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Tax-Exempt Status Of Amateur Sports Organizations

TAX-EXEMPT STATUS OF AMATEUR SPORTS ORGANIZATIONS

The Internal Revenue Code (Code) of 1954 provides exemption from federal income taxation for various categories of organizations.[1] Section 501(a) of the Code provides exemption for organizations that promote the public welfare or are otherwise charitable in nature.[2] An organization may qualify for exemption under section 501(a) by conforming to the appropriate descriptive provisions in the successive paragraphs of section 501(c).[3] The most common form of exempt organization qualifies under section 501(c)(3).[4]

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[1] *See, e.g.*, I.R.C. § 401(a) (West 1983) (tax-exempt status for qualified pension, profit sharing, and stock bonus plans); *id.* § 501(c) (tax exemption for charitable organizations); *id.* § 501(d) (tax exemption for certain religious or apostolic organizations); *id.* § 521 (tax-exempt status for farmers' cooperative organizations); *id.* § 526 (tax-exempt status for shipowners' protection and indemnity associations); *id.* § 527 (tax exemption for political organizations); *id.* § 528 (exemption from income tax for certain homeowner associations). *See generally* B. HOPKINS, THE LAW OF TAX-EXEMPT ORGANIZATIONS (1977) (describing qualifications for tax-exempt status).

Congress has explained the exemption from taxation of organizations devoted to charitable or other purposes on the theory that charitable organizations relieve the government of the financial burden that the government otherwise would have to make by appropriations from public funds. *See* H.R. REP. No. 1860, 75th Cong., 3d Sess. 19 (1939) (explaining justification for tax-exempt status of charitable organizations). The government, therefore, is willing to forego possible tax revenues in exchange for charitable organizations' performance of public services. *See id.* Congress also justified the exemption of charitable organizations on the ground that tax exemption encourages organizations to foster socially desirable activities. *Id.* The United States Supreme Court, in upholding the constitutionality of the religious tax exemption, noted that the government considers qualifying religious organizations as beneficial and stabilizing influences in community life and that the exemption is useful, desirable, and in the public interest. *See* Walz v. Tax Comm'n, 397 U.S. 664, 673 (1970) (tax exemption promotes social benefits).

[2] I.R.C. § 501(a) (West 1983). Section 501(a) provides the source of exemption for an organization described in §§ 501(c), 501(d), or 401(a). *Id.* The exemption that § 501(a) confers does not extend, however, to unrelated business income. *Id.* § 501(b); *see infra* note 28 (explaining imposition of tax on unrelated business income of charitable organizations).

[3] I.R.C. § 501(a) (West 1983); *see id.* § 501(c) (exempting organizations that promote the public welfare or are otherwise charitable in nature); *supra* note 2 (other Code sections for which § 501(a) provides exemption). *See generally* 4 B. BITTKER, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶¶ 100.1.1-104.3 (1981) (tax-exempt organizations under § 501(c)(3)); B. HOPKINS, *supra* note 1, at 36-293 (same).

[4] *See* I.R.C. § 501(c)(3) (West 1983) (providing exemption for charitable organizations); 337 TAX MGMT. (BNA) § A, 2 (1976) (§ 501(c)(3) describes most common form of exempt organization). Section 501(c)(3) exempts from federal income tax a corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for testing public safety, or for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition. I.R.C. § 501(c)(3). Section 501(c)(3) also requires that no part of the net earnings of the organization may inure to the benefit of any private shareholder or individual and that the organization must not engage in certain types of legislative or political activities. *Id. See generally* DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, I.R.M. 7751,

Section 501(c)(3) embraces a wide variety of organizations ranging from organizations traditionally associated with charitable purposes, such as religious, scientific, and educational organizations, to organizations directed toward the promotion of public welfare and community interests generally.[5] In 1976, Congress added to section 501(c)(3) an express provision exempting from taxation organizations that foster national or international amateur sports competition.[6] The amended section, however, restricts tax-exempt status to organizations that do not provide athletic facilities or equipment as a part of the organization's activities.[7]

EXEMPT ORGANIZATIONS HANDBOOK §§ 300-47 (requirements for meeting § 501(c)(3) exemption) [hereinafter cited as EXEMPT ORGANIZATIONS HANDBOOK]; P. TREUSCH & N. SUGARMAN, TAX EXEMPT CHARITABLE ORGANIZATIONS 49-128 (1979) (general requirements for qualification as § 501(c)(3) organization) [hereinafter cited as TREUSCH & SUGARMAN].

[5] I.R.C. § 501(c)(3) (West 1983); *see supra* note 4 (provisions of § 501(c)(3)).

[6] *See* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1313, 90 Stat. 1730 (1976) (codified at I.R.C. § 501(c)(3)). The legislative history of the 1976 Tax Reform Act stated that, under prior law, organizations that taught youth or were affiliated with charitable organizations could qualify for exemption under § 501(c)(3) and could receive payor-deductible contributions. *See* Internal Revenue Amendments, Pub. L. No. 94-455, § 1313, 90 Stat. 1520, 1730 (1976) (codified at I.R.C. § 501(c)(3)), *reprinted in* JOINT COMM. ON TAX'N, 94TH CONG., 2d SESS. GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, at 423 (1976) (explanation of § 501(c)(3) amendment) [hereinafter cited as JOINT COMM. ON TAX'N]. The legislative history also states that under prior law, organizations that fostered national or international amateur sports competition also could fall under the exemption provisions of either 501(c)(4), which encompasses civic organizations, or § 501(c)(6), which governs business leagues with no private inurement. *Id.* Section 170 of the Code, however, does not provide for donor-deductible contributions for organizations qualifying under § 501(c)(4) or § 501(c)(6). *Id.*; *see* I.R.C. § 170 (West 1983) (organizations qualifying for donor-deductible contributions); *infra* note 10 (Code sections qualifying for donor-deductible contributions). Congress added the amendment to § 501(c)(3) because Congress believed that the fostering of national or international amateur sports competition served a charitable purpose and should receive the benefit of tax-deductible contributions. JOINT COMM. ON TAX'N, *supra*, at 423.

[7] I.R.C. § 501(c)(3) (West 1983). Congress imposed a restriction on the provision of athletic facilities and equipment to prevent the allowance of the benefits of tax-deductible contributions for organizations like social clubs that provide facilities and equipment for their members. JOINT COMM. ON TAX'N, *supra* note 6, at 423. Section 501(c)(7) exempts clubs organized and operated for pleasure, recreation, and other nonprofit purposes from federal income taxation provided no part of the net earnings inures to the benefit of any private shareholder. I.R.C. § 501(c)(7). The § 501(c)(7) exemption generally extends to social and recreation clubs supported solely by membership fees, dues, and assessments. Treas. Reg. § 501(c)(7)-1(a) (1958). The Revenue Service interprets the term "club" as an organization formed to provide personal contact, commingling, and fellowship among members. *See* EXEMPT ORGANIZATIONS HANDBOOK, *supra* note 4, § 721. Examples of § 501(c)(7) organizations include college fraternities and sororities operating chapter houses for students, country clubs, amateur hunting, fishing, tennis, swimming, and other sport clubs, and hobby clubs. *Id.* (listing exempt organizations under § 501(c)(7)). A tax-exempt social club has as an essential prerequisite of the organization's exemption the provision of pleasure and recreation to the organization's members, in contrast to § 501(c)(3) organizations, which are exempt on the basis of the organizations' community service. *See* Rev. Rul. 66-179, 1966-1 C.B. 139, 139-40 (comparing classifications under § 501(c)(3) with § 501(c)(7) classification). The Revenue Service will look to the primary purpose of the organization in determining the organization's correct classification. *See* Rev. Rul. 71-421, 1971-2 C.B. 229, 229 (dog training club

Amateur sports organizations may qualify for exemption, in certain situations, under more than one category of section 501(c).[8] If an organization intends to perform civic functions, which the Internal Revenue Service has construed as charitable in nature, and the organization hopes to derive substantial support from contributions, the organization should attempt to qualify for exemption as an educational or charitable organization under section 501(c)(3).[9] Under section 170 of the Code, taxpayers may deduct contributions to section 501(c)(3) organizations, a privilege not available to contributors to other exempt organizations except in a few special situations.[10] If the inducement of the deductibility of charitable contributions provides a substantial impetus to the fund-raising activities of an organization, the organization may lose many, if not most, of the organization's primary sources of funds if the organization fails to qualify for exemption under section 501(c)(3).[11] The organization, therefore, should attempt to qualify as a section 501(c)(3) organization to acquire the fund-raising benefits of tax deductible contributions.[12]

To qualify for tax-exempt status as an amateur sports organization

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not exempt under § 501(c)(3) but meets requirements for § 501(c)(7)); Rev. Rul. 69-573, 1969-2 C.B. 125, 125-26 (college fraternity exempt under § 501(c)(7) but not under § 501(c)(3)). Additionally, in the case of a social club, solicitation of the general public to utilize the club facilities may disqualify the club for tax exemption. *See* Polish American Club, Inc. v. Commissioner, 33 TAX CT. MEM. DEC. (CCH) 925, 930 (1974) (advertisement of facilities as available for rental to general public prima facie evidence of non-exempt purpose). A club that engages in business including making the organization's social and recreational facilities available to general public does not organize and operate exclusively for pleasure, recreation, and other non-profit purposes. Treas. Reg. § 1.501(c)(7)-1(b) (1958); *see* Rev. Rul. 58-589, 1958-2 C.B. 266, 267 (club making social and recreational facilities available to public not organized and operated exclusively for pleasure, recreation, or social purposes).

[8] *See generally* TREUSCH & SUGARMAN, *supra* note 4, at 28-48 (factors involved in determining exempt classification).

