Why these topics?

- Election Year
- Awareness
- Ensure case approval appropriate
What is Form 5768?

Form 5768, *Election/Revocation of Election by an Eligible Sec. 501(c)(3) Organization to Make Expenditures to Influence Legislation*

Under section 501(h) of the IRC
Lobbying under section 501(c)(3):

Prior to 1976:
An organization is subject to:
- “Substantial Part Test”
- Denied or lose tax exempt status if a substantial part of activities consist of lobbying
Lobbying under section 501(c)(3):

After 1976:

An organization is subject to:

- “Substantial Part Test”

- Or

- A qualifying organization can make election under section 501(h)/“Expenditure test”
How is an election under 501(h) made?

By filing Form 5768
Form 5768

Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation

(Under Section 501(h) of the Internal Revenue Code)

For IRS Use Only

Name of organization

Employer identification number

Number and street (or P.O. box no., if mail is not delivered to street address)

Room/suite

City, town or post office, and state

ZIP + 4

1 Election—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending ____________________________ and all subsequent tax years until revoked.

Note: This election must be signed and postmarked within the first taxable year to which it applies.

2 Revocation—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending ____________________________.

Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) □ election □ revocation on behalf of the above named organization.

(Signature of officer or trustee) (Type or print name and title) (Date)

General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible section 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grassroots expenditures (as defined in section 4911(c)(2)) on its annual return required under section 6033. See Part II-A of Schedule C (Form 990 or Form 990-EZ).

Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in Item 1 or 2, as applicable, and sign and date the form in the spaces provided.

Eligible organizations. A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(v) (relating to organizations publicly supported by charitable contributions),
5. Section 501(h)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 501(h)(3) (relating to organizations supporting certain types of public charities other than those section 501(h)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

Disqualified organizations. The following types of organizations are not permitted to make the election:

a. Section 170(b)(1)(A)(i) organizations (relating to churches),

b. An integrated auxiliary of a church or of a convention or association of churches, or
c. A member of an affiliated group of organizations if one or more members of such group is described in a or b of this paragraph.

Affiliated organizations. Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

Note. A private foundation (including a private operating foundation) is not an eligible organization.
Qualifying Organizations which may make an election under IRC 501(h)

- 170(b)(1)(A)(ii)
- 170(b)(1)(A)(iii)
- 170(b)(1)(A)(iv)
- 170(b)(1)(A)(vi)
- 509(a)(2)
- 509(a)(3)
Disqualifying organizations which may not make an election under IRC 501(h).

- 170(b)(1)(A)(i) churches
- Integrated auxiliaries or a convention or association of churches
- A member of an affiliated group of the organization if one or more members of such group is described in above two.
Disqualifying organizations which may not make an election under IRC 501(h).

- IRC 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations
- 509(a)(4)
- Private foundations (including POF)
Commercial

- Flakey Wakey Cereal
Question #1

Which of the following may not file Form 5768?

1. $509(a)(2)$ - school booster club
2. $170(b)(1)(A)(iii)$ - hospital
3. Private Operating Foundation
4. $170(b)(1)(A)(vi)$ - educational organization
What does the election under section 501(h) do?

- Puts $ limits on lobbying expenditures
- Limits based on the % of the organization’s budget
- Overall cap of $1 million
- 25% limits on grassroots lobbying
What does the election under section 501(h) do?

- No limits on Volunteer activities
- 25% excise tax on excess over limits in any year
- Revocation of tax status-if lobbying expenditures exceed permitted amounts by more than 50% over 4 year period
Question #2

“Save the Whale” exempt organization under section 501(c)(3) filed the Form 5768 in 2001. Which of the following statements is not correct?

1) The organization has overall cap of $1 million lobbying expenditure for 2001.
2) 50% of their 2001 lobbying expenditures can be grassroots lobbying expenditures.
3) Filing Form 5768 put $ limits on the organization’s lobbying.
4) There is no limit on cost free, volunteer activities related to lobbying.
When is an election under IRC 501(h) effective?

Beginning of the taxable year the Form 5768 is filed.
Can a 501(h) election be voluntarily revoked?

Yes, by filing Form 5768

Effective date of revocation; must wait till start of new fiscal/calendar year.
Question #3

Can an organization use Form 5768 to revoke its IRC 501(h) election?

1) Yes
2) No
Question #4

“Save our Land” a calendar year exempt organization made election by filing Form 5768 on 11/18/10. When is the first effective date under the IRC 501(h)?

1) 11/18/10
2) 1/1/11
3) 1/1/10
4) 12/31/10
Question #5

“Save our Tree” a calendar year exempt organization filed Form 5768 on June 6, 2010 revoking their election. When is the above revocation effective?

1) 1/1/10
2) 12/31/10
3) 6/6/10
4) 1/1/11
Record keeping requirements under 501(h)

Must document all lobbying expenses.
Summary

- Options: substantial part test OR expenditure test
- Not all 501(c)(3) organizations can elect 501(h)
- Use Form 5768 for election/revocation
Sources

- IRC 501(h)
- Form 5768
- 1997 CPE/Lobbying Issues
Quotes

Choose the humorist who said this.

Source: About.com
Who said this?

"Sometimes I wonder whether the world is being run by smart people who are putting us on, or by imbeciles who really mean it."

1) George Carlin
2) Mark Twain
3) Groucho Marx
"Sometimes I wonder whether the world is being run by smart people who are putting us on, or by imbeciles who really mean it."

- Mark Twain
Who said this?

“Everything is changing, people are taking their comedians seriously and the politicians as a joke.”

1) Groucho Marx
2) Mark Twain
3) Will Rogers
Who said this?

“Everything is changing, people are taking their comedians seriously and the politicians as a joke.”

3) Will Rogers
Who said this?

“Reader, suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself.”

1) Will Rogers
2) George Carlin
3) Mark Twain
Who said this?

“Reader, suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself.”

3) Mark Twain
Questions
FY 11
EO Determinations CPE

Hot Topics
Welcome
Today’s Topics Include:

- Auto Revocations
- Political, Lobbying & Advocacy Activities
- Health Care Cases
- Medical Marijuana
Auto Revocation

Steve Bowling
513-263-3704

(b) (6)
Agenda:

- PPA ’06
- Reinstatement requirement
- Effective dates
- Current procedures
- Summary
The Pension Protection Act of 2006

- Filing requirement for the smaller entities (990-N, electronic postcard) 6033(i)

- Loss of exempt status – failure to file for 3 “consecutive” years 6033(j)(1)

- Requires application for reinstatement 6033(j)(2)
Reinstatement Requirement

- Application (Form 1023 / 1024)
- User Fee
Effective Dates

PPA ’06, Sec 1223(f) states that:

The amendments made by this section shall apply to notices and returns with respect to annual periods beginning after 2006.
## Effective Dates (cont.)

<table>
<thead>
<tr>
<th>FYM</th>
<th>Tax Yr Beg</th>
<th>Tax Yr End</th>
<th>Return Due</th>
<th>1st Extension Due</th>
<th>2nd Extension Due</th>
</tr>
</thead>
</table>
Effective Dates (cont.)

