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Population Legislation Policy Options

Representative Chris Smith (R - N.J.) and others have proposed legislative proposals on U.S. Population Assistance (commonly referred to as the Smith language) that:

1. Prohibits funding for UNFPA unless the President certifies that UNFPA has terminated all activities in China and,

2. Makes foreign and multilateral organizations ineligible for funding unless they certify that they will not use their own funds to:
   - perform abortion;
   - "lobby" to alter abortion laws.

As Smith and his allies seem more willing to accept a Presidential waiver on the performance of abortion, the Administration's efforts should focus on addressing "lobbying." UNFPA is a moot point in light of the recent UNFPA Executive Board decision to begin such activities.*

The attached six options seek to break the current impasse by addressing the lobbying issue in ways that should not interfere with existing programs or the Administration's publicly stated commitment to ensure that abortion remains safe, legal, and rare. However, each of the options carries significant downsides, including, in some cases (options A, B, and D), limitations or the risk of limitations on the ability of individuals and/or organizations to express their views on public policy issues relating to abortion.

The options are as follows:

Option A: Resurrect Gilman-Pelosi.

Option A ***plus***: Enhanced Gilman-Pelosi (with four versions)

Option B: Use 501(c)(3)-type tax code restrictions to limit lobbying activities.

Option C: Enact Smith restrictions with Presidential waivers.

Option D: Voluntary statement by foreign NGOs that they will not lobby on abortion for one year.

Option E: Provide incentive/bonus to foreign NGOs that agree not to lobby on abortion.

Option F: Return to FY97 Appropriations language with second vote.

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* It bears noting that UNFPA's China program will be conducted in provinces where the practices leading to Congressional opposition will no longer be practiced. Thus, the raison d'etre for prohibiting such funding no longer exists. However, we will have to work hard if we want to ensure future funding for UNFPA.

OPTION A: GILMAN-PELOSI AMENDMENT TO SMITH

Accept the Smith language, but with Gilman-Pelosi Amendment that adds language that funding would be available to organizations that "do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning;" defunding of UNFPA if there is a new China program, with the transfer of these funds to U.S. bilateral population programs.

Pros:

- Consistent with International Conference on Population and Development (ICPD) language. Emphasizes our commitment to prevent the need for abortion.

- Could help in maintaining funding for organizations currently supported by USAID.

- Came within 5 votes of winning in the House (however we may have lost additional votes due to attrition since September).

- Does not impose any restrictions on lobbying or the performance of abortion.

Cons:

- Could result in lawsuits. The Justice Department believes that the provision could be challenged. DOJ has suggested that there is a risk -- ranging from minimal to 30% -- that a Court would rule against the Administration. If this were to occur, a possible outcome would be to impose severe restrictions on USAID's program and result in a major setback to the Administration's policies vis-a-vis abortion. (See Annex 1 for analysis of Gilman-Pelosi.)

- Given the tendency to reenact the prior year's appropriation language, would likely make Smith language a permanent feature of USG law.

- Rejected in House vote, despite Administration support (albeit not conveyed by the most senior levels, i.e., the Secretary or the President).

OPTION A *PLUS*: ENHANCED GILMAN-PELOSI

Introductory Note on Options A(1) through A(4)

Options A(1) through A(4) all modify the Smith/Gilman-Pelosi proposal in ways that might make the underlying approach more attractive. These sub-options each impose additional terms that may be appealing to conservative votes. Options A(1) and A(2) impose relatively minimal burdens. Options A(3) and A(4) impose somewhat more significant burdens but may win more support. All four options are subject to the same pros and cons set forth in Option A. Only the pros and cons specifically associated with these sub-options are set forth below.[1]

Option A(1): Modified Gilman-Pelosi Amendment to Smith (Optics Approach)

Accept the Smith language together with Gilman-Pelosi, but with modifications that would: 1) make UNFPA ineligible for funding unless it complies with the Smith language and make UNFPA ineligible for the Gilman-Pelosi exception; and, 2) require that organizations that are exempted from the Smith language certification requirement certify that they will not promote abortion as a method of family planning and utilize funds to prevent abortion as a method of family planning. (See Annex 2 for exemplar language.)

Distinguished from Option A: As noted in Annex 1, Gilman-Pelosi creates an exception to the certification requirement contained in the Smith language. This exception would allow organizations to receive assistance even if they provide abortion on demand or seek to alter the laws on abortion (so long as they use their own funds in carrying out either activity). This option would narrow the exception so as to exclude UNFPA. As a result, UNFPA would be obliged to provide the certification called for by the Smith language and would be subject to the lobbying prohibition.

In addition, this option adds a certification requirement to foreign non-governmental organizations that are exempted from the Smith language certification. This certification, however, would only require that the organization not violate the policy promulgated by AID under Gilman-Pelosi.

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[1] It was suggested that L focus its efforts on developing slight language changes to Gilman-Pelosi that might make the proposal more appealing to conservative votes -- even if such changes were purely optical. L is reluctant to do so given the nature of Gilman-Pelosi and the basis of its appeal to conservatives votes. Gilman-Pelosi appeals to some conservatives because it creates a litigation risk that a Court will reject the Administration's intended implementation of the language and hamper the Administration's ability to implement its abortion policy. (See Annex 1.) Making even slight language changes -- at least those that would attract conservative votes -- could further increase those litigation risks. Given the negative outcomes associated with that risk, we have instead suggested options that do not inject further ambiguity/litigation risk into the Gilman-Pelosi /Smith proposal.

Pros:

- Largely symbolic in nature; places no additional burdens on existing programs while allowing Congress to argue that additional burdens are placed on UNFPA and AID grantees. (We call this the optics measure because we did not view it as having any negative impact. However, UNFPA may engage in advocacy efforts that arguably may fall within the scope of the Smith prohibition on lobbying.)

Cons:

- Likely not enough to garner conservative votes.

Option A(2): Modified Gilman-Pelosi Amendment to Smith (Authorization Approach)

Accept the Smith language together with Gilman-Pelosi as is (or with the changes noted in Option A(1)) but offer this language as an authorization bill rather than as an appropriations bill.

Distinguished from Option A: By offering it in an authorization bill, it would likely become permanent law, something that would be appealing to conservative votes.

Pros:

- Adds relatively little additional burden not already created by Option A but would be very appealing to conservative House members by making it essentially a permanent feature of foreign operations bills given the inability of Congress to pass regularly authorization bills.

Cons:

- Given the litigation risk associated with Gilman-Pelosi (see Annex 1), this option increases the likelihood that if successfully challenged by a conservative group, the Administration (and subsequent administrations) would be severely restricted in their ability to provide funding to organizations that provide abortion on demand or engage in activities to change the law on abortion (even when using their own funds). See Annex 1 (re litigation rights).

- If the restriction is included in an annual appropriation, the President could veto the bill in a subsequent year if the Administration is unable to successfully defend litigation challenging it's interpretation of Gilman-Pelosi. It would be much more difficult to amend an authorization act.

Option A(3): Modified Gilman-Pelosi Amendment to Smith (501(c)(3) Hybrid Approach)

Accept the Smith language together with Gilman-Pelosi but import the 501(c)(3) modified to operate in a manner similar to the narcotics certification legislation. Under this option, proposed legislation would provide that not more than 50% of the funds available for population assistance may be obligated before March 1. To obligate the remainder, the President would be required to determine and report to Congress that foreign nongovernmental organizations, which receive population assistance, do not <u>in the aggregate</u> have "a substantial part of their activities involve carrying on propaganda, or otherwise attempting, to influence legislation" with respect to abortion.[2]

This option might also provide the President authority to waive the requirement for determination if he finds it in the national interest to do so.

It might further include a fifteen day delay during which Congress would have the authority to pass a joint resolution to disapprove the waiver or determination (depending on the approach selected by the President).

<u>Distinguished from Option A</u>: As noted this option blends elements of both Options A and B together and imposes a limited lobbying limitation.

Pros:

- Addresses one of the major concerns expressed by Representative Smith and his allies, namely that USAID is funding organizations that engage in lobbying on the issue of abortion.
- Provides a new approach to the problem that may be appealing to conservative votes while staying largely within the confines of Gilman-Pelosi.
- Given what we know about the practices of AID grantees and subgrantees, this restriction will not threaten any programs. <u>See</u> Option B pros and cons.
- The waiver provision, if included, allows further protection to existing programs.

Cons:

- Subject to the same cons identified in Option B -- administrative burden and slippery slope argument that this option endorses the concept that lobbying one's government is bad.

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2 As noted in Option B, this language is drawn from the tax code provision limiting the ability of tax exempt 501(c)(3) organizations to lobby or otherwise influence legislation.

Option A(4): Modified Gilman-Pelosi Amendment to Smith (501(c)(3) Hybrid with Specific Agreement Language)

Identical to Option A(3) but with an additional provision that states in statutory language that agreements granting or subgranting U.S. population funds to foreign organizations must specifically include the provision that "Each agreement will be terminated if a substantial part of the organization's activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion."

Distinguished from Option A: Adds a further element to Option A(3) that would apply on an organization-specific basis. (Option A(3) above only imposes a requirement on the President to determine whether *in the aggregate* organizations are lobbying.)

Pros:

- Addresses one of the major concerns expressed by Representative Smith and his allies, namely that USAID is funding organizations that engage in lobbying on the issue of abortion.
- Looks tough.
- Provides a new approach to the problem that may be appealing to conservative votes while staying largely within the confines of Gilman-Pelosi.
- Given what we know about the practices of AID grantees and subgrantees, this restriction will not threaten any programs. See Option B.

Cons:

- Subject to the same cons identified in Option B and in Option A(3) above.

OPTION B: 501(C)(3) TAX CODE-TYPE LOBBYING RESTRICTIONS

Prohibit funding to foreign non-governmental organizations for which a substantial part of their activities are aimed at influencing legislation on abortion using section 501(c)(3) of the U.S. tax code as a model. This option would have a funding threshold to ensure that any administrative burdens associated with this option not apply to micrograntees. (See Annex 2 for exemplar legislative language.)

Pros:

- This option draws from the restrictions placed on non-profit organizations in the U.S. that receive tax-exempt status. Those restrictions do not prohibit lobbying activity so long as "a substantial part of the organization's activities are not aimed at attempting to influence legislation." The restriction could be justified as an effort to preserve U.S. support to organizations which use most of their own resources for family planning purposes and not abortion lobbying. (Existing law already bans the use of federal funds for lobbying.)

- Uses a definition of lobbying based on existing U.S. law governing 501(c)(3) organizations that is both readily understandable by Congress and U.S. organizations (i.e., what we apply overseas is what we practice here in the U.S.) and limited in scope.[3]

- Preserves funding for most, if not all, organizations because even the large organizations receiving funds spend only a de minimis amount on lobbying.[4]

- May encourage organizations to spin off lobbying operations.

- Unlike Gilman-Pelosi, this option does not carry a litigation risk that the entire population assistance program will be jeopardized.

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[3] The scope of what activities constitute attempting to influence legislation are set out in regulations promulgated under 26 U.S.C. § 501(c)(3). These include:

> a) contacting or urging the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation;
>
> b) advocating the adoption or rejection of legislation.

26 C.F.R. 1.501(c)(3) - 1(c)(3)(ii).

[4] For example, local affiliates of the International Planned Parenthood Federation (IPPF), one of the largest organizations in the field, are estimated to spend less than $75,000 per year in attempting to influence legislation (out of total expenditures by local affiliates of $60 million). It bears noting that Rep. Smith and others construe "lobbying" more broadly than the definition contained in the tax code. They draw the term to encompass advocacy efforts (such as outreach efforts to the public).

Cons (Option B):

- Codifies the principle that abortion rights as defined under law are somehow different from other reproductive rights (i.e., it is okay to lobby for the elimination of female genital mutilation but not on the risks of unsafe abortion), and that it is appropriate to limit NGO participation in the democratic process.

- Treasury is concerned about the precedent of using 501(c)(3) in a content specific manner (the tax code limits non-profit efforts to influence legislation on any topic) because it might prompt Congress to do the same thing domestically. In light of this concern, Treasury would prefer to see a broader ban on lobbying, i.e., one that is not limited just to the topic of abortion.

- Would contribute to the "chilling effect" on debate concerning abortion policy in developing countries because organizations will not understand the nuances of U.S. law and may act conservatively, conceivably not engaging in appropriate and perhaps legally permissable advocacy efforts.

- Sets a precedent that the Administration acknowledges that what NGOs do with privately-raised funds may be punished (contrary to the President's policy as articulated in 1993).

- Because of the difficulty and ambiguity in applying the language, could result in lawsuits.

- Congress could amend the phrase "influencing legislation" to include advocacy activities, such as having or attending meetings where abortion is discussed (which the House has previously done and which the Administration rejected last November).

- Ignores the differing context in which the 501(c)(3) status arises, i.e., to confer tax exempt status which is an indirect subsidy to domestic organizations. This model likely does not have an analogue in developing countries.

- If the threshold were removed, there is a danger of having a provision that would be difficult or impossible to implement and monitor for many small foreign NGO grantees and sub-grantees supported by USAID.

- Will be difficult to implement given ambiguity of what constitutes a "substantial part" of activities.

OPTION C: ENACT SMITH RESTRICTIONS WITH PRESIDENTIAL WAIVERS

Prohibit funding to foreign non-governmental organizations that use their own funds to perform abortion or to "lobby" to alter abortion laws, with provision for presidential waiver for either activity.[5]

Pros:

- Appears to give something to both sides, codifying the Smith Amendment into law while giving the President the opportunity to waive enforcement. Although enactment of these provisions into law could be construed as a political loss, the waiver authority would preserve the ability to continue existing programs. The President would say in signing the bill into law that he was doing so in light of the waiver authority and his immediate intent to exercise it.

- This was compromise language presented by the Senate to bring agreement between the House and the Administration. The NGOs have told us this would be acceptable language, if absolutely necessary.

Cons:

- The Smith Amendment is inconsistent with the Administration's policy and has been continually rejected.

- Family planning and abortion rights supporters would expect the President to veto Smith-type restrictions and would see incorporation of them into law as a major defeat even though it would not impede programs (assuming a pro-choice Administration).

- Given the tendency to reenact the prior year's appropriation language, would likely make Smith language a permanent feature of USG law.

- May not be sufficient. When Senate offered this language in the 105th Congress, it was rejected by the House.

- The House offered language that codified a prohibition on performance with a partial presidential waiver. This was rejected by the Administration.[6] Rep. Smith has since said that he would no longer find a waiver acceptable. (Others in Congress, however, may feel differently.)

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[5] When the double-waiver was proposed in the U.S. Senate, it included a higher overall funding level of $435 million with a $25 million penalty for each waiver invoked (i.e. $410 million if one waiver invoked; $385 if both waivers invoked.) Even if both waivers were invoked, the bottom line would have been the eventual 1997 appropriation level (albeit, with none of the other devastating restrictions – e.g., metering or delays).

[6] Albeit other language included in this offer was equally unacceptable if not more so, e.g. $356 million funding cap, extremely restrictive lobbying language, etc.

OPTION D: VOLUNTARY STATEMENT BY NGO'S

A voluntary statement by USAID-funded foreign non-governmental organizations that they will not "lobby" for changes in abortion laws for the period of one year.

Pros:

- Would not affect existing programs if there is no penalty for organizations that refuse to comply.

Cons:

- Too weak to be acceptable to Smith and others.
- No indication that NGOs would agree to this.
- Potential negative backlash from family planning and other advocacy groups who will view this as the functional equivalent of Smith-type restrictions.
- After one-year, if not before, Rep. Smith will demand that the "voluntary" statement be codified into law.

OPTION E: INCENTIVE FOR NGO'S

Provide bonus/incentive above current levels of funding to foreign non-governmental organizations who do not "lobby" on abortion. (This is premised on House leadership support for increased funding levels.)

Pros:

- Would not cut-off funding to any existing USAID grantees.
- Would encourage organizations to spin off lobbying operations.

Cons:

- This option suggests that the USG believes that there is something inherently wrong with an organization, using its own resources, seeking to influence its own government and that an organization should be penalized for engaging in democratic activity.
- This rewards organizations for rejecting the decision that President Clinton made by overturning the "Mexico City" policy, which enabled groups to lobby or perform abortion with their private funds.
- Given increased Congressional scrutiny, this could require an extensive monitoring effort.
- Given pressures to balance the budget, Congressional support for higher levels of funding would undoubtedly force us to make cuts elsewhere.

OPTION F: RETURN TO FY97 APPROPS LANGUAGE WITH SECOND VOTE

Accept a return to FY97 Appropriations language which would provide for a delay in the release of 1999 international population assistance funds until July, monthly metering of funds, a Presidential determination of whether the delay has a detrimental impact on the program, and a Congressional vote releasing funds based on the Presidential determination.

Pros:

- Returns to a formula that both sides had accepted in the past.

Cons:

- Owing to attrition in the House, a positive vote will be harder to win.

- This option by itself is not sufficient and will not appease Representative Smith as evidenced by the FY98 appropriations process. Even if the Administration wins a second vote on the detrimental impact of a delay, it doesn't resolve or address Smith's concerns regarding lobbying or performance of abortion.

