the trade or business is substantially related. For example, the Service ruled that a health club operated by a tax-exempt organization was an unrelated trade or business, even though the organization's exempt purpose was to contribute to the physical, social, mental, and spiritual health of young people because the organization charged fees for use of the club that were comparable to those of commercial rivals and were "sufficiently high to restrict the health club's use to a limited number of the members of the community."²²

Analysis relating to UBIT is highly fact-intensive and depends upon the facts and circumstances of each case. The Service's private letter ruling ("PLR") 200832027 indicates the Service's position on this issue.²³ The facts of that PLR involved a

¹⁸ Code §513(a). See Treasury regulation §1.513-1(d)(1) ("not substantially related (other than through the production of funds) to the purposes for which exemption is granted").

¹⁹ Treasury regulation § 1.513-1(d)(2).

²⁰ Revenue Ruling 73-128, 1973-1 CB 222 (manufacturing plant operated for education and vocational training of unemployed persons was substantially related to exempt purpose).

²¹ Treasury regulation §513(a). Activities specifically excluded from unrelated business income are activities in which the work is performed by volunteers or for members' convenience, sale of donated merchandise, qualified public entertainment activities, qualified convention and trade show activities, certain hospital services, bingo games, pole rentals, distribution or low-cost articles and exchange or rentals of mailing lists.

²² Revenue Ruling 79-360, 1979-2 CB 236. See Revenue Ruling 79-361, 1979-2 CB 237 (same for similar organization's miniature golf course). See also Revenue Ruling 80-297, 1980-2 CB 196 (tennis camp on school premises not substantially related to school's educational purposes).

²³ Internal Revenue Service Private Letter Ruling 200832027 involved a 501(c)(3) tax-exempt, 509(a)(1) publicly supported community entity with the primary purpose of supporting charitable activities that benefited citizens in the community through grant-making activities within that community. The organization proposed to carry out its purpose by selling its internal grant management and administrative services to other grant-making charities. The grant-making charities receiving these service were primarily private entities that operated independently in the community and that "lack[ed] the staff, expertise or resources to conduct their own internal grant-making functions. The organization offered nine different services – from assisting with the establishment of a grant-making program to handling day-to-day inquiries from potential grant applicants – which were sold for a reasonable fee based on the hourly rate of the organization's staff. Income that exempt organization/community trust received from reasonable fees charged for providing described grant-making services to separate exempt organizations that served same community did not constitute UBIT under Code §512; however, income that organization received from reasonable fees charged for providing described administrative and clerical services to separate organizations did constitute UBIT and was subject to unrelated business income tax under Code §511. The fact that the

community entity which provided various services to grant-making organizations. The Service concluded that the grant-making services were not subject to UBIT, but that the administrative and clerical services were subject to UBIT since these services were provided daily and for a fee and were regularly carried on. Thus, the Service's ruling was based primarily on analysis of the third element as to whether the trade or business was related to the organization's exempt purpose.²⁴

To satisfy the operational test, the focus is the purpose toward which each activity of an organization is directed.²⁵ A single activity of an organization may further or accomplish multiple purposes, both exempt and non-exempt, and therefore the crucial inquiry is whether the primary purpose for engaging in an activity is to further or accomplish an organization's exempt purpose or purposes.²⁶ The exempt purposes that the activities are engaged in or support are questions of fact.²⁷ To demonstrate purpose, the courts and the Internal Revenue Service ("Service") focus not only on the design or intent to be accomplished by each organizational activity, but also on the manner in which each activity is conducted, the activity's commercial nature, and the existence and amount of profits produced by the activity.²⁸

Under the judicially created "commerciality doctrine,"²⁹ the courts and the Service have considered that an activity conducted in a "commercial manner" is not in furtherance of an exempt purpose and hence is a "non-exempt activity."³⁰ Yet, as long as the *primary* purpose of an organization in conducting commercial-type trade or business activity is not the conduct of an unrelated trade or business activity, the organization is entitled to conduct even substantial amounts of related commercial-type trade or business activity in furtherance of its exempt purposes.³¹ Although the

services were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable within the meaning of Code §501(c)(3). (emphasis added)

²⁴ The Service considers many factors to determine whether a trade or business is substantially related to the purpose for which the organization's exempt status was granted. Treasury regulation 1-513-1.

