

I. PUBLIC CHARITY STATUS ON THE RAZOR'S EDGE

IRC 509(a)(3) AND THE COMPLEXITIES OF THE OPERATED IN CONNECTION WITH INTEGRAL PART TEST, AND MISCELLANEOUS IRC 509(a)(3) ISSUES

by
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The Internal Revenue Service has drafted fantastically intricate and detailed regulations to thwart the fantastically intricate and detailed efforts of taxpayers to obtain private benefits from foundations while avoiding the imposition of taxes.

From a court opinion as to whether an organization was "operated in connection with." Windsor Foundation v. United States, 77 U.S.T.C. 9709 (E.D. Va., 1977).

1. Introduction

The primary advantage for the over 32,000 IRC 501(c)(3) or IRC 4947(a)(1) organizations that qualify as "supporting organizations" described under IRC 509(a)(3) is the avoidance of the private foundation rules and taxes under Chapter 42 of the Code. While supporting organizations take several forms, the central focus of this article is on the "operated in connection with" variety that requires application of the "integral part test" and related sub-tests. The crucial elements of the integral part test will be discussed independently and in context with real and hypothetical cases. Finally, the article addresses a number of miscellaneous but important IRC 509(a)(3) issues. A Subject Directory follows the article.

2. General

IRC 509(a)(3) was enacted as a part of the Tax Reform Act of 1969. The theory behind the provision, as explained in the 1982 EO CPE Text on the subject, Exclusion From Private Foundation Status Under IRC 509(a)(3), page 24, is "that the public charity's control or involvement with the supporting organization will render unlikely the potential for manipulation to private ends present in a private foundation." It is this element of a supported organization's oversight or accountability that legally allows the supporting organization (often sailing on the razor's edge between public charity and private foundation status) to navigate away from the shoals of Chapter 42 of the Code.

Under the statute, a supporting organization may be one of three different varieties. The relationship that exists where a supporting organization is "operated supervised or controlled by" a public charity is much like the relationship between a parent corporation and its wholly-owned subsidiary. See Reg. 1.509(a)-4(g). The relationship between a supporting organization and the public charity it supports is, in some ways, similar to the relationship between brother-sister corporations. See Reg. 1.509(a)-4(h). The third variety of supporting organization comes under the rubric "operated in connection with". See Reg. 1.509(a)-4(i). The "integral part test" is a key element to qualification under the "operated in connection with" relationship. For a broader discussion of IRC 509(a)(3), see the 1982 EO CPE Text, page 23, and the 1993 EO CPE Text, p. 232.

GCM 36186, March 10, 1975, explains the problem in drafting the regulations with respect to the "operated in connection with" relationship to comply with the purpose behind the Tax Reform Act of 1969. An extract follows:

The Regulations endeavor to restrict the application of this language exclusively to the types of strongly integrated relationships described in the legislative history. See S. Rep. 91-552, 91st Cong., 1st Sess. 57 (1969); H. Rep. 91-413, 91st Cong., 1st Sess. (Part 1) 41 and (Part 2) 6 (1969). Thus, the Regulations require that the supporting organization be responsive to and significantly involved in the operations of the publicly supported charity. Treas. Reg. section 1.509(a)-4(f)(4). In order to do this, the supporting organization must satisfy the "responsiveness test" and the "integral part test" of Treas. Reg. section 1.509(a)-4(i)(2) and (3) respectively.

3. The "Operated in Connection With" Responsiveness Test and Other IRC 509(a)(3) Requirements

The relationship required of a supporting organization wishing to come under the "operated in connection with" language of IRC 509(A)(3)(B) as defined in Reg. 1.509(a)-4(i) is: (1) responsiveness to the needs of a publicly supported organization; as well as (2) an integral or significant involvement in the operations of the public charity. The regulations define a "responsiveness test" and a "integral part test."

Reg. 1.509(a)-4(i)(2) describes two separate and distinct avenues for achieving responsiveness to the supported organization. The first avenue is where the officers or directors of the supporting organization are elected by or are in common with those officers or directors of the public charity, or there is a close working relationship between the officers and directors of the two entities. Reg.