Annex 1: Analysis of Gilman-Pelosi

Analysis of Gilman-Pelosi turns on the phrase "abortion as a method of family planning." This phrase has been used in section 104(f) of the Foreign Assistance Act (commonly referred to as the Helms amendment) and comparable restrictions in annual appropriation acts to prevent, with limited exceptions, US funds from being used to pay for abortions. Although AID has not formally defined the phrase under these statutes, its administrative practice has been understood to mean abortion for any reason other than to save the life of the woman or in the case of rape or incest. The litigation risk associated with Gilman-Pelosi is that this proposal depends on using a different interpretation of the phrase in the context of how organizations spend their own funds.

Beginning in 1984, the Mexico City policy established by President Reagan, and continued by President Bush, precluded funding to organizations that could not certify that they did not provide or promote abortion as "a method of family planning." In implementing this policy, AID defined this term to mean:

> [abortions] for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions following rape or incest (since abortion under these circumstances is not a family planning act).

AID Grantee Contract §752.7016(d)(10) (circa 1986).

In other words, AID formally extended the Helms restrictions on how US funds are spent to how AID funded organizations spent their own funds. Thus, under the Mexico City policy, organizations that performed or promoted abortions in circumstances other than the limited circumstances noted (*even when using their own funds to do so*) were unable to provide the required certification and, therefore, were ineligible for US funding. One of President Clinton's first acts in office was to issue an executive order discontinuing this policy.

Last term Representative Smith introduced language that would enact this policy into law. His proposed legislation would require all recipients of US funding to certify that they would not perform abortions or engage in <u>any</u> activities to alter the existing laws or policies on abortion while receiving US funds. The Smith amendment did not use the term "abortion as a method of family planning," but referred specifically to the circumstances under the Mexico City policy in which abortion was permissible.

Gilman-Pelosi creates a exception to the certification requirement by exempting organizations that "do not promote abortion as a method of family planning."[1] This is where the definition of the phrase "abortion as a method family planning" becomes critical.

If the Smith language, as modified by Gilman-Pelosi, were enacted, AID would draft regulations that defines the phrase to mean *in this context* as "a substitute for contraception." Thus, if a woman sought an abortion from a clinic that was partially US funded, under such regulations, the clinic could use nonfederal funds to terminate the pregnancy so long as it could demonstrate that its policy and practice did not hold abortion out as a substitute for contraception.

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1 The plain text below represents the Smith language; the bold text reflects the language that Gilman-Pelosi adds to the Smith language:

(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS --

(1) PERFORMANCE OF ABORTIONS --

(A) Notwithstanding section 614 of this Act or any other provision, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country **or to organizations that do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning.**

(2) LOBBYING ACTIVITIES --

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted regulated or prohibited, or **(except in the case of organizations that do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning)** engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited.

In other words, AID's regulations would impose a narrow definition of what it means to "promote abortion as a method of family planning."[2]

The problem with this approach:

This approach depends on the legal principle set out in Rust v. Sullivan[3] and other Supreme Court decisions that the Executive Branch is entitled to judicial deference when the terms of a statute are ambiguous. So long as the President's interpretation is a reasonable reading of the words chosen by Congress and does not conflict with clear legislative history, courts will defer. Here, the Administration would have to demonstrate that the words "promote abortion as a method of family planning" can reasonably be read to mean "promote abortion as a substitute for contraception."

As noted in footnote 2, there is a reasonable explanation for this interpretation. Although not free from doubt, a court would likely agree. Indeed in Rust itself, the Court found these specific words -- "abortion as a method of family planning" -- were susceptible to a differing interpretation and deferred to the Executive.

However, there is a risk -- estimated by various individuals at Justice from minimal to 30% -- that a Court would disagree and find AID's regulation arbitrary and capricious in light of the differing definition given to the phrase "abortion as a method of family planning" elsewhere in the statute. As noted, current US law prohibits the use of US funds for "the performance of abortions as a method of family planning."[4] In this context, the Administration uses a **broad definition** of the phrase so that US funds only pay for abortion in the event the mother's life is in jeopardy or the pregnancy is the result of rape or incest.

A court might conclude that Congress understood the phrase "abortion as a method of family planning" to mean one thing, not two, and that both historically and currently it gave the phrase the same broad definition, not the **narrow definition** that AID would create administratively in the context of how foreign nongovernmental organizations spend their own funds.

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2 There is a reasonable explanation for this narrow definition. Contraception, not abortion, is ordinarily the means promoted in planning the size of families. Organizations which do not "promote" the use of abortion in its policies as a substitute for contraception do not "promote abortion as a method of family planning" even if they recognize a woman's right to choose safe, legal abortion if the woman's family planning is not successful. As a result, AID's regulations would only target organizations that promote abortion in a highly unorthodox manner. In reality, this is a null set. No organizations that AID funds promote abortion as a substitute for contraception.

3 500 U.S. 173, 184-86 (1991).

4 See, e.g., Foreign Operations Appropriations Act of 1998, §518.

In addition, this strategy assumes that there will be no significant legislative history that undermines AID's interpretation. If such contrary legislative history were developed, the Administration would not be able to implement Gilman-Pelosi in the fashion contemplated.

In either event, the result would be to cut off organizations that provide abortion on demand and impose a complete gag order on organizations that engage in *any* activities to alter the laws or government policies regarding the circumstances under which abortion is permitted or prohibited. The Administration has made clear it would not accept either situation. This, however, would be the outcome if the litigation were resolved adversely or contrary legislative history were developed.

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Annex 2: Exemplar Legislative Language for Option A(1)

The plain text below represents the Smith language. The bold text reflects the language that Gilman-Pelosi adds to the Smith language. The underscored bold text reflects proposed further revision to Gilman-Pelosi under Option A(1):

(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS --

(1) PERFORMANCE OF ABORTIONS --

(A) Notwithstanding section 614 of this Act or any other provision, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country **or to <u>any foreign private, nongovernmental</u> organizations that do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning.**

<u>(C) No funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental organization not otherwise subject to Subparagraph (A) until the organization certifies that it will not, during the period for which the funds are made available, promote abortion as a method of family planning and that it will utilize these funds to prevent abortion as a method of family planning</u>

(2) LOBBYING ACTIVITIES --

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted regulated or prohibited, or **(except in the case of <u>any foreign private, nongovernmental</u> organizations that do not promote abortion as a method of family planning and that utilize these funds to prevent abortion as a method of family planning)** engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated or prohibited.

Office of Management and Budget
International Affairs Division
Economic Affairs Branch

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Comments:

Federal Audit Requirement for Population Funds

Option one: Designed to enforce Current Law (no federal funds for abortion) through application of Circular A-133 to organizations which expend more than $300,000 in federal funds

Purpose of Audit: To clarify existing audit requirement through additions to the A-133 Compliance Supplement

To ensure that no federal funds are used to either perform or lobby for abortion, a "special tests and provisions" section could be written into the Compliance Supplement to A-133. The "special tests and provisions" would direct the auditor to perform tests to verify that no federal funds were used for unintended purposes. The compliance requirement could be written into law. One example of an element of the "special tests and provisions" could include a process of self-certification that none of the funds be used for lobbying or abortion. The auditors could then verify that the organization met this requirement.

USAID currently requires audits in accordance with its Guidelines for Financial Audits Contracted By Foreign Recipients. OMB's audit expert believes that these guidelines incorporate much of what is included in A-133 and are reasonable guidelines. The issue therefore may be more one of enforcement and therefore have resource implications if AID is expected to better enforce these guidelines.

Option two: Designed to support the inclusion of some of the Mexico City provisions through application of CircularA-133 to organizations which expend more than $300,000 in federal funds.

Purpose of Audit: To expand existing audit requirements to cover possible certifications that organizations do not use federal or private funds to perform abortion or lobby for abortion.

Although non-US based entities are currently exempt from A-133 requirements, USAID could enforce the standards of A-133 on foreign NGOs and contractors. A single audit would consist of two components. The first component would draw on the review of the federal award to ensure that it is in compliance with the laws and regulations associated with it, as described in option one above. The second component would consist of a review of the financial statements of the entire organization. This would provide a comprehensive approach which reviews not only the specific compliance of the use of the federal grant monies, but also the uses of all funds through the financial statements analysis.

Audit De Minimus and Coverage/Frequency as relates to OPTION TWO

The cascade of options to be tabled below for audit frequency and coverage may minimize the administrative burden on USAID

1. Audits would be performed annually for organizations which receive $1 million or more per year.

AND

2. Audits would be performed for organizations which receive more than $300,000 per year only if triggered as described below.

OR

3. Audits would be performed every third year for organizations which receive more than $300,000 per year.

OR

4. Audits would be performed every third year or more frequently if an audit was triggered as described below for organizations which receive more than $300,000 per year.

OR

5. Audits would be performed annually for all organizations which receive more than $300,000 per year.

Audit trigger:
An example of an audit trigger may be if there are discrepancies found under the reporting requirement
An audit could also be triggered if there was an audit finding as described in A-133.

1. Study, with trigger.

2. Cut IPPF, reallocate funds within pop

3. Cut only bad actors, funds stay within pop

    a. X% cut on abortion performers and X% cut on lobbyists

    b. X% on EITHER abortion performers OR lobbyists

    c. X% on all bad actors, regardless of whether they do one or both acts

    Note: (1) need threshold on grant size
    (2) if no threshold, need to define lobbying very narrowly
    (3) make sure bad actions not attributed up funding chain
    (4) new entities not subject to this rule in first year

4. $5 million off the top of acct

5. ~~$5 million off the top of acct, plus no funds for IPPF~~

6. Lower pop cap by $X, all savings retained for post-abortion care activities in DA acct

7. Cut all pop ~~non-~~NGO's by X% (cuts just CA's and umbrella organization, not bilateral)

WE NEED:

(1) Get rid of metering language in current law.

(2) NO report language unless jointly agreed to

paragraph (b)(5) of this section (special rebuttable presumption regarding certain paid mass media communications) and §56.4911-5 (special, more lenient, definitions for certain communications from an electing public charity to its bona fide members)). Paragraph (b)(3) of this section lists and cross-references various exceptions to the definitions set forth in paragraphs (b) (1) and (2) (the text of the exceptions, along with relevant definitions and examples, is generally set forth in paragraph (c)). Paragraph (b)(4) of this section contains numerous examples illustrating the application of paragraphs (b) (1), (2) and (3). As mentioned above, paragraph (b)(5) of this section sets forth the special rebuttable presumption regarding a limited number of paid mass media communications about highly publicized legislation. Paragraph (d) of this section contains definitions of (and examples illustrating) various terms used in this section.

(b) *Influencing legislation: direct and grass roots lobbying communications defined*—(1) *Direct lobbying communication*—(i) *Definition*. A direct lobbying communication is any attempt to influence any legislation through communication with:

(A) Any member or employee of a legislative body; or

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

(ii) *Required elements*. A communication with a legislator or government official will be treated as a direct lobbying communication under this §56.4911-2(b)(1) if, but only if, the communication:

(A) Refers to specific legislation (see paragraph (d)(1) of this section for a definition of the term "specific legislation"); and

(B) Reflects a view on such legislation.

(iii) *Special rule for referenda, ballot initiatives or similar procedures*. Solely for purposes of this section 4911, where a communication refers to and reflects a view on a measure that is the subject of a referendum, ballot initiative or similar procedure, the general public in the State or locality where the vote will take place constitutes the legislative body, and individual members of the general public area, for purposes of this paragraph (b)(1), legislators. Accordingly, if such a communication is made to one or more members of the general public in that state or locality, the communication is a direct lobbying communication (unless it is nonpartisan analysis, study or research (see paragraph (c)(1) of this section).

(2) *Grass roots lobbying communication*—(i) *Definition*. A grass roots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

(ii) *Required elements*. A communication will be treated as a grass roots lobbying communication under this §56.4911-2(b)(2)(ii) if, but only if, the communication:

(A) Refers to specific legislation (see paragraph (d)(1) of this section for a definition of the term "specific legislation");

(B) Reflects a view on such legislation; and

(C) Encourages the recipient of the communication to take action with respect to such legislation (see paragraph (b)(2)(iii) of this section for the definition of encouraging the recipient to take action.

For special, more lenient rules regarding an organization's communications directed only or primarily to bona fide members of the organization, see §56.4911-5. For special rules regarding certain paid mass media advertisements about highly publicized legislation, see paragraph (b)(5) of this section. For special rules regarding lobbying on referenda, ballot initiatives and similar procedures, see paragraph (b)(1)(iii) of this section).

(iii) *Definition of encouraging recipient to take action*. For purposes of this section, encouraging a recipient to take action with respect to legislation means that the communication:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the similar procedure, the general public in the State or locality where the vote will take place constitutes the legislative body, and individual members of the general public area, for purposes of this paragraph (b)(1), legislators. Accordingly, if such a communication is made to one or more members of the general public in that state or locality, the communication is a direct lobbying communication (unless it is nonpartisan analysis, study or research (see paragraph (c)(1) of this section)).

(2) *Grass roots lobbying communication*—(i) *Definition.* A grass roots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

(ii) *Required elements.* A communication will be treated as a grass roots lobbying communication under this §56.4911–2(b)(2)(ii) if, but only if, the communication:

(A) Refers to specific legislation (see paragraph (d)(1) of this section for a definition of the term "specific legislation");

(B) Reflects a view on such legislation; and

(C) Encourages the recipient of the communication to take action with respect to such legislation (see paragraph (b)(2)(iii) of this section for the definition of encouraging the recipient to take action.

For special, more lenient rules regarding an organization's communications directed only or primarily to bona fide members of the organization, see §56.4911–5. For special rules regarding certain paid mass media advertisements about highly publicized legislation, see paragraph (b)(5) of this section. For special rules regarding lobbying on referenda, ballot initiatives and similar procedures, see paragraph (b)(1)(iii) of this section).

(iii) *Definition of encouraging recipient to take action.* For purposes of this section, encouraging a recipient to take action with respect to legislation means that the communication:

(A) States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the

principal purpose of urging contact with the government official or employee is to influence legislation);

(B) States the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(C) Provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation); or

(D) Specifically identifies one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation. Encouraging the recipient to take action under this paragraph (b)(2)(iii)(D) does not include naming the main sponsor(s) of the legislation for purposes of identifying the legislation.

(iv) *Definition of directly encouraging recipient to take action.* Communications described in one or more of paragraphs (b)(2)(iii) (A) through (C) of this section not only "encourage," but also "directly encourage" the recipient to take action with respect to legislation. Communications described in paragraph (b)(2)(iii)(D) of this section, however, do not directly encourage the recipient to take action with respect to legislation. Thus, a communication would encourage the recipient to take action with respect to legislation, but not directly encourage such action, if the communication does no more than identify one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation. Communications that encourage the recipient to take action with respect to legislation but that do not directly encourage the recipient to take action with respect to legislation may be within the exception for nonpartisan analysis, study or research (se paragraph (c)(1) of this section) and thus not be grass roots lobbying communications.

(v) *Subsequent lobbying use of nonlobbying communications or research materials*—(A) *Limited effect of application.* Even though certain communications or research materials are initially not grass roots lobbying communications under the general definition set forth in paragraph (b)(2)(ii) of this section, subsequent use of the communications or research materials for grass roots lobbying may cause them to be treated as grass roots lobbying communications. This paragraph (b)(2)(v) does not cause any communications or research materials to be considered direct lobbying communications.

(B) *Limited scope of application.* Under this paragraph (b)(2)(v), only "advocacy communications or research materials" are potentially treated as grass roots lobbying communications. Communications or research materials that are not "advocacy communications or research materials" are not treated as grass roots lobbying communications under this paragraph (b)(2)(v). "Advocacy communications or research materials" are any communications or materials that both refer to and reflect a view on specific legislation but that do not, in their initial format, contain a direct encouragement for recipients to take action with respect to legislation.

(C) *Subsequent use in lobbying.* Where advocacy communications or research materials are subsequently accompanied by a direct encouragement for recipients to take action with respect to legislation, the advocacy communications or research materials themselves are treated as grass roots lobbying communications unless the organization's primary purpose in undertaking or preparing the advocacy communications or research materials was not for use in lobbying. In such a case, all expenses of preparing and distributing

Another particularly relevant factor is whether the lobbying use of the advocacy communications or research materials is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence (which must include evidence demonstrating cooperation or collusion between the two organizations) will be required to establish that the primary purpose for preparing the communication for use in lobbying.

(H) *Examples.* The provisions of this paragraph (b)(2)(v) are illustrated by the following examples:

Example (1). Assume a nonlobbying "report" (that is not nonpartisan analysis, study or research) is prepared by an organization, but distributed to only 50 people. The report, in that format, refers to and reflects a view on specific legislation but does not contain a direct encouragement for the recipients to take action with respect to legislation. Two months later, the organization sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report's nonlobbying distribution is not as extensive as its lobbying distribution, the report's nonlobbying distribution is not substantial for purposes of this paragraph (b)(2)(v). Accordingly, the organization's primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal nonlobbying distribution and the fact that the lobbying distribution is by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grass roots lobbying communications. Assume that all costs of preparing the report were paid within the six months preceding the mailing of the letter. Accordingly, all of the organization's expenditures for preparing and mailing the two documents are grass roots lobbying expenditures.