[9] I.R.C. § 170 (West 1983) (contributions to § 501(c)(3) organizations are deductible). Section 170 sets forth the basic rules authorizing an income tax deduction for any charitable contribution by an individual. *Id.* Section 170 allows an individual to take a deduction for charitable contributions, subject to certain monetary restrictions and the inclusion of the organization under § 170(c). *Id.* Section 170(c)(2)(B) generally parallels the list of organizations that § 501(c)(3) lists as tax-exempt. *Compare id.* § 170(c)(2)(B) (listing classifications for donor-deductible contributions) *with id.* § 501(c)(3) (listing types of tax-exempt organizations). In addition, § 2055 and § 2522 permit an estate tax deduction and a gift tax deduction, respectively, for transfers to the organizations listed in § 170(c)(2)(B). *Id.* § 2055 (estate tax deduction); *id.* § 2522 (gift tax deduction). *See generally* 281 TAX MGMT. 2d (BNA) (1976) (deductions for charitable contributions).

[10] *See* I.R.C. § 170 (West 1983) (authorizing donor tax deduction for charitable contributions). The Code provides for donor-deductible charitable contributions in several categories. *See id.* § 501(c)(1) (government organizations); *id.* § 501(c)(13) (cemetary companies); *id.* § 501(c)(19) (veterans' organizations).

[11] *See* Rainey & Henshaw, *Exempt Organizations: A Survey*, 19 S. TEX. L.J. 205, (1978) (inducement of deductibility of contributions may provide impetus to fund-raising activities of charitable organizations).

[12] *Id.*

under section 501(c)(3) an organization must fulfill three requirements.[13] The organization first must organize and operate exclusively for one or more exempt purposes.[14] Because the Code states the "organized and operated" test conjunctively in the statute, the organization must satisfy each part of the requirement separately.[15] Second, no part of the organization's net earnings may inure to the benefit of any shareholder or individual.[16] Third, the organization must not engage in political campaigns

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[13] I.R.C. § 501(c)(3) (West 1983); *infra* notes 14-38 and accompanying text (requirements for § 501(c)(3) tax-exempt status). Section 508(a) of the Code requires organizations claiming exempt status under § 501(c)(3) to file an application for exemption with the Revenue Service. I.R.C. § 508(a). The legislative history relating to the enactment of § 508(a), however, clearly suggests that Congress considered the nature of the organization itself, not the determination of the Revenue Service, as controlling the determination of the organization's tax-exempt status. *See* S. REP. No. 91-552, 91st Cong., 1st Sess. 53-54 (1969), *reprinted in* 1969 U.S. CODE CONG. & AD. NEWS 2027, 2081-82 (legislative history of § 508(a)). Despite the legislative history, however, a § 501(c)(3) organization should obtain formal recognition of the exempt status of the organization from the Revenue Service to establish the organization's eligibility to receive tax deductible contributions. *See* 337 TAX MGMT. § A, 28 (1976) (explanation of application for exempt status). If the organization fulfills the requirements of § 501(c)(3), the Revenue Service will recognize the organization's exempt status by issuing a determination letter to the organization. *Id.* Once an organization has received formal recognition from the Revenue Service, the Service lists the organization as eligible to receive tax deductible contributions under § 170(c). *Id.* The Service publishes the list of exempt organizations for taxpayers and tax practitioners to use as a reference. *See Cumulative List of Organizations described in section 170(c) of the Internal Revenue Code of 1954* (1982), DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, PUBLICATION 78.

If an organization applies for tax-exempt status and receives an adverse determination, the organization may protest the determination by requesting appeals office consideration. *See Tax-Exempt Status for Your Organization* (1982), DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, PUBLICATION 557 (appeal procedures for organizations denied tax-exempt status). The appeals office, after considering the organization's protest as well as information presented in any conference held, will notify the organization of the office's decision and issue an appropriate determination letter. *Id.* An organization may appeal an adverse appeals office decision to the courts. *Id.* If an organization meets the statutory prerequisites, the organization may file suit in a United States District Court for a refund of taxes paid, or in the United States Tax Court for a redetermination of any tax deficiencies. *Id.*; *Examination of Returns, Appeal Rights, and Claims, for Refund* (1982), DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, PUBLICATION 556 (appeal procedures).

[14] I.R.C. § 501(c)(3) (West 1983); Treas. Reg. § 1.501(c)(3)-1(a)(1) (1961); *see* Dumaine Farms v. Commissioner, 73 T.C. 650, 654-56 (1980) (extensive discussion of organizational and operational test); *infra* notes 15-37 and accompanying text (organizational and operational test).

[15] *See* I.R.C. § 501(c)(3) (West 1983) (organization must organize and operate for exempt purpose); Treas. Reg. § 1.501(c)(3)-1(a)(1) (1961) (exempt organization must meet both organizational and operational test).

[16] I.R.C. § 501(c)(3) (West 1983). The Code proscribed the private inurement of an organization's net earnings in several sections. *See id.* § 501(c)(4) (social welfare organizations); *id.* § 501(c)(6) (business leagues); *id.* § 501(c)(7) (social clubs); *id.* § 501(c)(9) (employee beneficiary associations); *id.* § 501(c)(11) (teacher retirement societies); *id.* § 501(c)(13) (cemetary companies); *id.* § 501(c)(19) (veterans' organizations). *See generally* TREUSCH & SUGARMAN, *supra* note 4, at 129-40 (requirement against private inurement). The prohibition against private inurement of the net earnings of an organization ensures that exempt charitable organizations serve public and not private interests. *See* Ginsburg v. Commissioner, 46 T.C.

or, to any substantial extent, in lobbying activities.[17]

To satisfy the "organized and operated" test the organization's articles

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47, 54-56 (1966) (association organized by shorefront property owners to dredge harbor does not qualify where primary purpose is to improve property owner's personal property); Rev. Rul. 76-206, 1976-1 C.B. 154, 155 (exempt organization must serve public purpose). The regulations provide that to satisfy § 501(c)(3), the organization must not organize and operate for the benefit of private interests such as designated individuals, the creator of the organization, shareholders of the organization, or any persons having a personal and private interest in the activities of the organization. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1961); *see id.* § 1.501(a)-1(c) (1968) (defining shareholder and individual in § 501 as persons having personal and private interest in activities or organization). *See generally* EXEMPT ORGANIZATIONS HANDBOOK, *supra* note 4, § 741.2 (factors involved in applying prohibition of inurement test). The Service, in determining the presence of any proscribed private inurement, examines the predominate purpose of the organization. *See* Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1961) (exempt organization must serve public purpose). If the predominant purpose of the organization is to benefit private individuals, the organization cannot qualify for exemption under § 501(c)(3). *Id.* Private individuals, however, may receive incidental benefits of reasonable compensation for goods, services, or other expenditures in furtherance of the organization's exempt purposes. EXEMPT ORGANIZATIONS HANDBOOK, *supra* note 4, § 381.1. When contributions by the organization's own beneficiaries constitute the major source of the organization's income, the organization does not qualify under § 501(c)(3). *See* Lindback v. Commissioner, 4 T.C. 652, 666 (organization not exempt because member's contribution constituted major portion of organization's income), *aff'd*, 150 F.2d 986 (3d Cir. 1945). An organization will not fail to qualify for tax-exempt status, however, merely because a limited group is the beneficiary of the organization. *See* United States v. Proprietors of Social Law Library, 102 F.2d 481, 484-85 (1st Cir. 1939) (organization limiting use of library to government officers and proprietors qualified as exempt organization).

The Revenue Service examines additional factors in determining the existence of proscribed private inurement. *See* EXEMPT ORGANIZATIONS HANDBOOK, *supra* note 4, § 381-85 (factors involved in applying prohibition of inurement test). Generally, the organization must not operate for the benefit of "insiders." *Id.* § 381.1. The term "insider" includes the organization's trustees, officers, members, founders, and contributors. *Id.* One form of private inurement may be in the form of unreasonable compensation. *Id.*; *see* Birmingham Business College, Inc. v. Commissioner, 276 F.2d 476, 480-81 (5th Cir. 1960) (persons in control of organization may not withdraw organization's earnings under guise of salary payments). In addition, unreasonable rental charges constitute private inurement. *See* Texas Trade School v. Commissioner, 30 T.C. 642, 647 (1958) (payment of excessive rent constitutes private inurement), *aff'd*, 272 F.2d 168 (5th Cir. 1959). Other factors the Service considers are deferred or retained interests in organization assets, bargain sales or exchanges of property, loans to insiders, personal grants to insiders or their relatives, or investment by organizations that benefits the interests of insiders. *See* EXEMPT ORGANIZATIONS HANDBOOK, *supra* note 4, § 381-85 (factors considered in private inurement test). *See generally* B. HOPKINS, *supra* note 1, at 127-53 (§ 501(c)(3) prohibition against private inurement); TREUSCH & SUGARMAN, *supra* note 4, at 129-40 (same).

[17] I.R.C. § 501(c)(3) (West 1983). The regulations regard an organization as attempting to influence legislation if the organization contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation. Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) (1961). If attempting to influence legislation is a substantial part of an organization's activities, the organization qualifies as an "action" organization and cannot be exempt under § 501(c)(3). Treas. Reg. § 1.501(c)(3)-1(c)(3)(i) (1961). To qualify for tax exemption, therefore, an organization must demonstrate that the organization's attempts to influence legislation do not and will not constitute a substantial part of the organization's activities. *Id.* Additionally, the organization must demonstrate that the organization

of organization[18] must limit the organization's purposes to one or more of the exempt purposes specified in section 501(c)(3).[19] The purposes of the organization, as stated in the articles, may be as broad as the purposes stated in section 501(c)(3) or may be far more specific, so long as the purposes fall within one or more of the statutorily enumerated purposes.[20] If the purposes stated by the articles are broader than the section 501(c)(3) categories, the applicable regulations suggest that the articles describe the proposed activities in some detail.[21] Additionally, the articles of organization must not empower the organization to engage, except insubstantially, in activities that do not further an exempt purpose.[22] If the articles empower the organization to carry on activities that do not further an exempt purpose, the organization does not meet the organizational requirement even though the organization's actual opera-

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does not and will not intervene or participate in any political campaign on behalf of or against a candidate for public office. *Id.* The Service considers all the surrounding facts and circumstances, including the articles of organization and all activities of the organization, in determining whether an organization is an "action" organization. *Id.* § 1.501(c)(3)-1(c)(3)(iv) (1961).