1.509(a)-4(i)(2)(ii). The second avenue, the one most frequently utilized by trusts, is under Reg. 1.509(a)-4(i)(2)(iii). It provides:

- (a) The supporting organization is a charitable trust under State law;***
- (b) Each specified publicly supported organization is a named beneficiary under such charitable trust's governing instrument;***
- and***
- (c) The beneficiary organization has the power to enforce the trust and compel an accounting under State law.***

While the responsiveness test is obviously a crucial element to qualification under "operated in connection with," most applications seen in Headquarters reveal few problems under this test. More often problems arise in complying with the "integral part test." However, before discussing this key test, other general IRC 509(a)(3) requirements deserve mention in passing.

The Regulations impose organizational and operational tests applicable to all three varieties of supporting organizations. Reg. 1.509(a)-4(b). To some extent, qualification under the organizational and operational tests is more difficult for the supporting organization seeking to qualify as "operated in connection with" IRC 509(a)(3). Under Reg. 1.509(a)-4(c), the supporting organization's governing instrument must contain appropriate language concerning the organization's purposes. Additionally, under Reg. 1.509(a)-4(d), the governing instrument, to meet the organizational test, must "specify" the publicly supported charities. Under the operational test set forth in Reg. 1.509(a)-4(e), the supporting charity must engage in activities that support or benefit the specified publicly supported organizations. Usually such activity takes the form of grants to the specified publicly supported charity. However, the activity of the supporting organization may take other forms as described in the Regulations. See also 4B(1) and 6A below. There is a further discussion of the requirements of the organizational test under 6B.

Also applicable to all three varieties under IRC 509(a)(3)(C), a supporting organization must not be controlled directly or indirectly by one or more disqualified persons (as defined in IRC 4946) other than foundation managers or other than one or more of the supported public charities. See also the discussion under 5 below.

4. The Integral Part Test

A. A Common Example

A common example of an organization seeking exemption under IRC 509(a)(3) as a supporting organization, purportedly qualifying under the "operated in connection with" relationship, is an inter vivos or testamentary trust that is funded as a purely charitable trust at some time after the death of the settlor of the trust. In some cases, the trust becomes entirely charitable shortly after the settlor's death and in other cases the trust is not entirely charitable until the expiration of intervening life interests of the settlor's heirs or other beneficiaries who receive an income interest in the trust. After the trust becomes wholly charitable, the trust is commonly managed by a trust department of a bank having no interest in the trust other than as a fiduciary. The charitable beneficiary is one or more public charities specifically named in the Trust document. This type of trust is relatively uncomplicated in form. The main issue is whether there is a sufficient connection between the trust and the named charitable beneficiaries to qualify it as a supporting organization by virtue of the "operated in connection with" relationship; the second subsection of the "integral part test" is usually the key element in meeting such relationship.

B. The Regulations - Alternative Tests

(1) General

The key to qualifying as a supporting organization under the "operated in connection with" relationship is being able to meet the requirements of the "integral part test" set forth in Reg. 1.509(a)-4(i)(3). There are two alternative ways in which the integral part test may be met by a supporting organization. The first is described in Reg. 1.509(a)-4(i)(3)(ii) as follows:

The activities engaged in for or on behalf of the publicly supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would not normally be engaged in by the publicly supported organizations themselves.

Most IRC 509(a)(3) aspirants in exemption applications processed in Headquarters do not attempt to meet this subsection of the Regulations in order to satisfy the integral part test. Most entities seeking IRC 509(a)(3) status under the "operated in connection with" relationship are trusts or other organizations

having only a purpose to make grants to or for the use of the supported organization. Making grants to the supported organization does not generally constitute the kind of activity described in Reg. 1.509(a)-4(i)(3)(ii) since this integral part test contemplates more ongoing supportive program activity. See GCM 36523, December 18, 1975; GCM 36379, August 15, 1975. However, under GCM 38417, June 20, 1980, grant making would meet the requirement of the Regulation under consideration by virtue of the particular facts of that GCM. This is not inconsistent with the general rule. In GCM 38417, the supporting organization was making grants directly to a class of charitable beneficiaries that were also receiving grants from the supported organization, a community trust, a special type of IRC 509(a)(1)/170(b)(1)(A)(vi) public charity described in Reg. 1.170A-9(e)(11). Grant making is generally the means by which community trusts carry out their charitable purposes.