Example (2). Assume the same facts as in Example (1), except that the costs of the report are paid over the two month period of January and February. Between January 1 and 31, the organization pays $1,000 for the report. In February, the organization pays $500 for the report. Further assume that the report is first used with a direct encouragement to action on August 1. Six months prior to August 1 is February 1. Accordingly, no costs paid for the report before February 1 are treated as grass roots lobbying expenditures under the subsequent use rule. Under these facts, the subsequent use rule treats only the $500 paid for the report in February as grass roots lobbying expenditures.

(3) *Exceptions to the definition of influencing legislation.* In many cases, a communication is not a direct or grass roots lobbying communication under paragraph (b)(1) or (b)(2) of this section if it falls within one of the exceptions listed in paragraph (c) of this section. See paragraph (c)(1), Nonpartisan analysis, study or research; paragraph (c)(2), Examinations and discussions of broad social, economic and similar problems; paragraph (c)(3), Requests for technical advice; and paragraph (c)(4), Communications pertaining to self-defense by the organization. In addition, see § 56.4911–5, which provides special rules regarding the treatment of certain lobbying communications directed in whole or in part to members of an electing public charity.

(4) *Examples.* This paragraph (b)(4) provides examples to illustrate the rules set forth in the section regarding direct and grass roots lobbying. The expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b)(4). In addition, it is assumed that the special rules of § 56.4911–5, regarding certain of a public charity's communications with its members, do not apply to any of the examples in this paragraph (b)(4).

(i) *Direct lobbying.* The provisions of this section regarding direct lobbying communications are illustrated by the following examples:

Example (1). Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example (2). Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write an administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency state the Congresswoman's support of M's application for a particular type of permit granted by the agency. The letter written by M's president is not a direct lobbying communication.

Example (3). Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

Example (4). State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

Example (5). Organization B researches, prepares and prints a code of standards of minimum safety requirements in an area of common electrical wiring. Organization B sells the code of standards booklet to the public and its is widely used by professional in the installation of electrical wiring. A number of states have codified all, or part, of the code of standards as mandatory safety standards. On occasion, B lobbies state legislators for passage of the code of standards for safety reasons. Because the primary purpose of preparing the code of standards was the promotion of public safety and the standards were specifically used in a profession for that purpose, separate from any legislative requirement, the research, preparation, printing and public distribution of the code of standards is not an expenditure for a direct (or grass roots) lobbying communication. Costs, such as transportation, photocopying, and other similar expenses, incurred in lobbying state legislators for passage of the code of standards into law are expenditures for direct lobbying communications.

Example (6). On the organization's own initiative, representatives of Organization F present written testimony to a Congressional committee. The news media report on the testimony of Organization F, detailing F's opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

Example (7). Organization R's monthly newsletter contains an editorial column that refers to and reflects a view on specific pending bills. R sends the newsletter to 10,000 nonmember subscribers. Senator Doe is among the subscribers. The editorial column in the newsletter copy sent to Senator Doe is not a direct lobbying communication because the newsletter is sent to Senator Doe other government officials nor does it name any undecided legislators, but it does name the legislation being considered by the committee. The President's proposed funding of public works, however, is not highly publicized during the two weeks before the vote: there has been little coverage of the issue on nightly television network news programs, only one front-page article on the issue in the country's ten largest daily general circulation newspapers, and only one editorial about the issue in the country's ten largest daily general circulation newspapers. Two days after the advertisement appears, the committee votes to approve funding of the projects. Although the advertisement appears less than two weeks before the legislative vote, the advertisement is *not* within the scope of the special rule for mass media communications on highly publicized legislation because the issue of funding for public works projects is not highly publicized. Thus, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

Example (4). Organization P places numerous advertisements in the mass media about a bill being considered by the State Assembly. The bill is highly publicized, as evidenced by numerous front-page articles, editorials and letters to the editor published in the state's general circulation daily newspapers, as well as frequent coverage of the bill by the television and radio stations serving the state. The advertisements run over a three week period and, in addition to showing pictures of a family being robbed at gunpoint, say: "The State Assembly is considering a bill to make gun ownership illegal. This outrageous legislation would violate your constitutional rights and the rights of other law-abiding citizens. If this legislation is passed, you and your family will be criminals if you want to exercise your right to protect yourselves." The advertisements refer to and reflect a view on a specific bill but do not encourage recipients to take action. Sixteen days after the last advertisement runs, a State Assembly committee votes to defeat the legislation. None of the advertisements is a grass roots lobbying communication.

Example (5). Assume the same facts as in Example (4), except that it is publicly announced prior to the advertising campaign that the committee vote is scheduled for five days after the last advertisement runs. Because of public pressure resulting from the advertising campaign, the bill is withdrawn and no vote is ever taken. None of the advertisements is a grass roots lobbying communication.

(c) *Exceptions to the definitions of direct lobbying communication and grass roots lobbying communication*—(1) *Nonpartisan analysis, study, or research exception*—(i) *In general.* Engaging in nonpartisan analysis, study, or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees the results of such work constitute neither a direct lobbying communication under §56.4911-2(b)(1) nor a grass roots lobbying communication under §56.4911-2(b)(2).

(ii) *Nonpartisan analysis, study, or research.* For purposes of this section, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of §1.501(c)(3)-1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify as "nonpartisan analysis, study, or research."

(iii) *Presentation as part of a series.* Normally, whether a publication or broadcast qualifies as "nonpartisan analysis, study, or research" will be determined on a presentation-by-presentation basis. However, if a publication or broadcast is one of a series prepared or supported by an electing organization and the series as a whole meets the standards of paragraph (c)(1)(ii) of this section, then any individual publication or broadcast within the series is not a direct or grass roots lobbying communication even though such individual broadcast or publication does not, by itself, meet the standards of paragraph (c)(1)(ii) of this section. Whether a broadcast or publication is considered part of a series will ordinarily depend upon all the facts and circumstances of each particular situation. However, with respect to broadcast activities, all broadcasts within any period of six consecutive months will oridinarily be eligible to be considered as part of a series. If an electing organization times or channels a part be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is within the exception for nonpartisan analysis, study, or research.

Example (6). Assume the same facts as Example (2), except that, instead of issuing a report, X presents within a period of 6 consecutive months a two-program television series relating to the pesticide issue. The first program contains information, arguments, and conclusions favoring legislation to restrict the use of pesticides. The second program contains information, arguments, and conclusions opposing legislation to restrict the use of pesticides. The programs are broadcast within 6 months of each other during commensurate periods of prime time. X's programs are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

Example (7). Assume the same facts as in Example (6), except that X arranged for televising the program favoring legislation to restrict the use of pesticides at 8:00 on a Thursday evening and for televising the program opposing such legislation at 7:00 on a Sunday morning. X's presentation is not within the exception for nonpartisan analysis, study, or research, since X disseminated its information in a manner prejudicial to one side of the legislative controversy.

Example (8). Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example (9). Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example (10). Organization X plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in §56.4911-2(c)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of §56.4911-2(b)(2)(v)(E)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying, the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research.

Example (11). Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

Example (12). Organization M pays for a bumper sticker that reads: "STOP ABORTION: Vote NO on Prop. X!" M also pays for a 30-second television advertisement and a billboard that similarly advocate opposition to Prop. X. In light of the limited scope of the communications, none of the communications is within the exception for nonpartisan analysis, study or research. First, none of the communications rises to the level of analysis, study or research. Second, none of the communications is nonpartisan because none contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Thus, each communication is a direct lobbying communication.

(2) *Examinations and discussions of broad social, economic, and similar problems.* Examinations and discussions of broad social, economic, and similar problems are neither direct lobbying communications under §56.4911-2(b)(1) nor grass roots lobbying communications under §56.4911-2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§56.4911-2(b)(1) and (2), lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph (c)(2) excludes from grass roots lobbying under §56.4911-2(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a

ment payments made by one spouse to another under marital property settlement agreement. Gammill v Commissioner (1980) 73 TC 921, affd (CA10) 710 F2d 607, 82-2 USTC ¶ 9514, 50 AFTR 2d 82-5469.

Imputed interest rules do not apply to taxpayer's divorce settlement, and accordingly taxpayer is not entitled to deductions for imputed interest attributable to periodic payments made by him. McCormick v Commissioner (1987) TC Memo 1987-418, 54 TCM 242.

§§ 484–500. [Reserved for future use.]

SUBCHAPTER F. Exempt Organizations

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1996, P.L. 104-188, Sec. 1806(b)(2), added Part VIII.

In 1976, P.L. 94-455, Sec. 2101(d), added Part VII.

In 1975, P.L. 93-625, Sec. 10(d), added Part VI.

In 1969, P.L. 91-172, Sec. 101(j)(58), redesignated former parts II, III, and IV as parts III, IV, and V respectively and added new part II.

PART I. GENERAL RULE

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1987, P.L. 100-203, Sec. 10711(b)(2)(B), amended item 504.

Prior to amendment, item 504 read as follows:

"504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying."

In 1984, P.L. 98-369, Sec. 513(b), added the item for Code Sec. 505.

In 1976, P.L. 94-455, Sec. 1307(d)(3)(B), added the item for Code Sec. 504.

In 1969, P.L. 91-172, Sec. 101(j)(61), repealed item 504 relating to denial of exemption.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation. An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities. An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations. The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) 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.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)[.]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan; and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the lesser of—

(i) the excess (if any) (as of the close of the preceding taxable year) of—

(I) the fair market value of the assets of the trust, over

(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

(ii) the excess (if any) of—

(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term "qualified investments" means—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7)) located in the United States.

(iii) The term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term "incidental expenses" includes legal, accounting, actuarial, and trustee expenses.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pe n, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(d) Religious and apostolic organizations. The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations. For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under su tion (a), would constitute activities in

exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within $8^1/_2$ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative service organizations of operating educational organizations. For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of agricultural. For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by public charities to influence legislation. (1) General rule. In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions. For purposes of this subsection—

(A) Lobbying expenditures. The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

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(B) Lobbying ceiling amount. The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures. The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount. The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies. This subsection shall apply to any organization which elected (in ı manner at such time as the Secretary may prescribe) to have the provisions of this subsection apply to organization which, for the taxable year which includes the the election is , is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

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(4) Organizations permitted to elect to have this subsection apply. An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) Disqualified organizations. For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (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 (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) Years for which election is effective. An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) No effect on certain organizations. With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) Affiliated organizations. For rules regarding affiliated organizations, see section 4911(f).

(i) Prohibition of discrimination by certain social clubs. Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) Special rules for certain amateur sports organizations. (1) In general. In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined. For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) Treatment of certain organizations providing child care. For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(l) Government corporations exempt under subsection (c)(1). For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(m) Certain organizations providing commercial-type insurance not exempt from tax. (1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities. An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business. In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance. For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities. For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity. For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Charitable risk pools. (1) In general. For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) Qualified charitable risk pool. For purposes of this subsection, the term 'qualified charitable risk pool' means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which [illegible]s the organizational requirements of paragraph (3).

(3) **Organizational requirements.** An organization (hereinafter in this section referred to as the 'risk pool') meets the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if, within a reasonable period of time after such pool is notified as required under subparagraph (C)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) **Other definitions.** For purposes of this subsection—

(A) Startup capital. The term 'startup capital' means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) Nonmember charitable organization. The term 'nonmember charitable organization' means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(o) **Cross reference.** For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat 997; 50 U.S.C. 790(b)).

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1996, P.L. 104-188, Sec. 1114(a) (applicable to taxable years beginning after 8/20/96, pursuant to Sec. 1114(b), which appears as a note to this section), redesignated subsec. (n) as subsec. (o); and added a new subsec. (n).

—P.L. 104-188, Sec. 1704(j)(5), substituted "section 101(7)" for "section 101(6)" and substituted "1752(7)" for "1752(6)" in subcl. (III) of subsec. (c)(21)(D)(ii).

—P.L. 104-168, Sec. 1311(b)(1) (applicable as provided by Sec. 1311(d)(3), which appears as a note to this section), amended subsec. (c)(4) by designating the existing text as subpara. (A), and adding subpara. (B).

In 1993, P.L. 103-66, Sec. 13146(a), (b) (applicable to taxable years beginning on or after 1/1/94, as provided by Sec. 13146(c)), amended subsec. (c) by inserting "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph." in para. (2), and by adding para. (25)(G).

In 1992, P.L. 102-486, Sec. 1940(a), amended para. (c)(21), effective for tax. yrs. begin. after 12/31/91.

Prior to amendment, para. (c)(21) read as follows:

"(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

"(A) the purpose of such trust or trusts is exclusively—

"(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

"(ii) to pay premiums for insurance exclusively covering such liability; and

"(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

"(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(i) the purposes described in subparagraph (A), or

"(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in —

"(I) public debt securities of the United States,

"(II) obligations of a State or local government which are not in default as to principal or interest, or

"(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

"(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

In 1989, P.L. 101-73, Sec. 1402(a), amended subsec. (l), effective 8/9/89.

Prior to amendment, subsec. (l) read as follows:

"(l) Government corporations exempt under subsection (c)(1).

"The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).".

In 1988, P.L. 100-647, Sec. 1010(b)(4)(A), deleted "and" at the end of subpara. (m)(3)(C), substituted ", and" for the period at the end of subpara. (m)(3)(D), and added subpara. (m)(3)(E) . . . Sec. 1010(b)(4)(B), added para. (m)(5), effective for tax. yrs. begin. after 12/31/86.

—P.L. 100-647, Sec. 1011(c)(7)(D), deleted "and" at the end of clause (c)(18)(D)(ii), substituted ", and" for the period at the end of clause (c)(18)(D)(iii), and added clause (c)(18)(D)(iv), effective for plan yrs. begin. after 12/31/87, except as provided in Sec. 1011(c)(7)(E)(ii) of this Act which reads:

"(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

"(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(II) January 1, 1989."

—P.L. 100-647, Sec. 1013(i), provides:

"(i) Application to 501(c)(3) bonds.—In accordance with section 1302 of the Reform Act, each amendment and other provision of this Act which applies to private activity bonds shall, unless otherwise expressly provided, apply to qualified 501(c)(3) bonds."

—P.L. 100-647, Sec. 1016(a)(1)(A), added the last sentence to subpara. (c)(25)(A), effective or with respect to property acquired by the organization after 6/10/87, except that such amendment shall not apply to any property acquired after 6/10/87, pursuant to a binding written contract in effect on 6/10/87, and at all times thereafter before such acquisition.

—P.L. 100-647, Sec. 1016(a)(2), amended the part of subpara. (c)(25)(D) that precedes clause (c)(25)(D)(i) . . . Sec. 1016(a)(3)(A), added subpara. (c)(25)(E) . . . Sec. 1016(a)(3)(B), added "or" at the end of clause (a)(3)(B)(iii), substituted a period for ", or" at the end of clause (a)(3)(B)(iv) and deleted clause (a)(3)(B)(v) . . . Sec. 1016(a)(4), added subpara. (c)(25)(F), effective for tax. yrs. begin. after 12/31/86.

Prior to amendment, the part of subpara. (c)(25)(D) that precedes clause (c)(25)(D)(i) read as follows:

"(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—"

Prior to deletion, clause (a)(3)(B)(v) read as follows:

"(v) any organization described in this paragraph"

—P.L. 100-647, Sec. 1018(u)(14), substituted "Any association" for "any association" in para. (c)(23), effective 9/3/82.

—P.L. 100-647, Sec. 1018(u)(15), substituted "Any corporation organized" for "any corporation organized" in para. (c)(1), effective 10/1/79.

—P.L. 100-647, Sec. 2003(a)(1), deleted "or" at the end of clause (c)(12)(B)(ii), substituted ", or" for the period at the end of clause (c)(12)(B)(iii) and added clause (c)(12)(B)(iv) . . . Sec. 2003(a)(2), amended subpara. (c)(12)(C), effective for tax. yrs. end. after 10/21/86.

Prior to amendment, subpara. (c)(12)(C) read as follows:

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals."

—P.L. 100-647, Sec. 6202(a), added "(including the purchasing of insurance on a group basis)" after "purchasing" in subpara. (e)(1)(A), effective for purchases before, on, or after 11/10/88.

—P.L. 100-647, Sec. 6203, provides:

"SEC. 6203. CANCELLATION OF CERTAIN DEBTS ORIGINATED BY OR GUARANTEED BY THE UNITED STATES NOT TAKEN INTO ACCOUNT IN DETERMINING TAX EXEMPT STATUS OF CERTAIN ORGANIZATIONS.

"Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990."

In 1987, P.L. 100-203, Sec. 10711(a)(2), substituted "on behalf of (or in opposition to) any candidate" for "on behalf of any candidate" in para. (c)(3), effective with respect to activities after 12/22/87.

In 1986, P.L. 99-514, Sec. 1012(a), redesignated subsec. (m) as subsec. (n) and added new subsec. (m), effective for tax. yrs. begin. after 12/31/86. Sec. 1012(c)(2) of this Act provides:

"(2) Study of fraternal beneficiary associations.—The Secretary of the Treasury or his delegate shall conduct a study of organizations described in section 501(c)(8) of the Internal Revenue Code of 1986 and which received gross annual insurance premiums in excess of $25,000,000 for the taxable years of such organizations which ended during 1984. Not later than January 1, 1988, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this paragraph."

