

An organization substantially engaged in promoting legislation to protect or otherwise benefit animals is not exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, even though the legislation it advocates may be beneficial to the community, and even though most of the attempts to influence legislation may be indirect.

The Internal Revenue Service has been asked whether the organization described below may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 as being organized and operated for the prevention of cruelty to animals.

The organization is now exempt under section 501(c)(4) of the Code as an organization not organized for profit, but operated exclusively for the promotion of social welfare. It seeks a ruling to the effect that it qualifies for exemption under section 501(c)(3) of the Code and that contributions to it are deductible by donors under the provisions of section 170(c)(2) of the Code.

The organization operates a community pound for the care, protection, placing, and, if necessary, humane disposal of stray animals. In addition, it engaged in attempts to influence legislation which it contends would benefit animals, animal owners, persons interested in the welfare of animals, and the community at large. For example, it was instrumental in having a bill introduced in the State legislature which would provide for investigation of, and sanctions against, mistreatment of laboratory animals. It wrote legislators to support the bill, and also sent pamphlets and notices urging its members and other interested citizens to contact their representatives on behalf of the bill. On various occasions the organization advocated other similar humane legislation, and sent its principal officer to lobby in the State legislature and at county council meetings. The periods have been few and brief when it was not actively engaged in working for the passage or defeat of some piece of legislation affecting the welfare of animals. The organization has not, however, participated or intervened in any political campaigns on behalf of or in opposition to any candidate for public office.

Section 501(c)(3) of the Code specifically exempts from Federal income tax organizations formed and operated exclusively to prevent cruelty to animals or children. However, this section limits organizations which may be exempt under its provisions to those which do not carry on propaganda or otherwise devote a substantial part of their activities to attempts to influence legislation.

Section 1.501(c)(3)-1(c)(3) of the Income Tax Regulations describes organizations which engage in such activities as

"action" organizations. On the other hand, regulations 1.501(c)(4)-1(a)(2)(ii) state specifically that an organization may qualify for exemption under section 501(c)(4) of the Code even though it is an "action" organization.

The organization does not deny that its legislative activities are substantial, but it argues that it is not precluded from exemption by the prohibition against substantial legislative activities for either or both of two reasons: (1) All the legislation which it has advocated is beneficial to the community, and therefore is not violative of its essentially charitable purpose as a society for the prevention of cruelty to animals. (2) It rarely contacts legislators in its own name, but merely encourages others to do so. These two arguments are discussed below.

(1) The statute is quite specific in proscribing, without qualification, substantial legislative activities by organizations desirous of qualifying under section 501(c)(3) of the Code. The clear intent of the Code is to exclude certain organizations, if engaged in such legislative activities, from exemption under section 501(c)(3) of the Code.

(2) Section 1.501(c)(3)-1(c)(3) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization. Under this section an organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation.

Accordingly, neither of the organization's arguments supports a conclusion that it qualifies for exemption under section 501(c)(3) of the Code and the regulations thereunder. However, it remains exempt under section 501(c)(4) of the Code. Contributions to it are not deductible by donors under the provisions of section 170(c)(2) of the Code.