The second subsection, the alternative method, for qualifying under the "integral part test" is found in Reg. 1.509(a)-4(i)(3)(iii)(a) through (d). Under Reg. 1.509(a)-4(i)(3)(iii)(a), there is a three part test. First, the supporting organization must make payments of "substantially all" of its income to or for the use of one or more publicly supported organizations. Second, the amount of support received by the publicly supported organization(s) must represent a sufficient amount or part of the organization's(s') total support to ensure "attentiveness" to the operations of the supporting organization. Third, "a substantial amount" of the total support of the supporting organization must go to the publicly supported organization(s) that meet the "attentiveness" requirement described in the preceding sentence.

Each of the requirements of the Regulation suggests a certain portion of the income/support of the supporting organization must be paid out by the supporting organization. The Regulation does not define the specific numerical amount of the payout required. Similarly, the Regulation suggests that a certain portion of the support of the recipient public charity's total support must be received from the supporting organization to ensure its attentiveness. While the Regulation does not provide any numerical parameters for determining the income/support amounts, numerical amounts have been defined by revenue ruling and GCM. Each of these separate requirements is examined in turn, and, in detail as follows:

(2) Subtest One- Substantially All of the Supporting
Organization's Income

a. General

Rev. Rul. 76-208, 1976-1 C.B. 161, defines the substantially all requirement to mean that the supporting organization must distribute 85 percent or more of its income to one or more publicly supported charities. For purposes of Reg. 1.509(a)-4(i)(3)(iii)(a), Rev. Rul. 76-208 holds that 85 percent is the appropriate definition of "substantially all" by virtue of the definition of "substantially all" under Reg. 53.4942(b)-1(c). The underlying GCM, GCM 36186, notes a number of other Code and Regulation sources where "substantially all" is defined as 85 percent but focuses on the IRC 4942 regulations since IRC 509 and Chapter 42 were both promulgated under the Tax Reform Act of 1969. GCM 36186 stated that "it appears logical to give the term substantially all a consistent meaning throughout the provisions of the Tax Reform Act of 1969 which relate to private foundations." The trust which was the subject of Rev. Rul. 76-208 failed to qualify under the integral part test because it accumulated 25 percent of its income yearly and thus failed to distribute 85 percent.

GCM 36523, December 18, 1975, addresses Rev. Rul. 76-208 and GCM 36186 on the 85 percent income payout requirement. The facts of GCM 36523 indicate that a supporting organization was paying out its income in most years to benefit a specifically named charity named in its trust document. In some years, income was accumulated and paid to the charity in a subsequent year. GCM 36523 distinguished the facts of GCM 36186 and found that accumulations of income in some years may be acceptable if the accumulations are not extended and if the accumulations are ultimately paid to the supported charity. Other favorable factors are that the accumulations were for a specific purpose and at the request of the publicly supported charity. GCM 36186 was distinguished on its facts, in part, from the holding of GCM 36523 because the accumulation of income by the trust described in GCM 36186 would never be paid to the named charitable income beneficiary according to the conclusion reached in GCM 36523.

G.C.M. 36523 goes even further and suggests that a facts and circumstances test may be appropriate in some cases. It states:

Thus, we believe that all the facts and circumstances must be considered in determining whether a supporting organization satisfies the 'substantially all' requirement. Where, as in ... (G.C.M. 36186) ... there is a permanent accumulation of income, or where there is an accumulation for an extended period without

apparent purpose, the 'substantially all' requirement will not be met. Where, as in the instant case, however, there are only relatively minor delays and arguable reasons for these delays, we think it proper to consider the 'substantially all' test as having been met.

Is there a conflict between GCM 36523 and GCM 36186 (Rev. Rul. 76-208) on the "substantially all" requirement? The G.C.M. states that it is distinguished from the earlier G.C.M. 36186 on the facts, and perhaps this is the way to view the differences to the extent that differences exist.