—P.L. 99-514, Sec. 1024(b), amended para. (c)(15), effective for tax. yrs. begin. after 12/31/86.

Prior to amendment, para. (c)(15) read as follows:

"(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000."

—P.L. 99-514, Sec. 1109(a), deleted "and" from the end of subpara. (c)(18)(B), substituted ", and" for the period at the end of subpara. (c)(18)(C) and added subpara. (c)(18)(D), effective for tax. yrs. begin. after 12/31/86.

—P.L. 99-514, Sec. 1114(b)(14), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, persons whose principal duties consists of supervising the work of other employees, or highly compensated employees" in clause (c)(17)[A] (ii), clause (c)(17)[A](iii), subpara. (c)(18)(B) and subpara. (c)(18)(C), effective for yrs. begin. after 12/31/86.

—P.L. 99-514, Sec. 1302, [as amended by Sec. 1013(i) of P.L. 100-647, see above] provides:

"Sec. 1302. treatment of section 501(c)(3) bonds.

"Nothing in the treatment of section 501(c)(3) bonds as private activity bonds under the amendments made by this title shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation."

—P.L. 99-514, Sec. 1603, added para. (c)(25), effective for tax. yrs. begin. after 12/31/86.

—P.L. 99-514, Sec. 1879(k)(1)(A), deleted "or" at the end of clause (c)(14)(B)(ii) . . . Sec. 1879(k)(1)(B), substituted "or" for the period at the end of clause (c)(14)(B)(iii) . . . Sec. 1879(k)(1)(C), added clause (C)(14)(B)(iv), effective for tax. yrs. end. after 8/13/81.

—P.L. 99-514, Sec. 1899A(15), substituted "July, 18, 1984" for "the date of enactment of the Tax Reform Act of 1984" in clause (c)(1)(A)(i), effective 10/22/86.

In 1986, P.L. 99-272, Sec. 11012(b), added para. (c)(24), effective 1/1/86.

In 1984, P.L. 98-369, Sec. 1032(a), redesignated subsec. (k) as subsec. (l), and added new subsec. (k), effective for tax. yrs. begin. after 7/18/84.

—P.L. 98-369, Sec. 1079, amended subpara. (c)(1)(A) (as added by Sec. 2813(b)(2)).

Prior to amendment, para. (c)(1)(A) read as follows:

"(A) is exempt from Federal income taxes under such Act, as amended and supplemented, or"

—P.L. 98-369, Sec. 2813(b)(l), redesignated subsec. (1) (as redesignated by Sec. 1032(a)) as subsec. (m) and added new subsec. (l) . . . Sec. 2813(b)(2), amended para. (c)(1), effective 10/1/79.

Prior to amendment, para. (c)(1) read as follows:

"(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes."

In 1983, P.L. 97-448, Sec. 306(b)(5), substituted "75 percent" for "25 percent" in para. (c)(23), effective 9/3/82.

In 1982, P.L. 97-248, Sec. 286(a), redesignated subsec. (j) as subsec. (k) and added new subsec. (j), effective 10/5/76.

—P.L. 97-248, Sec. 354(a)(1), substituted "past or present members of the Armed Forces of the United States" for "war veterans" the first time it appeared in para. (c)(19) . . . Sec. 354(a)(2), amended subpara. (c)(19)(B) . . . Sec. 354(b), added para. (c)(23), effective 9/3/82.

Prior to amendment, subpara. (c)(19)(B) read as follows:

"(B) at least 75 percent of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans (but not war veterans), or are cadets, or are spouses, widows, or widowers of war veterans or such individuals, and"

In 1981, P.L. 97-119, Sec. 103(c)(1), substituted "established under section 9501" for "established under section 3 of the Black Lung Benefits Revenue Act of 1977" in clause (c)(21)(B)(iii), effective 1/1/82.

—P.L. 97-34, Sec. 802(b), amended Sec. 2134(e)(1) of P.L. 94-455, the effective date for changes made by Sec. 2134(b), from tax. yrs. begin. after '76 and end. before '82 to tax. yrs. begin. after '76 [see below].

In 1980, P.L. 96-605, Sec. 106(a)(1), substituted "(12)(A)" for "(12)" in para. (c)(12) . . . Sec. 106(a)(2), deleted the second sentence of para. (c)(12) . . . Sec. 106(a)(3), added subparas. (c)(12)(B), (C)(12)(C), and (c)(12)(D), effective for tax. yrs. to which the Internal Revenue Code of 1954 applies.

—P.L. 96-601, Sec. 3(a), added the last sentence to subsec. (i), effective for tax. yrs. begin. after 10/20/76.

—P.L. 96-364, Sec. 209(a), added new para. (c)(22), effective for tax. yrs. ending after 9/26/80.

—P.L. 96-222, Sec. 108(b)(2)(B), substituted "Federal Mine Safety and Health Act of 1977" for "Federal Coal Mine Health and Safety Act of 1969" in para. (c)(21), effective in and for tax. yrs. begin. after '77, see Sec. 5 of P.L. 95-227 reproduced in note following Code Sec. 192.

In 1979, P.L. 96-74, Sec. 103, provides the following:

"Sec. 103. None of the funds made available pursuant to the provisions of this Act [Treasury Department Appropriations Act, 1980] shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978."

—P.L. 96-74, Sec. 615, provides the following:

"SEC. 615. None of the funds available under this Act [Treasury, Postal Service, and General Government Appropriations Act, 1980] may be used to carry out proposed revenue procedure 4830-01-M of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (44 F.R. 9451 through 9455, February 13, 1979, F.R. Document 79-4801), and proposed revenue procedure 4830-01 of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (43 F.R. 37296 through 37298, August 22, 1978, F.R. Document 78-23515), or parts thereof."

In 1978, P.L. 95-600, Sec. 703(b)(2), substituted "this paragraph" for "section 501(c)(20)" in para. (c)(20), effective 10/4/76.

—P.L. 95-600, Sec. 703(g)(2)(A), amended the changes made by Sec. 2(a) of P.L. 94-568 by substituting "subsection (i) as subsection (j) and by inserting after subsection (h)" for "subsection (h) as subsection (i) and by inserting after subsection (g)" . . . Sec. 703(g)(2)(B), redesignated subsec. (g) [sic (i)] (as added by P.L. 94-568, Sec. 2(a)) as subsec. (i), effective for tax. yrs. begin. after 10/20/76. See below.

—P.L. 95-345, Sec. 1(a), added a new sentence to the end of para. (c)(12), effective for tax. yrs. begin. after 12/31/74.

—P.L. 95-227, Sec. 4(a), added para. (c)(21), effective for contributions, acts, and expenditures made after '77, in and for tax. yrs. begin. after '77. See Sec. 5 of this Act, reproduced in note following Code Sec. 192.

In 1976, P.L. 94-568, Sec. 1(a), amended para. (c)(7), effective for tax. yrs. begin. after 10/20/76.

Prior to amendment, para. (c)(7) read as follows:

"(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder."

—P.L. 94-568, Sec. 2(a), redesignated subsec. (h) as subsec. (i) [sic] and added new subsec. (g) [sic], for tax. yrs. begin. after 10/20/76. See above

—P.L. 94-455, Sec. 1307(a)(1), redesignated subsec. (h) as subsec. (i) (as previously amended by this Act), and added new subsec. (h), effective for tax. yrs. begin. after 12/31/76.

—P.L. 94-455, Sec. 1307(d)(1)(A), substituted "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))," for "no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation," in para. (c)(3), effective for tax. yrs. begin. after 12/31/76.

with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.".

Application of private inurement rule to tax-exempt organizations described in § 501(c)(4). Act July 30, 1996, P. L. 104-168, Title XIII, Subtitle B, § 1311(d)(3), 110 Stat. 1478, provides:

"(A) In general. The amendment made by subsection (b) [amending subsec. (c)(4) of this section] shall apply to inurement occurring on or after September 14, 1995.

"(B) Binding contracts. The amendment made by subsection (b) [amending subsec. (c)(4) of this section] shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.".

Application of Aug. 20, 1996 amendment adding subsec. (n). Act Aug. 20, 1996, P. L. 104-188, Title I, Subtitle A, § 1114(b), 110 Stat. 1760, provides: "The amendment made by subsection (a) [redesignating subsec. (n) of this section as subsec. (o) and adding a new subsec. (n)] shall apply to taxable years beginning after the date of the enactment of this Act.".

CODE OF FEDERAL REGULATIONS

Exempt organizations—general rule, 26 CFR §§ 1.501(a)-1 et seq.
Constructive filing of waivers of exemption from social security taxes by certain tax-exempt organizations, 26 CFR § 33.1.
Rulings and determinations letters, 26 CFR § 601.201.
Standards of conduct, 34 CFR Part 73.
Rules of Practice and procedure, 46 CPR Part 502.

CROSS REFERENCES

Corporate deduction for dividends received as inapplicable to dividends from exempt corporations, 26 USCS § 246.
Disallowance of losses with respect to transactions between persons and certain tax-exempt educational and charitable organizations, 26 USCS § 267.
Constructive ownership of stock rule as inapplicable to tax-exempt employees' trust, 26 USCS § 318.
Deduction for employer's contributions to employees' trust, 26 USCS § 404.
Feeder organizations, 26 USCS § 502.
Requirements for exemption, 26 USCS § 503.
Revocation of exemption, 26 USCS § 504.
Taxation of business income of certain exempt organizations, 26 USCS §§ 511-515.
Foreign educational, charitable, and certain other exempt organizations, 26 USCS § 878.
Foreign tax-exempt organizations, 26 USCS § 1443.
Returns by exempt organizations, 26 USCS § 6033.
Returns regarding liquidation, dissolution, termination, or contraction, 26 USCS § 6043.
Returns regarding patronage dividends not required from certain exempt corporations, 26 USCS § 6044.
Publicity of information required from certain exempt organizations and certain trusts, 26 USCS § 6104.
Special rules with respect to § 501(c)(3) organizations, 26 USCS § 508.

RESEARCH GUIDE

Federal Procedure L Ed:
8 Fed Proc L Ed, Courts and Judicial System § 20:479.
15 Fed Proc L Ed, Freedom of Information § 38:377.
20 Fed Proc L Ed, Internal Revenue §§ 48:121 et seq., 48:299.

Am Jur:
2 Am Jur 2d, Administrative Law §§ 279, 561.
6 Am Jur 2d, Associations and Clubs §§ 4, 19.
33A Am Jur 2d, Federal Taxation (1996) ¶ 8627.
34 Am Jur 2d, Federal Taxation (1996) ¶¶ 18908, 19208, 20512, 20626, 20627, 20629, 20632, 20676, 20679, 20680, 20685, 10686, 20690, 20694, 20696, 20698, 20699, 20701, 20711, 20713, 20718, 20719, 20751, 20752, 20776, 20777, 20779–20784, 20790–20793, 20878.
45A Am Jur 2d, Job Discrimination § 54.
60A Am Jur 2d, Pensions and Retirement Funds §§ 45, 963, 1110, 1112.
76 Am Jur 2d, Unemployment Compensation § 40.

Forms:
11 Fed Procedural Forms L Ed, Internal Revenue § 43:147.

13A Fed Procedural Forms L Ed, Patents § 52:501.
13A Fed Procedural Forms L Ed, ons and Retirement Systems §§ 53:32—53:37.
2A Am Jur Legal Forms 2d, Associations and Clubs § 27:2.
4A Am Jur Legal Forms 2d, Charities §§ 55:1 et seq.
11A Am Jur Pl & Pr Forms (Rev), Federal Taxation, Form 28.

American Law of Products Liability 3d:
5 Am Law Prod Liab 3d, Food Products Inherently Unwholesome § 81:6.

Immigration Law Service:
2A Immigration Law Service, Taxation § 26:25.

Social Security Law and Practice:
1 Soc Sec LP, Covered Earnings § 11:34.
2 Soc Sec LP, Benefit Programs § 19:87.

CBC Coordinators:
3 Employment Coord, Health, Life, and Disability Tax Qualification ¶ B-13,601, 14,203.
8 Employment Coord, Remedies ¶¶ EP-28,180, 29,109.
3 Employment Coord, Introduction to Benefit and Retirement Plans ¶¶ B-10,142, 10,145, 10,156, 10,425, 10,426.
4 Employment Coord, Choosing a Retirement Plan—Plan Options and Design ¶¶ B-20,102, 20,323, 22,203, 20,565.
7 Employment Coord, Job Discrimination Overview ¶¶ EP-16,126, 17,143.
4 Employment Discrim Coord, Attorney's Fees and Costs ¶ 45,564.

RIA Coordinators:
2A Benefits Coord, Other Employee Benefits (R to Z) ¶¶ 32,010, 32,011, 32,024, 32,031, 32,032, 32,034—32,037, 32,053, 32,080.
3 Benefits Coord, Prefunding; Cafeteria Plans; Other Delivery Systems ¶ 33,310.
3 Employee Ben Comp Coord, Employee Welfare Benefit Plans ¶¶ 18,103, 18,305.
3 Estate Plan & Tax Coord, Gift Tax ¶ 48,144.
3 Estate Plan & Tax Coord, Estate Tax ¶¶ 44,303, 44,402—44,415, 48,144.
7 Fed Tax Coord 2d ¶¶ D-4000—4041, 4232, 5000—7007.
8 Fed Tax Coord 2d ¶ E-5304.1.
24A Fed Tax Coord 2d ¶¶ U-3800—3805, 4107.
3 Pension Coord, Retirement and Deferred Compensation Plans ¶ 20,608.
5 Pension Coord, Plan Termination and Withdrawal ¶¶ 68,180, 68,190.
5 Pension Coord, Nonpension Benefits; Social Security ¶¶ 79,860—79,942.
2 Tax Action Coord, Tax Planning ¶¶ 190-A et seq.
2A Estate Plan & Tax Coord, Income Tax ¶¶ 41,218, 41,868.
5 Estate Plan & Tax Coord, Trusts ¶ 85,609.

Annotations:
Allowability of federal tax benefits to a private racially segregated school or college. 7 ALR Fed 548.
What is "Business League" entitled to federal tax exemption under § 501(c)(6) of internal revenue code of 1954 (26 USCS § 501(c)(6)). 48 ALR Fed 187.
Federal Tax-exempt status as nonprofit "social welfare" organization under 26 USCS § 501(c)(4). 87 ALR Fed 708.
Federal tax exemption: when do earnings of religious, charitable, educational, or similar organization inure to benefit of private shareholders or individuals within meaning of 26 USCS § 501(c) (3). 92 ALR Fed 255.
Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions. 37 ALR3d 1191.
What constitute labor, agricultural, or horticultural organizations within purview of provision (IRC 1939, § 101(1); IRC 1954, § 501(c)(5)) exempting such organizations from federal income taxation. 42 ALR2d 1019.
When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code. 69 ALR2d 871.

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Rasch, Handling Federal Estate and Gift Taxes 4th §§ 6:76-6:108, 17:24-17:44.
1 Hoops, Family Estate Planning Guide 3d §§ 146, 147.

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Woodworth. Legislative Activities of 501(c)(3) Organizations. 23 Catholic Law 175, Summer, 1978.

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INTERPRETIVE NOTES AND DECISIONS

I. EXEMPT ORGANIZATIONS

A. In General

1. Generally

Private charities were excepted from private foundation status on theory that exposure to public scrutiny and their dependance on public support would keep them from abuses which private foundations were subject; supporting organizations are similarly excepted in so far as they are subject to scrutiny of public charity. William F. Quarrie, Mable E. Quarrie & Margaret K. Quarrie Charitable Fund v Commissioner (1979, CA7) 603 F2d 1274, 79-2 USTC ¶ 9534, 44 AFTR 2d 79-5474.

Tax exemption granted under 26 USCS § 501 allows income derived from investment (not involving funds borrowed for acquisition) to be exempted from income taxes; thus, tax exempt status of organization is not nullified by tax on debt financed income. Elliot Knitwear Profit Sharing Plan v Commissioner (1980, CA3) 614 F2d 347, 2 EBC 2330, 80-1 USTC ¶ 9176, 45 AFTR 2d 80- 639.

Where all the stock of a corporation was owned by a foundation which was exempt as a foundation organized and operated exclusively for charitable and educational purposes and was exempt, the income of the corporation was not subject to income taxes. Enterprise Ry. Equipment Co. v United States (1958) 142 Ct Cl 192, 161 F Supp 590, 58-1 USTC ¶ 9508, 1 AFTR 2d 1605.

Trust is not association taxable as corporation, where trust operates decedent's manufacturing company, because running of business enterprise is not necessarily inconsistent with protecting and conserving of trust property; non-transferability of beneficiaries' interest militates against finding of associates, where decedent clearly wanted trust to benefit only blood descendents. Bedell v Commissioner (1986) 86 TC No. 70.