Application of the proscription on legislative and political activities is intertwined with the operational test and proscription on private inurement. *See infra* notes 28-37 (operational test). The regulations describe the operational test by illustrating activities incompatible with an organization operating for an exempt purpose. Treas. Reg. § 1.501(c)(3)-1(c) (1961). Under the operational test, the regulations prohibit the inurement of the organization's net earnings in whole or in part to the benefit of private shareholders or individuals and prohibit the organization from engaging in certain legislative or political activities. *Id.* More explicit statutory provisions prohibit or regulate both the proscription against private inurement and engagement in legislative activities and the inclusion in the operational test appears redundant. *See* I.R.C. § 501(c)(3) (restricting private inurement and organization's legislative activity); 4 B. BITTKER, *supra* note 3, ¶ 100.2.2 (operational restriction on private inurement and legislative activity redundant).

[18] *See* Treas. Reg. § 1.501(c)(3)-1(b)(2) (1961). The articles of organization are the trust instrument, the corporate charter, the articles of association, or any other written instrument that creates the organization. *Id.*

[19] Treas. Reg. § 1.501(c)(3)-1(b)(1)(i) (1961). An organization formed, by the terms of the organization's articles, for educational or charitable purposes within the meaning of § 501(c)(3) of the Code meets the organizational test. *See* General Conference of the Free Church of Am. v. Commissioner, 71 T.C. 920, 926-29 (1979) (organization whose organizing document neither limited purposes nor distribution of assets upon dissolution found not exempt); Treas. Reg. § 1.501(c)(3)-1(b)(1)(ii) (1961) (articles of organization must limit purposes of organization to one or more exempt purposes).

[20] *See* General Conference of the Free Church of Am. v. Commissioner, 71 T.C. 920, 926-29 (1979) (purposes of organization listed in articles of organization must fall within statutorily enumerated purposes); Treas. Reg. § 1.501(c)(3)-1(b)(1)(ii) (1961) (organization's purposes may be as broad as, or more specific than purposes stated in § 501(c)(3)).

[21] *See* Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii) (1961) (organization not organized for one or more exempt purposes does not qualify for § 501(c)(3) exemption).

[22] *Id.* According to the regulations, a charitable organization empowered by the organization's articles to engage in a manufacturing business or to engage in the operation of a social club does not meet the organizational requirement even if the organization does not avail itself of the power. *Id.*

tions may be in furtherance of one or more exempt purposes.[23] The organization, therefore, should incorporate into the articles a disavowal of unacceptable powers which denies that the articles empower the organization to engage in activities beyond the limit set in section 501(c)(3).[24]

As part of the organizational test, the Treasury Regulations require that the organization dedicate the assets of the organization to one or more of the exempt purposes described in section 501(c)(3).[25] The organization, therefore, must set aside permanently the assets of the organization for exempt purposes.[26] An organization can establish proper dedication of the organization's assets by including a provision in the articles that upon dissolution, the organization will distribute the assets for one or more exempt purposes.[27]

In addition to fulfilling the organizational requirement under section 501(c)(3), the organization also must operate exclusively for an exempt purpose.[28] The regulations mitigate the strictness of the exclusivity re-

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[23] *Id.*

[24] *See generally* TREUSCH & SUGARMAN, *supra* note 4, at 54 (recommending that articles incorporate disavowal of unacceptable powers to satisfy organizational requirement).

[25] *See* Treas. Reg. § 1.501(c)(3)-1(b)(4) (1961) (organization must dedicate organization's assets to one or more exempt purposes). The organizational test not only examines the charitable organization's purposes during the organization's existence but also examines the future distribution of the organization's assets on dissolution. *See* 4 B. BITTKER, *supra* note 3, ¶ 100.2.2 (organizational test includes distribution for exempt purposes upon dissolution). An organization does not qualify for exemption if the organization distributes the organization's assets on dissolution to the organization's members or shareholders. Treas. Reg. § 1.501(c)(3)-1(b)(4) (1961). An express or implied provision must exist which provides that upon dissolution the organization will distribute the organization's assets for an exempt purpose, or to the government for public purposes, or to a court to distribute to accomplish the general purposes for which the dissolved organization was organized. *Id.* Distribution of the organization's assets to a nonexempt party would serve a private interest and would not satisfy the requirement that the organization dedicate the organization's assets to an exempt purpose. *See* 4 B. BITTKER, *supra* note 3, ¶ 100.2.2 (liquidating distribution to organization's members or shareholders not consistent with requisite dedication of assets to an exempt purpose).

[26] Treas. Reg. § 1.501(c)(3)-1(b)(4) (1961); *see supra* note 25 (qualifying distributions).

[27] *See supra* note 25 (qualifying distributions).

[28] I.R.C. § 501(c)(3) (West 1983); *see* Hutchinson Baseball Enter., Inc. v. Commissioner, 696 F.2d 757, 760 (10th Cir. 1982) (organization must operate exclusively for exempt purpose). Although operated "exclusively" does not mean operated "solely" for one or more exempt purposes, the charitable organization still remains potentially taxable on any unrelated business income. *See* I.R.C. § 511 (taxation of business income of certain exempt organizations). The unrelated business income tax subjects organizations to the regular tax rates on business income arising from activities unrelated to the organization's exempt purpose. *Id.* If a substantial portion of an organization's income is from sources unrelated to the organization's exempt purpose, the organization will not qualify for exemption under § 501(c)(3). Treas. Reg. § 1.501(c)(3)-1(e) (1961). An organization, however, may satisfy the requirements of § 501(c)(3) even though the organization operates a trade or business as a substantial part of the organization's activities if the operation of the trade or business is in furtherance of the organization's exempt purposes. *Id.*; *see* Edward Orton, Jr. Ceramic Found. v. Commissioner, 9 T.C. 533, 536 (1947) (exempt status granted to foundation formed

quirement of section 501(c)(3) by providing that an organization operates "exclusively" for exempt purposes under section 501(c)(3) if the organization engages "primarily" in activities that accomplish the organization's exempt purpose.[29] An organization, however, does not operate for exempt

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to advance science of ceramic engineering despite foundation having operated substantial going business relating to manufacture and sale of pyrometric cones).

Three conditions are necessary for the tax on unrelated business income to be applicable. Treas. Reg. § 1.513-1(b) (1971). First, the income must be from a trade or business. *Id.* The regulations, however, define "trade or business" broadly to include any activity carried on for the production of income. *Id.* The regulations stress that the primary objective of the unrelated business income tax is to eliminate a source of unfair competition by placing the unrelated business activities of exempt organizations on the same tax basis as nonexempt businesses with which exempt organizations compete. *Id.*; *see* Webster, *Unrelated Business Income Tax*, 48 TAXES 844, 845 (1970) (policy behind unrelated business income tax).

The second necessary condition for the imposition of an unrelated business income tax is that the exempt organization must regularly carry on the trade or business that produces the income. Treas. Reg. § 1.513-1(c) (1971). Organizations "regularly carry on" business activities if the organization's business activities manifest a frequency and continuity and the exempt organization pursues the business activities in a manner similar to comparable commercial activities of a nonexempt business. *Id.* The regulations illustrate that short-term activities are exempt generally if nonexempt businesses usually conduct comparable commercial activities on a year-round basis. *Id.* § 1.513-1(c)(2).

The third condition necessary is that the business activity must not be substantially related to the organization's exercise or performance of the organization's exempt purpose. *Id.* § 1.513-1(d). Under the regulations, a trade or business is "related" to the organization's exempt purpose only if the business activity has a causal relationship to the achievement of exempt purposes. *Id.* § 1.513-1(d)(2). For the relationship to be substantial, the activity must "contribute importantly" to the accomplishment of the exempt purposes of the organization. *Id.* If the business activity does not have a causal relationship to achieving the exempt purpose and does not contribute importantly toward achieving the exempt purpose, the organization will be liable for the tax. *Id.*

In determining whether activities contribute importantly to the accomplishment of an exempt purpose, the Service examines the size and extent of the organization's business activity in relation to the organization's exempt function. *Id.* § 1.513-1(d)(3). If the trade or business is unreasonably large, relative to the organization's exempt function, the gross income attributable to that portion of the activities in excess of the needs of exempt functions is subject to the unrelated business income tax. *Id.* The critical factor in determining the status of an organization's business activities is whether the organization conducts the business in furtherance of an exempt purpose other than through the production of income. *See* Rev. Rul. 73-128, 1973-1 C.B. 222, 223 (manufacturing plant operated for educational and vocational training of unemployed persons substantially related to organization's exempt purpose and not subject to unrelated business income tax).