GCM 36523 also clarifies GCM 36186. GCM 36523 states that the "substantially all" requirement of Reg. 1.509(a)-4(i)(3)(iii)(a) is a prerequisite to all parts of the integral part test under Reg. 1.509(a)-4(i)(3)(iii).

b. The Definition of Income

What is the meaning of the term "income" for purposes of applying the "substantially all" test of the Regulation? Specifically at issue is the treatment of capital gains income of a trust. Under widely accepted accounting principles, capital gains are allocated to trust corpus unless the trust instrument provides to the contrary. For income tax purposes, the capital gains earned by a trust are included in income.

In PLR 9021060, February 28, 1990, the term "income" was held to not include all capital gains income for purposes of the application of the substantially all test of Reg. 1.509(a)-4(i)(3)(iii)(a). The PLR was also cited in the Private Foundation Handbook, IRM 7752-28.7, paragraph 523.33 (9-20-94).

The Service is now revisiting PLR 9021060, and has amended PFHB 523.33(8) (MT, 7752-38, May 10, 1996) in respect to the exclusion for all capital gains for purposes of the substantially all test. The Service believes that long term capital gains may indeed be excluded from income for purposes of the application of the substantially all test, but short-term capital gains must be included. This position is based on Rev. Rul. 76-208. Since the Service turned to Reg. 53.4942(b)-1(c) for the definition of the term "substantially all", it follows that the term "income" is tied to "adjusted net income." Adjusted net income is defined in Reg. 53.4942(a)-2(d) and includes short-term capital gains, but not long-term capital gains. Although many income tax distinctions between long-term and short-term capital gains ended years ago, there is still a great difference in the nature of short-term gains (a regular carried out financial strategy), versus long-term gains (intermittent sales of long held capital assets). IRC 1222 still distinguishes short-term capital gains as gains from sales or

exchanges of capital assets held for not more than a year and long-term capital gains as gains from the sales of exchanges of capital assets held for more than a year. Under certain facts and circumstances, short-term capital gains may be accumulated by the supporting organization if done at the explicit request of the supported organization. See discussion of GCM 36523 in (2)a above. Headquarters is reviewing this matter.

(3) Subtest Two - The Attentiveness Test

a. General Rule

A second test that must be met to qualify under the integral part test of section 1.509(a)-4(i)(3)(iii)(a) is the attentiveness requirement. In the words of the Regulations "... the amount of support received by a publicly supported organization must represent a sufficient part of the organization's total support so as to ensure the attentiveness of such organizations to the operations of the supporting organization."

GCM 36379, August 15, 1975, discussed the attentiveness test in terms of a numerical support limitation. The GCM stated that although the regulations do not specify a required percentage of support, it seems unlikely that grants that were less than 10 percent of a beneficiary's support would, in the usual case, be deemed sufficient to ensure attentiveness. The facts of the GCM disclose that the supporting organization was providing support to the supported organizations in amounts that ranged from 2 to 6 percent of the beneficiaries' support. Thus, the GCM found that under a "strict application" of subdivision (a), the trust did not satisfy the "integral part test."

GCM 36379 does not establish a standard set in stone. The GCM does not absolutely rule out qualifying support to the supported organization of less than 10 percent. Secondly, it does not necessarily bless qualifying support to the supported organization where there is an amount that is greater than 10 percent of the supported organization's total support. The GCM goes on to discuss the "facts and circumstances" test under Reg. 1.509(a)-4(i)(3)(iii)(d). The holding in the GCM was that the trust was able to meet the facts and circumstances test of subdivision (d) because of the large size of the gift and the long history with the supported charity.

