Checkpoint Contents
Federal Library
Federal Editorial Materials
WG&L Journals
Taxation of Exempts/Journal of Taxation of Exempt Organizations (WG&L)
Taxation of Exempts (WG&L)
2010
Volume 20, Number 05, March/April 2010
Articles
SETTING THE RECORD STRAIGHT—NOT EVERYTHING GOES, Taxation of Exempts (WG&L), Mar/Apr 2010

IRS EXEMPTION OVERSIGHT

SETTING THE RECORD STRAIGHT—NOT EVERYTHING GOES

The data, anecdotal evidence, and arguments do not support the charge that oversight is weak.

Author: NATHAN M. BOYCE

NATHAN M. BOYCE is an associate in the St. Louis office of Bryan Cave LLP.

[pg. 37]

The authors of "Anything Goes: Approval of Nonprofit Status by the IRS," [1] argue that "when it comes to oversight of the application process to become a public charity, nearly anything goes." [2] In fact, among those granted tax benefits are "wildly diverse and indeed eccentric associations." Further, they claim that oversight of the conferral of tax privileges "is weak, bordering on non-existent," such that obtaining recognition of exempt status by the IRS is an "embarrassingly easy thing to do." [3] In support of this claim, the authors analyze data on the number of applicants who are admitted or rejected and conclude that "nearly every application on which a decision is rendered is approved." [4] Further "evidence for the 'anything goes' claim" is provided in the form of short descriptions of the "top 20 most bizarre public charities created in 2008." [5]

Although these claims are interesting, even attention-grabbing, they are not supported by the authors' own evidence. On such an important matter, it is important to set the record straight.

501(c)(3) requirements

Section 501(c)(3) provides for an exemption from federal income taxation for:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not 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.

The requirements of Section 501(c)(3) can be separated into four parts:

- The organization must be organized and operated exclusively for religious, charitable, etc. purposes. [6]
- Net earnings of the organization may not inure to the benefit of any private shareholder or individual. [7]
- Lobbying cannot be a substantial part of the organization's activities. [8]
- The organization cannot participate in any political campaign activities.

The term "charitable" is used in its generally accepted legal sense, including such purposes as relieving the poor, advancing science, advancing education, and lessening the burdens of government. [9]

Donations received by an organization exempt under Section 501(c)(3) are generally not subject to

[pg. 38]

income tax and are deductible by the donors. [10] Such donations, as well as other assets of a 501(c)(3) organization, are restricted by Section 501(c)(3) to be used by such organizations for 501(c)(3) purposes.

IRS determination process

The authors' section under the heading "The Determination Process" fails to provide salient details on the determination process conducted by the IRS.

IRS Form 1023, "Application for Recognition of Exemption," along with attachments required by it (together, the "Application"), is filed by organizations that seek recognition of exemption under Section 501(c)(3). Among other things, a completed Application provides identifying information, actual and/or proposed financial information for several years, and a "detailed narrative statement of proposed activities, including each of the fundraising activities." [11] Certain documentation must also accompany the application, specifically the applicant's legal formation and governing documents such as, in the case of a nonprofit corporation, articles of incorporation and, if in existence, bylaws. [12]

Each Application is reviewed by an IRS agent who specializes in doing so. [13] The agent reviews the Application to ensure that no items are missing and will contact the organization to obtain any additional information or amendments necessary to process the application. [14] The agent ultimately will determine, based on the "facts of the case and clearly established rules in the statute, a tax treaty, the regulations, a revenue ruling, opinion or court decision, how the case should be closed (approved, adverse, failure to establish, other)." [15] Then the agent will submit the case to his or her group manager for "review/signature/approval." Besides manager review, a "statistically valid sample of EO determination cases" are reviewed by EO Determinations Quality Assurance to ensure technical accuracy, adherence to written procedures, uniform and impartial treatment, and identification of trends, patterns, and unique or new issues or techniques. [16] In recent years the IRS has centralized its determination process, and the agents dedicated to that process, at its Cincinnati, Ohio processing center. [17]

If an agent believes that an adverse determination is likely, "it is often advisable to hold an informal conference with [the] organization" before issuing the initial adverse determination letter. In such conference, the parties may clarify activities, purposes, or facts, and/or discuss alternative tax-exempt status or foundation classification. [18] If, after the conference with the organization and a review of any information submitted by the organization, the "agent and group manager agree that the organization does not qualify for a favorable determination, then the agent should prepare an initial adverse determination letter" setting forth a detailed discussion of the rationale for the denial and advising the

organization of its "opportunity to appeal or protest the decision and request a conference." [19]

