



501(c)(3) Organizations: What Qualifies as “Educational”?

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Summary

Concern is sometimes expressed that certain entities which qualify for tax-exempt 501(c)(3) status as “educational” organizations have abused their exemption by advocating a policy viewpoint. The argument is that these entities should have to present information on both sides of an issue equally and neutrally, without opinion.

The term “educational” is not defined in the Internal Revenue Code (IRC). It is defined by regulation to encompass individual instruction, as well as public instruction “on subjects useful to the individual and beneficial to the community.”

The question here is how far can the term “educational” be extended? Can a group espousing a viewpoint (i.e., only one side of an issue) be characterized as educational? If so, does the group have to provide factual information to support its statements? Is there some standard for truthfulness and accuracy?

The answers are rooted in a Treasury regulation, which provides that an organization that advocates a position or viewpoint can qualify as educational if it presents “a sufficiently full and fair exposition of the pertinent facts” so that people can form their own opinions or conclusions. To supplement the regulation’s “full and fair exposition” standard, the Internal Revenue Service (IRS) has developed the “methodology test.” Under it, a method is not “educational” if it fails to provide a “factual foundation” for the position or viewpoint or “a development from the relevant facts that would materially aid a listener or reader in a learning process.”

There are constitutional implications in how the term “educational” is defined. In particular, the denial of tax-exempt status on the basis of an organization’s speech could raise issues under the First Amendment. While there is no constitutional requirement that the term “educational” encompass every communication protected by the First Amendment, courts will examine the IRS’s denial of a tax exemption or other benefit when it is based on the content of the taxpayer’s speech in order to ensure the denial was not done for an impermissible reason. Groups that promote controversial positions may be particularly vulnerable to an interpretation of “educational” that permits a subjective determination by the IRS as to whether a group’s methods of presenting its views are educational.

Concern over these issues has led to questions about whether the “educational” standard is unconstitutionally vague. While the IRS’s methodology test was held to be unconstitutionally vague by a federal appellate court, subsequent court decisions have suggested that the test passes constitutional muster.

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Educational organizations qualify for tax-exempt status as entities described in Section 501(c)(3) of the Internal Revenue Code (IRC).¹ Benefits that arise from 501(c)(3) status include exemption from federal income taxes and eligibility to receive tax-deductible contributions.²

One criterion for 501(c)(3) status is that the organization’s activities must be primarily for at least one tax-exempt purpose—for example, charitable, religious, or educational.³ When it comes to having an “educational” purpose, questions often arise about the scope of the term’s definition. Can a group espousing a viewpoint be characterized as educational? If so, does it have to provide factual information to support its statements? Relatedly, is there some standard for truthfulness and accuracy? This report discusses the legal definition of the term “educational,” as well as the constitutional implications of that definition.

Definition of “Educational”

There is no statutory definition of the term “educational” in the IRC. Rather, the term is defined by a Treasury regulation. It defines “educational” to encompass both (1) individual instruction “for the purpose of improving or developing his capabilities,” and (2) “[t]he instruction of the public on subjects useful to the individual and beneficial to the community.”⁴

The regulation goes on to address the heart of the matter about the term’s scope:

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.⁵

The regulation also provides examples of educational organizations, including schools of every educational level; groups that hold public forums and lectures; and museums and zoos.⁶

¹ IRC §501(c)(3)(describing organizations “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 ... or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ... and which does not participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office”).

² See IRC §§501(a), 170(c)(2).

³ See IRC §501(c)(3) (organization must be “organized and operated exclusively” for at least one of the listed purposes); Treas. Reg. 1.501(c)(3)-1(c)(1) (“an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes”); *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945) (interpreting the “organized and operated exclusively” requirement in a statute providing an exemption for social security taxes to mean “the presence of a single [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes”).

⁴ Treas. Reg. §1.501(c)(3)-1(d)(3)(i).

⁵ *Id.*

⁶ Treas. Reg. §1.501(c)(3)-1(d)(3)(ii) (providing 4 examples: (1) an organization (e.g., a primary or secondary school, college, or professional or trade school) with a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on; (2) an (continued...)

