

Definition of and Rationales for Tax-Exempt Organizations

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§ 1.2 DEFINITION OF TAX-EXEMPT ORGANIZATION

p. 5, note 23, second sentence. *Delete and insert:*

Nor can an organization premise its right to an exemption by showing that the IRS has treated similarly situated organizations more generously, leniently, or erroneously (*Easter House v. United States*, 12 Cl. Ct. 476, 490 (1987); also, *City of Galveston, Texas v. United States*, 33 Fed. Cl. 685, 707–08 (1995); *Mira Vista Homeowners Ass’n Inc. v. Comm’r*, T.C. Memo. 2025-102). Currently, the IRS is contending with (and rejecting) claims of disparate treatment from organizations that develop paid name, image, and likeness opportunities for student athletes (e.g., *Priv. Ltr. Rul.* 202504020). The IRS previously recognized as tax-exempt certain of these organizations but has since changed its position; it is now denying tax-exempt status on the grounds that these NIL collective organizations are operating for the substantial nonexempt purpose of serving the private interests of student athletes (see § 20.13(b), text accompanied by notes 393–394).

§ 1.4 POLITICAL PHILOSOPHY RATIONALE

p. 13, note 75. *Delete text and insert:*

The staff of the Joint Committee on Taxation and the Treasury Department measure the economic value (revenue “losses”) of various tax preferences, such as tax deductions, credits, and exclusions (termed tax expenditures). The income tax charitable contribution deduction has traditionally been among the largest tax expenditures. The Treasury Department’s report on tax expenditures for fiscal years 2029–2029 estimated the tax expenditure associated with the income tax charitable contribution deduction (excluding contributions to health and educational institutions) at \$303.2 billion (Staff of Joint Comm. on Tax’n, *Estimates of Federal Tax Expenditures for Fiscal Years 2025–2029* at Table 1 (Comm. Print JCX-45-25)). Tax expenditures attributable to health- and education-related charitable contribution deductions are estimated at an additional \$41.3 billion and \$59.4 billion, respectively (*id.*). Tax expenditures that are larger than the income tax charitable contribution deduction include the exclusion from gross income of employer contributions for health insurance premiums and health care, subsidies for insurance purchased through health benefit exchanges, the reduced rates of tax on long-term capital gains, the credit for children and other dependents, and the exclusion from gross income from defined benefit and contribution plans.

Tax exemption for nonprofit organizations is not considered a tax expenditure based on the rationales the nonbusiness activities of these organizations generally must predominate and their unrelated business activities are subject to tax (*id.* at 9). The exemption of certain nonprofit cooperative business

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organizations, including trade and business associations, is not treated as a tax expenditure because the tax benefits are available to any entity that chooses to organize itself and operate in the required manner to avoid the entity-level tax (*id.*).

Under the current approach taken by the staff of Congress's Joint Committee on Taxation, however, tax exemption for noncharitable organizations that "have a direct business analogue or compete with for-profit organizations organized for similar purposes is a tax expenditure" (*id.* at 8–9). These organizations include state and federal credit unions (see § 19.7), small insurance companies (see § 19.9), and mutual or cooperative electric companies (see § 19.5(b)) (JCX-45-25, *supra*, at 8 n.23). Also, exceptions that allow otherwise taxable unrelated business income to escape taxation (see Chapter 25) are considered tax expenditures (JCX-45-25, *supra*, at 9 n.25).