2. Construction, generally

As to claims of exemption the provisions of the statute are to be construed more strongly against the taxpayer, for taxation is the rule and exemption the exception. Gagne v Hanover Water Works Co.

and group self-insurance f organized to provide mechanism for small hospitals to insure each other on group basis with respect to professional liability and workers' compensation, are not cooperative hospital service organizations exempt under § 501(e). Florida Hosp. Trust Fund v Commissioner (1996, CA11) 71 F3d 808, 96-1 USTC ¶ 50023, 77 AFTR 2d 96-342, 96 TNT 8-9, 9 FLW Fed C 699.

Organizations which provide centralized cooperative insurance services to member hospitals through employment of actuaries, risk managers, underwriters, accountants and insurance consultants do not qualify as exempt cooperative hospital insurance organizations, since they do not purchase insurance but instead serve in role as insurers. Florida Hosp. Trust Fund v Commissioner (1994) 103 TC No. 10, 94 TNT 153-16.

50. Veterans' organizations

Dates of "a period of war," for purposes of definition of war veterans in Treas Reg § 1.501(c)(19)-1(b)(1) will be dates of periods of war set forth in 38 U.S.C.S. § 101 relating to veterans' benefits. Rev Rul 78-239, 1978-1 CB 162.

II. SECTION 501(c)(3) AND EXEMPT PURPOSE

A. In General

51. Generally

Entitlement to tax exemption under 26 USCS § 501(c)(3) depends upon meeting certain common-law standards of charity, namely that institution seeking tax-exempt status must serve public purpose and not be contrary to established public policy; to warrant tax exemption under § 501(c)(3), institution must fall within category specified in that section and must demonstrably serve and be in harmony with public interest, and institution's purpose must not be so at odds with community conscience as to undermine any public benefit that might otherwise be conferred. Bob Jones University v United States (1983) 461 US 574, 76 L Ed 2d 157, 103 S Ct 2017, 83-1 USTC ¶ 9366, 52 AFTR 2d 83-5001.

The term "charitable" is a generic term and includes literary, religious, scientific, and educational institutions. United States v Proprietors of Social Law Library (1939, CA1 Mass) 102 F2d 481, 39-1 USTC ¶ 9356, 22 AFTR 896.

Evidence of state and local tax exemption is neither conclusive nor even relevant to the question of whether a religious organization is in fact operated exclusively for religious purpose under federal tax law. Universal Life Church v United States (1972, ED Cal) 72-1 USTC ¶ 9467, 29 AFTR 2d 72-1464.

A public library, organized as a separate entity under a state statute, does not lose its exempt status because the statute conferred upon the library board a limited power to determine the tax rate necessary to support its operation within specified maximum and minimum rates, but no power either to impose or levy the tax; it therefore had no regulatory or enforcement power which would be incompatible with a § 501(c)(3) organization (Rev Rul 60-384, 1960-2 CB 172). Rev Rul 74-15, 1974-1 CB 126.

An organization will not jeopardize its exemption where it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds and maintains records establishing that the funds were for religious, charitable, scientific, etc., purposes as defined in the Code. Rev Rul 68-489, 1968-2 CB 210.

The exempt status of an organization was not affected where it entered into an annuity contract on the basis of transferred assets of income-producing property which exceeded the present value of the annuity since payments made to the transferor under the contract represented performance of a contract advantageous to the organization and were made in satisfaction of a reserved property right, and the transaction was an insubstantial part of the organization's overall activities. Rev Rul 69-176, 1969-1 CB 150.

A nonprofit organization awarding scholarships based on scholastic ability, without regard to financial need was held to be engaged in "charitable" activities since a trust for educational purposes is charitable although the persons to be educated are not limited to the poor, and the term "charitable" includes the advancement of education. Rev Rul 69-257, 1969-1 CB 151.

An organization formed to provide managerial and consulting services at cost to unrelated exempt organizations is not charitable, as is an organization controlled by a group of exempt organizations providing them exclusively with investment management services for charges substantially below cost. Rev Rul 72-369, 1972-2 CB 245.

An exempt organization that has no established retirement plan for its staff of salaried employees does not adversely affect its exempt status by paying pensions to retired employees at the discretion of its board of directors as this is an accepted method of employee compensation and neither constitutes an improper use of the organization's charitable resources, not an increment of its net earnings to private individuals. Rev Rul 73-126, 1973-1 CB 220.

Ownership by exempt organization devoted to preventing cruelty to animals of for-profit subsidiary offering boarding and grooming services to public does not affect exempt status even though business of for-profit subsidiary was unrelated to exempt purpose where majority of directors of subsidiary were not on taxpayers board and business relationship between the entities was conducted at arms length. Private Letter Ruling 9131058.

52. Constitutionality

Exemptions and deductions allowed under federal tax laws for charitable and religious purposes do not contravene the First Amendment. Swallow v United States (1963, CA10 Colo) 325 F2d 97, 64-1 USTC ¶ 9117, 13 AFTR 2d 738, cert den 377 US 951, 12 L Ed 2d 497, 84 S Ct 1630.

The denial of exemption to a religious organization which carried on substantial activity aimed at influencing legislation did not violate either the Fifth Amendment's due process clause or the First Amendment right of free exercise of religion or the right of free speech, even though the Treasury did not deny exemption to similar religious organizations. Christian Echoes Nat. Ministry, Inc. v United States (1972, CA10 Okla) 470 F2d 849, 73-1 USTC ¶ 9129, 31 AFTR 2d 73-460, cert den 414 US 864, 38 L Ed 2d 84, 94 S Ct 41.

Grants of exemption from taxation which is otherwise appropriate to providers of health care does not impermissibly infringe upon Establishment Clause of USCS Constitution Amendment 1 merely because abortions are or are not performed by particular health care organization; such exemptions do not foster excessive governmental entanglement with religion, inhibit free exercise of religion, or fail to reflect secular purpose. Haring v Blumenthal (1979, DC Dist Col) 471 F Supp 1172, 19 BNA FEP Cas 744, 19 CCH EPD ¶ 9120.

53. —Limits on political activity

26 USCS § 501(c)(3) does not violate equal protection component of Fifth Amendment by prohibiting substantial lobbying on part of organizations if they are to qualify to receive tax deductible contributions, even though veterans' organizations, under § 501(c)(19), are allowed to carry on substantial lobbying and still qualify to receive tax deductible contributions, since (1) veterans' organizations that qualify under § 501(c)(19) are entitled to receive tax-deductible contributions regardless of content of any speech they may use, including lobbying, and (2) it is not irrational for Congress to decide that tax exempt charities should not further benefit at expense of taxpayers at large by obtaining further subsidy for lobbying, or to decide that even though it would not subsidize substantial lobbying by charities in general, it would subsidize lobbying by veterans' organizations. Regan v Taxation with Representation (1983) 461 US 540, 76 L Ed 2d 129, 103 S Ct 1997, 83-1 USTC ¶ 9365, 51 AFTR 2d 83-1294.

26 USCS § 501(c)(3) does not violate First Amendment by prohibiting substantial lobbying on part of organizations if they are to qualify to receive tax deductible contributions, since organizations are not required to waive their First Amendment rights in order to obtain public benefits, they simply cannot lobby with tax-deductible contributions. Regan v Taxation with Representation (1983) 461 US 540, 76 L Ed 2d 129, 103 S Ct 1997, 83-1 USTC ¶ 9365, 51 AFTR 2d 83-1294.

54. —Tax exemption as state action

Tax exemption involves minimal and remote state involvement which does not constitute support for or participation in activities of organization given exemption so as to be equivalent, in constitutional terms, to tax and appropriation for such purpose; hence, union members disagreeing with partisan political activities in which union engaged were not entitled to enjoin Treasury from granting tax exemption to union under 26 USCS § 501(c)(5). Marker v Shultz (1973) 158 App DC 224, 485 F2d 1003, 83 BNA LRRM 3026, 73-2 USTC ¶ 9597, 32 AFTR 2d 73-5588.

Tax exempt status under § 503(c)(3) of the Internal Revenue Code to private, segregated schools, if there is involvement with the state or political subdivision, is unconstitutional as a violation of the laws of the United States. Green v Kennedy (1970, DC Dist Col) 309 F Supp 1127, 70-1 USTC ¶ 9176, 25 AFTR 2d 70-508, 7 ALR Fed 528, app dismd 398 US 956, 26 L Ed 2d 539, 90 S Ct 2169 and app dismd 400 US 986, 27 L Ed 2d 435, 91 S Ct 460.

Tax-exempt status of city club foundation was not unconstitutional, even though club excluded females, on ground that federal tax exemption constitutes state action within meaning of equal protection clause of Fourteenth Amendment, since tax exemption is not state participation in an organization. McCoy v Shultz (1973, DC Dist Col) 73-1 USTC ¶ 9233, 73-1 USTC ¶ 12906, 31 AFTR 2d 73-858.

55. Control and use test

A trust was entitled to nontaxable status, where trust was created by an indenture providing that the tr of the trust should accept the trust subject to a will which provided for small specific bequests and further provided that if any of the bequests should fail leaving any funds not therein provided for, such funds would go to the trust for charitable, educational, and public uses. Francis Edward McGillick Foundation v Commissioner (1960, CA3) 278 F2d 643, 60-2 USTC ¶ 9481, 5 AFTR 2d 1514.

Testamentary trust for employees is ordinary pension trust and is not tax exempt where employees are not impoverished as a class, since trust is not created for exclusively charitable purposes. Watson v United States (1965, CA3 NJ) 355 F2d 269, 66-1 USTC ¶ 12366, 17 AFTR 2d 1320; Rev Rul 68-422, 1968-2 CB 207.

Whether an enterprise is exclusively educational or religious or charitable for tax exemption purposes depends not upon how it makes its money, but upon the purpose for which it makes it, that is, how it spends what it makes. Southeastern Fair Asso. v United States (1943) 100 Ct Cl 216, 52 F Supp 219, 31 AFTR 747.

Corporation satisfies requirements of being "organized" for charitable purpose if at time in question its set up organization of ownership, directors and officers are such that its earnings will inure to charity. Dillingham Transp. Bldg., Ltd. v United States (1957) 137 Ct Cl 389, 146 F Supp 953, 57-1 USTC ¶ 9322, 50 AFTR 1280.

Foundation established to provide educational scholarships to employees of the donor and their children was not exempt as a charitable corporation when, in fact, a substantial portion of the scholarship awards had been granted to the son of a prominent officer of the donor corporation who was also a trustee of the foundation. Charleston Chair Co. v United States (1962, DC SC) 203 F Supp 126, 62-1 USTC ¶ 9250, 9 AFTR 2d 730.

Theatre group did not lose tax exempt status by contracting with unrelated booking agent for agent to make available theatrical attractions and perform specified other services for 15 percent of group's membership dues, even though contract also gave agent the right to attempt reorganization of theatre group if group's continuance was threatened, and provided that agent could incur no expense on group's behalf without prior written approval, since contract did not give agent such control of group as to make it organized and operated for agent. Broadway Theatre League, Inc. v United States (1968, WD Va) 293 F Supp 346, 68-2 USTC ¶ 9658, 23 AFTR 2d 69-604.

Press club was entitled to tax-exempt status as social club where percentage of outside volume of business amounted to 6.75 percent of total restaurant and bar service and frequency of events in which nonmembers were entertained was no more than normal in club of its size. Pittsburgh Press Club v United States (1978, WD Pa) 462 F Supp 322, 79-1 USTC ¶ 9145, 43 AFTR 2d 79-508, revd (CA3 Pa) 615 F2d 600, 80-1 USTC ¶ 9233, 45 AFTR 2d 80-812.

It is not necessary that an exempt organization control or supervise services performed or amount spent for services, before such expenses can be deducted. Sampson v Commissioner (1982) TC Memo 1982-276, 43 TCM 1408.

Activity of making advances to persons who solicit contributions does not further any exempt purpose and, when substantial, supports denial of exempt status; non-exempt activities representing 33.2% of organization's gross revenues is substantial warrants denial of exempt status. Senior Citizens of Missouri, Inc. v Commissioner (1988) TC Memo 1988-493, 56 TCM 480.

Exempt status is terminated where nonexempt activities are no longer insubstantial and therefore do not fit within operational test's limitation of exemption to organizations if more than insubstantial part of activities are not in furtherance of exempt purpose; organization's management and operation of Bingo games or other exempt organizations is nonexempt activity, and where almost all or organization's receipts are derived from its management activities and organization never took steps to meet its stated principle exempt purpose of opening camp for disadvantaged children and elderly, exempt status is terminated. Make a Joyful Noise, Inc. v Commissioner (1989) TC Memo 1989-4.

56. Inurement of income to private benefit

Where scholarship endowment foundation, for a consideration, obligated itself to pay donor annually a specified sum, and, after his death, to pay such sum to his wife annually, such foundation was not exempt, since a part of the earnings inured to the benefit of a private individual. Scholarship Endowment Foundation v Nicholas (1939, CA10 Colo) 106 F2d 552, 39-2 USTC ¶ 9689, 23 AFTR 399, cert den 308 US 623, 84 L Ed 520, 60 S Ct 378.

An institution that operates primarily for the benefit of private parties and only incidentally for the public is not a charitable institution in fact or within the meaning of the revenue statute. Underwriters' Laboratories, Inc. v Commissioner (1943, CA7) 135 F2d 371, 43-1 USTC ¶ 9430, 30 AFTR 1451, cert den 320 US 756, 88 L Ed 450, 64 S Ct 63.

Trade school was not entitled to exemption where five individuals, four of whom were members of the executive committee of the school and all of whom were members of the board of directors, shared in the school's net earnings as a result of the payment to them of excessive and unreasonable rent for real estate leased to the school and as the result of the construction by the school of buildings which became a part of the real estate. Texas Trade School v Commissioner (1959, CA5) 272 F2d 168, 59-2 USTC ¶ 9786, 4 AFTR 2d 5859.

Amount paid by taxpayer as a "room endowment" to the building fund of a charitable institution constituted a gift, though such payment entitled taxpayer to occupy the room, at a monthly charge, and was made one day before taxpayer did in fact enter the institution; and taxpayer was entitled to deduct the amount paid as a charitable contribution. Estate of Wardwell v Commissioner (1962, CA8) 301 F2d 632, 62-1 USTC ¶ 9383, 9 AFTR 2d 1161 (not followed Rev Rul 72-506, 1972-2 CB 106).

Use of foundation's funds in an appreciable amount and in a manner which, while beneficial to the tax-exempt corporation, also resulted in a substantial benefit to its founders when the latter were unable to procure financing from any other source was sufficient cause to hold that the organization had forfeited its tax-exempt status. Stevens Bros. Foundation, Inc. v Commissioner (1963, CA8) 324 F2d 633, 63-2 USTC ¶ 9820, 12 AFTR 2d 5952, cert den 376 US 969, 12 L Ed 2d 84, 84 S Ct 1135, reh den 377 US 920, 12 L Ed 2d 189, 84 S Ct 1179.

Nonprofit corporation organized by group of local merchants to operate public parking facility intended to alleviate i city parking problems was tax exempt, since improved parking near merchants' places of business did not benefit merchants any more than community as a whole. Monterey Public Parking Corp. v United States (1973, CA9 Cal) 481 F2d 175, 73-2 USTC ¶ 9539, 32 AFTR 2d 73-5336 (not followed Rev Rul 78-86, 1978-1 CB 151, distinguished 1981-1 CB 333).

Because excessive parsonage allowances have been held to preclude church from exemption, church may be held not to qualify where three church officers receive allowances to cover their housing costs and amount of allowance is dependent upon their contributions to church. Hall v Commissioner (1984, CA9) 729 F2d 632, 84-1 USTC ¶ 9341, 15 Fed Rules Evid Serv 509, 53 AFTR 2d 84-1174, 78 ALR Fed 355.

Payments by church to its founder support finding of inurement where founder used church to generate copyrighted literature and market his products, books were copyrighted in founder's name, publications copyrighted in founder's name were actually written by church employees, and church encouraged its staff members to aggressively market founder's products. Church of Scientology v Commissioner (1987, CA9) 823 F2d 1310, 87-2 USTC ¶ 9446, 60 AFTR 2d 87-5386, cert den (US) 100 L Ed 2d 214, 108 S Ct 1752.

Adoption agency is not exempt organization where it is controlled by individual who has power to appoint other members of the organization and its board of directors, receives $45 per year for part-time work, and uses agency's profits as source of credit for other corporations. Easter House v United States (1987) 12 Cl Ct 476, 87-1 USTC P 9359, 60 AFTR 2d 87-5119, affd without op (CA FC) 846 F2d 78.

Existence of contingent compensation arrangement does not preclude tax-exempt status if arrangement is reasonable, and payment of commissions to fund raisers in amount of from 3 to 6 percent is reasonable and does not constitute inurement. National Foundation, Inc. v United States (1987) 13 Cl Ct 486, 87-2 USTC ¶ 9602, 60 AFTR 2d 87-5926, later proceeding (Cl Ct) 15 Cl Ct 209, 88-2 USTC ¶ 9445, 62 AFTR 2d 88-5302.

Evidence that a tax exempt theatre group entered into a one-year contract with an unrelated booking agent, who was to make available theatrical attractions and perform specified other services for which he would receive a percentage of the membership dues, who had the right to attempt reorganization of the group if its continuance was threatened, but who could not incur any expenses on behalf of the group without prior approval, did not show that the group was in effect organized and operated for the benefit of the agent, and therefore its exempt status was upheld. Broadway Theatre League, Inc. v United States (1968, WD Va) 293 F Supp 346, 68-2 USTC ¶ 9658, 23 AFTR 2d 69-604.