²⁵ *Better Business Bureau*, 326 U.S. 279, 283-84.

²⁶ *B.S.W. Group*, 70 T.C. 352, 355-56; *Better Business Bureau*, 326 U.S. 279, 283.

²⁷ *Pulpit Resource v. Commissioner*, 70 T.C. 594 (1978). See *Christian Manner Int'l, Inc. v. Commissioner*, 71 T.C. 661, 668 (1979).

²⁸ See *B.S.W. Group, Inc.* 70 T.C. 352; *Christian Manner Int'l, Inc.*, 71 T.C. 661 (stating that "we must be concerned with both the actual as well as the stated purposes for the existence of the organization and the activities it engages in to accomplish those purposes"). See also *Presbyterian and Reformed Publishing Co. v. Commissioner*, 743 F.2d 148, 155 (3d Cir. 1984); *American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Trust v. United States* 663 F. Supp. 275, 277 (M.D. Ala. 1987), *aff'd*, 850 F.2d 1510 (11th Cir. 1988).

²⁹ *Trinidad v. Sagrada Orden de Predicadores*, 263 U.S. 578, 581-82 (1924) (creating doctrine in context of religious order for activities that the Service alleged were not tax-exempt but were "operated also for business and commercial purposes" and stating there was no "competition" although the "transactions yield some profit" which was deemed "in the circumstances a negligible factor"). See *Better Business Bureau*, 326 U.S. 279, 283-84 (articulating commerciality doctrine formally and connecting it with exclusively operated requirement and in which organization's tax exemption was denied because organization had "commercial hue" and its activities were "largely animated by this commercial purpose"); *Church of Scientology of Calif. v. Commissioner*, 83 T.C. 381 (1984) (discussing and applying commerciality doctrine to religion founded by L. Ron Hubbard).

³⁰ See, e.g., *Monterey Public Parking Corp. v. United State*, 321 F. Supp. 972, 975-76 (N.D. Cal. 1970), *aff'd*, 481 F.2d 175 (with Cir. 1973); *Washington Research Found. v. Commissioner*, T.C. Memo 1985-570; PLR 201645017 (organization formed to operate coffee chop where "believers could interact with non-believers in a safe and friendly environment to convey the Gospel in a non-confrontational manner in word and deed" not operated exclusively for §501(c)(3) purposes because substantial portion of activities consist of operation of coffee shop in commercial manner).

³¹ See Treasury regulation §501(c)(3)-1(e)(1); Revenue Ruling 80-278, 1980-2 C.B. 175. But see PLR 201310045 (organization not exempt because of insufficient proof of church-related activity and primary activity of organization was operating consulting and merchandising businesses).

“presence of profit-making activities is not per se a bar to qualification of an organization as exempt....³² historically such activities have triggered the Service’s interest. A significant problem with the commerciality doctrine is that it provides no precise guidelines for determining when an activity crosses the line between classification as an “exempt activity” and as a “non-exempt activity.” The courts generally have enumerated the following factors in evaluating the facts and circumstances to determine whether an activity is commercial: (1) the scope of the organization’s net profits; (2) the extent of the organization’s accumulated surplus revenue; (3) amounts expended for tax-exempt functions; (4) the type of activities and whether the activities are in direct competition with for-profit entities; (5) the organization’s pricing method; (6) the organization’s promotion method; (7) whether an organization’s hours of operation are basically the same as those of for-profit enterprises; (8) whether management has “business ability”; (9) whether the organization utilizes volunteers or employs individuals in the conduct of the activity; and (10) whether the organization receives charitable contributions.³³

4. **SOLUTIONS TO UBIT**

Nonprofit Forms a For-Profit Subsidiary

The Code and Treasury regulations provide that a Code §501(c)(3) entity can own a for-profit subsidiary (“FPS”), subject to certain parameters. An FPS should be a separate entity, engage in activities distinct from those of the nonprofit and observe formalities required by law and the FPS’s governing documents. The nonprofit should not be involved in the day-to-day activities of an FPS, notwithstanding that there likely would be control of the FPS via common corporate directors or limited liability company managers. Also, while the nonprofit may control the FPS through some common directors or managers, the entities should avoid having completely identical directors and officers. Consider the following factors:

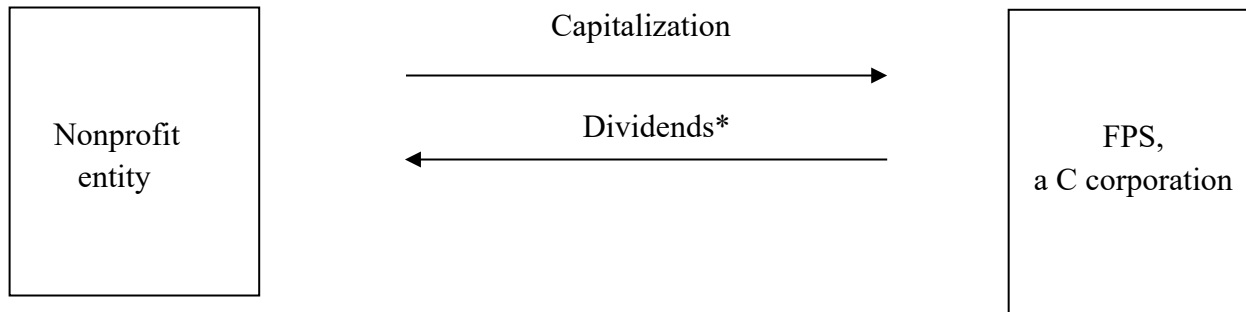
- the formation of an FPS would enable the nonprofit to avoid tax on unrelated business taxable income (“UBTI”).
- an FPS could offer equity interests to outside investors and equity compensation to employees.
- a nonprofit’s ownership of an FPS would have to be disclosed on the nonprofit’s annual IRS Form 990 which is required to be filed with the Internal Revenue Service (“Service”). However, fewer details would have to be provided than if the nonprofit were operating a trade or business without an FPS.
- the choice of entity for such an FPS should be a C corporation or a single member limited liability company (“LLC”). In most cases, we would not recommend an LLC. Single member LLC’s are disregarded entities for federal income tax purposes; as such,

³² *Aid to Artisan, Inc. v. Commissioner*, 71 T.C. 202, 211 (1978), acq., 1982-2 C.B. 1. See *Presbyterian and Reformed Publishing Co.*, 743 F.2d at 156; *San Francisco Infant School v. Commissioner*, 69 T.C. 957 (1978), acq., 1979-2 C.B. 2; Revenue Ruling 68-26.

³³ *Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 372 (7th Cir. 1991); *Federal Pharmacy Servs., v. Commissioner*, 625 F.2d 804 (8th Cir. 1980); *Elisian Guild, Inc. v. United States*, 412 F.2d 121 (1st Cir. 1969); *Peoples Translation Serv. Newsfront Int’l v. Commissioner*, 72 T.C. 42 (1979); *Scripture Press Found. v. United States*, 285 F.2d 800, 803-04 (C.F.C. 1961).

the nonprofit would likely have to file Internal Revenue Service Form 990-T, Exempt Business Organization Business Income Tax Return, to report UBTI, thereby subjecting the nonprofit to unwanted public scrutiny. Furthermore, significant growth in the for-profit business could ultimately jeopardize nonprofit's tax-exempt status with the Service.

The C corporation is the better choice for an FPS. The tax rules relating to FPS's payments and dividend distributions to the nonprofit are summarized in the following diagram:



*Dividends are not deductible by FPS and are not UBTI to the nonprofit. FPS pays federal and state income taxes on dividends.

**When the nonprofit capitalizes the FPS, the nonprofit must determine that such an investment does not violate applicable state law investment standards for fiduciaries or other prudent investor standards. To avoid UBTI, the nonprofit should not debt proceeds to capitalize a FPS.

5. DISASTER RELIEF BY EMPLOYERS FOR EMPLOYEES USING A NONPROFIT ENTITY - CASE STUDY

FACTS

ABC, a North Carolina corporation ("ABC") desires to create a nonprofit entity (ABC Charity) to assist financially the employees of ABC, their families, those employees (and their respective families) connected with ABC's vendors and others in the communities in which ABC operates retail facilities. The anticipated financial assistance would be precipitated by natural disasters or other unfortunate circumstances which create financial needs of any such persons. The retail businesses (collectively ABC-owned and franchisee-owned) are located in various parts of the United States (approximately twenty-four (24) states).