The numerical test was again applied in GCM 36523, where it was held that providing 2 percent of the supported organization's support was insufficient to meet the 10 percent test of GCM 36379. Thus, the 10 percent numerical test is given further credence in a subsequent GCM. GCM 36523 also found grounds

for the organization discussed therein to meet the attentiveness test under the facts and circumstances test of subdivision (d). Nonetheless, the 10 percent attentiveness test has become the rule of thumb utilized by the Service in testing for "attentiveness" under subsection (iii)(a) of the Regulations.

b. The Meaning of Support

What is the meaning of "support" for purposes of the Regulations? Is the term limited to just gifts, grants and contributions or does it include all revenue? Section 509(d) of the Code takes a broad approach in defining support to include (1) gifts, grants, and contributions, (2) program related revenues, (3) investment income, and (4) government support, among other listed items of revenue. The two GCMs (36379; 36523) discussed above do not define the term "support" or discuss its application. Both GCMs were using "support" as derived from the use of that term in Reg. 1.509(a)-4(i)(3)(iii)(a). The use of the term in the Regulations can be tied to IRC 509(d) of the Code. IRC 509(d) provides that for purposes of this part and Chapter 42, the term "support" is defined to include a number of sources of revenue as mentioned above. Thus, it is a logical conclusion that the term "support" for purposes of the application of the 10 percent test found in GCM 36379 is controlled by the definition of support under IRC 509(d).

c. Continuance of Support

How long must the supporting organization meet the 10 percent attentiveness test applied by GCM 36379? In that GCM, comparisons were made with respect to the grants to four potentially attentive recipient charities for either a two or a three year period. Apparently, in GCM 36523, the support test may have been examined for a number of years with respect to the 10 percent attentiveness requirement, perhaps longer than ten years. On the other hand, GCM 36523 concluded that, in some situations, the "substantially all" test may not have to be met each and every year. Perhaps, the same is true for the 10 percent attentiveness test; that compliance is not required for each and every year in the recent past. What would seem required, based on a general understanding of the purpose of IRC 509(a)(3) and the intent of the Regulations, is that there is some continuous and ongoing relationship between the attentive charities and the supporting organization. Recently, representatives of a nascent organization, in a preliminary discussion with EO division officials, suggested that the supporting organization would have a number of attentive public charities (also nascent) and that the payout of 10 percent (or more) support would vary among and between the several different charities from year to year so that not every supported charity would receive 10 percent support for every

year or even most years. For this structure to provide a basis for 509(a)(3) status, there would have to be, at the least, some history of a continuing and ongoing relationship with the attentive charities. That relationship would not have existed in the described situation.

d. Attentiveness- Alternative Support of A Program

"Attentiveness" can also be achieved by means other than under the 10 percent support test. Reg. 1.509(a)-4(i)(3)(iii)(b) provides that even where the amount of support received by a publicly supported charity does not represent a sufficient part of the supported beneficiary organization's total support, attentiveness may be achieved where it can be demonstrated that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. This may be the case where the support received is earmarked for a particular program or activity of the supported organization. Reg. 1.509(a)-4(i)(3)(iii)(c) provides two examples, one involving a museum's chamber music series, and the other the endowment of a chair of a university's law school. In GCM 36326, June 30, 1975, the Service addressed another factual situation, involving a special program of a children's home to recruit, screen, and train foster parents, in which attentiveness may be achieved under subsection (iii)(b) of the Regulations.

Achieving attentiveness under Reg. 1.509(a)-4(i)(3)(iii)(b) offers a real tax planning opportunity to organizations that wish to achieve 509(a)(3) status, but would otherwise fail to meet the 10 percent attentiveness requirement. The EO Division has seen a number of cases where the organization was able to secure status as a supporting organization by providing significant support to one particular program of a large organization where 10 percent attentiveness could not be achieved by a direct grant to the organization as a whole because of the very broad public support for the charity. Thus, providing support to just one separate program will allow the supporting entity to qualify under the integral part test. In GCM 36326, Chief Counsel concluded that it may not be necessary to provide 100 percent of the support to the particular program to qualify under subsection (iii)(b) of the Regulations. The GCM suggested that the loss of 50 percent of the necessary support for the program may be sufficient to interrupt the program within the meaning of the Regulations. GCM 36326 emphasized that the crucial factor was whether the activity would be interrupted without the supporting organization's funding.

e. Attentiveness - Alternative All Pertinent
Factors Approach

Reg. 1.509(a)-4(i)(3)(iii)(d) offers a catch-all method for achieving attentiveness under the integral part test. That subsection tests attentiveness based on all pertinent factors, including the number of beneficiaries, the length and nature of the relationship between the beneficiary and the supporting organization, amounts received as support, and evidence of actual attentiveness by the beneficiary organization.

