

What Does “Lessening the Burdens of Government” Mean?

01.04.18 | Linda J. Rosenthal, JD



The year 2018 is shaping up to likely include dramatic cuts in government funding for social services. In order to lessen the impact on tens of millions of Americans, there will need to be a response by donors and the philanthropic community in the form of new organizations – or expansion of existing ones – to focus on the “exempt” purpose of “lessening the burdens of government.” The pivotal federal tax-exemption statute, section 501(c)(3) of the Internal Revenue, does not explicitly include this phrase. So what is it? Where does it come from?

Exempt Purposes

Section 501(c)(3) is just one paragraph: The 132-word definition of which groups are eligible for the most coveted tax exemption classification that is a prerequisite for grants and charitable donations. It includes a series of hurdles, the first of which is the “purposes” test:

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Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, (bolding added)

An organization seeking 501(c)(3) status must be both “organized” and “operated” for one or more

approved – that is, “exempt” – purposes. The remainder of the 132-word paragraph includes certain disqualifiers, but they only come into play if the nonprofit applicant can successfully jump through the threshold – “qualifying purposes” – hoop.

Purposes Test

At first blush, these approved “purposes” categories may seem fairly clear and unambiguous, but they are not.

A good example is the “educational” classification: It refers to nonprofit schools and colleges, of course, but also includes many organizations formed to teach the general public about particular topics – some of which are highly controversial or presented from only one side of an issue. There’s a bit of wiggle room in the term “educational” itself, and there is some limited guidance in various Treasury Regulations and in IRS Revenue Rulings. From time to time, though, the matter of qualification under section 501(c)(3) proceeds to a formal administrative dispute with the IRS’s Exempt Organizations Division or, if unresolved at this administrative level, moves on to full-blown litigation in the courts. Depending on the particular facts and circumstances of each case, either the organization or the government may prevail in the end.

Another example of a highly nuanced classification is the term “charitable.” It’s often viewed as a “catch-all” phrase. It doesn’t – and shouldn’t – though, catch anything and everything that can’t comfortably be squeezed into one of the other listed “purposes” or that has been viewed – historically – as a charity function or something that the government might do if enough tax revenues are available.

Nevertheless, it can legitimately have a broad reach. The Treasury Regulations are helpful here – particularly because they specifically include the phrase “lessening the burdens of government.”

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Charitable defined. The term charitable is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; **lessening of the burdens of Government**; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.... (holding added)
(Treas. Reg. 1.501(c)(3)-1(d)(2))

Charitable Purposes

When does a nonprofit organization qualify under section 501(c)(3) because it is “lessening the burdens of government”?

The IRS website includes a useful analysis. An applicant has the burden of proof to show (1) that it is “conducting activities that a governmental unit considers to be its burden,” and (2) whether these activities “actually lessen the governmental burden.”

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*Based on all the facts and circumstances, an organization must demonstrate that a governmental unit considers the organization to be **acting on the government’s behalf**. Acting on the government’s behalf means the activities of the organization **free up governmental assets** (such as human, material or fiscal) that would otherwise have to be devoted to that activity if carried out by the governmental unit itself.*

In Revenue Ruling 85-1, though, the IRS made clear that “lessening the burdens of government occurs only if the governmental unit formally recognizes the activities of the organization to be its

burden.” This formal recognition may be objectively manifested by the “interrelationship” between the nonprofit group and the governmental unit. In the case described in this revenue ruling, the group’s activities “were an integral part of a larger governmental program and the organization funded governmental expenses.”

A government’s expressing approval of an organization’s activities doesn’t necessarily, by itself, establish the necessary facts.

In *Columbia Park & Recreation Assn. v. Comm.*, 88 T.C. 1 (1987), aff’d. without published opinion, 838 F. 2d 465 (4th Cir. 1988), the United States Tax Court ruled that “the mere assertion that, in petitioner’s absence, government would have had to assume the activities in question did not mean the activities were, in fact, the burdens of government.”

Similarly, in *Public Industries, Inc. v. Comm.*, T.C. Memo 1991-3, the Tax Court concluded that neither the federal government nor the government of the state of that organization’s incorporation viewed its activity – purchasing prison-made goods for sale to the private sector – as a “proper governmental function.”

However, in *Indiana Crop Improvement Association, Inc. v. Comm.*, 76 T.C. 394 (1981), acq., 1981-2 C.B. 1, the applicant-organization won the case. The Tax Court ruled that a group whose primary activity was the certification of crop seed under applicable federal and state laws, and which was specifically delegated this function under state law, qualified for section 501(c)(3) tax exemption. Of course, even if an applicant meets the “lessening the burdens of government test,” it cannot be disqualified under the additional tests of section 501(c)(3) – including that it does not primarily serve private interests. See, for instance, *Quality Auditing Company, Inc. v Comm.*, 114 T.C. 498 (2000).

Conclusion

The “lessening the burdens of government” rationale for 501(c)(3) qualification may be a valuable aid in moving forward in the current political climate of extreme fiscal restraint. The Treasury Department, though, may have to reformulate and broaden the scope and availability of this “exempt” purpose if this Congress and this Administration want private donors and foundation grants to pick up the slack and protect needy beneficiaries of social services.