An Application may be withdrawn upon written request "at any time prior to the issuance of a determination letter or ruling." [20] Although agents are not permitted to solicit withdrawal of an Application, they may discuss with an applicant its "option to withdraw the application because it does not appear to qualify for a favorable determination." [21]

This author and his colleagues have has been involved in the processing numerous Applications. None have ever seen the IRS respond to an Application with an initial adverse determination letter. For about the past year, several weeks after filing the Application,

[pg. 39]

the IRS has issued a preliminary letter stating that:

"During the initial review process, applications for exemption are separated into three groups:

> (“1.) Those that can be processed immediately based on information submitted
> (“2.) Those that need minor additional information to be resolved, and
> (“3.) Those that require additional development."

The letter further provides that if the application falls in one of the first two groups, "you will receive your determination letter stating that you are exempt," but that if it falls in the third group, "you will be contacted once your application has been assigned." Thereafter (or, before the IRS was issuing that preliminary letter, initially), this author and his colleagues occasionally receive a favorable determination letter, but usually receive a letter from the IRS stating that the IRS needs more information before it can "complete consideration of your application for exemption." In such letters, the IRS may ask questions to develop the facts or legal arguments. A response to this letter is followed sometimes by a favorable determination letter, and other times by another letter with more questions. In connection with the Service's written questions, there frequently are telephone conferences with IRS agents during which factual and legal issues are discussed. Many times in these conversations, IRS agents have suggested changes that could be made to the organization's activities in order to qualify for recognition of exemption under Section 501(c)(3).

Data on approval rates

The authors mention in a footnote that their 2008 sample consisted of 79,236 applications, but that 23,046 of those either were incomplete, did not include the fee, or were withdrawn. The authors then performed their analysis on the remaining 56,190 organizations and showed that the IRS approved 98% of Applications on which it rendered a decision. [22] This, and similar results for other years, is cited as evidence that the Service's oversight of application is weak. But there are at least two problems with the authors' analysis of their data.

First, as the authors concede at the end of the paper, some applicants may "apply and withdraw their applications quickly because of the IRS screening process." [23] This note, however, is insufficient. Withdrawal after corresponding with the IRS, as described above, is an *example* of IRS oversight, and hence should not be disregarded for purposes of the analysis of IRS oversight. The percentage of Applications excluded by the authors is about 29% of total Applications. Including such Applications in the analysis reveals that 69% of total Applications were approved in 2008. Without knowing which of such excluded Applications did not include the fee or were withdrawn with or without IRS correspondence, the analysis of IRS oversight based on approval rates is necessarily incomplete. [24] For purposes of analyzing the Service's oversight, the most that can be said based on the data is that the IRS approved between 69% and 98% of Applications on which it exercised oversight in 2008. [25]

Second, the fact that a high percentage of applicants are approved does not mean that the Service's oversight is weak. As set forth above, the IRS does not typically issue an adverse determination letter in response

[pg. 40]

to an Application that seems not to satisfy Section 501(c)(3). Rather, the agent generally corresponds with the organization to ask questions, explain concerns, suggest a change in the exemption sought, or discuss withdrawal. At most, the IRS issues an initial adverse determination letter, which carries protest and conference rights. Thus, organizations are given ample opportunity to avoid an adverse determination letter by revising the activities or aspects of activities that may disqualify them, changing the exemption status sought, or withdrawing. [26]

Therefore, the conclusion that the low number of adverse determination letters means oversight is weak is rebutted by a correct understanding of the oversight process. The authors' position seems to rely on the assumption that faulty applications are promptly denied. As seen above, this is not the case.

New charity anecdotes

The authors' second source of evidence that oversight is weak is a summary, "with comic spirit intended, though with a serious point to illustrate," of their "subjective take on the most eccentric organizations approved as public charities in 2008." These are entities that "seemed either peculiar (indeed sometimes bizarre) or perhaps at odds with the law." No defense will be undertaken here of all the 60 listed charities. In general, the record provided by the authors is not sufficient to do so, nor is doing so necessary to show the ineffectiveness of the evidence. More broadly, though, there are at least three reasons why the anecdotal evidence does not support the claim that anything goes.