In GCM 36379, August 15, 1975, the supporting organization, a trust, made large grants to four public charities. However, because the public charities were large entities widely supported by the public, the grants by the trust represented only 2 to 6 percent of each charity's total support for the year. Thus, the trust failed to achieve attentiveness under the 10 percent test. However, the GCM held that attentiveness was achieved under the all pertinent factors language of subsection (iii)(d) of the Regulations. One of the pertinent factors relied on in reaching this conclusion was the large amount of the grants in absolute terms. The grants to three of the public charities were in the range of \$200,000 to \$400,000 per year. The GCM concluded that "no matter how large a beneficiary's total budget may be, it will undoubtedly be at least somewhat attentive to a grant of \$200,000 to \$400,000 per year." Additionally, the G.C.M. goes on to mention other important pertinent factors that led to the finding of attentiveness. One factor was the long history with the public charities where the grants have continued over 20 years. Also, there was some evidence of actual attentiveness by virtue of the distribution each year of an array of reports to the recipient charities, including the supporting trust's form 990.

GCM 36379 does not suggest that all that is required to achieve attentiveness under subsection (iii)(d) of the Regulations is a large grant and the furnishing of annual reports to the supported attentive charity. The Service does not accept the position that there is a safe harbor for achieving attentiveness simply by virtue of a large grant and providing annual reports to the supported charity.

Support for such position is found, in part, in Rev. Rul. 76-32, 1976-1 C.B. 160, which holds that merely providing the reports of the type described in section 1.509(a)-4(i)(3)(iii)(d) of the Regulations to each of the beneficiaries of charitable trust each year, will not alone satisfy the attentiveness requirement of the integral part test. Other factors are also required to find "attentiveness" under the regulations.

Attentiveness was also achieved under the "all pertinent factors" requirement in GCM 36523. The facts indicate that the organization, a trust, was making grants to a zoo, a part of the city government, for the purpose of aiding the zoo in animal acquisition and housing. The GCM held that there was actual attentiveness as well as a number of other factors suggesting qualification under subsection (iii)(d). An important factor was that the zoo was a component part of the city government, and that the trust was only one of two nongovernmental organizations to support the zoo.

(4) Subtest Three- Substantial Amount of Total Support

The third leg of the integral part test under subdivision (iii) of the Regulations is the requirement that "a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness requirement . . ." GCM 36326 determined that a supporting organization met the substantial amount requirement if any one of three organizations was proven to be "attentive" where the supporting organization was required to pay its net income equally to three named publicly supported organizations. Thus, the GCM suggests that Chief Counsel may entertain the idea of a safe harbor rule when at least 33 1/3 percent of the total support paid to named public charities must be paid to an attentive charity. The support of multiple organizations is discussed in 5A below.

C. Integral Part Test - - Bottom Line Comments

The numerical guidelines set forth in the GCMs described above are helpful in resolving difficult decisions relating to the application of the integral part test. However, one would assume that the numerical tests, while helpful, cannot be relied upon as absolutes. For example, GCM 36523 appears to have retreated considerably on the 85 percent requirement for the substantially all test (subtest one). Yet, this position is the most fundamentally sound of the three numerical tests discussed in the GCMs, and is supported by Rev. Rul. 76-208.

5. Application of The Integral Part Test and Other
509(a)(3) Requirements to Cases

A. PLR 8617119 - An Example of a Conversion

It is not uncommon for a private foundation to convert to a supporting organization under IRC 509(a)(3). There are several reasons why an organiza-

tion may undergo a conversion, but the primary reason is likely to avoid one or more restrictions under Chapter 42.

Private Letter Ruling 8617119, January 31, 1986, is representative of this type of case. Facts and a discussion of this private ruling follows.

FACTS

M is a nonprofit organization which was established by A and incorporated in the state of P. M is exempt from federal income tax under section 501(c)(3) of the Code and is presently a private foundation as defined in section 509(a).