In 1986, the Internal Revenue Service (IRS) developed the “methodology test” to supplement the regulation’s “full and fair exposition” standard. The test assists in determining whether the method used by an organization to communicate a particular viewpoint or position is educational. Under the test, a method is not educational if it fails to provide a “factual foundation” for the position or viewpoint or “a development from the relevant facts that would materially aid a listener or reader in a learning process.”⁷ The IRS has identified four factors that lead to the conclusion the method is not educational:

- a significant portion of the group’s communications consists of the presentation of viewpoints or positions that are unsupported by facts;
- facts that purport to support the viewpoints or positions are distorted;
- the group’s presentations make substantial use of inflammatory and disparaging terms and express conclusions based more on strong emotional feelings rather than objective evaluation; and
- the presentation’s approach is not aimed at developing the audience’s understanding of the subject matter because it does not consider their background or training.⁸

Absent exceptional circumstances, the presence of any one of these factors indicates the organization’s method of communicating its views does not meet the criteria to be “educational.”⁹

There is relatively little case law or IRS rulings on the “full and fair exposition” test. A group advocating for the use of alternative schools was found to have met the test when it (1) made publicly available copies of all the briefs, including those of the opposing parties, filed in relevant legal actions; (2) encouraged those with different viewpoints to submit articles to its newsletter; and (3) provided information on a subject that was useful and beneficial to the public.¹⁰ A group that advocated for the use of one method of childbirth was found to have met the standard when it carried out its purpose by (1) hosting film presentations followed by discussions with doctors and its members; (2) conducting presentations on local radio stations; (3) hosting meetings between medical professionals and expectant parents; and (4) preparing pamphlets, manuals, and books that it distributed to libraries, hospitals, and obstetricians.¹¹

(...continued)

organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or similar programs; (3) an organization that presents a course of instruction by means of correspondence, television, or radio; and (4) museums, zoos, planetariums, symphony orchestras, and similar organizations).

⁷ Rev. Proc. 86-43, 1986-2 C.B. 729. A revenue procedure is “a statement of procedure that affects the rights or duties of taxpayers or other members of the public under the Code and related statutes or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge.” Treas. Reg. § 601.601(d)(2)(i)(b).

⁸ See Rev. Proc. 86-43, 1986-2 C.B. 729.

⁹ See *id.*

¹⁰ See *National Association for the Legal Support of Alternative Schools v. Comm’r*, 71 T.C. 118 (1978).

¹¹ See Rev. Rul. 66-255, 1966-2 C.B. 210.

Similarly, a group that was formed to “educate the public about homosexuality in order to foster an understanding and tolerance of homosexuals and their problems” was found to be educational.¹² The group hosted public seminars, forums, and discussion groups, as well as distributed materials that included copies of surveys and opinion polls; scholarly statements; government publications; and policy resolutions adopted by educational, medical, scientific, and religious organizations. The group was described as “accumulat[ing] factual information through the use of opinion polls and independently compiled statistical data from research groups and clinical organizations,” and all of its materials contained “a full documentation of the facts” to support its conclusions.¹³ In ruling that the group qualified as educational, the IRS explained:

The presentation of seminars, forums, and discussion groups is a recognized method of educating the public.... By disseminating information relating to the role of homosexuals in society, the organization is furthering educational purposes by instructing the public on subjects useful to the individual and beneficial to the community. The method used by the organization in disseminating materials is designed to present a full and fair exposition of the facts to enable the public to form an independent opinion or conclusion. The fact that the organization's materials concern possibly controversial topics relating to homosexuality does not bar exemption under section 501(c)(3) of the Code, so long as the organization adheres to the educational methodology guidelines of section 1.501(c)(3)-1(d)(3).¹⁴

It also appears that a group that presents information prepared by others may qualify to be educational if it subjects those others to the full and fair exposition test.¹⁵

On the other hand, in seemingly the only case applying the methodology test, the Tax Court held that a group purportedly “dedicated to advancing American freedom, American democracy and American nationalism” did not qualify as educational when its newsletters were filled with inflammatory language and unsupported conclusions.¹⁶ The court found the newsletters failed the first, third, and fourth factors in the methodology test.¹⁷ They failed the first factor because a significant portion presented viewpoints that were clearly not supported by facts. These included the “common sense” standards for Supreme Court Justices of “No odd or foreign name” and “No beard”; listing of “Boat people, wetbacks and aliens who are incompatible with American nationality and character, such as Nicaraguan refugees or Refusnik immigrants” as people who should be denied U.S. Citizenship; and the statement regarding Black History Month that “No such thing. Nary a wheel, building or useful tool ever emanated from non-white Africa.