First, in spite of the quote above, the authors provide no evidence or even any arguments that any of the anecdotal charities are at odds with Section 501(c)(3). In two places the authors imply substantive arguments against the "eccentric" charities. First, they include a sub-title in their eccentric list for "Parties and Festivals Masquerading as Public Charities" and list three charities that hold special events to raise money for other public charities or non-profits. Presumably the argument is that holding a party is not a purpose set forth in Section 501(c)(3). One of these charities is the "Woohoo Sistahs," which is a "crazy group of women" who "participate in fundraisers" like the Susan G. Komen Race for the Cure and "volunteer at and donate to organizations" such as a battered women's shelter. The authors declare that the Woohoo Sistahs "do not provide services of their own except for staging events that raise money for other public charities." [27] The authors' criticism of Woohoo Sistahs and other similar organizations, however, runs counter to well-established IRS precedents that an organization formed for the purpose of providing financial assistance to Section 501(c)(3) organizations, or supporting the exempt activities of other nonprofit organizations, is exempt under Section 501(c)(3). [28]

The authors also include a sub-title in the "eccentric" list for "Looks Like a For-Profit Operation" and list three charities that charge fees for various services or events. But Section 501(c)(3) does not prohibit charging fees for services as long as the requirements of Section 501(c)(3)

[pg. 41]

are satisfied (in this context, concerns include private benefit and operation for a substantial non-exempt purpose of operating a commercial business for profit). Non-profit hospitals, universities, museums, and zoos are perhaps the most well-known examples of this. There are ample other precedents on point. [29] Hence, pointing out that an organization charges a fee does not constitute an argument that the organization should not have been recognized as exempt under Section 501(c)(3). The first of the eccentric charities listed under this sub-title is the Jason Morris Elite Judo Training Inc.,

which is an amateur sports club that trains "many Olympic-level judokas." [30] As set forth above, the definition of Section 501(c)(3) expressly includes organizations that "foster national or international amateur sports competition." Thus, the purpose of this organization appears (based on the brief description) to fall within Section 501(c)(3) and, by itself, the fact that fees are charged does not change this.

The second reason that the anecdotal charity evidence does not support the authors' claims is that instead of making substantive arguments based on the requirements of Section 501(c)(3), the authors argue that the listed charities are examples that "anything goes" because the charities are "bizarre" or "eccentric". However, notably absent from the requirements of Section 501(c)(3) is a requirement that organizations not seem bizarre or eccentric to the agent. If eccentricity ought to be, but is not, a factor in evaluating charities' status, this is the fault of the Code, not the IRS. For example, with respect to the International Society of Talking Clock Collectors, the authors do not make (nor can I infer) a legal argument, but they do call the organization "absurd" and an example of "preposterousness." This organization is an online "virtual museum" designed to "preserve a broad base collection of talking clocks and related artifacts." Again, the authors' criticism ignores well-established precedent. The Regulations expressly provide that exempt educational purposes include "[m]useums, zoos, planetariums, symphony orchestras, and other similar organizations." [31] The exemption is not limited to subjectively non-bizarre museums.

Third, the authors concede that most of their information "came from websites for each organization or websites where the organizations in question were mentioned." [32] Relying on such information to criticize the determination process is a mistake. A Web site, especially of a new organization, may be undergoing development and not paint a complete picture of the organization. Further, even an established Web site may not include all the information required by the Application, since the two media are designed for very different audiences. Nonetheless, even if an organization's Web site thoroughly and accurately described it to the point of including evidence that the organization should not qualify for exemption under Section 501(c)(3), that does not necessarily reflect on the IRS oversight of the application process. The Service's review is based on the Application at the time it was filed, [33] not the organization's Web site months or years later. The organization may deliberately or innocently stray from its mission—even into realms rendering it ineligible for an exemption—but to the extent it does so, blame cannot be laid on Service's oversight of Applications. [34] A review of the actual Applications (which are publicly available documents) [35] and a showing that some violate the requirements of Section 501(c)(3) could form a basis for the authors' claims. As it is, such basis is lacking.

Therefore, the authors' anecdotal evidence does not support the claim that anything goes. Despite summarizing about 60 charities in the appendix, the authors failed to show even one instance of an organization being recognized under Section 501(c)(3) that should not have been so recognized. For example, they did not point to any entities that primarily further social or recreational purposes, commercial purposes, illegal purposes, or any other purpose outside of the scope of Section 501(c)(3).

A call to modify Section 501(c)(3)

The authors' argument that "anything goes" is not only directed at the IRS. They also assert that Section 501(c)(3) stands "in need of reconsideration in light of the massive growth of the nonprofit sector." Despite the above showing that the IRS has not exercised weak oversight, one could argue that, in spite of the diligent IRS oversight, "anything goes" as a result of weak laws and precedents. For example, one could argue that certain types of organizations should be excluded from the definition of Section 501(c)(3), or that the IRS should employ a subjective analysis to exclude bizarre or eccentric organizations from recognition under Section 501(c)(3). The authors have not, however, carried the burden of making a sufficient argument for changes in Section 501(c)(3) at any level, for the reasons set forth below.