[29] *See* Treas. Reg. § 1.501(c)(3)-1(c) (1961) (organization operates "exclusively" for exempt purposes if organization engages "primarily" in exempt activities); *supra* note 28 (unrelated trade or business activity). The organization does not operate exclusively for § 501(c)(3) purposes if more than an insubstantial part of the organization's activities is not in furtherance of exempt purposes. Treas. Reg. § 1.501(c)(3)-1(c). The regulations do not define the terms "substantial" or "insubstantial" and application of the requirement has varied. *Compare* Rev. Rul. 77-366, 1977-2 C.B. 501, 501-02 (nonprofit organization conducting winter cruises for ministers and church members, with some religious and educational activities, not operated for exempt purposes because of substantial amount of time devoted to social and recreational activities) *with* Rev. Rul. 77-430, 1977-2 C.B. 194, 194 (organization

purposes if more than an insubstantial part of the organization's activities is not in furtherance of the exempt purposes.[30] A substantial nonexempt purpose will disqualify an organization from exemption under section 501(c)(3) regardless of the number or importance of the organization's exempt purposes.[31] Since a particular activity may serve both exempt and nonexempt purposes, an organization satisfies the operational test only if the predominant motivation underlying the activity is an exempt purpose.[32]

The operational test, unlike the organizational test, focuses on what the organization does rather than what the articles of organization authorize the organization to do.[33] The articles of organization should describe fully the organization's proposed activities.[34] In deciding whether the activities of the organization have gone beyond acceptable limits, the Revenue Service and the courts examine the relative significance of the particular activity in terms of receipts and expenditures incident to the activity, the time devoted to the activity, and the significance the organization attaches to the activity.[35]

Section 501(c)(3) lists eight exempt purposes for which tax-exempt organizations can organize and operate.[36] Amateur sports organizations

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conducting weekend religious retreats with limited amount of free time for recreational activities operated for exempt purpose). A trade or business may constitute a substantial part of the organization's activities without jeopardizing the organization's ability to satisfy the operational test provided the business operations are in furtherance of the organization's exempt purposes. *See* TREUSCH & SUGARMAN, *supra* note 4, at 61 ("operated exclusively" requirement); *supra* note 28 (unrelated trade or business activity).

[30] *See* Treas. Reg. § 1.501(c)(3)-1(c)(1) (1961) (substantial nonexempt activity precludes § 501(c)(3) exemption); *supra* notes 28 & 29 (unrelated trade or business activity).

[31] *See* Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) (organization not exempt as educational organization because of substantial commercial purpose). To retain the exemption under § 501(c)(3), any substantial business activity of the organization must be in furtherance of the organization's purpose. Treas. Reg. § 1.501(c)(3)-1(e)(1) (1961).

[32] *See* Hutchinson Baseball Enter., Inc. v. Commissioner, 73 T.C. 144, 154 (1979) (predominant motivation must be exempt purpose), *aff'd*, 696 F.2d 757 (10th Cir. 1982); B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 357 (1978) (critical inquiry involves whether organization's primary purpose of activity is exempt purpose).

[33] *See* TREUSCH & SUGARMAN, *supra* note 4, at 60-63 operational test); *see also* S. WEITHORN, 1 TAX TECHNIQUES FOR FOUNDATIONS AND OTHER EXEMPT ORGANIZATIONS (1980) § 32.02 (organizational test concerned only with content of articles of organization and disregards nature of activites carried on).

[34] *See* TREUSCH & SUGARMAN, *supra* note 4, at 62 (requirements of operational test). The organization should furnish in the organization's exemption application a detailed statement of the organization's actual and proposed activities and state whether any of the organization's income may inure to the benefit of any shareholder or individual. Treas. Reg. § 1.501(a)-1(a)(3)(i) (1968); *id.* § 1.501(c)(3)-1(b)(1)(v) (1961); *see supra* note 13 (application for exemption); *supra* note 16 (provision against private inurement).

[35] *See* 337 TAX MGMT. § A, 3 (1978) (factors involved in operational test).

[36] *See* I.R.C. § 501(c)(3) (West 1983). Section 501(c)(3) lists exempt purposes consisting of religious, scientific, charitable, literary, and educational purposes as well as testing for public safety, fostering of national or international amateur sports competition, and prevention of cruelty to children or animals. *Id.*

may be exempt, in certain cases, under the charitable, educational, or national or international sports competition classifications enumerated in the statute.[37] Prior to the Tax Reform Act of 1976,[38] the promotion, advancement, or sponsoring of recreational and amateur sports did not fall literally within the enumerated classifications.[39] An organization supporting amateur athletics that desired the benefit of fund raising generated by charitable contributions had to satisfy the requirements of an educational or charitable organization under section 501(c)(3).[40]

The Tax Reform Act of 1976 added as an exempt category under section 501(c)(3) amateur athletic organizations that foster national or international amateur sports competition.[41] Congress, however, restricted the section 501(c)(3) exemption to amateur sports organizations that do not provide athletic facilities or equipment.[42] Congress intended the restriction on the provision of facilities or equipment to prevent the allowance of the benefits of section 501(c)(3) for organizations like social clubs that provide facilities and equipment for their members.[43] Congress did not intend, however, to affect adversely the qualification for charitable tax-exempt status of tax deductible contributions of any organization that would have qualified under section 501(c)(3) prior to the passage of the Tax Reform Act.[44]

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[37] *Id.*; *see, e.g.*, Hutchinson Baseball Enter., Inc. v. Commissioner, 696 F.2d 751, 762 (10th Cir. 1982) (organization with purpose to further recreational and amateur sports exempt as charitable organization); Bohemian Gymnastics Ass'n Sokol v. Higgins, 147 F.2d 774, 776 (2d Cir. 1945) (gymnastics association exempt as educational organization); Mobile Arts & Sports Ass'n v. United States, 148 F. Supp. 311, 315 (S.D. Ala. 1957) (organization formed to stimulate interest in sports exempt as educational organization); *infra* notes 60-127 and accompanying text (organizations qualifying for § 501(c)(3) exemption).

[38] Tax Reform Act of 1976, Pub. L. No. 94-455, § 1313, 90 Stat. 1730 (1976).

[39] *See supra* notes 6 & 7 (amateur sports competition amendment).

[40] *See supra* note 37 (organizations supporting amateur athletics qualifying as charitable or educational organizations).

[41] *See* Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 455, 1313, 90 Stat. 1730 (1976) (codified at I.R.C. § 501(c)(3)); *supra* note 6 (legislative history of Tax Reform Act of 1976).

[42] *See* I.R.C. § 501(c)(3) (West 1983) (§ 501(c)(3) national or international sports exemption does not apply if organization's activities involve provision of athletic facilities or equipment).

[43] *See* JOINT COMM. ON TAX'N, *supra* note 6, at 423 (benefits of § 501(c)(3) not intended to apply to organizations like social clubs). The exemption statute for social clubs is § 501(c)(7). I.R.C. § 501(c)(7) (West 1982). The tax-exempt social club has as the essential prerequisite of exemption the provision of pleasure and recreation to group members. Treas. Reg. § 1.501(c)(7)-1 (1958). Generally, § 501(c)(7) extends to social and recreation clubs supported solely by membership fees, dues, and assessments. *Id. See generally* B. HOPKINS, *supra* note 1, at 237-48 (exemption for social clubs). The classification as a social club is in contrast to a § 501(c)(3) organization that qualifies for exemption on the basis of the § 501(c)(3) organization's community service. *See supra* note 4 (qualifications of § 501(c)(3) organizations); note 7 (discussion of social clubs).

[44] *See* JOINT COMM. ON TAX'N, *supra* note 6, at 423-24 (restriction on provision of athletic facilities and equipment not intended to prevent otherwise qualified organizations from qualifying as tax-exempt).

Although the Tax Reform Act of 1976 created an exemption for amateur athletic organizations, the Act failed to clarify the status of amateur sports organizations.[45] In an attempt at clarification Congress passed section 286(a) of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982.[46] The House Conference Committee, in discussing section 286(a), recognized that the 1976 amendment to section 501(c)(3), which restricted the tax exemption to amateur sports organizations not providing athletic equipment or facilities, failed to clarify the exemption provisions and that amateur athletic organizations still received inequitable treatment.[47] To remedy the inequities, section 286(a) of TEFRA added section 501(j) to the Code.[48] Section 501(j) exempts "qualified amateur sports organizations" from the requirement that amateur sports organizations may not provide facilities or equipment.[49] The term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if the organization also organizes and operates primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.[50] Congress intended secton 501(j) to increase the public support for organizations dedicated to developing amateur athletes for the Olympic games.[51] Although Congress originally designed the amateur sports provision to apply only to sports listed on the program of the Olympic or Pan American games, the Conference Committee broadened the exemption to include any national or international amateur sports competition.[52] Prior to the enactment of section 501(j), an amateur athletic organization could not qualify for exemption if any part of the organization's activities involved the provision of athletic facilities or equipment.[53] Section 501(j) eliminated the restriction for "qualified amateur sports organizations" but retained the restrictive language in section 501(c)(3) to preclude organizations like social clubs from receiving the benefits of tax deductible contributions.[54]

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[45] *See infra* text accompanying notes 46-54 (reasons for passage of I.R.C. § 501(j)).

[46] Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, Pub. L. No. 97-248, § 286(a) (codified at I.R.C. § 501(j)).

[47] *See* H.R. REP. No. 97-760, 97th Cong., 2d Sess. 467, 679-80 (1982) (conference report), *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 781, 1445 (restricting provision against athletic organizations providing athletic facilities or equipment).

[48] Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 286(a) (codified at I.R.C. § 501(j)).

[49] I.R.C. § 501(j) (West 1983).

[50] *Id.*

[51] *See* H.R. REP. No. 97-760, 97th Cong., 2d Sess. 467, 679-80 (1982), *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 781, 1445 (original Senate amendment providing tax-exempt status for organizations supporting national or international competition in Olympic sports).

[52] *Id.* (Senate amendment originally limited amendment's application to sports listed on program of Olympic or Pan American games).

[53] *See supra* notes 41-44 and accompanying text (1976 amendment).

[54] *See supra* note 7 (restriction on provision of athletic facilities and equipment).