- Date of revocation
- Date of reinstatement
- Retroactive reinstatement
  6033(j)(3)
Current Procedures

- Cases are reviewed in normal screening
- IDRS research is secured
- Cases with a BMF status of 01, 02, 20, 21, 23, 24, 25, 31, 32, 36 and 97 are forwarded to Group 7822 for secondary screening
- Senior member of Group 7822 determines if the organization failed to file
Summary

- Small organizations are required to file Form 990-N.

- All tax-exempt organizations required to file an annual return or notice who fail to file such return or notice for 3 consecutive years will be revoked effective the day the third return or notice was due.
Organizations seeking reinstatement must submit the appropriate form (1023/1024) and user fee.

If the application for reinstatement is approved, the effective date will generally be the postmark date.

The organization may request retroactive reinstatement if they can show reasonable cause.
### Summary (cont.)

<table>
<thead>
<tr>
<th>2010 Tax Year and later (Filed 2011 and later)</th>
<th>Form to File</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Receipts normally ≤ $50,000</td>
<td>990-N</td>
<td>n/a</td>
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<tr>
<td><strong>Note:</strong> Organizations eligible to file the e-Postcard may choose to file a full return</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Receipts &lt; $200,000, <strong>and</strong> Total Assets &lt; $500,000</td>
<td>990-EZ</td>
<td>yes</td>
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<tr>
<td></td>
<td><strong>or</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>990</td>
<td></td>
</tr>
<tr>
<td>Gross Receipts ≥ $200,000, <strong>or</strong> Total Assets ≥ $500,000</td>
<td>990-PF</td>
<td>yes</td>
</tr>
<tr>
<td>Private Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>990-PF</td>
<td>yes</td>
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</tbody>
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Resources

- PPA ’06, Sec. 1223
- IRC 6033(i)
- IRC 6033(j)
- NERD domain
- www.irs.gov
QUESTIONS?
Political Campaign, Lobbying & General Advocacy Activities of Tax-Exempt Organizations

Presented By:

(b) (6)
Types of Exempt Organizations that May Engage in Advocacy Activities:

- § 501(c)(3) Charitable Organizations
- § 501(c)(4) Social Welfare Organizations
- § 501(c)(5) Labor Organizations
- § 501(c)(6) Business Leagues
- § 527 Political Organizations

Other types of exempt organizations may engage in advocacy but these are the most common ones.
Political Campaign Activity

- Any and all activities that favor or oppose one or more candidates for public office
- Includes candidate endorsements and contributions to campaigns
- Includes distributing materials prepared by others that favor or oppose candidates
- **All facts and circumstances** will be considered
Guidance

- Fact Sheet 2006-17 (plain language)

- Revenue Ruling 2007-41 (precedential)
  - 21 examples illustrating application of facts and circumstances test to 501(c)(3) organizations
Lobbying

Attempting to influence legislation through:

- Directly contacting members of a legislative body
- Encouraging the public to contact members of a legislative body
- Advocating a position on a public referendum
General Advocacy

- Influence public opinion on issues
- Influence non-legislative governing bodies (the executive branch, regulators)
- Encourage voter participation:
  - Voter Registration
  - Get Out the Vote Drives
  - Voter Guides
  - Candidate Debates
§501(c)(3) Status: Charitable Organizations

An organization must be organized and operated exclusively for an exempt purpose—charitable, religious, educational, scientific, etc.
501(c)(3) and Elections

- Participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office – Absolutely prohibited

- Encouraging people to participate in the electoral process in a non-biased, neutral manner – § 501(c)(3) purpose
Other Types of Advocacy and 501(c)(3) Status

**Lobbying** – Cannot be a substantial activity of the organization
- Different rules apply under section 501(h) to those that elect.

**General Advocacy** – Permitted as an educational activity
Situation 1. B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation.
Rev. Rul. 2007-41, Sit. 1

B is not engaged in political campaign intervention when it operates this voter registration booth.
Other Tax-Exempt Organizations

- § 501(c)(4) Social Welfare Organizations
- § 501(c)(5) Labor Organizations
- § 501(c)(6) Business Leagues
§ 501(c)(4) Status: Social Welfare Organizations

An organization must be operated exclusively for the promotion of social welfare--promoting the common good and general welfare of the people in the community
§ 501(c)(5) Status:
Labor, Agricultural & Horticultural Organizations

An organization must be operated for the betterment of conditions of those engaged in their pursuits and their earnings may not inure to the benefit of any member.
§ 501(c)(6) Status: Business Leagues, Trade Associations, etc.

Organizations that are associations of persons with a common business interest which promote the common interest and do not conduct a regular trade or business for profit.
501(c)(4), (c)(5), or (c)(6) Status

- Primary activity must be in furtherance of exempt purpose
- May engage in non-exempt purpose activities without jeopardizing exemption provided less than primary activity
- Lobbying may be exempt purpose activity
- Political campaign activity is not exempt purpose activity
Advocacy and § 501(c)(4), (c)(5), or (c)(6) Status

- **Political Campaign Activity** – Permitted so long as it does not constitute the organization's primary activity
- **Lobbying** – Unlimited amount of lobbying in furtherance of its exempt purpose permitted
- **General Advocacy** – Unlimited amount in furtherance of exempt purpose
§ 527(f) Tax Consequences

- Taxed on lesser of political expenditures or investment income
- May set up separate segregated fund - taxed as political organization
§ 527 Status:
Political Organizations

An organization that is *organized* and *operated* primarily for the purpose of directly or indirectly accepting contributions or making expenditures to influence the selection, nomination, election or appointment of any individual to federal, state, or local public office, office in political party, or presidential electors.
<table>
<thead>
<tr>
<th></th>
<th>501(c)(3)</th>
<th>501(c)(4)</th>
<th>501(c)(5)</th>
<th>501(c)(6)</th>
<th>527</th>
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<tbody>
<tr>
<td>Receive Tax-Deductible Charitable Contributions</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
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<tr>
<td>May Receive Contributions or Fees Deductible as a Business Expense</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
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<tr>
<td>Substantially Related Income Exempt from Federal Income Tax</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>Investment Income Exempt from Federal Income Tax</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
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<td>NO</td>
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<tr>
<td>Engage in Legislative Advocacy</td>
<td>LTD</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>LTD</td>
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<tr>
<td>Engage in Candidate Election Advocacy</td>
<td>NO</td>
<td>LTD</td>
<td>LTD</td>
<td>LTD</td>
<td>YES</td>
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<tr>
<td>Engage in Public Advocacy Not Related to Legislation or Election of Candidates</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>LTD</td>
</tr>
</tbody>
</table>
QUESTIONS?
Health Care Cases

Mackenzie McNaughton
202-283-9484
Health Care Cases
Reserved for EO Technical

- Prepaid Health Care Plans
- Whole Hospital Joint Ventures
- Faculty Group Practice Organizations
- PHOs
- IPAs
- Corporate Practice of Medicine
- RHIOs
- Consulting Service for Foreign Health Care Facility/Services
- Other Health Services
Prepaid Health Care Plans (HMOs)

- Pending in EO Technical
- Provision of healthcare services (contracting with hospitals, physicians, dentists, and other healthcare providers)