Perpetual care trust whose funds were paid to maintain cemetery property held by a cemetery company organized as a corporation for profit was not exempt from capital gains taxes under subsec. (c)(3) as an organization operated exclusively for charitable purposes where there was no evidence of any charitable purpose on behalf of any persons or corporations in the trust arrangement and the trust merely provided a service through which certain individuals bought maintenance services to protect their own pr y. Mercantile Bank & Trust Co. v

United States (1970, WD Mo) 312 F Supp 1164, 70-1 USTC ¶ 9450, 25 AFTR 2d 70-1410, affd (CA8 Mo) 441 F2d 364, 71-1 USTC ¶ 9325, 27 AFTR 2d 71-1085.

The net earnings of a church were held not to inure to the benefit of its founder and his wife where the salaries to the founder and his wife were reasonable, and the fact that the founder and his wife also used the church's property did not disqualify the church's exempt status, because the church's property had been dedicated to and used for its exempt purpose. Universal Church of Scientific Truth v United States (1973, ND Ala) 74-1 USTC ¶ 9360, 32 AFTR 2d 73-6122.

Religious community's provision of food, clothing, shelter, medical care, recreational facilities and parochial school to its members, who were often employed outside community but who donated their salaries to it, meant that community's net earnings inured to benefit of its members. Beth-El Ministries, Inc. v United States (1979, DC Dist Col) 79-2 USTC ¶ 9412, 44 AFTR 2d 79-5190.

Organization established to raise funds to support missionaries of church is not disqualified from exempt status due to inurement by payment to fund raisers of commissions of up to 20 percent of amounts raised where commission arrangement is found to be reasonable compensation and not scheme to shift organization earnings to individuals. World Family Corp. v Commissioner (1983) 81 TC 958 (Acq & Not Acq).

Net earnings of organization inured to benefit of private individuals in violation of 26 USCS § 501(c)(3), where substantial beneficiary of services contemplated by organization was child of founder and chief operating officer, because disbursement of organization's funds to pay for medical and rehabilitative care for daughter of organization's founder and secretary-treasurer would relieve family of economic burden of providing such care. Wendy L. Parker Rehabilitation Foundation, Inc. v Commissioner (1986) TC Memo 1986-348, 52 TCM 51.

Educational organization which provided interest-free loans to two corporations owned by persons having controlling interests in organization did not lose its tax exempt status. Orange County Agricultural Soc. v Commissioner (1988) TC Memo 1988-380; 55 TCM 1602.

A nonprofit organization operated to provide bus transportation for pupils attending private schools is not organized or operated exclusively for any exempt purpose since it merely enables participating parents to fulfill their individual responsibility of transporting their children to school. Rev Rul 69-175, 1969-1 CB 149.

Nonprofit corporation formed to operate college campus book and supply store, which sold books and supplies only to its membership, consisting of the college students and faculty, and which operated at cost with excess earnings, if any, refunded annually to members in proportion to their purchases, through a reduction in the price of books and supplies sold, did not lose exemption by virtue of such annual distributions. Rev Rul 69-538, 1969-2 CB 116.

A cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works was denied exemption as an educational organization. Rev Rul 71-395, 1971-2 CB 228, clarified Rev Rul 76-152, 1976-1 CB 151.

Arrangement by which hospital forms joint venture with members of medical staff and sells to joint venture gross or net revenue stream derived from operation of existing hospital unit or service for defined period of time constitutes prohibited private inurement because joint venture diverts to private physician's profits interest in portion of operations, and such payments would be indistinguishable from payment of dividends on stock. General Counsel Memorandum 39862 (November 22, 1991).

There is no private inurement despite payment of compensation by foundation to members of its board of directors where members are most qualified individuals for job located in area, members did not control board, and were excluded from all decisions regarding their compensation. Private Letter Ruling 9201035.

Hospital is not operated primarily for exempt purposes where it contracts with physicians, as recruitment incentive, to provide guaranteed minimum annual income with no obligation to repay subsidies out of income earned after contract. GCM 39498 (April 24, 1986).

Annotations:

Federal tax exemption: when do earnings of religious, charitable, educational, or similar organization inure to benefit of private shareholders or individuals within meaning of 26 USCS § 501(c)(3). 92 ALR Fed 255.

57. Influencing legislation

Denial of exemption to nonprofit religious organization which carried on substantial activities in attempting to influence legislation by molding public opinion on social and political issues through its publications and broadcasts, and which also intervened in political campaigns by attacking specific candidates, did not violate First Amendment right of free exercise of religion or right of free speech, and did not violate Fifth Amendment's due process clause, even though Treasury did not deny exemptions to similar religious organizations. Christian Echoes Nat. Ministry, Inc. v United States (1972, CA10 Okla) 470 F2d 849, 73-1 USTC ¶ 9129, 31 AFTR 2d 73-460, cert den 414 US 864, 38 L Ed 2d 84, 94 S Ct 41.

Annotations:

Validity of charitable trust to promote change in laws or systems or methods of government. 22 ALR3d 886.

58. Effect of profitable operations

A nonprofit corporation conducting tests, experiments, and investigations into the causes of losses against which insurance companies insure, which information is furnished free to its members, and also to the general public through publications, movies, and the radio, and maintaining a testing service for manufacturers for which it charges fees, is not exempt from income tax as a charitable, scientific, or educational organization. Underwriters' Laboratories, Inc. v Commissioner (1943, CA7) 135 F2d 371, 43-1 USTC ¶ 9430, 30 AFTR 1451, cert den 320 US 756, 88 L Ed 450, 64 S Ct 63.

Foundation, whose income under its charter provisions was to be used for charitable purposes, was exempt from income taxation for the years in question despite the fact that its income was derived chiefly from profits from masonry contracting operation. Lichter Foundation, Inc. v Welch (1957, CA6 Ohio) 247 F2d 431, 57-2 USTC ¶ 9910, 52 AFTR 115, later app (CA6 Ohio) 269 F2d 142, 59-2 USTC ¶ 9571, 2 FR Serv 2d 816, 4 AFTR 2d 5123.

A trust organized for charitable purposes which subsequently operated businesses for profit did not lose its status as a trust organized for charitable purposes and was entitled to exempt status upon discontinuance of its operations of businesses for profit. Commissioner v John Danz Charitable Trust (1960, CA9) 284 F2d 726, 61-1 USTC ¶ 9114, 6 AFTR 2d 6024.

A private charitable foundation did not lose its exempt status by selling part of the blue chip stocks contributed to it, and using the proceeds to buy all the stock of a family corporation, where the court found that such stock was not so speculative, risky, or "unpredictable" an investment that the foundation was not warranted in switching from its blue chips into the family corporation. Commissioner v Teich (1969, CA7) 407 F2d 815, 69-1 USTC ¶ 9239, 69-1 USTC ¶ 12586, 23 AFTR 2d 69-679.

Charitable corporation may operate business as substantial part of its activities as long as it does so in furtherence of its charitable purpose; focus in deciding whether corporation qualifies for tax exempt status is on manner of operation of its business, not just whether it is organized under not for profit corporate statutes; corporation was not entitled to chartiable purpose exemption although its stated purpose was to provide assistance to senior citizens, where proceeds from a second hand retail sales operations were diverted almost entirely to perpetuation of business, where less than half of its employees were over age of 55, their training was restricted to needs of business, corporation provided no housing facilities or health care, 10 percent or less of donated items were distributed directly to needy senior citizens, incomplete records were kept of such distributions, and corporation conducted no advertising to let senior citizens know of availability of such items. Senior Citizens Stores, Inc. v United States (1979, CA5 Tex) 602 F2d 711, 79-2 USTC ¶ 9592, 44 AFTR 2d 79-5665.

A testamentary trust established to provide medical care and educational opportunities to young people was tax exempt and a provision in the will creating the trust which authorized the trustees to operate a business in order to carry out the express purposes of the trust did not foreclose its tax exempt status. Lewis v United States (1961, DC Wyo) 189 F Supp 950, 61-1 USTC ¶ 9231, 7 AFTR 2d 537.

59. Distribution of assets upon dissolution

Organization formed to promote chiropractic satisfies requirements of § 501(c)(3) organizations even though articles of incorporation did not provide for dedication of assets to exempt purposes on dissolution or otherwise where under state law organization's bylaws could be considered in determining appropriate dedication of assets, and bylaws provided for appropriate dedication upon dissolution. Colorado State Chiropractic Soc. v Commissioner (1989) 93 TC No. 39.

Organization is not organized exclusively for exempt purposes where it fails to provide for proper distribution of assets upon dissolution, and where, additionally, it does not qualify as nonprofit corporation under state law because it does not provide that upon dissolution, after paying debts and winding up business, it has to divide residue of money among members, share and share alike. Chief Steward of Ecumenical Temples etc. v Commissioner (1985) TC Memo 1985-50, 49 TCM 640.

B. Particular Organizations

60. Generally

A nonprofit corporation conducting tests, experiments, and investigations into the causes of losses against which insurance companies insure, which information is furnished free to its members, and also to the general public through publications, movies, and the radio, and maintaining a testing service for manufacturers for which it charges fees, is not exempt from income tax as a charitable, scientific, or educational organization. Underwriters' Laboratories, Inc. v Commissioner (1943, CA7) 135 F2d 371, 43-1 USTC ¶ 9430, 30 AFTR 1451, cert den 320 US 756, 88 L Ed 450, 64 S Ct 63.

Although corporations originally organized to operate newspapers subsequently engaged only in holding property for museum, sole stockholder of said corporations having bequeathed all of his stock to the museum, they were not exempt as educational institutions. Sun-Herald Corp. v Duggan (1947, CA2 NY) 160 F2d 475, 47-1 USTC ¶ 9182, 35 AFTR 998.

A nonprofit corporation, which operated as its primary, if not sole, activity two "Veterans' Thrift Stores" which resold to the public or other secondhand retail outlets used goods of various kinds which had been donated by the public on solicitation of the corporation with the cooperation of state Disabled American Veterans, was subject to income tax laws. Veterans Foundation v United States (1959, DC Utah) 178 F Supp 234, 59-2 USTC ¶ 9720, 4 AFTR 2d 5694, affd (CA10 Utah) 281 F2d 912, 60-2 USTC ¶ 9689, 6 AFTR 2d 5501.

Organization created to eliminate prejudice, lessen neighborhood tensions and to combat community deterioration and juvenile delinquency in the community is "charitable," which includes the promotion of this type of social welfare while the dissemination of information on these subjects to residents of the community and to interested people of the city at large is "educational." Rev Rul 68-15, 1968-1 CB 244.

The creation of an organization to eliminate prejudice and lessen racial tension in public accommodations and housing is exempt since charitable includes the promotion of social welfare by organizations designed to lessen tensions, eliminate prejudice and discrimination and to defend human and civil rights secured by law and dissemination of information serves educational purposes. Rev Rul 68-438, 1968-2 CB 209.

An organization formed to provide cost-free rescue and emergency service to stranded, injured or lost persons as well as to persons suffering because of fire, flood, accident, or other disasters is both charitable and educational. Rev Rul 69-174, 1969-1 CB 149.

Organization formed to collect and collate campaign speeches, recorded interviews, comments, and other materials of a candidate for a historically important elective office for donation to a university or public library qualifies for educational exemption. Rev Rul 70-321, 1970-1 CB 129.

Charitable, as well as educational activities, are performed by an organization formed to develop, manage, and operate community correctional centers for prisoners selected by the courts and government custodial agencies. Rev Rul 70-583, 1970-2 CB 114.

Since the education provided by an organization to qualify as an exempt educational organization, must consist of the instruction of individuals or of the public, a dog club, formed to promote the ownership and training of purebred dogs and which conducts obedience classes, cannot be exempt as an educational organization rather [illegible] as a social club because while the dog owner receives [illegible]uction in how to give commands to his dog, it is the dog who is the primary object of the training, and the training of dogs isn't "education" for this purpose. Rev Rul 71-421, 1971-2 CB 229.

An organization that conducts an international exposition commemorating historical events and cultural achievements and exhibits products of various nations deriving income from admissions, concessions, fees, and contributions from the public and from governmental sources is exempt. Rev Rul 71-545, 1971-2 CB 235.

61. Day care centers

Organization that provides educational day care for children between ages of 6 months and 3 years is exempt educational organization where custodial care is necessary concommitant of education. San Francisco Infant School, Inc. v Commissioner (1978) 69 TC 957(A).

Nonprofit organization formed to operate a day care center for young children of needy working parents who have no means to provide care for their children during the day, which charges a nominal fee for its services but is not self-supporting, and which must depend on public contributions, is tax exempt. Rev Rul 68-166, 1968-1 CB 255.

Nonprofit organization formed to operate a work-related child care and development center in conjunction with an industrial company, and enrolling pre-school-age children of employees of the company, children of parents employed in nearby factories and children of parents recommended through contacts with antipoverty and welfare agencies, on the basis of financial need and the need of the child for the care and development program, financed by Federal grants and contributions of cash and services from the company, qualifies for exemption. Rev Rul 70-533, 1970-2 CB 112.

62. Ecological organizations

Farm organization being operated to demonstrate sound, ecological principles and intending to open its farming facilities to farming community and general public on specified visiting days well publicized over radio and through local newspaper is exempt organization for purposes of 26 USCS § 501. Dumaine Farms v Commissioner (1980) 73 TC 650 (A & NA).

Organization which planted trees in public areas, cooperated with city in street tree planting and keeping city clean, and educated public and architects on advantages of tree planting, thereby lessening the government's burden, was tax exempt. Rev Rul 68-14, 1968-1 CB 243, distinguished Rev Rul 75-286, 1975-2 CB 210, distinguished Rev Rul 78-85, 1978-1 CB 150.

An organization formed to assist local governments of a metropolitan region directed at the solution of problems dealing with water, air pollution, waste disposal, water supply and transportation proposes activities that are charitable as well as educational since in conducting a nonpartisan analysis, the results are published for the general public, and is not an "action" organization since it does not advocate the adoption of any legislative action to implement findings. Rev Rul 70-79, 1970-1 CB 127.

Organization formed to educate the public regarding environmental deterioration due to solid [illegible] pollution, even though it is operated in part with proceeds of sales of collected solid [illegible] to recycling companies, is e[illegible]t since the income derived from such sales is merely incidental to the accomplishment of the exempt purposes of the organization. Rev Rul 72-560, 1972-2 CB 248.

Nonprofit organization with membership open to general public that was formed by residents of city to help preserve, beautify, and maintain public park located in city and whose support is derived from membership dues and contributions from general public is operated exclusively for charitable purposes and qualifies for exemption under 26 USCS § 501(c)(3). Rev Rul 78-85, 1978-1 CB 150.

Nonprofit organization that owns farmland and restricts its use to farming or other uses organization deems ecologically suitable, but is not operated for purpose of preserving ecologically significant land and does not otherwise establish that it serves charitable purpose, does not qualify for exemption under 26 USCS § 501(c)(3); Rev Rul 76-204 distinguished. Rev Rul 78-384, 1978-2 CB 174.

Otherwise qualifying organization which is formed to protect and restore environmental quality and whose principal activity consists of instituting ligation as party plaintiff to enforce environmental legislation is operated exclusively for charitable purposes and qualifies for exemption under 26 USCS § 501. Rev Rul 80-278, 1980-2 CB 175.

Otherwise qualifying organization that engages in legal research concerning various means of adjusting and resolving international environmental disputes and arranges for, and participates in resolution of such disputes through mediation is exempt under 26 USCS § 501. Rev Rul 80-279, 1980-2 CB 176.

63. Organizations assisting government

Corporation which provides community benefit or lessens burdens of government may be regarded as engaged in charitable activity and those activities at minimum cannot be regarded as bringing otherwise charitable organization as outside charitable exemption on substantial nonexempt purpose rationale; nonprofit corporations whose purpose is to establish and perform services of professional standards review organization pursuant to 42 USCS § 1320c or for purpose of assuming responsibilities and duties of support center for standards review organization is entitled to exemption under 26 USCS § 501(c)(3) and any benefits which might accrue to participants and PSRO program are wholly of incidental nature, and are not inconsistent with charitable purposes and operations of organizations. Virginia Professional Standards Review Foundation v Blumenthal (1979, DC Dist Col) 466 F Supp 1164, 79-1 USTC ¶ 9167, 43 AFTR 2d 79-682.

Determination whether organization lessens burden of government involves two-part inquiry as to whether government unit considers activities to be its burden, recognizes organization as acting on its behalf, and whether organization's performance of activities actually lessens burden of government; corporation formed to buy prison-made goods and services and sell them to general public does not lessen burden of government where neither federal or state government views sale of prison-made goods to private sector as proper governmental function. Public Industries, Inc. v Commissioner (1991) TC Memo 1991-3, 61 TCM 1626.

Charitable, as well as educational activities are performed by an organization formed to provide rescue and emergency service to stranded, injured or lost persons as well as to persons suffering because of fire, flood, accident, or other disasters,

CODE OF FEDERAL REGULATIONS

General provisions relating to occupational taxes, 26 CFR §§ 44.4901-1 et seq., §§ 45.4901-1 et seq.