Pursuant to a plan of reorganization adopted by M on July 9, 1985, N was incorporated as a P nonprofit public benefit corporation. N is identical in all material respects to M. On September 17, 1985, the Service determined N to be exempt from federal tax under section 501(c)(3) of the Code and a private foundation under section 509(a).

The Board of Directors of M has approved an amendment to its Articles of Incorporation which provides that M is organized and shall be operated in connection with Q, a corporation sole, the legal entity constituting R. R is an exempt section 501(c)(3) religious institution described in section 170(b)(1)(A)(i) of the Code. The amended articles also list as secondary beneficiaries a number of organizations which are section 501(c)(3) public charities within the meaning of section 509(a). Specifically, the amended articles provide that M shall: (i) operate primarily for the benefit of S, a separate fund of R, (ii) distribute substantially all of its net income to its designated beneficiaries, and (iii) distribute at least one-third of such income to S. The amended articles further provide that R shall have the power to enforce its rights thereunder and to compel an accounting.

The office of the Attorney General of the State of P has submitted a letter stating that, under P law, all assets of a corporation formed exclusively for charitable purposes are held in trust for such charitable purposes. This letter also makes it clear that under x, R has the power to compel an accounting or otherwise bring action to remedy any breach of a charitable trust by M.

The support provided by M to R will be held and administered in S, and used within R exclusively for the benefit of various religious organizations of R's denomination. R will appoint a

committee for administration of S, a minority of which will consist of some members of the Board of Directors of M. The total amount of support of M will be approximately 600w dollars annually. M will make grants of approximately one-third of its total support (200w dollars) to S which will represent substantially all of the support received by S. This 200w dollars of support will be derived from M's proposed assets of fourteen percent of the stock of O described below.

Pursuant to the reorganization, M will file the amended articles and will make the operational changes necessary to qualify as a support organization under section 509(a)(3) of the Code. Upon final distribution of the residue of C which consists of the total outstanding stock of O, a "business enterprise" within the meaning of section 4943(d)(3) of the Code, M will transfer to N all of M's existing assets, and all of the residue received from C, except for approximately fourteen percent of the O stock. After the reorganization, the combined holdings of N and its disqualified persons in O will not exceed twenty percent of the total outstanding stock of O. The value of this transfer of assets to N from M will be in excess of 25 percent of the fair market value of M's net assets at the beginning of M's taxable year.

Each of the Boards of Directors of M and N is composed of nine persons. The composition of both boards is identical. Of the nine members, only two are disqualified persons within the meaning of section 4946 of the Code (other than as foundation managers). These two persons do not have the power to exercise veto power over the actions of M. Further, except for these two persons, who are employees of O, none of the directors are employees of O. Also, the other seven directors do not work for the two disqualified persons. M has submitted a notice to the Service of the intention to terminate its private foundation status in compliance with section 507(b)(1)(B)(ii) of the Code.

DISCUSSION

The distribution of the estate or trust of "C" would have caused the private foundation, M, to hold over 20 percent of the stock of "O", a business enterprise, in violation of IRC 4943(c). M is able to avoid IRC 4943 restrictions and avoid selling O stock within 5 years by converting to a supporting organization under the integral part test of IRC 509(a)(3). N is created as the new private foundation and will carry out the wishes of M's founder. N will also receive a significant amount of O stock but not enough to violate the IRC 4943(c) prohibition. In addition, by virtue of acquiring IRC 509(a)(3) status, M is not

treated as a disqualified person as to N for purposes of attributing M's large ownership in O stock to N. See Reg. 53.4946-1(a)(7).

Further, M is carrying out its founder's wishes by providing a substantial benefit to S, a special program of Q/R. Note, however, that M retains some of its former private foundation character under the amended Articles of Incorporation in that M may distribute up to 2/3 of its income annually to a number of "secondary" public charities.

PLR 8617119 states, among other items, that M is terminating its private foundation status over a sixty month period and is treated as a public charity for that period. Reg. 1.507-2(f)(1). The Ruling holds that M meets the integral part test of the Regulations. The Ruling holds further that M meets the attentiveness requirement under Reg. 1.509(a)-4(i)(3)(iii)(b) by virtue of the support of S, a particular activity of Q/R. In addition, the large size of the annual contributions is sufficient to ensure the attentiveness of Q/R.