As a preliminary matter, it is not clear why growth in organizations that satisfy the requirements of

Section 501(c)(3) constitutes a reason for changing Section 501(c)(3). There seem to be two different reasons for the authors' position that growth constitutes such a reason for change. First, they cite a report that in 2008, American donations to charities "cost ... the United States Treasury an estimated $50 billion in foregone tax revenue." Hence, one can read the argument as saying that the problem with growth of 501(c)(3) organizations is that such growth costs the

[pg. 42]

U.S. too much revenue in the form of charitable deductions. [36] But charitable deductions do not "cost" the U.S. Treasury money in the same way as, for example, people lying on their tax returns. In fact, the House Committee on Ways and Means stated that the charitable deduction is "based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare." [37] Consequently, an increase in the number of extant 501(c)(3) organizations and in the amount of money donated to 501(c)(3) organizations does not constitute a reason to reconsider Section 501(c)(3). If there is a public policy or other reasoning that argues against the public policies of encouraging support of 501(c)(3) organizations, the authors have not advanced it.

Another way to read the argument is that the growth in 501(c)(3) organizations is at least in part a result of an increase in exemption being granted to bizarre and eccentric organizations. Accordingly, one way to limit Section 501(c)(3) would be to exclude such bizarre and eccentric organizations. But, as discussed above, the authors have not shown that bizarre or eccentric organizations fail to qualify under Section 501(c)(3), so such proposed limitation must be reduced to excluding bizarre or eccentric organizations that otherwise do qualify under Section 501(c)(3). This could be done by injecting a subjective analysis into Section 501(c)(3) so that otherwise qualifying, but eccentric, organizations could be excluded (for example, a museum of paintings could be exempt but a museum of clocks could not). Of course, the attempt to exclude "bizarre" and "eccentric" organizations would require great care in identifying the conditions for being so designated. The authors' obviously have some conception in mind (otherwise they would not be able to describe various organizations using these terms), but they do not articulate such a conception even in general terms, much less with the specificity that would be required to guide IRS agents making those determinations. Without providing such specific conditions, a subjective analysis on each Application would likely lead to uncertainty and inconsistent results.

Furthermore, such a limitation is inconsistent with the praise of Alexis de Tocqueville, used approvingly by the authors as the introduction to their paper, that "Americans of all ages, conditions, and dispositions form associations." [38] Would that praise be well-founded if groups of professionals, businesspeople, and academics were permitted to form fundraising organizations, but eccentric groups cited by the authors such as "drag nuns," beer festivals, and a "crazy group of women" could not do the same?

Another way to limit the scope of Section 501(c)(3) would be to eliminate a particular exempt purpose under Section 501(c)(3) (such as fundraising, amateur sports, or education). Again, in order to raise the issue, an argument would need to be advanced against the public policies favoring such particular exempt purpose. In short, saying there has been a growth in organizations exempt under Section 501 (c)(3)—even bizarre or eccentric ones—does not, without more, constitute an argument for reconsidering Section 501(c)(3).

Conclusion

In their conclusion, the authors propose that additional funding be allocated to the IRS to bolster the staff for reviewing Applications. They also propose that the IRS raise the Application filing fee as a "desirable barrier" to those seeking exemption under Section 501(c)(3). As discussed above, however, the data, anecdotal evidence, and arguments provided by the authors do not support such changes, and neither do they support the charge that oversight is weak or that "anything goes." All the authors have proven in this regard is that the IRS will not withhold recognition of exempt status if an

organization meets the 501(c)(3) standards—even if the organization is eccentric (as the authors judge eccentricity). In addition, the authors propose that Section 501(c)(3) be reconsidered but, again, they fail to provide any evidence or coherent arguments that would support such a step.

Perhaps both the IRS and the Code could be improved. For example, there may in fact be good arguments to revise Section 501(c)(3), and perhaps an examination of actual Applications would reveal errors or negative trends in the approval process. However, the changes called for by the authors, and the conclusions they reach, are not supported by their arguments, largely because those arguments themselves are not supported by the facts.