¹² Rev. Rul. 78-305, 1978-2 C.B. 172.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Rev. Rul. 71-413, 1971-2 C.B. 228 (organization qualified as educational when it “was formed to act as a clearinghouse and course coordinator by bringing together instructors and interested students in a certain community” by publishing a schedule of general interest courses taught by unpaid instructors and open to the public; among other things, the group ensured that a full and fair exposition of all viewpoints and facts were presented in controversial courses by monitoring the classes and canceling those that did not allow equal opportunity of expression); Rev. Rul. 76-443, 1976-2 C.B. 149 (holding that an organization was educational when it made equipment and facilities available to the general public in order to produce educational and cultural programs to air on a public access station; among other things, any program that advocated a viewpoint was subject to the “full and fair exposition” test by the organization).

¹⁶ *Nationalist Movement v. Comm’r*, 102 T.C. 558, *4 (April 11, 1994).

¹⁷ The court found it could not determine whether the test’s second factor—whether the newsletter included distorted facts—was met. The court explained that while it found some overt examples, it thought “[t]his type of distortion, however, is presumably less serious than one not apparent on its face” and found that the government had failed to adequately show the existence of any latent distortion. *Id.* at *75.

Africanization aims to set up a tyranny of minorities over Americans.”¹⁸ The court had no trouble finding the third factor was met, as the newsletters were filled with inflammatory and disparaging terms for gays and African Americans, among others.¹⁹ Finally, the court found that the fourth factor was met because a significant portion of the newsletters’ intended readership were young people who would likely have little knowledge about the historical events presented in the newsletters, and the newsletters’ negative treatment of these events would not assist in the readers’ understanding of them.²⁰

An example of an organization that failed to meet the “full and fair exposition” standard was one formed to “promote the education of the public on patriotic, political, and civic matters, and to inform and alert the American citizenry to the dangers of an extreme political doctrine.”²¹ The group distributed written materials (e.g., books, pamphlets, and newsletters) and operated a speakers’ bureau. The materials included substantial data about the doctrine’s activities. The problem was they also included

many allegations and charges that certain individuals and institutions are of questionable national loyalty. Such charges are primarily developed by the use of disparaging terms, insinuations, and innuendoes and the suggested implications to be drawn from incomplete facts. For instance, the organization bases many of its conclusions on incomplete listings of an individual’s organizational affiliations without stating the extent or the nature of the affiliations or attempting to present a full and fair exposition of the pertinent facts about those organizations.²²

The IRS ruled that these types of activities were a substantial part of the organization’s overall activities, and therefore the group failed to be classified as educational.

Similarly, a white supremacist group was held not to meet the criteria to be an educational organization.²³ The court in this case did not base its holding on the regulation, but rather found there was simply no way in which the organization’s materials could fall within the term “educational” as Congress intended.²⁴ Important to the court was that there was “no reasoned development” from the purported facts presented in the organization’s publications (e.g., the occurrence of violent acts by African Americans or the presence of Jews in important positions) to the positions it advocated (e.g., removing these groups from society), and therefore the publications “cannot reasonably be considered intellectual exposition.”²⁵

¹⁸ *Id.* at *73-*75.

¹⁹ *See id.* at 76-77.

²⁰ *See id.* at *77-*78.

²¹ Rev. Rul. 68-263; 1968-1 C.B. 256

²² *Id.*

²³ *See National Alliance v. United States*, 710 F.2d 868, 875 (D.C. Cir. 1983).

²⁴ *See id.* at 873, 875.

²⁵ *See id.* at 873 (“there is no more than suggestion that the few ‘facts’ presented in each issue of Attack! justify its sweeping pronouncements about the common traits of non-whites and Jews or the need for their violent removal from society”).