  *Vision Service Plan v. U.S.*
  - Did not qualify for IRC 501(c)(4) tax exempt status.
Whole Hospital Joint Ventures

- Sole activity is participation in a joint venture that operates a hospital or other health care facility.
- Rev. Rul. 98-15
  - Joint venture furthers a charitable purpose.
  - Joint venture arrangement permits the nonprofit organization to act exclusively in furtherance of exempt purposes and only incidentally for the benefit of for-profit partners or members.
Faculty Group Practice Plans

- Professional corporation
- Shareholders
- Corporation’s general powers are not overly broad
- Administrative convenience in billing for services and collecting fees
- Full-time practices devoted to the medical schools with clinical instruction
Physician-Hospital Organizations (PHOs)

- Generally not a health care provider.
- Does not exercise control over operations of hospital or physicians.
- Serves as vehicle through which hospitals and physicians jointly market services and contract with third party payors.
- Generally does not qualify for 501(c)(3) exemption
- Do not qualify under IRC 501(c)(4) or 501(c)(6)
Individual Practice Associations (IPAs)

- Represent participating physicians’ interests in dealing with HMOs and other prepaid health care plans

- Rev. Rul. 86-98
  - Do not qualify for 501(c)(4) exempt status
Corporate Practice of Medicine

- Affected states include: California, Texas, Ohio, Colorado, Iowa, Illinois, New York, and New Jersey
- Prohibit the employment of physicians by hospitals
- Beneficial ownership of stock held by exempt hospital parent
- May be exempt if certain safeguards are present
Regional Health Information Organizations (RHIOs)

- Health Information Network
- Health Information Exchange
- Health Information Technology
- Regional Extension Centers
Regional Health Information Organizations (RHIOs), cont.

- Stakeholders may create, access, and transmit or exchange patient records, health data, or pharmaceutical prescriptions.

- Must comply with the HHS standards and regulations.

- ARRA provided for establishment of health information technology by 501(c)(3) nonprofit organizations.

- Lessen the burdens of government.
Consulting Service for Foreign Health Care Facility or Services

- Generally not exempt under IRC 501(c)(3).
  - Not primarily operated to promote health for a charitable purpose.
  - Primarily operated for substantial non-exempt commercial purpose.
Questions?
Health Fund Case
IRC 501(c)(3) Application

- Offered health care reimbursements, discounts, and loans to its members
- Membership open to anyone in community willing to pay an annual fee.
- Provided discounts to members for various health-related services from practitioner members.
- Regularly distributed lists of its practitioner members and related discounts
Health Fund Case
IRC 501(c)(3) Application, cont.

- IRS position - does not qualify for IRC 501(c)(3) exemption.
  - Failed to show that it primarily serves charitable purposes
  - Provides members with insurance-type benefits
  - Served a substantial non-exempt private purpose to promote members’ interests
Pharmacy Benefit Management Services Case

- Pharmacy benefits management program to contain prescription medicine costs purchased by public sector entities.

- Funding - "per member per month" fees

- IRS position - organization did not benefit the community as a whole and conducted the program in a manner similar to for-profit businesses.
ACA Health Care Cases

- Memo dated April 20, 2010, from Rob Choi, Director, EO Rulings and Agreements

- Screening group to determine whether:
  - Cases are ACA cases
  - Require transfer to EOT
List of Possible New Health Care Applications/Issues due to ACA

- IRC 501(r) Requirements for Hospitals
- Accountable Care Organizations
- Freestanding Birth Centers
- Family Planning Services
- Community Health Grant Recipients
- Community Service Centers for Pregnant and Parenting Teens
IRC 501(r) Requirements for Hospitals

IRC 501(r) imposes 4 new requirements on 501(c)(3) hospital facilities:

- Adopt, implement and publicize written financial policies
- Limit charges for emergency & other medically necessary care
- Comply with new billing and collection restrictions, and
- Conduct a community health needs assessment at least once every 3 years.
IRC 501(r) Requirements for Hospitals, cont.

- Applies on a facility-by-facility basis.

- Hospital: Organization that operates a facility required by a state to be licensed, registered, or similarly recognized as a hospital.
Accountable Care Organizations (ACOs)

- Accountable for the quality and cost of care of beneficiaries serviced by its members

- ACA does not require ACOs to include nonprofit or tax-exempt organizations

- Developing area, so unclear what a “typical” ACO might look like
Notice 2011-20 addresses exempt organizations participating in the Medicare Shared Savings Program (MSSP) created under 3022 of the ACA

Exemption issues

Applications generally transferred to EOT
Other ACA Health Care Cases

- ACA does not require the other listed types of healthcare-related organizations to be tax-exempt
  - Requires them to be nonprofit

- Other listed types would be developed under current guidance.

- Generally not transferred to EO Technical.
Questions?
Medical Marijuana
Introduction

This presentation will provide you with an overview of the Medical Marijuana (Cannabis) applications that are currently being processed.
Reform of Marijuana Laws

- Proposition 215 - State of CA
- State Patient Registry
- Statistics
- Current Events
Active States Medical Marijuana Programs

- Alaska, Arizona, Colorado, District of Columbia, Hawaii, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington

- Website on State Law [http://norml.org](http://norml.org)
Reasons Taxpayers Request Exemption from IRS

- State Department of Health Services Requirements
- Misinterpreted State Requirements
Applications

Types of Cases Worked:

- Educational
- Scientific
- Raising Funds to Subsidize Cost of MJ
- Operation of a Dispensary
Case Example

Activities- Operation of Marijuana Dispensary

www.legalmarijuanadispensary.com
EO Technical

- Reviewing illegality & commerciality arguments
- Not Issuing Favorable Determinations unless they are purely educational
Summary

- Forward all MJ cases to Group 7888
- Form 3198 - MJ Case for
Questions?
Closing Performance

"I Will Survive" CPE
Next Presentation
Thursday, June 23rd

- Analysis & Documentation of Risk
- ROO Feedback
Comment: If I heard correctly - it was mentioned that TAM's are issued on "closed" cases. This is not correct. A TAM may be issued for an open or closed case.

This represented an “unforced error”, an oversight, missed in our final edit.

Question: Why didn’t you include NSARs (IRS Non-Docketed Service Advice Review) in your list of available resources?

Answer: It was not included because it is a resource with which we were not familiar.

Question: If the Living Faith restaurant priced its meals at cost would that have made a difference?

Answer: Possibly. Depending on the purpose of the pricing policy, if this pricing policy had been established to accomplish a religious or charitable purpose, it could have been an influential factor among the total facts and circumstances of the case.

Question: If the organization w/ the restaurants did not advertise could it then pass the operational test- since it was not in competition with other restaurants?

Answer: Not necessarily. Advertising is one of many “facts and circumstances” that must be taken into consideration with respect to the commerciality of an activity. The organization may have chosen not to advertise for economic reasons.

Question: In all of the examples, did any of the organizations pass the primary purpose test, but whose activities were not exclusively charitable, educational...?

Answer: There were a few situations in the examples where this occurred. This is possible when activities of an organization provide an “incidental” private benefit, of either a quantitative or qualitative nature.