ABC wishes to benefit primarily those with direct and indirect relationships to ABC as described above and desires for the nonprofit entity to be organized pursuant to section 501(c)(3) of the Code so that contributions to the entity are tax deductible.

LAW

The public interest requirement provides that an activity is charitable only if it benefits a broad segment of the community. It applies regardless of the basis of an organization's claim for exemption and is not limited to organizations claiming to be "charitable." The

requirement overlaps a statutory prohibition on an organization's net earnings inuring to the benefit of private shareholders or individuals.³⁴

Activities benefiting small groups of persons usually run afoul of the community benefit requirement, particularly if these persons organized and are operating the entity carrying on the activities. Employer-financed trusts providing vocational training, scholarships, and other benefits to employees and their families are rarely exempt because their purposes are to serve the private ends of the employers and employees, although a few early decisions can be found allowing exemption on dubious grounds.³⁵

Mixed-benefit organizations are more difficult to classify.³⁶ An example is a community group engaged in rehabilitating or improving a geographical area whose activities are organized, controlled, or financed by adjacent landowners or other beneficiaries of the improvements. If the benefits for the larger community are substantial, the activities are comparable to museums, schools, and other public services that are supported by local people whose cultural lives are thereby enriched. On the other hand, if the benefits inure primarily to the organization's members and contributors, tax exemption may be denied for lack of sufficient benefits to the community.³⁷ On the other hand, the Service recognizes that organizations benefiting an entire community are usually charitable, even if the community is affluent.³⁸ When charitable status is denied for lack of sufficient public benefits, the defect is ordinarily not that the benefited group is too small but that it is composed primarily or solely of insiders.

To have ABC Charity recognized as a Code §501(c)(3) organization, ABC Charity would file Service Form 1023, Application for Recognition of Tax Exempt Status ("Application"), with the Service. The Application requires a detailed narrative of the proposed activities with regard to the organizational structure, activities and present and future funding. The goal is to provide a statement that provides objective standards by which those in the communities would be selected to receive benefits. It should not provide ABC's employees or its franchisees' employees an advantage when applying for financial assistance.

Conversely, ABC Charity would not want to be overly restrictive in its Form 1023 narrative to the Service because not every scenario can be anticipated.

CONCLUSION

ABC Charity must be organized and operated to benefit not only employees of ABC and its franchisees, their families, those employees (and their respective families) connected with ABC Charities' vendors and others in the communities in which ABC Charities and/or franchisees operate the retail facilities, but also the general public within the communities of

³⁴Treasury regulation §1.501(c)(3)-1(c)(2)

³⁵See Revenue Ruling 68-422, (testamentary trust to provide pension benefits to testator's employees not exempt, despite claim it was intended for relief of poor; no showing that class benefited is lacking in necessities or comforts of life); Revenue Ruling 56-138, (similarly). See also Watson v. US, 355 F2d 269 (3d Cir. 1965) (estate tax deduction disallowed for similar testamentary trust).

³⁶ See Revenue Ruling 76-442, (tax and estate planning services to persons making charitable contributions; held, benefit to charity overshadowed by private benefit).

³⁷ See Ginsberg v. CIR, 46 TC 47 (1966) (organization to dredge waterways not charitable because it primarily benefited contributing adjacent landowners; resulting storm harbor for small craft owned by public was only secondary).

³⁸ See Revenue Ruling 76-147, (community organization to combat deterioration, monitor public facilities, and similar activities in area with above-median income and housing was charitable; test is whether community interests are "truly public in scope and not merely the private interests of a class of persons not themselves comprising a charitable class.")

its businesses. While ABC Charities may benefit its employees and their families and others connected with ABC Charities in the communities, the application for tax-exempt status should clearly state that the entity intends to benefit the general public in the community in which ABC Charities and/or franchisees operate the retail facilities. ABC Charities should not communicate to its employees or franchisees that they will be favored in the event of any needs.

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