Constitutional Implications of Definition

There are constitutional implications as to how the term “educational” is defined. In particular, the denial of tax-exempt status to an organization on the basis of its speech could raise issues under the First Amendment.²⁶

On the one hand, the Supreme Court has made clear that the government may choose to not subsidize taxpayers’ speech through the provision of a tax incentive.²⁷ Thus, there appears to be no constitutional requirement that the term “educational” encompass every communication protected by the First Amendment.²⁸

At the same time, courts will examine the IRS’s denial of a tax exemption or other benefit when it is based on the content of the taxpayer’s speech in order to ensure the denial was not done for an impermissible reason.²⁹ Groups that promote controversial positions may be particularly vulnerable to an interpretation of “educational” that permits a subjective determination by the IRS as to whether a group’s methods of presenting its views are educational. As one court has explained in this context, “the government must shun being the arbiter of ‘truth.’”³⁰

The IRS recognizes the potential issues here, emphasizing that “[i]t has been, and it remains, the policy of the Service to maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization.”³¹ The government reportedly believes the methodology test “leads to the minimum of official inquiry into, and hence potential censorship of, the content of expression, because it focuses on the method of presentation rather than the ideas presented” and is therefore “the least intrusive standard available.”³² On the other hand, some have questioned if the methodology test can be fairly categorized as objective or content neutral when it requires looking into such things as whether the organization uses “particularly inflammatory” language or distorts facts.³³

Concern over these issues has led to questions about whether the “educational” standard is unconstitutionally vague. Not only does a vague law that affects First Amendment rights “inhibit

²⁶ U.S. CONST. Amend. I (“Congress shall make no law ...abridging the freedom of speech”).

²⁷ See *Cammarano v. United States*, 358 U.S. 498 (1959) (upholding the validity of a tax regulation that disallowed a business deduction for lobbying expenditures); *Taxation With Representation*, 461 U.S. at 545-46 (upholding the federal law that limits the lobbying of 501(c)(3) organizations to “no substantial part” of their activities).

²⁸ See *National Alliance v. United States*, 710 F.2d 868, 875 (D.C. Cir. 1983).

²⁹ See, e.g., *Nationalist Movement v. Comm’r*, 102 T.C. 558, 584 (1994) (“Denial of a tax exemption for engaging in speech consisting of ‘dangerous ideas’ can be a discriminatory limitation on free speech.”) (citing to *Speiser v. Randall*, 357 U.S. 513, 519 (1958)).

³⁰ *National Alliance*, 710 F.2d at 873-74.

³¹ Rev. Proc. 86-43, 1986-2 C.B. 729.

³² *National Alliance*, 710 F.2d at 875.

³³ See Laura B. Chisolm, *Exempt Organization Advocacy: Matching the Rules to the Rationales*, 63 IND. L.J. 201, 219-220 (1987) (also arguing that “[c]onsidering, in addition, the uncertain line between dissemination of opinion and legislative activity or election campaign intervention, it appears that organizations hoping to bring about social change by raising public awareness of their causes continue to be vulnerable to loss of exemption based upon a subjective IRS evaluation of the controversiality and validity of the position taken, as well as the style in which the viewpoint is expressed.”).

the exercise of those freedoms,³⁴ but vagueness may also lead to arbitrary and discriminatory application of the law in violation of the Fifth Amendment’s due process protections.³⁵

In *Big Mama Rag, Inc. v. United States*,³⁶ the D.C. Circuit Court of Appeals held that the definition of “educational” in the Treasury regulation was unconstitutionally vague. Note that this case predates the methodology test. The court found that it was not clear which organizations were subject to the “full and fair exposition” test and what the standard required. For example, the court found the distinction between facts and opinions to be “not so clear-cut” that the organization or the IRS “will be able to judge when any given statement must be bolstered by another supporting statement.”³⁷