1

Reich, Dorn, and Sutton, "Anything Goes: Approval of Nonprofit Status by the IRS (Draft Report of October 25, 2009)," available at www.stanford.edu/~sdsachs/AnythingGoesPACS1109.pdf, hereinafter "Anything Goes." Actually, the IRS does not grant non-profit status. Non-profit status is a creature of state law. For example, a Missouri corporation may incorporate under the General and Business Corporation Law of Missouri and become a Missouri for-profit corporation, or it may incorporate under the Missouri Nonprofit Corporation Act and become a Missouri nonprofit corporation. See Mo. Rev. Stat. Chapters 351 and 355. Not all states have such an option for corporations. See generally Del. Gen. Corp. Law. In any event, contrary to the authors' claim, federal tax benefits do not accompany state non-profit status. Rather, nonprofit corporations (as well as certain trusts, associations, and limited liability companies (see Internal Revenue Manual ("IRM") 7.25.3.2.; McCray and Thomas, "Limited Liability Companies as Exempt Organizations—Update," *Exempt Organizations Continuing Professional Education Technical Instruction Program for FY 2001* (2000)) may *apply* to the IRS for recognition of exemption from federal income tax under Section 501(c)(3). Thus, the issue as presented by the authors is inaccurate, as is the title of the paper itself. The proper terms of art will be used in the following analysis.

2

"Anything Goes" at 4.

3

Id. at 3-4.

4

Id. at 4. A similar statement is found on page 10. However, on pages 3 and 25, the authors misstate their point by saying that "nearly all applicants are approved." As shown below, there is a material difference between all applicants and applicants on which a decision is rendered, so conflating the two is misleading.

5

Id. at 5.

6

In this context, "exclusive" does not carry its common meaning. An organization will not be regarded as "exclusively" operated for 501(c)(3) purposes only if "more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Reg. 1.501(c)(3)-1(c)(1).

7

See also Reg. 1.501(c)(3)-1(d)(1)(ii). The inurement doctrine based on this language and the excess benefit rules found in Section 4958 prohibit or limit benefits to insiders of the 501(c)(3) organization. The private benefit rules derived from this language prohibit benefits to individuals that are not "incidental to the accomplishment of exempt purposes." IRM 7.25.3.16.7.

8

The authors' claim that organizations recognized as exempt under Section 501(c)(3) are prohibited from lobbying is incorrect. "Anything Goes" at 12, footnote 11. See also Section 501(h).

9

Reg. 1.501(c)(3)-1(d)(2) states that the term includes "[r]elief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency."

10

See Sections 501(c), 170(b).

11

Rev. Proc. 2010-9, 2010-2 IRB 258. This revenue procedure does not reflect any material changes from the procedures in effect during 2008, set forth in Rev. Proc. 2008-9, 2008-2 IRB 258.

12

Form 1023, at 2.

13

IRM 7.20.2.1. EO Determinations, a division of EO Rulings and Agreements within the IRS, is primarily responsible for processing Applications and issuing determination letters. Cases that raise issues that "cannot be resolved by established precedent and thus require the interpretation of tax laws" are processed by EO Technical, which issues letter rulings. Rev. Proc. 2010-9, 2010-2 IRB 258; IRM 7.20.1.1. This paper will focus on the process of EO Determinations.

14

IRM 7.20.2.4. Agents are required to "provide identifying information about themselves so taxpayers will know whom to contact if they should have questions relating to their determination request." IRM 7.20.2.4. If the applicant fails to respond to the agent's request, or request an extension, within 21 days, the agent will contact the applicant and may provide an extension. If applicants do not respond after 35 days, the application is closed for "failure to establish." After such closure, an applicant has 90 days to submit additional information without an additional fee and agents should "in the interests of good customer service, use every opportunity to remind organizations" to request an extension if needed. IRM 7.20.2.7.1.

15

IRM 7.20.2.4.

16

IRM 7.20.5.1. In addition, certain cases may be subject to mandatory review or post-review by EO Technical. IRM 7.20.2.4.

17

See Advisory Committee on Tax Exempt and Government Entities, "'Project Aspire': EO Determinations Process Review Project Group" (2003), at I-3 to I-4, available at www.irs.gov/pub/irs-tege/act_rpt2_part1.pdf.

18

IRM 7.20.2.9.

19

Rev. Proc. 2010-9, 2010-2 IRB 258. See IRM 7.20.2.9. The initial adverse determination letter is subject to mandatory review.

20

IRM 7.20.2.4.2.

21

Id.

22

"Anything Goes" at 7.

23

Id. at 25.