CROSS REFERENCES

Inapplicability of this section to occupational tax on wagering, 26 USCS § 4413.

RESEARCH GUIDE

Am Jur:

58 Am Jur 2d, Occupations, Trades, and Professions § 10.

§§ 4908–4910. [Reserved for future use.]

CHAPTER 41. PUBLIC CHARITIES

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1987, P.L. 100-203, Sec. 10714(d), added item 4912.

In 1976, P.L. 94-455, Sec. 1307(b), added chapter 41, for tax. yrs. begin. after '76.

§ 4911. Tax on excess expenditures to influence legislation.

(a) Tax imposed. (1) In general. There is hereby imposed on the excess lobbying expenditures of any organization to which this section applies a tax equal to 25 percent of the amount of the excess lobbying expenditures for the taxable year.

(2) Organizations to which this section applies. This section applies to any organization with respect to which an election under section 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

(b) Excess lobbying expenditures. For purposes of this section, the term "excess lobbying expenditures" means, for a taxable year, the greater of—

(1) the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for such organization for such taxable year, or

(2) the amount by which the grass roots expenditures made by the organization during the taxable year exceed the grass roots nontaxable amount for such organization for such taxable year.

(c) Definitions. For purposes of this section—

(1) Lobbying expenditures. The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

(2) Lobbying nontaxable amount. The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) $1,000,000 or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over $500,000	20 percent of the exempt purpose expenditures.
Over $500,000 but not over $1,000,000	$100,000, plus 15 percent of the excess of the exempt purpose expenditures over $500,000.
Over $1,000,000 but not over $1,500,000	$175,000 plus 10 percent of the excess of the exempt purpose expenditures over $1,000,000.
Over $1,500,000	$225,000 plus 5 percent of the excess of the exempt purpose expenditures over $1,500,000.

(3) Grass roots expenditures. The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

(4) Grass roots nontaxable amount. The grass roots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2)) for such organization for such taxable year.

(d) Influencing legislation. (1) General rule. Except as otherwise provided in paragraph (2), for purposes of this section, the term "influencing legislation" means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

(2) Exceptions. For purposes of this section, the term "influencing legislation", with respect to an organization, does not include—

(A) making available the results of nonpartisan analysis, study, or research;

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or [illegible] subdivision thereof in re[illegible] to a wi[illegible] request by such body or subdivision, as the [illegible] may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) any communication with a government official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

(3) **Communications with members.** (A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

(B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

(e) **Other definitions and special rules.** For purposes of this section—

(1) **Exempt purpose expenditures.** (A) In general. The term "exempt purpose expenditures" means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes).

(B) Certain amounts included. The term "exempt purpose expenditures" includes—

(i) administrative expenses paid or incurred for purposes described in section 170(c)(2)(B), and

(ii) amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in section 170(c)(2)(B)).

(C) Certain amounts excluded. The term "exempt purpose expenditures" does not include amounts paid or incurred to or for—

(i) a separate fundraising unit of such organization, or

(ii) one or more other organizations, if such amounts are paid or incurred primarily for fundraising.

(2) **Legislation.** The term "legislation" includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

(3) **Action.** The term "action" is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

(4) **Depreciation, etc., treated as expenditures.** In computing expenditures paid or incurred for the purpose of influencing legislation (within the meaning of subsection (b)(1) or (b)(2)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization. Such allowance shall be computed only on the basis of the straight-line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under subtitle A to amounts which are paid or incurred in a trade or business.

(f) **Affiliated organizations.** (1) **In general.** Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in section 501(c)(3) are members of an affiliated group of organizations as defined in paragraph (2), and an election under section 501(h) is effective for at least one such organization for such year, then—

(A) the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of section 501(h)(1) have been exceeded shall be made as though such affiliated group is one organization;

(B) if such group has excess lobbying expenditures, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which has excess lobbying expenditures in an amount which equals such organization's proportionate share of such group's excess lobbying expenditures;

(C) if the expenditure limits of section 501(h)(1) are exceeded, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which is not [illegible]ribed in section 501(c)(3) by [illegible]on of the application of 501(h), and

(D) subparagraphs (C) and (D) of subsection (d)(2), paragraph (3) of su[illegible]tion (d), and clause (i) of subsection (e)(1)(C) shall be applied as if such affiliated group were one organization.

(2) **Definition of affiliation.** For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) the governing instrument of one such organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) the governing board of one such organization includes persons who—

(i) 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) by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

(3) **Different taxable years.** If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Secretary.

(4) **Limited control.** If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of such affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no such organization requires it to be bound by decisions of any of the other such organizations on legislative issues other than as to action with respect to Acts, bills, resolutions, or similar items by the Congress, then—

(A) in the case of any organization whose decisions bind one or more members of such affiliated group, directly or indirectly, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization has paid or incurred those amounts paid or incurred by such members of such affiliated group to influence legislation with respect to Acts, bills, resolutions, or similar items by the Congress, and

(B) in the case of any organization to which subparagraph (A) does not apply, but which is a member of such affiliated group, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization is not a member of such affiliated group.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1978, P.L. 95-600, Sec. 703(g)(1), substituted "exempt purpose expenditures" for "proposed expenditures" in the heading of the table appearing in para. (c)(2), effective 10/4/76.

In 1976, P.L. 94-455, Sec. 1307(b), added Code Sec. 4911, effective for tax. yrs. begin. after 12/31/76.

CROSS REFERENCES

Itemized deductions: charitable contributions and gifts, 26 USCS § 170.
Exemption from tax on corporations, certain trusts, etc., 26 USCS §§ 501 et seq.

RESEARCH GUIDE

Am Jur:

34 Am Jur 2d, Federal Taxation (1996) ¶¶ 20682, 20683, 20685.

34 Am Jur 2d, Federal Taxation (1995) ¶ ¶ 20682, 20683.

RIA Coordinators:

7 Fed Tax Coord 2d ¶ ¶ D-5440-5446.

Law Review Articles:

Grayells. Charitable Trusts and Ancillary Purposes. 1978 Convey 92, March-April, 1978.

Hyslop. Public Interest Lobbying and the Tax Reform Act of 1976. 7 Environ L 283, Winter, 1977.

Wadsworth. Federal Taxation and Charitable Organizations. 39 Law & Contemp Prob 262 p, Autumn, 1975.

Glover. Public Benefit as Charitable Object. 126 New L J 4, May, 1976.

Cotterell. Legal Re-Definition of Charity. 126 New L J 30, May, 1976.

Political Speech of Charitable Organizations Under the Internal Revenue Code. 41 U Chi L Rev 352, Winter, 1974.

POSSIBLE LEGISLATIVE OPTIONS FOR A WORST CASE SCENARIO

1. **Withhold support for IPPF/London and use the money given to them for other family planning organizations.**

   Explanation: Under this option, we would simply agree to legislatively prohibit AID from granting any money to IPPF. The cap would stand at $385, so the $5 million or so that goes to IPPF would be used for other grantees.

   Pros
   - Easy to administer, with no impact on other groups or program as a whole.
   - Addresses main group the right wing complains about.
   - Of the options being considered, dropping funding to IPPF would have the least programmatic impact

   Cons
   - Singles out one group that has lots of support from the pro-choice wing.
   - May be politically hard to swallow.

Discussion: The International Planned Parenthood Federation (IPPF) is unlikely to agree to any of the conditions being discussed. They were one of the two organizations that refused to sign Mexico City. IPPF has not been an effective organization for some years. USAID has dropped its funding from around $17 million to $5.8 million in FY 99. They also received $2 million in contraceptives in FY 99. They are scheduled to get $5 million in FY00. IPPF is an important symbol for both sides of the abortion/family planning issue. Not funding them would be seen as a significant victory for the anti-pop groups and a stinging defeat for the pro-pop groups. If played, we should get a lot for this card.

2. **Smith language with Presidential waiver for both lobbying and performing coupled with a cut in the overall level for family planning assistance if the President exercises a waiver, but no reduction from individual grantees.**

   Explanation: If the lump sum off the top were limited to $5 million, although the programs would suffer, the loss could be absorbed. However, if the amount exceeded that amount, the countries most in need of the funds would be hurt most and there would be a growing disparity in the way we fund assistance in the most needy nations and the way we fund Eastern European countries and the countries of the former Soviet Union.

   Pros

   - All organizations would share the burden, not just those who engage in lobbying or perform abortions

   Cons

- Would disproportionately affect those countries most in need of family planning assistance.
- Wouldn't target those organizations that engage in lobbying or perform abortions.

Discussion: Family planning assistance is currently capped in the FY 2000 apropriations bill at $385 million. The effect of this option would be to reduce this ceiling by some amount, leaving it to the administration to determine the allocation of the reduced total. The bill language would specify that the amount of the reduction would be used for a less controversial purpose (e.g., an additional amount over FY 98 levels for post-abortion care) or transferred to another account, e.g., child survival. To the extent that the penalty amount exceeds $5 million, the damage to the program becomes severe. ~~At the $___ million level it becomes unacceptable.~~

In FY96, Congress cut the population account to $356 million. However, using prior year funds, the Administration increased this amount to $432 million. Since then, the population level has remained at $385 million. The $385 million cap is attained with a combination of DA (Development) and non-DA funds. Since FY97, non-DA funds constitute a larger percent of the cap. In FY99, $339 of the $385 million was DA. The FY00 budget puts the DA amount at $340. Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest or most demographically important countries. Also, the non-DA countries are relatively well funded in population relative to the DA countries. For example, ESF countries have a $0.33 per capita versus $0.14 per capita of population funds. It is likely that any reduction in the population account would come from the DA and not non-DA accounts. As a result, the impact of the reduction would be magnified in particular countries like ~~[illegible]~~ South Africa

A reduction from the $385 level would have more than programmatic consequences. The $385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.

3. Smith language with waiver for both lobbying and performing coupled with a percentage reduction off all grantees if the President issues a waiver. Transfer the resulting savings to the CSF for post abortion care (or as second alternative, to the CSF for prevention cervical cancer).

Pros

- All organizations would share the burden, not just those who engage in lobbying or perform abortions

Cons

- Wouldn't target those organizations that engage in lobbying or perform abortions

Discussion: The effect of this option would be to reduce the amount of assistance that could be provided to each organization that received family planning funding in FY 1998, if the

President exercised one or both waivers. This would be an across-the-board percentage reduction from every organization regardless of whether a particular organization performed abortions or lobbied. Organizations that received no funding in FY 1998 would be unaffected, but that is likely to be a fairly low number. The funds not used for these organizations would either be used for a more benign purpose, e.g., post-abortion care, or transferred to another account, e.g., child survival.

4. **Smith language with waiver for both lobbying and performing, with reductions to any grantee or subgrantee that is above a certain threshold and do not certify that it does not spend any money (or more than a de minimus amount) on engaging in such activity.**

Explanation: Under this option, the cuts would come directly from the grantees and subgrantees who engage in the proscribed conduct, notwithstanding exercise of the waiver. Withheld funds would be redirected, thus keeping the money in family planning. The threshold level of the grant must be high enough to avoid the administrative burden of going after the smallest subs.

Discussion: Given the large number of grant recipients and the layers of subgrantees, this option would be extremely difficult to implement and would concentrate an inordinate amount of time on de minimis amount grants. Under this option, funding withheld from the grant recipient would be redirected to other certifying grantees.

If we added a minimum threshold so that grants for less than $500,000 would not be covered by the Smith language, large foreign organizations that perform or lobby for abortion would be caught, but we would avoid the administrative difficulty in monitoring de minimis size grants. OMB Circular A-133 identifies $300,000 as de minimis in the domestic context; if used overseas, would eliminate approximately 75% __% of the grants from the requirement.

A slight variance would be to apply the certification requirement to all grants regardless of size, but apply the penalty provision only to grants above the minimum threshold. This option would not exempt foreign organizations falling below the threshold from Smith – although they would still be able to avoid the certification requirement if the President exercised the waiver. The result would be the same: only organizations whose grants exceeded the threshold suffered a penalty for failing to provide the certifications. This formulation would allow Smith to say that his certification requirement applied to all grantees but for the President's exercise of the waiver.

A further variance would be to apply the penalty only to organizations that fail to provide the lobbying certification (as broadly defined by Smith) as opposed to both certifications. This option would focus on organizations that receive grants in excess of the threshold who fail to provide the lobbying certification, rather than both certifications. This would limit the penalty to those organizations that in Smith's view are the bad ones.

5. **Smith language with no waiver for performing, but waiver for lobbying.**

Explanation: this option reverses the presumption in the vetoed State Dept conference report. It would allow the President to waive the ban for lobbying but absolutely ban the grantees from performing abortions with their own funds. It would drop the funding reduction penalty included in the vetoed bill for exercising the waiver.

Pros:

- Would expose many, many fewer organizations to the risk of being dropped from the program if they could not certify that they did not engage in the proscribed activity (in this case performing abortions) with their own funds. From a pro-life perspective, a ban on funding groups that perform abortions with their own funds might also be attractive.

Cons:

- The administration would be agreeing to a ban on performing abortions and defending a waiver that it would presumably exercise to allow lobbying to continue.

6. **Substitute a narrow definition of lobbying.**

Explanation: We could agree to either reduce funding for anyone who lobbies or prohibit lobbying altogether, but have a narrow definition (NOT the Smith language) that is limited to actual direct lobbying (i.e., button-holing legislative members or their staff about specific legislation).

Pros

- Would likely affect few organizations
- Would be easier to administer, since we would simply prohibit the activity rather than have to reduce funding.

Cons

- A outright ban might result in some organizations getting no funding (as opposed to reduced funding.)
- Will probably result in subsequent disputes when some organization does something that may be viewed by Congress as lobbying.

7. **Require an independent study by a CPA firm of foreign NGOs expenditure of their own funds for lobbying and/or abortion; the information from that study would be transmitted to Congress by the President, with any recommendations he might have. This could be coupled with some sort of process for expedited consideration of legislation from the appropriate committees of jurisdiction – in response to the results of the study – with fast track procedures on the House and Senate floors.**

Pros

Neither side has any real idea how much is spent on lobbying or performing; this would allow the facts to be developed.

Cons

There may be some chilling effect of a CPA asking about groups' use of their own funds and some foreign policy issues are presented in that the groups receive funds from other nations, which would in effect be under review by the federal government.

GENERIC ISSUES

1. Use of Population Funds "Saved": Every attempt should be made to keep funds withheld from organizations for engaging in Smith-proscribed activities in the regular population program activities. One way to do this is to "earmark" such funds for Post-abortion care.

Treating the consequences of unsafe abortion is supported by all parts of the political spectrum. Such an earmark keeps the funds in reproductive/maternal health but walls them off from performance/advocacy area. Unsafe abortions are a major cause of death among women in the developing world. USAID can document that funds redirected to post-abortion care would be additive.

The other side will want to redirect these funds to Child Survival. This would upset the population community since it would, in effect, constitute a reduction in the population budget base for future negotiations. Additionally, the Child Survival account is highly directed by House Appropriations staff who would most likely dictate that funds go to areas unrelated to reproductive health.

2. De Minimus Discussion

It is estimated that between 2,500 and 3,000 organizations receive population funds and/or contraceptives. This number makes the implementation of any monitoring or auditing activity difficult and expensive. Many of these organizations are very small, have limited budgets, and no influence on policy issues. Previous research has shown that few NGOs actually provide abortion services.

Setting a funding level threshold would result in a more manageable organization universe. OMB uses a $300,000 threshold for auditing domestic grants. (Circular 133-A) Given the additional difficulties associated with auditing foreign organizations overseas, we have chosen a threshold of $500,000 as an appropriate threshold. As a practical matter, this would reduce the number of organizations by 90 to 95 percent. This threshold would not eliminate the major NGOs.

If necessary, we could move to the OMB specificied de minimus level of a $300,000 threshold. This would exclude from 70 to 75 percent of the organizations.

3. Metering

Metering should be dropped if funding is tied to certification. Currently, all USAID population funds are obligated based on an agency wide metering schedule that limits obligating more than 1/12 of the annual appropriation in any given month, i.e., obligates 8.35 percent of the funds each month. Thus far, cash flow problems have been kept to a minimum, although many organizations have very short pipelines. Last year, there were 168 metering tranches to prime cooperating agencies, host country governments, U.S.

governments and multilaterals. If any of these tranches are missed, it sets off a domino effect down the funding tree. Having a certification requirement would greatly complicate the pipeline analyses that are the underpinning of the metering schedule. Also, USAID and contract and grant program staff are just about at the breaking point with the additional burden of Tiahrt.

4. Off the Top Cut: The other side has proposed a $20 million cut in the population "account" or cap? This should be rejected. A $5 million cut would be tolerable.

The $385 million cap is attained with a combination of DA and non-DA funds. In FY99, $339 of the $385 million was DA. The FY00 budget puts the DA amount at $340.

Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest are most demographically important countries. Also, the non-DA countries are relatively well-funded in population relative to the DA countries. For example, ESF countries have a $0.33 per capita versus $0.14 per capita of population funds. It is likely that any reduction in the population account would come from the DA and not non-DA accounts.

