
CHAPTER ONE

Tax-Exempt Healthcare Organizations: An Overview

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§ 1.2 DEFINING TAX-EXEMPT ORGANIZATIONS

p. 9. Insert as second paragraph:

The U.S. Supreme Court, reflecting these principles, wrote that a “nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it ‘is barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors or trustees.’”^{23.1} The Court has discussed the concept of nonprofit organizations on other occasions.^{23.2} (Of course, before there can be a nonprofit organization or a tax-exempt organization, there must first be an organization.^{23.3})

§ 1.5 CHARITABLE HEALTHCARE ORGANIZATIONS

p. 15. Insert following existing text at note 79:

Meanwhile, state courts continue to challenge the qualification of hospitals as charitable organizations for real property tax exemption purposes. In a 91-page decision that describes the current structure and operations of the majority of hospitals in the United States, the New Jersey Tax Court revoked the property tax exemption for Morristown Memorial Hospital. The court concluded that “[i]f it is true that all non-profit hospitals operate like the

^{23.1}*Camps Newfoundland/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 585 (1987).

^{23.2}*Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768-2772 (2014); *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 344-346 (1987) (concurring opinion).

^{23.3}E.g., *George v. Commissioner*, 110 T.C.M. 190 (2015) (where the court concluded that, for tax exemption purposes, an organization was not formed).

Hospital in this case... then for purposes of the property tax exemption, modern non-profit hospitals are essentially legal fictions. Clearly, the operation and function of modern non-profit hospitals do not meet the current criteria for property tax exemption under [New Jersey law.]” *AHS Hospital Corp., d/b/a Morristown Memorial Hospital v. Town of Morristown*, 2015 BL 206190 (N.J. Tax Ct. 2015). See generally, Paff, “Is Your Nonprofit Hospital’s Property Tax Exemption Safe?,” Bloomberg Daily Report for Executives, August 25, 2015.

*§ 1.8 PROMOTION OF HEALTH

p. 20. Insert at end of first paragraph:

In some instances, activities that would seem to promote health are insufficient to support qualification as a charitable organization. An organization was formed to promote sports, recreation, health, and fitness through church leagues and tournaments, exercise programs, and recreational activities. The organization’s goal was to organize adult and youth athletic competitions. Its proposed sources of financial support were ticket sales, advertising income, auctions, annual fundraisers, and donations.

The IRS determined that the organization did not qualify as a charitable organization because it did not meet the organizational or operational tests for charitable status. The IRS focused on the fact that the bulk of the organization’s activities were geared toward encouraging sports, recreational, and social interaction between adults. These are not exempt purposes in the IRS’s view. Sports and social and recreational activities are not considered exempt activities. The IRS distinguished other guidance in which sports were provided to children under the age of 18. Recreational sports for adults are not considered charitable or educational purposes, according to the IRS.^{118.1}

p. 22. Insert following existing material:

§ 1.10 ABLE PROGRAMS

The newest category of tax-exempt organization, modeled somewhat on the state-sponsored qualified tuition program,¹³⁷ is the ABLE program.¹³⁸ This is a program established and maintained by a state, or agency or instrumentality of a state, under which a person may make contributions for a tax year, for

^{118.1}Priv. Ltr. Rul. 201835012.

¹³⁷IRC § 529. See *Tax-Exempt Organizations* § 19.19(a).

¹³⁸IRC § 529A (effective January 1, 2015). This acronym is in reference to the Achieving a Better Life Experience Act of 2014, Pub. L. 113-295, div. B, 128 Stat. 4056.

1.10 ABLE PROGRAMS

the benefit of an eligible individual, to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.¹³⁹ A designated beneficiary may have only one ABLE account.¹⁴⁰ A beneficiary must be a resident of the state that established the program or a resident of a contracting state.¹⁴¹ An interest in an ABLE program may not be used as security for a loan.¹⁴²

An *eligible individual* is an individual entitled to benefits based on blindness or disability under the Social Security Act, where the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification¹⁴³ with respect to the individual is filed with the IRS.¹⁴⁴ A *designated beneficiary* in connection with an ABLE account established under a qualified ABLE program is the eligible individual who established an ABLE account and is the owner of the account.¹⁴⁵ The term *disability expenses* means expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses for education, housing, transportation, health, financial management services, and legal fees.¹⁴⁶

Contributions to an ABLE account must be in the form of money.¹⁴⁷ There is an annual per-account funding limit equal to the annual gift tax exclusion.¹⁴⁸ A qualified ABLE program must provide a separate accounting for each designated beneficiary.¹⁴⁹ A beneficiary may, directly or indirectly, direct the investment of contributions to the program, and earnings thereon, no more than two times in any calendar year.¹⁵⁰ Distributions from a qualified program are not includable in the beneficiary's gross income to the extent they do not exceed the amount of qualified disability expenses.¹⁵¹

Each officer or employee having control of the qualified ABLE program or their designee must make reports regarding the program to the IRS and to designated beneficiaries with respect to matters such as contributions,

¹³⁹IRC § 529A(b)(1)(A).

¹⁴⁰IRC § 529A(b)(1)(B). This type of account is defined in IRC § 529A(e)(6).

¹⁴¹IRC § 529A(b)(1)(C).

¹⁴²IRC § 529A(b)(5).

¹⁴³IRC § 529A(e)(2).

¹⁴⁴IRC § 529A(e)(1).

¹⁴⁵IRC § 529A(e)(3).

¹⁴⁶IRC § 529A(e)(5).

¹⁴⁷IRC § 529A(b)(2)(A).

¹⁴⁸IRC § 529A(b)(2)(B). That exclusion amount currently is \$14,000 (IRC § 2503(b)(2)). See *Charitable Giving* § 8.2(h).

¹⁴⁹IRC § 529A(b)(3).

¹⁵⁰IRC § 529A(b)(4).

¹⁵¹IRC § 529A(c)(1)(B)(1).

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distributions, and the return of excess contributions.¹⁵² For research purposes, the IRS must make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from qualified ABLÉ programs.¹⁵³

¹⁵²IRC § 529A(d)(1).

¹⁵³IRC § 529A(d)(2). The Department of the Treasury promulgated proposed regulations to accompany IRC § 529A (REG-102837-15). An IRS hearing on this proposal was held on October 14, 2015.