Question: "Primary" and "Exclusively" are interchangeable terminology under 501(c)(3) - correct?

Answer: No. “Exclusively” presumes the near exclusion of other alternatives. “Primary” refers to the principle or most dominant alternative.

Question: If an organization states that its fees are below cost, let’s say at a discount, is this sufficient, or is there something further we should look at?

Answer: The U.S. Tax Court in the 1979 Federation Pharmacy Services vs. Commissioner case did not find providing a discount sufficient. The court required the
charges to be substantially below cost for this activity to be considered positively among the facts and circumstances under consideration.

**Question:** If an org is providing a service that is normally commercial in nature, such as counseling, then it must be provided at substantially below cost - correct?

**Answer:** Correct. However, this alone may not be a determinant, if other facts and circumstances serve as counter indicators.

**Question:** Regarding political activity - do you consider the terms 'conservative' and 'progressive' to mean that the org is related to a specific party? For example, if an org is training persons on how to progressively campaign using new networking technologies, would you feel that org is partial to a specific party?

**Answer:** Not necessarily. In order to interpret the meaning of the cited terms, it is necessary to consider the context in which they are used – (literary facts and circumstances).

**Question:** Golden Rule case: How important is the results of operation = losses, and the method of operation = selling at market prices in determining the charitable activity?

**Answer:** Both of these circumstances were considered in the court’s evaluation of whether the organization operated for an exclusively religious purpose. The court considered the reason for each of these observed practices and the contrast with the expected practice if the applicant operated for a commercial purpose.

**Question:** I thought you mentioned UBIT consideration during the presentation...when would you pursue UBIT for a substantial non-exempt activity versus a denial? Is there a certain percentage of income and/or time you look at?

**Answer:** If the purpose of the organization is clearly exclusively charitable, religious or educational, it would be appropriate to pursue UBIT. A Denial would be appropriate if the primary purpose was the carrying-on of a trade or business. Beyond that, there is no fixed percentage of income or time that can be specified as a defining limit. At the same time, it is logical that the greater the income from and the time devoted to non-exempt activity, the more likely a non-exempt purpose could be inferred.

**Question:** Concerning insubstantial, are you saying we can use a 10 percent rule to define this term in regard to an organization's activities and them being exempt?

**Answer:** No. It is not feasible to establish a specific, numerical value to apply to the individual, case by case, subjective examination and evaluation of all facts and circumstances related to an applicant organization’s activities.

**Question:** voluntary labor or donated goods are these factors?
Answer: These could be factors to be considered in the mix of facts and circumstances. However, neither by itself or together would be sufficient indicators of an exclusively exempt purpose.

Question: Insubstantial and not substantial or less than substantial are not the same but it looks like they are constantly used in the same sense. Whereas insubstantial is not more than 5% not substantial or less than substantial can mean a much higher percentage. What are the presenters' thoughts on this?

Answer: Although “insubstantial” and “not substantial” or “less than substantial” are not the same, it is questionable whether a focus on the difference is worthwhile, particularly when the smaller value, “insubstantial”, can be included within the larger value, “not substantial” or “less than substantial”. This might explain why the terms are often used without explicit differentiation. Since these are relative terms, a specific numerical value cannot be identified as appropriate in all situations. e.g. It is possible for a percentage greater than 5% or even 10% to be regarded as “insubstantial”.

Question: I have a question for the faith-based restaurant and health food stores. If the organization only charges a modest price close to the cost for its meals and items at health food stores, provides more free meals to public, and solicits donations from the public, can we consider its exempt status under section 501(c)(3)?

Answer: To meet the operational test, an organization must demonstrate that it operates for an exclusively exempt purpose. When an organization’s purpose is inferred from its activities, modifications in activities such as those described in the question would enhance the inference of an exempt purpose. However, it may not be sufficient to draw that conclusion depending on all the other factors related to the applicant’s activities as described in the information provided in the applicant organization’s 1023 application and correspondence.

Question: In the Golden Rule case, does it have to do with the church's control over the org's activities?

Answer: The fact that the church controls the organization’s activities influences why and how those activities are conducted in a manner that promotes the achievement of the church’s exclusively religious purpose. This also reinforces the conclusion that the operational test is met as a result of inferring an exempt purpose from the organization’s activities.

Question: I'm not sure, but I believe the regs on private foundation (Chapter 42 taxes) comes close to defining substantial (83%?) Can we apply that in applying "substantiality test"?

Answer: This specific percentage (85%) can be applied only in the situations to which the cited regulations on private foundations refer, i.e. chapter 42 taxes. It can not be
applied in defining substantiality, other than to give a general idea of the scope of what might be considered “substantial”.

**Question:** Note that the Commissioner issued a nonacquiescence at: Golden Rule Church Ass’n, 1964-2 C.B. 8 (I.R.S. 1964). Presenters’ thoughts?

**Answer:** Although the reasons for non acquiescence were not considered (and were unknown) prior to selection of the case as an example, the decision by the U.S. Tax Court did differentiate the activities evident in this case from similar situations in other cases cited in the formal decision by noting that the apparently commercial activities of the plaintiff had an exclusively religious purpose.

**Question:** Can you provide guidance on organizations that are conducting social events as the primary activity and is claimed to be a fundraiser in which a portion of the income from the social event is used for a charitable purpose? In other words, what can be taken into consideration to determine if the social event is furthering an exempt purpose under section 501(c)(3) rather than an social event under 501(c)(4)?

**Answer:** The most important question should be: “what is the purpose of the social event?” If the event has a purpose that is exempt under section 501(c)(3), the organization could meet the operational test. This may require an evaluation of the applicant organization’s activities to determine whether a 501(c)(3) purpose can be inferred.

**Question:** RR 76-208, defines "substantially all" at least 85%. Can we use this RR?

**Answer:** This Revenue Ruling makes reference to the section 53.4942(b)-1(c) of the Regulations, which provides that for purposes of section 4942(d)(3)(A) of the Code (relating to qualifying distributions by private foundations) the term, “substantially all” shall mean 85% or more. The Revenue Ruling extends the application of this definition of “substantially all” for purposes of applying the integral part test for organizations seeking exemption as supporting organizations under section 509(a)(3). Therefore this Revenue Ruling can be used to support determinations related to recognizing foundation status under section 509(a)(3). It does not necessarily have application in any other context.
Operational Test

2011 CPE
Preparers and/or Presenters

(b) (6)
Objective

Review the Operational Test in the Evaluation and Development of Applications for Tax-Exemption

- This review will include establishing the importance of an organization’s exempt purpose to the operational test.