A reduction from the $385 level would have more than programmatic consequences. The $385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.

5. **Fix Attribution Language**. We should fix the Smith attribution language by striking on page 3 of the language, everything in the first paragraph after subgrantee. (See language strikeout). The Smith language requires foreign organizations to provide certifications on their own activities and for their subgrantees. If there is a penalty levied against organization that fail to provide the Smith certification, and grantees' certifications are held hostage to the activities of their subgrantees, those activities would "toxify" all the grantors up the chain.

Annex 3: Exemplar Legislative Language Incorporating 501(c)(3) Option (Revised)
(using the portion of the Smith Amendment addressing lobbying)

(2) LOBBYING ACTIVITIES. - (A) Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, no funds appropriated or otherwise made available in this Act for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, **and will not have a substantial part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion.**

[bold language strikes: "or engage in any activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."]

Statement of Managers Revision

Substantial activity or effort attempting to influence legislation with respect to abortion. The language is intended to be comparable to restrictions that exist on lobbying activity by tax exempt organizations under 26 U.S.C. § 501(c)(3).

Family planning actual
or 9 Member

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(2) the normalization of relations between the "Federal Republic of Yugoslavia" (Serbia and Montenegro) and the United States requires, among other things, that President Milosevic and the leadership of Serbia—

(A) promote the building of democratic institutions, including strengthening the independent news media and respecting the rule of law;

(B) promote the respect for human rights throughout the "Federal Republic of Yugoslavia" (Serbia and Montenegro); and

(C) promote and encourage free, fair, and equal conditions for the democratic opposition in Serbia.

SEC. 1815. FUNDS MADE AVAILABLE UNDER CHAPTER 4 OF PART II OF THE FOREIGN ASSISTANCE ACT OF 1961.

Not less than $2,000,000 shall be made available under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346; relating to the economic support fund), for fiscal years 1998 and 1999 to carry out the programs and activities under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6021 et seq.) and the Cuban Democracy Act of 1992 (22 U.S.C. 6001 et seq.).

SEC. 1816. FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION; FORCED ABORTION IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS.—

"(1) PERFORMANCE OF ABORTIONS.—

"(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

"(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

Over 6/15/93

"(2) LOBBYING ACTIVITIES.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

"(3) APPLICATION TO FOREIGN ORGANIZATIONS.—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.".

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(i) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

"(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

"(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

As used in this section, the term 'coercion' includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.".

(c) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year: Provided, That if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed $356,000,000 may be made available for population planning activities or other population assistance for such fiscal year: Provided further, That the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

DIVISION C—UNITED NATIONS REFORM

TITLE XX—GENERAL PROVISIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "United Nations Reform Act of 1998".

SEC. 2002. DEFINITIONS.

In this division:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee

DEVELOPMENT OF DEMOCRACY IN SERBIA

The House bill (sec. 1713) expresses a sense of Congress regarding the various methods and actions that can be taken to support the development of democracy in the Republic of Serbia. The Senate amendment has no comparable provision.

The conference substitute (sec. 1814) is similar to the House bill with modifications to consolidate the findings.

CUBA ASSISTANCE

The House bill (sec. 1901) makes $2 million available for democracy programs in Cuba under chapter 4 part II of the Foreign Assistance Act of 1961.

The Senate amendment has no comparable provision.

The conference substitute (sec. 1815) is the same as the House bill.

FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION; FORCED ABORTION IN CHINA

The House bill (sec. 2101)

The Senate amendment had no comparable provision.

The conference substitute (sec. 1816) combines House bill sections 2101 and 2102. Section 2101 concerns U.S. population assistance to foreign organizations that perform or promote abortions. Section 2102 concerns UN Population Fund (UNFPA) activities in the People's Republic of China in relation to forced abortions carried out in connection with the Chinese government's population program.

The prohibited lobbying

The conference substitute prohibits, inter alia, population assistance to foreign organizations that "engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited." ~~Such practices include not only~~ overt lobbying for such changes, ~~but also such other activities as sponsoring, rather than merely attending, conferences and workshops on the alleged defects of the abortion laws, as well the drafting and distribution of materials or public statements calling attention to such alleged defects.~~

DIVISION C—UNITED NATIONS REFORM

GENERAL PROVISIONS

SHORT TITLE

The House bill has no similar section.

The Senate bill (Sec. 2001) names this division the "United Nations Reform Act of 1997."

The conference substitute (Sec. 2001) is identical to the Senate bill.

DEFINITIONS

The House bill has no similar section.

The Senate bill (Sec. 2002) defines the terms: appropriate congressional committee, designated specialized agency, secretary gen-

meaning engaging in any attempt to influence any legislation concerning the circumstances under which abortion is permitted, regulated, or prohibited through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation

(5)

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(2) the normalization of relations between the "Federal Republic of Yugoslavia" (Serbia and Montenegro) and the United States requires, among other things, that President Milosevic and the leadership of Serbia—

(A) promote the building of democratic institutions, including strengthening the independent news media and respecting the rule of law;

(B) promote the respect for human rights throughout the "Federal Republic of Yugoslavia" (Serbia and Montenegro); and

(C) promote and encourage free, fair, and equal conditions for the democratic opposition in Serbia.

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(a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS.—

"(1) PERFORMANCE OF ABORTIONS.—

"(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

"(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

"(2) LOBBYING ACTIVITIES.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign

country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

"(3) APPLICATION TO FOREIGN ORGANIZATIONS.—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.".

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(i) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

"(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

"(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

As used in this section, the term 'coercion' includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.".

(c) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year: Provided, That if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed $356,000,000 may be made available for population planning activities or other population assistance for such fiscal year: Provided further, That the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

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8th Congressional District San Francisco, California

Fax Transmission
from
The Washington Office of
Congresswoman Nancy Pelosi

Phone #: 202/225-4965 U.S. HOUSE OF REPRESENTATIVES **Fax #: 202/225-8259**

ATTENTION: Bill Marshall

FROM: Carolyn Bartholomew

DATE: 3/27

# of Pages: 8
(Including cover sheet)

Message/Instructions: Thank you

Action Required:

225 9476

Sec. (a) Prohibition on Funding for Abortion and Lobbying for or Against Abortion—

(1)None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

(2) None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to lobby for or against abortion.

(b) Restrictions on Assistance to Foreign Organizations –

(1) None of the funds appropriated for population planning activities or other population assistance under part I of the Foreign Assistance Act of 1961 may be made available during fiscal year 1998 and fiscal year 1999 for any foreign private, nongovernmental, or multilateral organization; except organizations that utilize these funds to prevent, avert, or discourage abortion as a method of family planning, and that do not advance or encourage abortion as a method of family planning; until the organization certifies that it will not, during the period for which funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in the cases of forcible rape or incest. This prohibition may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

(2) None of the funds appropriated for population planing activities or other population assistance under part I of the Foreign Assistance Act of 1961 may be made available during fiscal year 1998 and fiscal year 1999 to any foreign organization; except organizations that utilize these funds to prevent,

avert, or discourage abortion as a method of family planning and that do not advance or encourage abortion as a method of family planning, and that do not spend a substantial portion of their funds on activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is ~~permitted~~, regulated or prohibited; until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited or engage in any activity or effort to alter the laws or governmental policies of any foreign concerning the circumstances under which abortion is permitted, regulated, or prohibited. These restrictions do not apply to activities in opposition to coercive abortion or involuntary sterilization.

(3) The prohibitions of subsections (1) and (2) apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by subsections (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantees.

Proposed language changes - to G-P

- Specific language changes:

  - Substitute "advance or encourage" for "promote"
  - Add "avert or discourage" to "prevent"
  - Change the clauses around so "prevent" clause is first ((so the emphasis is on preventing, averting or discouraging abortion, rather than on not promoting abortion as a method of family planning))
  - ~~Change "method of family planning" to "family planning method"~~

- Presidential ~~certification~~ that no funds are going/have gone to groups ~~(in aggregate?)~~ that have spent substantial part of activities in lobbying. ((This alternative could use Smith's statutory definition of lobbying, but not his statement of managers language. Could also be modelled on Tax Code 501(c)(3) substantial part of activities lobbying, which is 20%))

Sanction:

- If group violates, they would be disqualified from receiving AID family planning funds for a period of time (two years).

Mark Murray draft

G-P

Bill - old
Bill new

Underlined
Stake

Foreign Organizations that Perform or <u>Promote</u> **(Advance or Encourage)** Abortion Overseas; Forced Abortion in the People's Republic of China

Sec. (a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsections:

"(h) PROHIBITION ON FUNDING FOR ABORTION AND LOBBYING FOR OR AGAINST ABORTION —

(1) None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of an abortion as a method of family planning or to motivate or coerce any person to practice abortions.

(2) None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to lobby for or against abortion.

"(h) (i) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY <u>PROMOTE</u> **(ADVANCE OR ENCOURAGE)**ABORTIONS-

"(1) Performance of Abortions-

"(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in the cases of forcible rape or incest.

"(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country, **or to organizations that utilize these funds to prevent, *avert, or discourage* abortion as a method of family**

planning , and that do not (promote) ***advance or encourage* abortion as a method of family planning.**

"(2) LOBBYING ACTIVITIES – (A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, ***and the President ceritifies that they have not during the previous fiscal year***, violate the laws of any foreign country concerning the circumstances under which, abortion is permitted, regulated, or prohibited or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

"(i) violate or have violated the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, and

"(ii) engage or have engaged in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, except in the case of organizations that utilize these funds to prevent, avert or discourage abortion as a method of family planning and that do not advance or encourage abortion as a method of family planning, and

"(iii) spend or have spent a substantial portion of its funds on activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under abortion is permitted, regulated, or prohibited.

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization .

"(C) If any foreign private, nongovernmental, or multilateral organization receiving funds appropriated for population planning activities or other population assistance spends a substantial portion of its funds to engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, then all such assistance to such organization shall be terminated and such organization shall be ineligible for assistance under this Act for a period of not less than two years.

(3) APPLICATION TO FOREIGN ORGANIZATIONS—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantees.

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new section:

"(i)(j) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

"(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available: or

"(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other government entities within the People's Republic of China.

As used in this section, the term "coercion" includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.
If the President is unable to make the certification required by paragraph (1) or (2) with respect to a fiscal year, *funds allocated or otherwise made available for UNFPA for such fiscal year shall be transferred to the Agency for International Development for population planning activities or other population assistance."*

(new language added by Smith to State Dept. Conference Rept., to be stricken by this amendment)

(c The President may waive the provisions of section 104 (h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year: Provided, That if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed $356,000,000 may be made available for population planning activities or other population assistance for such fiscal year: Provided further, That the limitation of the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

(current Conference Report language on UNFPA)

The conference substitute prohibits inter alia, population assistance to foreign organizations that "engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited." Such practices include not only overt lobbying for such changes, but also such other activities as sponsoring, rather merely attending, conferences and workshops on the alleged defects of the abortion laws, as well the drafting and distribution of materials or public statements calling attention to such alleged defects.

(new report or statement language?, definition of "substantial". Is definition of lobbying still necessary due to changes in bill language?)

To: Bill Marshall

From: Dana Martinez

Date: 3-2-98

Re: Non-resident Aliens and the First Amendment

This memo serves to inform you of the results produced from research you had requested regarding non-resident aliens and constitutional rights. The issue was whether non-resident aliens are provided First Amendment protections, and if so, how extensive is the coverage and in what circumstances may the amendment be applied. Preliminary research revealed that although non-resident aliens may receive protection from the Fourth and Fifth Amendments in isolated circumstances, there are generally no First Amendment rights guaranteed to non-resident aliens. However, there are a few cases, which are detailed below, which suggest that in very narrow circumstances there may be some available protection to this group of persons. The case law is limited to cases of exclusion, deportation, and naturalization, therefore, the precedence is fairly narrow.

I. Exclusion

The principle of alien exclusion cases is that non-resident aliens generally do not enjoy First Amendment rights. Kleindienst v. Mandel et al., 408 U.S. 753 (1972) (concluding that the refusal to allow non-alien resident scholars to enter the country to attend academic meetings did not violate the First Amendment); Turner v. Williams, 194 U.S. 279 (1904) (upheld bar of alien anarchist from the U.S.). Whether the exclusion of an alien is subject to First Amendment objection depends on whose First Amendment interests have been injured. The Supreme Court's current position is that non-resident aliens possess no First Amendment interests and, therefore, may not challenge exclusion on the basis that it abridges their freedom of expression. On the other hand, citizens asserting that the exclusion of an alien harms their First Amendment interests by violating their right to receive information, may object to the constitutionality of exclusion under the First Amendment, but will obtain only very limited judicial review. 408 U.S. 753. In so holding, the Court emphasizes the plenary power of Congress to make rules for admission of aliens and to exclude those who possess the characteristics that Congress has forbidden. Id. As long as there is a "facially legitimate and bona fide reason" for an immigration decision, the courts will defer to the legislature. Id. The court will especially defer to Congress if the contested law was designed to protect the country and its citizens from perceived threats to the national security. Id.

II. Deportation

Deportation differs significantly from exclusion. As opposed to non-resident aliens and issues of exclusion, those non-resident aliens who are already in the U.S., although not yet residents, do enjoy First Amendment protections. The Supreme Court has acknowledged a "longstanding distinction between exclusion proceedings, involving determination of admissibility, and deportation proceedings" that correspond to the basic difference between protected status within the national community and unprotected status at the threshold of admission. American-Arab Anti-Discrimination Committee v. Reno, 70 F.3d 1045 (1995).[1] Accordingly, the court declined to apply Kleindienst to the deportation context. Id. Moreover, the court has recognized that this protection is not limited in the deportation arena by the Government's plenary immigration power. American-Arab Anti-Discrimination v. Meese, 714 F. Supp. 1060 (1989).

Although the court has recognized a distinction between exclusion and deportation, there is language which indicates that the court may be willing to recognize First Amendment rights to non-resident aliens across the board. The language is extracted from a deportation case, however, it is very general. The language comes from ACLU v. Barr, 952 F.2d 457 (D.C. Cir. 1991). This case involved the deportation of non-resident aliens who were alleged members of an international terrorist group. To gather evidence to support these allegations, the FBI used electronic surveillance. Issues of First Amendment limits on government investigations and the legality of electronic surveillance were raised. The D.C. Circuit Court recognized that as non-U.S. persons, the non-resident aliens had no statutory right of action under the Foreign Intelligence Surveillance Act (FISA), even if they had been targeted for surveillance solely on the basis of their First Amendment activities. However, the court recognized that the non-resident aliens were not precluded automatically from a constitutional cause of action based on the First Amendment. Id. "Even non-resident aliens...are entitled to the full protection of the First and Fourth Amendments." Id. at 465. Thus, the non-resident alien plaintiffs might be able to challenge surveillance under the Constitution even where FISA expressly forbade them from doing so. The court also found that if the alien plaintiffs could show that the government had targeted them for surveillance solely on the basis of the First Amendment activities, they would be able to enjoin the surveillance.

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[1]Aliens filed a federal suit challenging deportation proceedings on First Amendment grounds before a final order of deportation had been issued. The aliens were arrested because they were alleged members of an international Communist organization. In holding that First Amendment protections apply in deportation cases, the court stated, "Because we are a nation founded by immigrants, this underlying principle in especially relevant to our attitude toward current immigrants who are part of our community.... It is thus especially appropriate that our First Amendment principle of tolerance for different voices restrain our decisions to expel a participant in that community form our midst." American-Arab Anti-Discrimination v. Reno, 70 F.3d 1045 (9th Cir. 1995).

III. Naturalization

First Amendment protection afforded in naturalization proceeding are no greater than that of plaintiffs in exclusion cases such as Kleindienst. Price v. INS, 962 F.2d 836 (1992).[2] Therefore, the court adopted the reasoning that although they do recognize that First Amendment rights of U.S. citizens may be implicated as in Kleindienst, the courts will defer to the legislature if there is a facially legitimate and bona fide reason for an immigrant decision. Id.

IV. Resident Aliens

Freedom of speech and of press are accorded to aliens already residing in this country. Bridges v. Wixon, 326 U.S. 135 (1945). This principle stands even in the exclusion context where the alien is a resident in the U.S. Rafeedie v. INS, 279 U.S. App. D.C. 183 (1989) (holding certain ideological exclusion grounds invoked against an alleged Marxist Palestinian activist, and resident alien, violated the First Amendment on both overbreadth and void for vagueness grounds.)

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[2]Price appeals the District Court's denial for his petition for naturalization. The District Court's order was based on Price's refusal to list all organizations with which he has ever been affiliated. Price argued that the Attorney General does not have statutory authority to require him to supply such a list and that such authority would be unconstitutional. Price also argued that because Kleindienst involved exclusion rather than naturalization, it does not control his case. The court held that the determination of who will become a citizen of the U.S. is at least as peculiarly concerned with the political conduct of government as the decision of who will be allowed to enter, if not more so. While a resident alien may not participate in the process of governing the country, naturalized citizens may. Naturalization decisions, therefore, deserve at least as much judicial deference as do decisions about initial admission. Price v. INS, 962 F.2d 836 (1992).