24

It is also unclear from the authors' discussion of their data how the cases closed as "failure to establish" are accounted for—as withdrawals or denials (see note 13, *supra*). These cases arise where an organization fails to respond to IRS requests for information and, like withdrawals after corresponding with the IRS, constitute evidence of the IRS exercising oversight.

25

The authors do not provide data on how many applications were withdrawn in other years.

26

It is also worth mentioning that at least some of the Applications are prepared by lawyers or accountants who are familiar with the Application and Section 501(c)(3). This certainly contributes to a higher approval rate. It is common, for example, for this author and his colleagues to identify an issue

in a client's proposed charity and recommend that the client modify it to be consistent with Section 501 (c)(3). In these cases, by the time the IRS sees the Application, some or all of the issues have already been eliminated.

27

"Anything Goes" at 21.

28

Reg. 1.501(c)(3)-1(b)(1)(ii) (providing that an organization created solely "to receive contributions and pay them over to organizations which are described in Section 501(c)(3) and exempt from taxation under Section 501(a)" satisfies the organizational test). *See* Rev. Rul. 67-149, 1967-1 CB 133 (concluding that an organization formed for the purpose of providing financial assistance to several different types of Section 501(c)(3) organizations is exempt under Section 501(c)(3)); National Foundation, Inc., 60 AFTR 2d 87-5926, 13 Cl Ct 486, 87-2 USTC ¶9602 (Cls. Ct., 1987); Rev. Rul. 68-489, 1968-2 CB 210 (concluding a Section 501(c)(3) organization could transfer funds to any other type of non-501(c)(3) organization, provided that such organization used the funds for activities that the Section 501(c)(3) transferor could conduct directly and the transferor maintains control over the use of the funds and documents such use). Several of the charities listed in the authors' appendix appear to be fundraising organizations as well. Of course, it does not follow that an organization may conduct *any* fundraising activities and qualify for exemption on the grounds that it passes such funds to other 501(c)(3) organizations. The unrelated business income tax, the commerciality doctrine, and other rules constrict the types of activities that may be conducted to raise funds. In the cases cited by the authors, it seems (on the scant record) as though the charities avoid the unrelated business income tax because the trade or business is "not regularly carried on" as defined in Reg. 1.513-1.

29

See also Section 509(a)(2).

30

"Anything Goes" at 23.

31

Reg. 1.501(c)(3)-1(d)(3)(ii). See Rev. Rul. 68-372, 1968-2 CB 205 (by maintaining an institution devoted to the procurement, care, and display of objects of lasting interest or value in a particular sport, this organization is operating a museum that educates the public).

32

"Anything Goes" at 16. The authors note that they attempted to review the IRS Forms 990, but apparently such were not available for many of the organizations they reviewed.

33

The Application asks the applicant to disclose its Web site address if it has one.

34

Such straying organizations may have IRS audit to worry about in the future. As pointed out by the authors, some organization recognized under Section 501(c)(3) have such status revoked each year.

"Anything Goes" at 12, footnote 11.

35

An Application may be requested in writing from the IRS or from the organization itself, which is required to provide a copy. Sections 6104(a)(1)(A), (d)(1). Requesting and reviewing a considerable number of the Applications filed in a given year would not be an easy process, but it would be a process from which one could draw more reliable conclusions. It does not appear, however, that the authors obtained or reviewed the actual Applications for any of the 20 organizations they listed.

36

This reading is also supported by the authors' statement in their conclusion that although all 501(c)(3) organizations can offer tax deductions, "the overwhelming majority" of the newly recognized 501(c)(3) organizations have tiny revenues and it is unlikely that they lead to a large loss of tax revenue.

37

Bittker, McMahon, and Zelenak, *Federal Income Taxation of Individuals* (Warren, Gorham & Lamont, 2002) ¶25:01 (citing H. Rep't No. 1860, 75th Cong., 3d. Sess. (1938), reprinted in 1939-1 CB (pt.2) 728, 742). See Regan v. Taxation With Representation of Washington, 51 AFTR 2d 83-1294, 461 US 540, 76 L Ed 2d 129, 83-1 USTC ¶9365, 1983-2 CB 90 (1997) ("Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions"). It is worth re-stating that 501(c)(3) purposes are public purposes and that assets of 501(c)(3) organizations must be used for 501(c)(3) purposes. The authors' failure to appreciate this point is evident in the appendix, where, with respect to several different organizations, they rhetorically ask why this organization would need donations.

38

Tocqueville, *Democracy in America* (1840), Vol. 2, Ch. 5.

END OF DOCUMENT -