Prior to the passage of the Tax Reform Act of 1976, organizations encouraging athletic development and conducting sports training programs had qualified as either educational or charitable organizations under section 501(c)(3) and thus were eligible to receive tax deductible contributions.[55] The regulations provide that the term "educational" embraces both instruction and training of individuals for the improvement of the individual's capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.[56] The Service has ruled organizations exempt as educational for providing instruction in dancing,[57] sailboat racing,[58] drag car racing,[59] and the promotion of sportsmanship.[60]

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[55] *See infra* notes 66-131 and accompanying test (organizations qualifying as educational or charitable organizations under § 501(c)(3)).

[56] Treas. Reg. § 1.501(c)(3)-1(c)(3) (1961). The educational exemption is not confined to educational institutions such as schools and colleges. *See generally* B. HOPKINS, *supra* note 1, at 97-106 (educational exemption). The category of educational organizations includes entities that primarily provide instruction or training for a general purpose or on a particular subject although the organization need not have a regular curriculum, faculty, or student body. *Id.* at 98.

[57] *See* Rev. Rul. 65-270, 1965 C.B. 160, 160-61. The organization involved in Revenue Ruling 65-270 formed to operate and maintain a school to teach the art of dancing, particularly contemporary dancing. *Id.* The organization maintained a regular faculty and curriculum and had a regular body of enrolled students. *Id.*

[58] *See* Rev. Rul. 64-275, 1964-2 C.B. 142, 142. In Revenue Ruling 64-275 the Service granted exemption to an organization that provided training for competitive sailboat racing in which both physical and technical education were involved. *Id.* The purpose of the organization was to train suitable candidates in the techniques of racing sailboats in national and international competition. *Id.* at 143. The training offered to the selected candidates consisted of practical training sessions, classroom lectures, seminars, and panel discussions. *Id.* The Service noted that the training which the organization offered involved theoretical instruction together with a considerable amount of training of the individual's physical capabilities for sailboat racing. *Id.* at 145. The Service concluded that, in view of the broad definition of education in the regulations and courts' inclusion of physical development as education, the physical education involved in the organization's program qualified as educational. *Id.*

In light of the Tax Reform Act of 1976, which established a separate category of organizations that foster national or international amateur sports competition, organizations that support amateur sports may fall within the more specific classification rather than within the broader group of educatonal organizations. *See* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1313, 90 Stat. 1730 (1976) (codified at I.R.C. 501(c)(3)) (adding amateur sports organization exempt classificiation under § 501(c)(3)). If an organization fails to qualify under the amateur sports category, however, the organization still may attempt to qualify as an educational or charitable organization. *See* JOINT COMM ON TAX'N, *supra* note 6, at 423 (1976 amendment not designed to preclude otherwise qualified organizations from tax-exempt status).

[59] *See* Lions Associated Drag Strip v. United States, 13 A.F.T.R. 2d (P-H) 973, 978-79 (S.D. Cal. 1963). *Lions* involved a corporation that formed for the purpose of building and maintaining a drag strip for the use of the general public. *Id.* at 976. The organization operated the drag strip specifically to alleviate the lawless activity of juveniles who use self-designed, high-powered cars for racing on public streets. *Id.* at 975-76. The district court held that the organization operated exclusively for the promotion of social welfare and qualified for tax-exempt status under § 501(c)(3). *Id.* at 978.

[60] *See* Rev. Rul. 55-587, 1955-2 C.B. 261, 261-62. The organization involved in Revenue Ruling 55-587 was an interscholastic athletic association formed for the purpose of pro-

The regulations do not limit the term "charitable" to the classifications enumerated in the statute.[61] In the regulations "charitable" embraces not only the traditional meaning of the term, such as relief to the poor and underprivileged, but also encompasses a more general sense of the term, including benefit to the community and lessening the burdens placed on government.[62] The Tax Court has defined the term "charitable" as any benevolent or philanthropic objective that tends to advance the well-being of man.[63] The Revenue Service has recognized that by encouraging children to participate in sports, an organization may serve to combat juvenile delinquency and consequently lessen the burdens placed on the government.[64] The Service, however, has not treated amateur sports organizations seek-

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moting and protecting the health of high school athletes through uniform interscholastic competition under the direction and control of school officials. *Id.* The association also sought to cultivate the ideals of good sportsmanship, loyalty, and fair play. *Id.* The Service found the association tax-exempt under § 501(c)(3) as an educational organization. *Id.* at 262.

[61] *See* Treas. Reg. § 1.501(c)(3)-1(d)(2) (1961) (definition of "charitable"). As defined by the regulations, the term "charity" includes relief of the poor, advancement of religion, education, or science, erection of public buildings, performance of public services government otherwise would have to perform, and promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination, defend human rights, or to combat juvenile delinquency and community deterioration. *Id. See generally* TREUSCH & SUGARMAN, *supra* note 4, at 71-100 (§ 501(c)(3) definition of "charity").

[62] Treas. Reg. § 1.501(c)(3)-1(d)(2) (1961). *See generally* TREUSCH & SUGARMAN, *supra* note 4, at 71-100 (§ 501(c)(3) definition of "charity").

[63] *See* Peters v. Commissioner, 21 T.C. 55, 59 (1953) (citing Turnure v. Commissioner, 9 B.T.A. 871, 873 (1927)). In *Peters*, the Tax Court found exempt a foundation organized to provide convenient swimming and recreation facilities for residents of Cold Spring Harbor, New York. *Id.* A contribution was not a condition for use of the facility and the facility was open to contributors and noncontributors alike. *Id.* The Tax Court found that the organization's dominant purpose was to provide recreational facilities and was within the broad meaning of the term "charitable." *Id.*; *see* Ould v. Washington Hosp. for Foundlings, 95 U.S. 303, 311 (1877) (charitable objective is one that tends to promote well-being of man). *See generally* Reiling, *What is a Charitable Organization?*, 44 A.B.A. J. 528 (1958) (§ 501(c)(3) definition of "charitable").

[64] *See* Rev. Rul. 65-2, 1965-1 C.B. 227, 228. The purpose of the organization in Revenue Ruling 65-2 was to provide educational and character building programs for the children of the community. *Id.* The organization's activities consisted of conducting clinics for student athletes in elementary and high schools, at playgrounds, and at parks under the guidance of qualified instructors. *Id.* In addition, the organization held coaching clinics for instructors of the student athletes, furnished free equipment to children unable to afford equipment, and stimulated interest in the program through films and other instructional devices. *Id.* The organization obtained its funds entirely from contributions by the members of the community. *Id.*

The Revenue Service amplified the holding of Revenue Ruling 65-2 in Revenue Ruling 77-365, which involved an organization organized and operated to instruct and educate individuals of all ages and skill levels in a particular sport. *See* Rev. Rul. 77-365, 1977-2 C.B. 192, 192. The organization involved in Revenue Ruling 77-365 conducted clinics, workshops, lessons, and seminars at municipal parks and recreation areas. *Id.* The Service stated that the regulations contained no limitation with regard to age in defining "educational." *Id. But see infra* note 66 (distinction based on age). The Service held that by instructing individuals of all ages in the sport, the organization was instructing or training individuals for the purpose of improving or developing their capabilities and thus operated exclusively for educational purposes. *Id.*

ing exemption under the educational or charitable provisions of section 501(c)(3) consistently.[65]

In an early memorandum decision, the Tax Court first equated physical education with "education" as exempted by the statute.[66] The Tax Court, in *United States Lawn Tennis Association v. Commissioner*,[67] found that a tennis association whose primary purpose was the encouragement of regional, national, and international tennis qualified as an exempt organization because the association operated for educational and social welfare purposes.[68] The association's activities included scheduling amateur tennis tournaments, conducting national championships, maintaining up-to-date rules of tennis, and encouraging the playing of tennis.[69] The Tax Court noted that the encouragement of active participation in athletic exercise and the consequent development of a strong, healthy, and physically alert population could only contribute to the national interest.[70] The court determined that physical education qualified as education even though physical education emphasized the body instead of the mind.[71] The Tax Court held, therefore, that the association fell within the exemption statute.[72]

The Revenue Service, however, in Revenue Ruling 70-4,[73] reached a decision contrary to the Tax Court's holding in *United States Lawn Tennis Association*.[74] The primary purpose of the organization involved in Revenue Ruling 70-4 was the promotion and regulation of a sport for amateurs.[75] The organization's primary activities consisted of attempting to revive and promote a sport by circulating printed material about the sport, by conducting exhibitions to introduce the sport to the public, by conducting tournaments, and by giving instructional clinics.[76] Despite the

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[65] *Compare* Rev. Rul. 70-4, 1970-1 C.B. 126, 126 (denying tax-exempt status to organization with purpose of promotion and regulation of sport for amateurs) *with* Rev. Rul. 80-215, 1980-2 C.B. 174, 174 (granting tax-exempt status to organization with purpose of promotion and regulation of amateur sport for individuals under eighteen years of age).

[66] *See* United States Lawn Tennis Ass'n v. Commissioner, 11 T.C.M. (P-H) ¶ 42,457 (1942) (holding physical education qualified as § 501(c0(3) education).

[67] *Id.*

[68] *Id.* at 42-1160.

[69] *Id.* at 42-1153.

[70] *Id.* at 42-1160. The Tax Court noted that aspects of social welfare were present, including the promotion of amateur sportsmanship and of international exchange and understanding. *Id.*

[71] *Id.*

[72] *Id.*

[73] Rev. Rul. 70-4, 1970-1 C.B. 126.