- This review will include establishing the importance of an organization’s activities to the operational test where an exempt purpose can be inferred from activities.
Determinations Experience

- One year or less?
- Over one but less than three years?
- Over three but less than five years?
- Between five to nine years?
- Between ten to fourteen years?
- Over fifteen years?
Part 1 - Introduction

Organized and operated exclusively for:
- Religious,
- Charitable,
- Scientific,
- Educational,
- Literary or
- Testing for public safety purposes.
Operational Test and Requirements

- Most significant hurdle.
- Seems to be a single requirement.
- Several factors can describe “operations”.
- Must accomplish section 501(c)(3) purposes.
- No inurement or private benefit.
- No political or substantial lobbying activities.
Operational Test Challenging

- Activities v. Purpose
- “Primarily” v. “Exclusively”
- Qualitatively or Quantitatively “Incidental”
- “Facts and Circumstances”
Resources

- Treasury Regulations
- Precedents derived from Court decisions
- Revenue Rulings
- Revenue Procedures
- General Counsel Memos
- Tech Advice Memos
- Private Letter Rulings
- IRM
Part 2 - Purpose

Operational test:

- Primary purpose exempt under 501(c)(3)?
- OR
- Primary purpose nonexempt?
Case #1 Facts

- Advancement of business methods.
- Prevent and fight fraud, elevate business standards through education, and assist and cooperate with law enforcement.
- Membership comprised of business and professional men and women.
- Membership fees and contributions.
- Promote mutual welfare, and protect and improve business methods.
Questions

- Can education or charitable activity be regarded as the primary purpose of the organization?
- Is the organization’s purpose exclusively educational or charitable?
- Will the organization meet the operational test?
Case #1

Case #2 Facts

- Rural-related policy and program development consulting services.
- Tax-exempt and nonprofit clients.
- Retained specialized consultants.
- "Word of mouth"—no advertising.
- Solely from consulting service fees.
- Ability to pay and value of services (i.e. At or close to cost).
Questions

- Can education or charitable activity be regarded as the primary purpose of the organization?
- Is the organization’s purpose exclusively educational or charitable?
- Will the organization meet the operational test?
Case #2

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978)
Case #3 Facts

- Create and administer prizes for humanitarian goals.
- Solicit contributions or recommendations of solutions via Internet.
- $1.00 minimum donations solicited and awarded.
- Prizes for long-term seemingly impossible objectives.
- Goal of challenges to benefit the poor and distressed or other charitable classes.
Questions

- Can education or charitable activity be regarded as the primary purpose of the organization?
- Is the organization’s purpose exclusively educational or charitable?
- Will the organization meet the operational test?
Case #3

Case #4 Facts

- For-profit predecessor provided regulatory compliance services relating to fertilizer chemicals.
- Increased customer-base to include farm retailers.
- Formed nonprofit corporation—all assets but no liabilities transferred.
- Activities essentially the same—new programs developed.
- President/CEO provided Congressional testimony.
- Structure change from customer to membership-based.
- Funded solely from membership fees and promoted by trade associations.
Questions

- Can education or charitable activity be regarded as the primary purpose of the organization?
- Is the organization’s purpose exclusively educational or charitable?
- Will the organization meet the operational test?
Case #4 - Asmark Institute, Incorporated v. Commissioner, T.C. Memo. 2011-20
Case #5 Facts

- Operated faith-based restaurants and health food stores.
- Promotional material strategically placed and distributed.
- Prices set at market rate.
- Daily devotional services and Bible reading.
- Free meals offered monthly to public.
- Free weekly Bible classes.
- Occasional meals provided to needy.
- Staff composed of individuals who had difficulty finding employment.
- Sole revenues from restaurant and health food store gross receipts.
- Profits used to expand health ministry.
Questions

- Can religious, educational or charitable activity be regarded as the primary purpose of the organization?
- Is the organization’s purpose exclusively religious, educational or charitable?
- Will the organization meet the operational test?
Case #5

- Living Faith, Inc. v. Commissioner, 950 F.2d. 365 (7th Cir. 1991)
Part 3 – Not Yet Operational

- Description of Purpose is more significant when “projected” activities provided.
- Ensure that purpose complies with operational test.
Rev. Proc. 2011-9, Section 4.03

- Everything must be sufficiently described.
- Mere restatements unsatisfactory.
- No determination until activities clearly established.
Applicable Citations


- **General Conference of Free Church of America v. Commissioner, 71 T. C. 920 (1979)** – no legitimate constitutional basis for refusing to respond to request.

Part 4 – Purpose Inferred from Activities

- Fundamental descriptions provided in Regulations and Revenue Procedures.
- Regulations 1.501(c)(3)–1(c)(1)
- Regulations 1.501(c)(3)-1(d)(2)
- Regulations 1.501(c)(3)–1(d)(l)(ii)

INFER

INFER means to make an educated ("smart") guess. It is a conclusion that is supported by evidence from the text.
Interpretation

Problematic and subjective terms:

- Exclusively
- Primarily
- Insubstantial
Facts and Circumstances

Factors to consider:

- How are activities conducted?
- Are activities carried on with a "commercial hue"?
- Is there competition with commercial firms?
- Are substantial net profits present?
- How are prices or fees set?
Two Points to Remember

Trade or business will not qualify even though:

- Profits payable to an exempt organization;
- or
- It has certain religious purposes and no inurement is evident.
Case #1 Facts

- Care for pregnant women with unwanted pregnancies.
- Advertised through yellow pages with some referrals from professionals and “word of mouth.”
- Agreement to put babies up for adoption and demonstration of financial need.
- Obligation for medical expenses if no adoption.
- Sole source of revenue from adoption fees.
- Adoption fees usually more than covered costs of services.
Questions

- Do the activities described appear to promote a charitable or educational purpose?
- Do the activities appear to be those of a tax-exempt organization?
- Can the organization’s primary purpose be inferred from the description of its activities?
- Is the organization’s primary purpose exclusively charitable or educational?
- Will the organization meet the operational test?
Case #1

- Easter House v. U.S., 12 Ct. Cl. 476 (1987), aff’d. 846 F. 2d 78 (Fed. Cir 1988) - adoption services were primary activity.
Case #2 Facts

- Church subsidiary managed several business to spread religious doctrines.
- God's laws applied to both spiritual life and all facets of life.
- Hotel open on a limited basis to public.
- Laundry service and sawmill operation terminated.
- Devotional services held daily.
- Services and products priced at going rates.
- Sole source of financial support was from revenues from businesses.
Questions

- Do the activities described appear to promote a charitable or religious purpose?
- Do the activities appear to be those of a tax-exempt organization?
- Can the organization’s primary purpose be inferred from the description of its activities?
- Is the organization’s primary purpose exclusively charitable or religious?
- Will the organization meet the operational test?
Case #2

Case #3 Facts

- Study, promote, encourage and foster knowledge, understanding and appreciation of the interrelationships.
- Organized, hosted, conducted, and sponsored educational conferences.
- Free lectures, concerts, and art shows.
- Meeting space provided to nonprofits, overnight accommodations for cultural programs participants, and public use of its grounds for charitable events.
- Limited advertising.
- 85% of revenue from client fees and 8% from endowment.
- 20% of events for government clients, 50% from nonprofit and/or educational clients, and 30-40% for others.
- Average daily rates charged almost 20% lower than rates of similar area facilities.
Questions

- Do the activities described appear to promote a charitable or educational purpose?
- Do the activities appear to be those of a tax-exempt organization?
- Can the organization’s primary purpose be inferred from the description of its activities?
- Is the organization’s primary purpose exclusively charitable or educational?
- Will the organization meet the operational test?
Case #3