The same court had the opportunity to look at the regulation several years later in *National Alliance v. United States*,³⁸ where it held that a white supremacist group did not meet the criteria to be an educational organization. Notably, the court did not decide the case based on the regulation or methodology test.³⁹ Rather, as discussed above, the court’s holding was based on its determination that there was simply no way in which the organization’s materials could fall within the term “educational” as Congress intended.⁴⁰

The court did state in dicta that the IRS’s methodology test reduced the vagueness concerns by tending to limit the meaning of “educational” to “material which substantially helps a reader or listener in a learning process.”⁴¹ The court noted with approval that the “IRS has attempted to test the method by which the advocate proceeds from the premises he furnishes to the conclusion he advocates rather than the truth or accuracy or general acceptance of the conclusion.”⁴²

While the court did not overrule *Big Mama Rag*, its decision in *National Alliance* is commonly understood to represent the court moving away from its reasoning in that case.⁴³ As a result, the court’s approval of the methodology test, while in dicta, is often seen as reducing any precedential value of *Big Mama Rag*.⁴⁴

³⁴ Grayned v. City of Rockford, 408 U.S. 104, 109 (1972)(citations omitted).

³⁵ See *id.* at 108; U.S. CONST. Amend. V (“No person shall... be deprived of life, liberty, or property, without due process of law...”).

³⁶ 631 F.2d 1030 (D.C. Cir. 1980).

³⁷ *Id.* at 1038.

³⁸ 710 F.2d 868, 875 (D.C. Cir. 1983).

³⁹ See *id.* at 876 (“We need not, however, and do not reach the question whether the application of the Methodology Test, either as a matter of practice or under an amendment to the regulation would cure the vagueness found in the regulation by this court in *Big Mama*.”).

⁴⁰ See *id.* at 873, 875.

⁴¹ *Id.* at 875.

⁴² *Id.* at 874.

⁴³ See, e.g., Martha Good, *Recent Case: National Alliance v. United States*, 53 U. Cin. L. Rev. 277, 295 (1984)(“The general approval given to the methodology test in *National Alliance* indicates that the District of Columbia Circuit has retreated from the position it took in *Big Mama*.”).

⁴⁴ See, e.g., *id.* at 295-96 (arguing *National Alliance* undercuts the influence of *Big Mama Rag* and therefore the IRS will likely continue to apply the test and it is unlikely any court, including the D.C. Circuit, would adopt the *Big Mama Rag* reasoning in a future case).

It appears the only court to address the vagueness issue since *National Alliance* is the Tax Court.⁴⁵ In *Nationalist Movement v. Commissioner*,⁴⁶ the court rejected the argument that the methodology test was overly vague. The court found the test was “sufficiently understandable, specific, and objective both to preclude chilling of expression protected under the First Amendment and to minimize arbitrary or discriminatory application by the IRS.”⁴⁷ Further, the court did not find the test’s purpose or effect to be the suppression of “disfavored ideas.”⁴⁸ Other cases, both prior to and after *Big Mama Rag/National Alliance*, have involved application of the regulation, without addressing the issue of its constitutionality.⁴⁹

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⁴⁵ The Tax Court had also upheld the regulation against a vagueness challenge in a case decided between *Big Mama Rag* and *National Alliance*. See *Retired Teachers Legal Defense Fund, Inc. v. Comm’r*, 78 T.C. 280 (1982). This case did not deal with the “full and fair exposition” test, but rather the general definition of “educational.” The court, in upholding the regulation, reasoned that “the broader language of the regulation is clarified by subsequent concrete examples which provide objective norms to illustrate its meaning” and, therefore, it did not appear “men of common intelligence must necessarily guess at its meaning.” *Id.* at 285 (citing to *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976) quoting *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926)).

⁴⁶ 102 T.C. 558 (1994).

⁴⁷ *Id.* at 589.

⁴⁸ *Id.*

⁴⁹ See, e.g., *National Association for the Legal Support of Alternative Schools v. Comm’r*, 71 T.C. 118 (1978) (holding a group that advocated for the use of alternative schools met the “full and fair exposition” test when it (1) made publicly available copies of all the briefs, including those of the opposing parties, filed in relevant legal actions; (2) encouraged those with different viewpoints to submit articles to its newsletter; and (3) provided information on a subject that was useful and beneficial to the public).

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