[74] *Compare id.* (denying tax-exempt status to organization with purpose of promotion and regulation of amateur sport) *with* 11 T.C.M. (P-H) ¶ 42,457 (1942) (exempting organization with purpose of encouragement of amateur tennis) *and* Rev. Rul. 70-4, 1970-1 C.B. 126. The purposes of the organization involved in Revenue Ruling 70-4 were to promote the health of the general public by encouraging all persons to improve their physical condition and to foster, by educational means, public interest in a particular amateur sport. *Id.*

[75] *Id.* The organization involved in Revenue Ruling 70-4 set the standards for the equipment used, established the official rules of the game, and prescribed the official size of the playing area. *Id.*

Tax Court's allowance of encouragement of an amateur sport as an exempt purpose, the Revenue Service in Revenue Ruling 70-4 reasoned that promotion and regulation of a sport for amateurs neither improved nor developed the capabilities of the individual nor instructed the public on subjects useful to the individual and beneficial to the community within the meaning of the regulations.[77] The organization must engage in sufficient instructional activities to qualify as part of an overall recognized charitable activity such as the reduction of juvenile delinquency.[78] The organization, however, did qualify for exemption under section 501(c)(3)[79] of the Code.[80] By promoting and regulating a sport for amateurs, the Service found that the organization was providing wholseome activity and entertainment for the social improvement and welfare of the community.[81]

Distinguishing Revenue Ruling 70-4, the Service in Revenue Ruling 80-215[82] found an organization engaged in promoting and regulating a sport for individuals under the age of eighteen exempt under section 501(c)(3).[83] The Service reasoned that the organization's activities contributed to combatting juvenile delinquency and advancing education.[84] The organization organized to develop, promote, and regulate a sport for players under eighteen years old and to promote sportsmanlike competition in a particular state.[85] The organization's primary activities consisted of organizing local and state-wide competition for individuals under eighteen years of age, promulgating rules, presenting seminars to players, and distributing a newsletter to encourage the growth of the sport throughout the state.[86]

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[77] *Id.* at 127. Section 1.501(c)(3)-1(c)(1) of the Treasury Regulations provides that an organization must engage primarily in activities that accomplish one or more of the exempt purposes specified in § 501(c)(3). Treas. Reg. § 501(c)(3)-1(c)(1) (1961); *see supra* notes 28-35 and accompanying text ("operate exclusively" requirement). Prior to the passage of TEFRA, the Revenue Service exercised broad discretion in their determination of tax-exempt status of amateur athletic organizations. *See infra* notes 142-50 and accompanying text (discussion of TEFRA). The Service may have considered the contributions of the individual sport in determining whether the organization organized and operated for valid tax-exempt purposes.

[78] Rev. Rul. 70-4, 1970-1 C.B. 126, 127.

[79] I.R.C. § 501(c)(4) (West 1983). Section 501(c)(4) exempts nonprofit civic organizations operated exclusively for the promotion of social welfare. *Id.* The regulations provide that an organization operates exclusively for the promotion of social welfare if the organization primarily is engaged in promoting the common good and general welfare of the community. Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (1959). A § 501(c)(4) organization must operate primarily for the purpose of bringing about civic and social improvements. *Id.* Section 501(c)(4) organizations may operate over a wider spectrum of activities than § 501(c)(3) organizations and may undertake activities that are more activist in nature. *See* HOPKINS, *supra* note 1, at 207-17 (social welfare organizations).

[80] Rev. Rul. 70-4, 1970-1 C.B. 126, 127 (organization promoting amateur sport exempt under § 501(c)(4)); *see supra* note 80 (§ 501(c)(4) organizations).

[81] Rev. Rul. 70-4, 1970-1 C.B. 126, 127.

[82] Rev. Rul. 80-215, 1980-2 C.B. 174.

[83] *Id.* at 174.

[84] *Id.*

[85] *Id.*

[86] *Id.*

The Service found that by developing, promoting, and regulating a sport for individuals under eighteen years of age, the organization combatted juvenile delinquency by providing a recreational outlet for young people.[87] The Service cited a charitable basis for exemption in addition to educational purposes.[88] The Revenue Service distinguished Revenue Ruling 70-4 on the ground that the organization involved in Revenue Ruling 70-4 directed its activities to all members of the general public without regard to age.[89] The organization in Revenue Ruling 80-215, in contrast, limited the organization's activities to individuals under eighteen years of age.[90]

Similarly, in *Bohemian Gymnastics Association Sokol v. Higgins*,[91] the Second Circuit found an educational basis for exemption for a nonprofit organization whose purpose, among others, was to promote and secure harmonious development of a sound mind and a healthy body.[92] While the Service contended that the gymnastics association operated as a social

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[87] *Id.* The Service in Revenue Ruling 80-215 cited Revenue Ruling 65-2 as authority for the position that an organization organized and operated for the purpose of teaching a particular sport to children by holding clinics conducted by qualified instructors and by providing free instruction, equipment, and facilities qualifies as tax-exempt under § 501(c)(3). Rev. Rul. 80-215, 1980-2 C.B. 174, 174; *see* Rev. Rul. 65-2, 1965-1 C.B. 227, 228 (educational and charitable bases for exemption for organization providing free athletic instruction, sports equipment, and facilities to children); *supra* note 65 (Rev. Rul. 65-2).

[88] Rev. Rul. 80-215, 1980-2 C.B. 174, 174. The Service noted in Revenue Ruling 80-215 that the organization promoted the education of the children by providing a format for educational activities. *Id.*

[89] *Id.* Since the prevailing reason for allowing tax-exempt status in Revenue Ruling 80-215 was the prevention of juvenile delinquency, the Service distinguished Revenue Ruling 70-4 on the basis of the age of the individuals toward whom the organizations directed the organizations' activities. *Id.*; *see* Rev. Rul. 70-4, 1970-1 C.B. 127, 127 (denying tax-exempt status to organization organized for promotion and regulation of sport for amateurs). To fulfill the § 501(c)(3) operational requirement, an organization that only develops, promotes, and governs an amateur sport must direct the organization's activities to individuals under 18 years of age. *See* Rev. Rul. 80-215, 1980 C.B. 174, 175. The organization then may qualify for exemption on the ground of combatting juvenile delinquency. *Id.* at 174-75. The distinction that the Service drew, however, between Revenue Ruling 70-4 and Revenue Ruling 80-215 appears tenuous. The Service actually may have based the determination on grounds other than the age difference involved. *See supra* note 78 (Service exercises broad discretion in determining which sports may qualify for tax-exempt status).

[90] Rev. Rul. 80-215, 1980 C.B. 174, 174-75; *See supra* note 90 (Service's rationale for distinguishing Revenue Ruling 70-4).

[91] 147 F.2d 774 (2d Cir. 1945).

[92] *Id.* at 774-75. Bohemian Association organized to create a center for American culture where the association could make known and readily available the contributions of the Czech and Slovak people to the United States. *Id.* at 775. The use of the association's facilities was available to anyone regardless of ethnic background. *Id.* The organization's educational program consisted of gymnastic and athletic classes, contests, games and summer camping projects, musical and dramatic classes, recitals, folk and classical dancing, and art exhibits. *Id.* at 774. The association supplemented the program with regular classroom lectures in first aid, hygiene, citizenship, civics, literary work, and national defense. *Id.* The Second Circuit determined that the association's activities were educational. *Id.* at 777.

club,[93] the *Bohemian Gymnastics* court noted that the instruction the association provided in physical and cultural development to the association's students distinguished the association from a social club.[94] The Second Circuit concluded that the activities of the gymnastics association fell within the educational classification of the exemption statute.[95]

Expanding the educational exemption, the United States District Court for the Southern District of Alabama in *Mobile Arts & Sports Association v. United States*,[96] held that an association formed to present the annual Senior Bowl college football game organized for educational and civic purposes and qualified for exemption under section 501(c)(3).[97] The Revenue Service, in *Mobile Arts*, contended that the association operated for a nonexempt purpose and that the income derived from the annual football game was taxable.[98] The district court found that the association had made substantial civic, educational, and cultural contributions to the community, and therefore operated exclusively for one or more exempt purposes.[99]

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[93] *Id.* at 776; *see supra* note 7 (exempt status of social club).

[94] 147 F.2d at 776; *accord* Rev. Rul 78-309, 1978-2 C.B. 123. In Revenue Ruling 78-309 the Service found exempt under § 501(c)(3) an organization whose primary activity consisted of providing courses in the martial arts. *See* 1978-2 C.B. at 123. The organization had a faculty of qualified instructors who presented courses consisting of participatory exercises and theoretical discussions. *Id.*

[95] 147 F.2d at 177.

[96] 148 F. Supp. 311 (S.D. Ala. 1957).

[97] *Id.* at 312. *Mobile Arts* involved a refund suit for federal income taxes by Mobile Arts and Sports Association (MASA), a community-organized arts and sports association, on the ground that income which the association derived from the annual Senior Bowl football game was exempt. *Id.* MASA claimed tax-exempt status as an educational corporation, a civic organization, or as both. *Id.* The purposes of MASA were to sponsor the annual bowl game and to support and operate other educational, recreational, and cultural activities that would benefit the community. *Id.* at 313. The district court found that MASA had made substantial civic, educational, and cultural contributions to the Mobile community and therefore qualified under § 501(c)(3) for tax-exempt status. *Id.* at 315. In addition, the *Mobile Arts* court found that conducting the bowl game had a close and intimate relationship to the civic and educational purposes for which MASA organized. *Id.* at 316. Approximately one-fourth of the tickets sold to the bowl game were sold each year at a discount to children in the Mobile public schools. *Id.* It was MASA's objective in permitting school children to attend for a discount rate to stimulate the children's interest and encourage the children's participation in recreational activities. *Id.* Additionally, the district court found that the halftime shows presented at the bowl game had some educational value. *Id.* The district court noted that the Rangerettes of Kilgore College and the Dixie Darlings of Mississippi Southern College performed during halftime of the bowl game and provided entertainment with a flavoring of art, dancing, and music, and undoubtedly had some educational value. *Id.* The district court held, therefore, that MASA had no unrelated business income from the bowl game. *Id.*

[98] *Id.* at 312.