Part 5 – Mixed Messages

Seemingly paradoxical citations:
- Regulations 1.501(c)(3)–1(e)(1)
- IRC 502 - Feeder Organizations
Legal Citations

- **Aid to Artisans, Inc. v. Commissioner**, 71 TC 202 (1978)
- **World Family Corporation v. Commissioner**, 81 T.C. No. 60, 81 T.C. 958
Regulations 1.501(c)(3)–1(d)(l)(ii)

- Must further "public" purposes.
- Must not benefit private interests.
- May benefit incidental private interests.
Questions to Consider

- Can operational test be met despite operating a trade or business?
- Must trade or business profits be turned over?
- Can operational test be met if private benefit results?
- Does incidental private benefit refer only to size or amount?
Qualitative vs. Quantitative

“Incidental” both “qualitative” and “quantitative”:

- Qualitatively - when exempt activities also benefit individuals either directly or indirectly.
- Quantitatively - when benefit is insubstantial in size and amount.
Applicable Revenue Rulings

- Revenue Ruling 68-504
- Revenue Ruling 68-71
Part 6 Political Activity (Action Organization)

- Regulations 1.501(c)(3)-1(c)(3)
- Limits on political activity
- Limits on private benefit
Part 7 – Factors to Consider

- Description of Activities
- Financial Data
- Governing Body Members
- Governance Provisions
- Associated Organizations and/or Vendors
- Websites
Questions and Answers
The End
Political Expenditures

501(c)(4) Organizations

Presenter: (b) (6)

Writer: (b) (6)
Requirements under section 501(c)(4):

- Organized not for profit, operated exclusively for the promotion of social welfare.

- Reg. 1.501(c)(4)-1(a)(2)(i): Primarily engaged in promoting the common good and general welfare
  
a) Rev. Rul. 74-361

b) Rev. Rul. 68-45
Requirements under section 501(c)(4), continued:

- Promotion of social welfare does not include direct or indirect participation in political campaigns

- Reg. 1.501(c)(3)-1(c)(3)(iii) describes political activity
Can 501(c)(4) organizations be involved in political campaigns?

- Yes, provided that such involvement does not constitute the organization’s primary activity.

  - Rev. Ruling 67-368
  - Rev. Rul. 81-95
Question #1

Does an organization, whose primary activity is rating candidates for public office, qualify for exemption under section 501(c)(4)? Y/N
Who said this?

"Being president is like running a cemetery: you've got a lot of people under you and nobody's listening."

1. Ronald Reagan
2. Harry Truman
3. Bill Clinton
Taxable Expenditures under section 501(c)(4)

- Political expenditures are subject to tax under IRC 527(f)
- May establish separate segregated fund/527 political organization
Tax Base
under section 527(f)

Tax base is amount equal to the lesser of:

a) The organization’s net investment income for the year or,
b) The total amount of political expenditures for the year
Question #2

An otherwise qualifying 501(c)(4) organization has investment income of $5,000 and political expenditures of $6,000 during 2010. What is its 2010 tax base under section 527(f) ?

1) $6,000
2) $5,000
3) $1,000
4) $11,000
Who said this?

"If I were two-faced, would I be wearing this one?"

1. George Washington
2. Abraham Lincoln
3. Franklin Roosevelt
Reporting Requirements for the organization

- Form 990/Schedule C
- Form 1120 POL
Question #3

An otherwise qualifying 501(c)(4) organization has $30,000 in investment income and the same amount in political expenditures in 2010. Which of the following forms is it not required to file?

1) Form 1040
2) Form 990
3) Schedule C of Form 990
4) Form 1120-POL
Who said this?

"I am not worried about the deficit. It is big enough to take care of itself."

1. George Bush
2. Ronald Reagan
3. John Kennedy
Notification Requirements for 501(c)(4) organizations

IRC section 6033(e): The 501(c)(4) organizations are required to notify their members regarding the nondeductible portion of the membership dues.

Failure of notification may result in tax on the organization.
Effect on 2010 Supreme Court decision: Citizens United v. FEC

501(c)(4) organizations remain subject to the primary purpose restriction under IRC 501(c)(4).
Who said this?

"If one morning I walked on top of the water across the Potomac River, the headline that afternoon would read: 'President Can't Swim.' ”

1. Lyndon Johnson
2. Richard Nixon
3. Jimmy Carter
Summary

- Political Activities ok- if not primary
- Tax liability for political expenditures possible under Section 527(f)
- Notification Requirements
- Filing Requirements
Sources

- IRC 501(c)(3)
- IRC 501(c)(4)
- Revenue Rules 67-368, 68-45, 74-61, 81-95
- 1995 EO CPE Text M. Political Organizations and IRC 501(c)(4)
- Lobbying and Political Activity by Tax-Exempt Organizations- Online Compendium of Federal and State Regulations for U.S. Nonprofit Organizations
- 501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws – Congressional Research Service
- Comparison of 501(c)(3), 501(c)(4) and Political Organizations-Alliance for Justice
Questions
Reference Material Note: A good reference for what is political activity as related to advocacy can be found in Revenue Ruling 2004-6. This RR has six scenarios that specialists can refer to - they will help in understanding what is political.

Question: Is lobbying any different at the federal, state and local levels?

Answer: No. Code § 162(e)(4)(A) defines "influencing legislation" to mean any attempt to influence any legislation through a lobbying communication with any member or employee of a legislative body or with any government official or employee who may participate in the formulation of legislation.

Question: If a church has 501(h) referenced in its articles - should it be deleted (should the organization be required to amend its organizing document to remove the reference to 501(h))?

Answer: Even though a church can engage in an insubstantial amount of lobbying activities, it cannot make a 501(h) election. Specialists should consider the context in which 501(h) is referenced in a church’s organizing document.

For example,

(1) What if the organizing document states that the organization will not make expenditures to influence legislation as defined in section 501(h)?

In this scenario, the reference to section 501(h) is acceptable because the organizing document is stating that the organization will not make expenditures to influence legislation under section 501(h).

(2) What if the organizing document states that the organization will make expenditures to influence legislation as defined in section 501(h)?

In this scenario, the reference to section 501(h) is not acceptable because the organizing document is stating that the organization will make expenditures to influence legislation under section 501(h). The organizing document will need to be amended to remove that provision.

(3) What if the organizing document states that no substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise permitted by section 501(h) of the Code)?
In this scenario, the reference to section 501(h) is not acceptable because a church cannot make the 501(h) election. In this scenario, the organizing document is indicating that the organization can engage in attempting to influence legislation as-long-as it follows the rules of section 501(h). Since a church cannot make the election under 501(h), and therefore, it cannot measure its involvement in lobbying activities based on the Expenditure Test, then the organization will need to amend its organizing document to remove that provision.

This list is not all-inclusive and it is intended to give specialists some examples of what is and what is not acceptable in relation to section 501(h) and a church's organizing document. As with all cases, the particular facts and circumstances must be taken into consideration.

**Question:** Can a 501(c)(4) organization engage in lobby activities and/or political activities and not lose its tax-exempt status?