[99] *Id.* at 315. The contributions MASA made to the Mobile community included sponsorship of an annual collegiate basketball tournament, outdoor symphony concerts open to the public, ballet performances, choral singing performances, and joint sponsorship of a recreational program for several thousand youths of the city. *Id.* at 314.

Furthermore, the district court held that the operation of the Senior Bowl football game was an integral part of the association's civic and educational program and bore a close and intimate relationship to the civic and educational objectives for which the association organized.[100] The court noted that the association distributed discount tickets for the football game to children in the Mobile public schools to stimulate the children's interest and encourage the children to participate in recreational activities.[101] The court held, therefore, that the association met the organizational and operational requirements of the exemption statute[102] and that the income the association received from the operation of the football game was not "unrelated business income."[103]

The Tenth Circuit further expanded the scope of the section 501(c)(3) exemption in *Hutchinson Baseball Enterprises, Inc. v. Commissioner*.[104] The Tenth Circuit, on appeal from the Tax Court, found that the promotion, advancement, and sponsoring of amateur athletics qualified as an exempt purpose.[105] In *Hutchinson*, the first case to address the tax exempt status of an amateur athletic organization after the passage of the Tax Reform Act of 1976, the organization's articles of incorporation provided that one of the purposes of the corporation was to promote, advance, and sponsor amateur baseball in the Hutchinson, Kansas area.[106] As part of the organization's activities, the organization owned and operated an amateur baseball team with unpaid college players.[107] Additionally, the organization leased and maintained a playing field for the use of the Hutchinson team, various

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[100] *Id.* at 316; *see supra* note 97 (bowl game's relationship to organization's purpose).

[101] 148 F. Supp. at 316.

[102] *Id.* at 315.

[103] *Id.* at 316.

[104] 696 F.2d 757 (10th Cir. 1982).

[105] *Id.*, *aff'g* 73 T.C. 144 (1979). *But cf.* North American Sequential Sweepstakes v. Commissioner, 77 T.C. 1087 (1981). In *North American*, an organization that operated in a manner that may have furthered amateur athletics incidentally, did not qualify as an exempt organization because the predominant purpose underlying the organization's activities was the furtherance of the recreational activities of the organization's creators. 77 T.C. at 1094. The organization's purpose was to sponsor and conduct a national skydiving competition based upon a novel skydiving technique in which the organization's creators were experts. *Id.* at 1088-89. All the creators participated in the competition and an eight-man team that included one of the organization's three creators won the competition. *Id.* at 1091. The organization, by prior arrangement, then furnished financial support to the winning team toward the team's participation in the skydiving world championships. *Id.* at 1091-92. The Tax Court determined that the creators began the organization for private benefit and thus operated for a substantial nonexempt purpose. *Id.* at 1096. The Service also may have been able to challenge the exempt status of the organization on the ground that the net earnings of the organization inured to the benefit of a private individual. *See supra* note 16 (proscription against private inurement).

[106] 696 F.2d at 758.

[107] *Id.* Hutchinson leased the baseball field to a local junior college for a nominal fee. *Id.* Hutchinson leased the baseball field from the City with the proviso that the organization maintain the field and keep the field in good repair. *Id.* Since Hutchinson assumed control of the field, the organization improved the facility by installing new fences and

American Legion teams, and a baseball camp, and furnished instructions and coaches for the baseball camp and Little League teams.[108]

The Service argued in *Hutchinson* that the mere promotion of amateur sports was not a qualifying charitable purpose.[109] As support, the Service cited section 1313 of the Tax Reform Act of 1976 and the underlying legislative history.[110] Under existing law, the Service argued, the fostering of amateur sports competition, without more, was not a qualifying charitable purpose because otherwise the amendment to section 501(c)(3) would have been unnecessary.[111] The Revenue Service contended that the Tax Court decision under the 1976 Act had the anomalous result that organizations like Hutchinson, which promote local amateur sports, would qualify without regard to whether the organizations provide facilities or equipment, while organizations promoting national and international sports would be ineligible for section 501(c)(3) status if the organizations provide facilities or equipment.[112]

In examining the legislative history of the 1976 amendment, the Tenth Circuit concluded that Congress always had intended that amateur sports fall within the scope of section 501(c)(3).[113] The court noted the broad interpretation of the term "charitable" in the regulations and held that Hut-

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screens, constructing new dugouts and offices, and adding additional bleachers to accomodate the larger crowds. *Id.*

[108] *Id.* at 760.

[109] *Id.*

[110] *Id.*; *see* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1313, 90 Stat. 1730 (1976) (codified at I.R.C. § 501(c)(3)); JOINT COMM. ON TAX'N, *supra* note 6, at 423 (legislative history of Tax Reform Act).

[111] 696 F.2d at 760. The Service argued in *Hutchison* that Congress, in passing the 1976 amendment, recognized that promotion of amateur sports was not a charitable purpose except where the organization engaged in sufficient instructional activities to qualify as an educational organization, or where the sports program was part of an overall recognized charitable activity such as reducing juvenile delinquency. *Id.*; *see* Tax Reform of 1976, Pub. L. No. 94-455, § 1313, 90 Stat. 1730 (1976) (codified at I.R.C. § 501(c)(3)).

[112] 696 F.2d at 760. *But see supra* note 45 and accompanying text (Congress did not intend to adversely affect the qualification of any organization qualifying prior to passage of 1976 amendment). National or international amateur sports organizations would be eligible for tax-exempt status if the organizations fell within the charitable or educational classifications of § 501(c)(3). *See* JOINT COMM. ON TAX'N, *supra* note 6, at 423-24 (restriction on provision of athletic facilities and equipment not intended to prevent otherwise qualified organization from tax-exempt status). TEFRA eliminated any opportunity for the "anomalous result" the Revenue Service maintained would occur as a result of the *Hutchinson* decision. *See infra* notes 142-50 and accompanying text (discussion of TEFRA).

[113] 696 F.2d at 760-61. The Tenth Circuit followed the Tax Court's reasoning that Hutchinson's purposes in promoting numerous phases of recreational and amateur baseball for the community were of a charitable nature within the scope of § 501(c)(3). *Id.*, *aff'g* 73 T.C. 144 (1979). The Tenth Circuit held that Hutchinson's furthering of the development and sportsmanship of children and young men qualified the organization for exemption. *Id.* The Tenth Circuit did not consider age determinative of the exempt status of the organization as the Revenue Service had advocated. *See supra* notes 73-90 and accompanying text (Revenue Service advocates that age may be determinative of tax-exempt status).

chinson qualified for the section 501(c)(3) exemption as being organized and operated exclusively for a charitable purpose.[114] The Tenth Circuit explained that in the legislative history Congress recognized that amateur athletic organizations could qualify for exemption under section 501(c)(3) prior to the 1976 amendment.[115] The *Hutchinson* court interpreted the legislative history as demonstrating that Congress considered the advancement of amateur athletics to be a permissible charitable activity.[116] Congress passed the 1976 amendment, the court noted, to clarify that organizations which foster national or international amateur sports competition are within the section 501(c)(3) exemption.[117] If an organization that fosters national or international amateur athletics fails to qualify for the section 501(c)(3) exemption under the 1976 amendment, the organization still may attempt to qualify as a charitable or educational organization under the statute.[118]

In addition to considering whether amateur sports fall within the scope of section 501(c)(3), the Tenth Circuit addressed the Service's argument that the organization did not qualify for the section 501(c)(3) exemption because the organization's predominant activity was the operation of an amateur baseball team, the Hutchinson Broncos.[119] The Service argued that the operation of the Broncos did not serve an educational or other recognized charitable purpose, and therefore the organization failed to operate primarily for an exempt purpose.[120] The Tenth Circuit rejected the Service's argument and concluded that Hutchinson's various activities furthering the development and sportsmanship of children and young men through amateur baseball qualified for the section 501(c)(3) exemption.[121] The *Hutchinson* court did not address the amateur sports organization exemption provided by the 1976 amendment.[122] The court instead applied a charitable basis for exemption and recognized that the promotion, advancement, and sponsoring of amateur athletics qualified as a charitable activity under section 501(c)(3).[123]

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[114] 696 F.2d at 760-61.

[115] *Id.*; *see supra* note 6 (legislative history of the Tax Reform Act of 1976).

[116] 696 F.2d at 762; *see supra* note 6 (legislative history of Tax Reform Act of 1976).

[117] 696 F.2d at 762.

[118] *See supra* note 112 (amateur athletic organization may qualify under § 501(c)(3) as educational or charitable organization).

[119] 696 F.2d at 762-63; *see supra* notes 28-35 and accompanying text (operational requirement of § 501(c)(3)). The Service argued in *Hutchinson* that the organization's operation of the Hutchinson Broncos did not serve an educational or other recognized charitable purpose and that the organization operated the Broncos for the purpose of fielding the best team possible and winning the championship of the league. 696 F.2d at 762.

[120] 696 F.2d at 762.

[121] *Id.* at 761.

[122] *See id.* (organization qualified as charitable organization). Prior to the passage of TEFRA, an organization similar to Hutchinson may not have qualified under the amateur sports organization exemption because of the restriction against providing athletic facilities or equipment. *See supra* notes 45-54 and accompanying text (discussion of TEFRA).