**Answer:** Seeking legislation germane to the organization's programs is a permissible means of attaining social welfare purposes. Thus, a section 501(c)(4) social welfare organization may further its exempt purposes through lobbying as its primary activity without jeopardizing its exempt status. An organization that has lost its section 501(c)(3) status due to substantial attempts to influence legislation may not thereafter qualify as a section 501(c)(4) organization. In addition, a section 501(c)(4) organization that engages in lobbying may be required to either provide notice to its members regarding the percentage of dues paid that are applicable to lobbying activities or pay a proxy tax. For more information, see [Lobbying Issues](#).

The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f). For further information regarding political and lobbying activities of section 501(c) organizations, see [Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations](#), and [Revenue Ruling 2004-6](#).

**Question:** What is an example of taxable business income?

**Answer:** Examples of taxable business income are:

- Investment Income (interest, dividends, rent, royalties, net gain from sale of assets)
- Business Income (proceeds from fundraising or political campaign materials, which are not UBI, are not business income.)
**Question:** Are Forms 8871, 8872 and 1120-POL open to public inspection?

**Answer:** Forms 8871 and 8872 are open to public inspection. Form 1120-POL is not open to public inspection.

**Question:** Can a 527 organization be revoked for not filing Form 990? If so, does it go in status 97? How does it get reinstated?

**Answer:** No, § 527 organizations are not subject to the automatic revocation provisions.
Objectives

- List the exempt purposes specified in IRC section 501(c)(3) of the Code

- Determine whether an organization meets the organizational test

- Describe the situations in which an amendment to the organizational document must be secured
Advantages of 501(c)(3)

- Exemption from federal income tax
- Tax-deductible contributions for donors
- Preferred postal rates
- Relief from sales tax
- Relief from real estate taxes
- Special retirement provisions for employees
501(c)(3) Exemption Requirements

- Pass the Organizational Test
- Pass the Operational Test
- No inurement
- Legislative activities must not be substantial
- No political activities
Purpose Clause
Exempt Purposes

What are some examples of exempt purposes?
Exempt Purposes

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for Public Safety
- Fostering National or International Sports Competitions
- Prevention of Cruelty to Children or Animals
Definition of Charitable

- Relief of the poor, distressed or underprivileged
- Lessening the burdens of government
- Lessening neighborhood tensions
- Combating community deterioration and juvenile delinquency
- Advancement of religion, education or science
- Erecting or maintaining public buildings, monuments or works
- Eliminating prejudice and discrimination
- Defending human and civil rights secured by law

Reg. 1.501(c)(3)-1(d)(2)
Educational Purposes

Name one type of organization that is formed for educational purposes
IRC 501(c)(3)

Entities organized for an educational purpose include:

- Schools
- Museums
- Symphony orchestras
- Preschools, and
- Youth sports organizations
Entities organized for a religious purpose include:

- Churches
- Synagogues
- Mosques
- Other religious organizations
Types of Organizations

An exempt organization may be:

- A corporation (IRC section 501(c)(3))
- An unincorporated association (IRC section 7701(a)(3)), or
- A trust
Organizational Document-Form

- Corporation –
  - Articles of Incorporation
- Association –
  - Articles of Association, Constitution, etc.
- Trust, Inter Vivos –
  - Trust Instrument
- Trust, Testamentary –
  - Last Will & Testament
Organizational Document - Language

Required Clauses

1. Purpose Clause
   - Must be exclusively for 1 or more 501(c)(3) purposes
   - May be narrower than 501(c)(3)
   - Can’t be broader than 501(c)(3)
Private Foundation Language

- Additional Required Language for Private Foundations

- Have to be organized for a 501(c)(3) purpose
New Mexico is required to have additional provisions
Public vs. Mutual Benefit

- 501(c)(3)
Corporations

- If listed, must be public benefit corporation
- Not mutual benefit
Purpose, continued

- If incorporated, not satisfied by provisions in bylaws
- Not satisfied by statements by officers
- Not satisfied by actual operations being conducted
501(c)(3) Purpose

- Receiving contributions and paying them over to organizations that are described in IRC 501(c)(3)

- Operating a school for education when the creating document describes in detail the manner of operation of such a school
Notwithstanding Clause

“Notwithstanding other language (or provisions) in the creating document, the purposes will be limited exclusively to exempt purposes within the meaning of IRC 501(c)(3).”
Notwithstanding – Example 1

A creating document provides that an organization is formed to provide scholarship assistance to individuals.
Notwithstanding – Example 1

A creating document provides that an organization is formed to provide scholarship assistance to individuals.

- Without further limitation, the term “providing scholarship assistance to individuals” could describe *purposes* outside the scope of IRC 501(c)(3).
Notwithstanding – Example 2

The organization is formed to provide scholarship assistance to individuals.

Notwithstanding any other provision in this instrument, it will not further any specified purpose to more than an insubstantial degree other than those described in IRC 501(c)(3).
Notwithstanding – Example 3

Creating document provides that an organization is formed to promote educational and political purposes.
Notwithstanding – Example 3

Creating document provides that an organization is formed to promote educational and political purposes.

Educational purposes are described in IRC 501(c)(3); however, political purposes include intervening in political campaigns, which is specifically prohibited.
Notwithstanding any other provision of these articles, the corporation shall not carry on any other *activities* not permitted to be carried on by a 501(c)(3) organization.
Today’s Match

- Organizational Test
- Purpose vs. Activities

PURPOSE IS THE WINNER!!!!!
Activities Limitation

A provision in an organization’s creating document limiting its *activities* to those described in IRC 501(c)(3) does not cure an overly broad purpose statement.
Notwithstanding clause is not sufficient because the creating document contains a purpose that cannot be limited to make it fit within the scope of exempt purposes described in IRC 501(c)(3).
Cross-Referencing IRC 170

The organization will limit its purposes to those carried out by organizations described in IRC 501(c)(3) or organizations contributions to which are deductible under IRC 170.
IRC Section 170

- Charitable Contributions vs.
- Charitable Purposes
Acceptable IRC Section 170

- IRC 170(c)(1)
- IRC 170(c)(2)
What if the articles empower the organization to:

- Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise

- Directly or indirectly 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
What if the articles empower the organization to:

- Have objectives and engage in activities which characterize it as an "action" organization as defined in section 1.501(c)(3)-1(c)(3) of the regulations. Reg. 1.501(c)(3)-1(b)(3).
Example 1

This organization is formed to engage in research.
Example 1 - continued

Not properly limited since all research is not scientific.
Example 2

The purpose of this organization is to receive contributions and pay them over to organizations that are described in section 501©(3) and exempt from taxation under Section 501(a).
Example 2 - continued

The purpose clause is acceptable.
Example 3

The purpose of the organization is to function as a school.
Example 3 - continued

The school could be a for profit school. Further clarification is needed.
Example 4

This organization is formed to operate a school for educational purposes.
Example 4 - continued

This statement satisfies the purpose requirement.
Example 5

The organization is formed for charitable, benevolent and philanthropic purposes.
Example 5 – continued

The terms benevolent and philanthropic have no general accepted legal meaning.
Example 6

This organization is formed to promote American ideals or to foster the best interests of the people or to further the common welfare and well being of the community.
Example 6 - continued

Purposes are vague and may be accomplished in other than an exempt manner.
Vote for Real Case Examples

- Y- Accept
- N- Amend
The name of the corporation is **Iwanabeacharity**. The corporation is a public benefit corporation. The corporation is not a church, but shall engage in religious activities.
Real Case Example - #2

The nonprofit corporation is a public benefit corporation. This corporation will have members.
Real Case Example - #3

Letskate is hereby organized as a public nonprofit charity for the express purpose of promoting and soliciting funds for the development and completion of a recreational skate park for the use and benefit of the youth who participate in the sport of skateboarding.
Real Case Example - #4

Purpose(s) for which the corporation is organized:

- Social
- Benevolent
- Charitable
Real Case Example - #5

To seek an unprecedented increase in the education, edification, and graduation of today’s teenagers, primarily by establishing, maintaining, and growing altruistic partnerships.

Applicant is organized exclusively for charitable, educational and scientific purposes.
Real Case Examples - #6

This corporation is organized exclusively within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and as hereinafter amended ("Code"), particularly for purposes of receiving and administering funds and property for charitable, scientific and educational purposes and in such a manner as will best promote the mission of the corporation as set forth in the Corporation’s bylaws.
Real Case Examples - #7

This organization is organized and operated exclusively for raising money and/or organize efforts for other charitable organizations established under section 501(c)(3) of the IRC.
The purpose for which the corporation is organized is the transaction of any or all lawful business for which non-profit corporations may be incorporated under the laws of the State of Arizona, as they may be amended from time to time. To develop, present, distribute and/or sponsor educational classes, programs and materials that protect the sanctity of life.
Real Case Examples -#9

To act and operate as a nonprofit educational corp charitable org. In the pursuit of education and exhibition of felines both purebred and mixed breed for the public.
Real Case Examples - #10

To solicit, collect, receive and administer funds exclusively for such charitable and educational organizations as permitted for organizations defined in Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, in particular, to renovate and operate a historic building in Town, to be used by Town University and other educational institutions for a residential college for study of architecture, art and design.
Real Case Examples - #11

To conduct educational activities beneficial to and in support of educators to improve the educational achievement of all children. The organization will operate for purposes that are appropriate for an educational, scientific, or charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code.
Real Case Examples - #12

Provide needed services to lesbian, gay, bisexual, transgender, queer, intersex communities of color, in an effort to bridge racial divisiveness within all communities, through awareness, education, knowledge of the plights of these communities, dialogue, intervention, alliances and social and charitable programming.
Real Case Example - #13

The purpose for which the corporation is organized is: Provide a unique style of learning and education for children and adults.
Summary

- Read the purpose clause carefully and thoroughly.

- Remember to consider the reference material if you have questions.
Solve the Puzzle
Stretch Break...
Political Campaign, Lobbying, and General Advocacy Activity of Tax-Exempt Organizations

Presented by:

(b) (6)
Types of Exempt Organizations that May Engage in Advocacy Activities:

- § 501(c)(3) Charitable Organizations
- § 501(c)(4) Social Welfare Organizations
- § 501(c)(5) Labor Organizations
- § 501(c)(6) Business Leagues
- § 527 Political Organizations

Other types of exempt organizations may engage in advocacy, but these are the most common ones.
Political Campaign Activity

- Any and all activities that favor or oppose one or more candidates for public office
- Includes candidate endorsements and contributions to campaigns
- Includes distributing materials prepared by others that favor or oppose candidates
- All *facts and circumstances* will be considered
Guidance

- **Revenue Ruling 2004-6**
  - 6 examples illustrating application of facts and circumstances test to 501(c)(3) organizations

- **Fact Sheet 2006-17 (plain language)**

- **Revenue Ruling 2007-41 (precedential)**
  - 21 examples illustrating application of facts and circumstances test to 501(c)(3) organizations
Lobbying

Attempting to influence legislation through:

- Directly contacting members of a legislative body
- Encouraging the public to contact members of a legislative body
- Advocating a position on a public referendum
General Advocacy

- Influence public opinion on issues
- Influence non-legislative governing bodies (the executive branch, regulators)
- Encourage voter participation:
  - Voter Registration
  - Get Out the Vote Drives
  - Voter Guides
  - Candidate Debates
501(c)(3) and Elections

- Participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office – Absolutely prohibited

- Encouraging people to participate in the electoral process in a non-biased, neutral manner – § 501(c)(3) purpose
Other Types of Advocacy and 501(c)(3) Status

**Lobbying** – Cannot be a substantial activity of the organization

- Different rules apply under section 501(h) to those that elect.

**General Advocacy** – Permitted as an educational activity
Other Tax-Exempt Organizations

- § 501(c)(4) Social Welfare Organizations
- § 501(c)(5) Labor Organizations
- § 501(c)(6) Business Leagues
501(c)(4), (c)(5), or (c)(6) Status

- Primary activity must be in furtherance of exempt purpose
- May engage in non-exempt purpose activities without jeopardizing exemption provided less than primary activity
- Lobbying may be exempt purpose activity
- Political campaign activity is not exempt purpose activity
Advocacy and § 501(c)(4), (c)(5), or (c)(6) Status

- **Political Campaign Activity** – Permitted so long as it does not constitute the organization's primary activity
- **Lobbying** – Unlimited amount of lobbying in furtherance of its exempt purpose permitted
- **General Advocacy** – Unlimited amount in furtherance of exempt purpose
§ 527(f) Tax Consequences

- Taxed on lesser of political expenditures or investment income
- May set up separate segregated fund - taxed as political organization
§ 527 Status: Political Organizations

An organization that is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to influence the selection, nomination, election or appointment of any individual to Federal, State, or local public office, office in political party, or Presidential electors.
<table>
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<tr>
<th></th>
<th>501(c)(3)</th>
<th>501(c)(4)</th>
<th>501(c)(5)</th>
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<tr>
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<td>YES</td>
<td>YES</td>
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<td>Engage in Candidate Election Advocacy</td>
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<td>LTD</td>
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<tr>
<td>Engage in Public Advocacy Not Related to Legislation or Election of Candidates</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>LTD</td>
</tr>
</tbody>
</table>
Working Advocacy Cases

Cases involving advocacy present several challenges:

- They often get media attention, particularly during an election year
- It is often difficult to determine the exact activities of the organization
- Organizations may be focused on just providing the information they think you want to hear
How to meet these challenges?

- Get the facts:
  - Use precise questions and request actual documents
    - Fundraising materials
    - Meeting minutes
    - Agenda, handouts and transcripts from events
How to meet these challenges?
(continued)

- Analyze carefully:
  - Determine the type of advocacy, remember what is permitted
  - Determine exactly who is speaking
    - Organizations often have related entities:
      - (c)(3) Educational org
      - (c)(4) Lobbying org
      - 527 Political org
    - See 2000 CPE, Chapter S on Affiliations
How to meet these challenges?
(continued)

- Remember other issues like private benefit

  - Recent denials, e.g. PLR 201128034
Closing

- When in doubt, ask!
Questions?