[123] 696 F.2d at 761; *see supra* note 122 (Hutchinson may not have qualified under amateur

In the first case to address the qualification of an amateur sports organization under the 1976 amendment, the Tax Court, in *International E22 Class Association v. Commissioner*,[124] considered whether a yachting association provided "athletic facilities or equipment" within the meaning of section 501(c)(3).[125] In *International E22*, a yachting association organized to promote and further the interests of the International E22 lass of sailboats.[126] The association accomplished the organization's purposes, in part, by maintaining the standard design of the International E22 yacht.[127] The yachting association owned and maintained measurement and inspection tools that the organization used in connection with the enforcement of design characteristics in yacht racing competitions.[128] The Revenue Service argued that the organization's activities involved the provision of athletic facilities or equipment.[129] The Tax Court held that the measurement tools were not athletic facilities or equipment, but tools the association used in formulating and enforcing extensive measurement services necessary to standardize the competitive categories in the amateur competition the association fostered.[130] The Tax Court concluded,

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sports organization amendment). The Tenth Circuit noted that the organization's operation of the Broncos aided in the development of the Broncos players. *Id.* Hutchinson acquired the Broncos players through recruiting efforts or tryouts. *Id.* The organization provided the players with free lodging in the Hutchinson Junior College domitories during the baseball season. *Id.* The organization guaranteed the Broncos players jobs in local industry at the minimum wage during the season. *Id.* Finally, an important function of the Broncos team members was to serve as instructors and coaches for Little League teams and the baseball camps. *Id.* Considering all the circumstances, the Tenth Circuit found that the support of the Broncos and the organization's other activities served a charitable purpose under § 501(c)(3). *Id.* The Tenth Circuit noted that the Broncos was an amateur baseball team. *Id.* The *Hutchinson* court found that the purpose of the organization was to advance amateur baseball in the Hutchinson community. *Id.* The organization sought to advance amateur baseball through the organization's operation of the Broncos and activities connected with the Little League, the baseball camp, and the American Legion program. *Id.* The Tenth Circuit upheld the Tax Court in determining that Hutchinson's promotion, advancement, and sponsoring of amateur athletics was an exempt purpose under § 501(c)(3). *Id.*, *aff'g* 73 T.C. 144 (1979).

[124] 78 T.C. 93 (1982).

[125] *See id.* at 95 (holding organization did not provide athletic facilities or equipment within meaning of § 501(c)(3)).

[126] *Id.* The association's activities in *International E22* included supervising the conduct of builders of E22 class sailboats through the measurement of hulls, spars, and sails. *Id.* To ensure the standard design character of the E22 class sailboat, the association provided the use of a master plug and measurement templates for enforcing extensive measurement rules and for providing measurement control services both at the time of construction and in connection with national and international races. *Id.* at 97-98.

[127] *Id.*; *see supra* note 127 (association provided master plug and measurement templates to ensure design uniformity).

[128] 78 T.C. at 97-98.

[129] *Id.* at 97.

[130] *Id.* at 98. The Tax Court held that the master plug and measurement templates had no athletic use and were not athletic facilities or equipment. *Id.* The court found no use for the measurement tools in any athletic exercise, game, or competition and therefore,

therefore, that the tools did not constitute "athletic facilities or equipment" within the meaning of section 501(c)(3).[131]

As originally proposed, the 1976 amendment to section 501(c)(3), allowing tax-exempt status for amateur sports organizations, did not contain the parenthetical qualification regarding facilities and equipment.[132] The Conference Committee added the qualification and explained that Congress intended that organizations like social clubs would not be eligible to receive tax deductible contributions.[133] In enacting the 1976 Tax Reform Act, however, Congress intended to clarify the section 501(c)(3) exemption by providing an express statutory exemption for amateur sports organizations.[134]

Congress recognized that the fostering of national or international amateur sports competition was a charitable purpose and qualified as an exempt purpose under the existing classifications.[135] Congress further recognized, however, that the prior policy on the qualification for section 501(c)(3) status had been a source of confusion and inequity for amateur sports organizations whereby organizations similarly situated received inconsistent treatment.[136] Passage of the 1976 amendment, however, failed to remedy the inconsistent application of section 501(c)(3).[137] Instead of clarification, the 1976 amendment provided language that the Revenue Service interpreted as restricting the eligibility of amateur sports organizations to qualify for tax-exempt status.[138]

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under the ordinary meaning of the phrase, the measurement tools were not "athletic facilities or equipment." *Id.* The court noted that the regulations provided no help in defining "athletic." *Id.* at 98 n.9. The regulations that reflect the changes of the Tax Reform Act of 1976, when Congress added the term "athletic facilities or equipment" to the Code, are not in official form. *Id.* Furthermore, the proposed regulations do not contain a definition of "athletic facilities or equipment." *Id.* The Tax Court noted that in the ordinary meaning of the terms, "athletic facilities or equipment" applies to physical structures like clubhouses, swimming pools, or gymnasiums, and "athletic equipment" applies to property used directly in athletic endeavors. *Id.* at 99. The court held that neither term applied to property used only in some manufacturing process or in the officiating of an event. *Id.* at 99-100.

[131] *Id.* at 98.

[132] *See* S. REP. No. 1236, 94th Cong., 2d Sess. 542 (1976) *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 4130, 4238.

[133] *Id.*

[134] *Id.*; *see infra* text accompanying notes 135 & 136 (Congress intended to remedy confusion and inequity under § 501(c)(3)).

[135] *See* JOINT COMM. ON TAX'N, *supra* note 6, at 423 (Congress believed it was appropriate to treat fostering of national or international amateur sports competition as charitable purpose).

[136] *Id.*

[137] *See supra* notes 45-54 and accompanying text (passage of 1976 amendment failed to clarify inconsistent application of § 501(c)(3)).

[138] *See supra* notes 109-12 and accompanying text (Service taking restrictive position on § 501(c)(3) in *Hutchinson*). Despite the position of the Revenue Service, two recent court decisions have evidenced an expansive interpretation of the exemption statute. *See* Hutchinson Baseball Enter., Inc., v. Commissioner, 696 F.2d at 762 (holding promotion, advancement, and sponsoring of amateur athletics exempt purpose); International E22 Class Ass'n

Despite the Service's interpretation of the 1976 amendment, however, Congress clearly has indicated that amateur sports organizations deserve section 501(c)(3) status whether as a charitable, educational, or separately classified organization.[139] The position of the Revenue Service restricting the application of section 501(c)(3) is inconsistent with the legislative history of the exemption statute.[140] Despite the legislative history, the Revenue Service has issued a nonacquiesence in *Hutchinson*, indicating that the Service may litigate the exempt status of organizations whose purpose is to promote, sponsor, and advance amateur athletics.[141]

TEFRA, however, may provide the clarification that Congress intended to provide in the 1976 amendment.[142] TEFRA has broadened the statutory opportunities for amateur sports organizations to qualify for tax-exempt status under section 501(c)(3) and to receive tax deductible contributions.[143] TEFRA eliminates the restriction against qualified amateur athletic organizations providing athletic facilities or equipment.[144] If an organization fails to qualify as a charitable or educational organization, TEFRA opens section 501(c)(3) to organizations qualifying as amateur sports organizations.[145] The restrictive language of the 1976 amendment no longer applies except to prevent organizations like social clubs from qualifying for tax-exempt status under section 501(c)(3).[146] The Revenue Service has been inconsistent in application of the exemption statute, perhaps because the Service has exercised broad discretion in determining whether an amateur athletic organization serves an educational or

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v. Commissioner, 78 T.C. at 95 (finding restrictive meaning of "athletic facilities or equipment" under § 501(c)(3)).

[139] *See supra* notes 41-54 and accompanying text (legislative history of § 501(c)(3)).

[140] *Id.*

[141] *See* Hutchinson Baseball Enter., Inc. v. Commissioner, 696 F.2d 757 (10th Cir. 1982), *nonac.*, 1980-2 C.B. 2. The Service has not issued a nonacquiescence to the Tenth Circuit decision in *Hutchinson* and may not in light of TEFRA. *See supra* notes 45-54 (TEFRA may provide exemption for athletic organizations formed to promote amateur sports).

[142] *See supra* notes 143-50 and accompanying text (discussion of TEFRA). TEFRA eliminated retroactively to 1976 the requirement that no part of an amateur sports organization's activities involve the provision of athletic facilities or equipment. *See* Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 286(a) (1982) (codified at I.R.C. § 501(j)). Furthermore, the organization may qualify even if the organization's membership is only local or regional. *See* I.R.C. § 501(j) (West 1983).

TEFRA also provides that the rules for "qualified amateur sports organizations" apply for tax deductible contributions. *See* I.R.C. § 170(c) (West 1983), *as amended by* Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 286(b) (codified at I.R.C. § 501(j)). Thus, contributors to qualified amateur sports organizations may deduct their contributions. *See* I.R.C. § 170(c) (West 1983).

[143] *See supra* notes 45-54 and accompanying text (TEFRA eliminated restriction on provision of athletic facilities and equipment).

[144] *Id.*

[145] *Id.*

[146] *See* I.R.C. § 501(j) (West 1983); *supra* notes 45-54 and accompanying text (restriction on provision of athletic facilities and equipment no longer applies to qualified athletic organizations).

charitable purpose.[147] In clarifying the scope of the specific amateur athletic exemption, TEFRA narrows the discretion the Service may exert in ruling on the tax-exempt status of amateur athletic organizations.[148] TEFRA clearly indicates legislative intention that the fostering of amateur athletics is an exempt purpose under section 501(c)(3).[149] After TEFRA, the Revenue Service no longer should be able to deny tax-exempt status to amateur athletic organization through a restrictive interpretation of the statute's goals.[150]

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[147] *See supra* note 65 and accompanying text (citing inconsistent Revenue Rulings).
[148] *See supra* notes 45-54 and accompanying text (discussion of TEFRA).
[149] *Id.* (legislative history of TEFRA).
[150] *Id.*