Presumably, the support of S, a particular program of Q/R, was designed by M to avoid problems of achieving attentiveness under the 10 percent test of G.C.M. 36379. If Q/R was a large religious institution, even M's large annual contribution would likely fall far short of 10 percent. An interesting point of this PLR is that under state law a corporation is accorded the same right as a trust in enforcing the beneficiary's rights under the law. Thus, in the Ruling, M, a corporation, is ruled to have complied with the responsiveness test of Reg. 1.509(a)-4(i)(2)(iii) because the corporation is treated the same as a charitable trust under state law.

It is possible that the holding of O stock by M as a private foundation would have created a problem also under IRC 4942 if the O stock paid only a small dividend. Even if IRC 4943 was not a problem, a low yield on the O stock, the primary asset of M, could result in the failure to distribute 5 percent of assets as required by IRC 4942 unless appropriate amounts of O stock were sold.

**B. Hypothetical Example - The Integral Part Test
and the Disqualified Person Control Test**

FACTS

A is the retired owner of major corporation, X, and over 10 years ago had established private foundation, W, holding as its primary asset less than 2 percent of X stock. A owns the remaining X stock. A wishes to support an existing private school, Y, for the benefit of the residents of his home town. In addition, A wishes

to establish Z supporting organization under IRC 509(a)(3) to assist the operations of the school but also to make grants to other public charities that A wishes to support. Accordingly, the private school, Y, is informed of A's intentions. At the same time, Z is organized and is funded with X stock to serve as a supporting organization to Y and other named public charities in the articles of incorporation. A's daughter, C, is to serve as CEO of Z and she is also a member of the three person board of directors of Z. The other two members of the Board of Directors of Z are persons asserted by A to be unrelated to A or C and independent as to X or private foundation W. However, one of the directors is a part-time employee with a subsidiary corporation of X. Z will support Y with the payment of \$250,000 yearly which will be no less than 35 percent of Z's total support for the year paid to the named public charities. The \$250,000 annual grant will not equal 10 percent of Y's support due to tuition revenue and grants from other sources. Some of the stock of W in X will be transferred to Z and some of X stock will be transferred by A to Z during A's lifetime. Under A's estate plan, a significant part of X stock will be transferred to Z on the death of A.

DISCUSSION

The public and private charities described above must display considerable flexibility in order to carry out A's estate planning and charitable wishes. Since private foundation W remains in existence, the charitable programs that A was supporting through the foundation may continue. The creation of Z was intended to allow A to use the X stock for his charitable purposes without the restrictions imposed by IRC 4942 or 4943. In addition, the makeup of the Z board of directors would give A considerable influence, if not control, over decision making. Further, since 1/3 of Z's support is paid to Y annually, there is flexibility in benefiting other public charities with special grants. The transfer of X stock by W private foundation to Z is intended to constitute a qualifying distribution under IRC 4942. While it is intended that most of the X stock is to be transferred to Z on the death of A, any lifetime transfer of X stock by A to Z will qualify for IRC 170 deductibility. For an individual, the charitable contribution limitation under IRC 170(b)(1)(A) for a cash gift to a public charity is 50 percent of the taxpayer's contribution base for the year in contrast to a 30 percent limitation for a cash gift to a private foundation under IRC 170(b)(1)(B). For contributions of capital gain property (X stock), gifts to public charities are limited to 30 percent of the taxpayer's contribution base under IRC 170(b)(1)(C) in contrast to the 20 percent limitation under IRC 170(b)(1)(D) for gifts to private foundations.

However, there are a number of problems associated with the hypothetical example. The independence of the board of directors is of critical importance to Z's qualification under IRC 509(a)(3).

Particular focus on the composition of the board of directors of Z is mandated by IRC 509(a)(3)(C). It is necessary to determine that the organization is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2). C is a disqualified person by virtue of her family relationship with her father. IRC 4946(d). In addition, the board member that is a part-time employee of X's subsidiary is likely to be treated as a disqualified person or controlled by a disqualified person. In Rev. Rul. 80-207, 1980-2 C.B. 193, the Service held that for purposes of IRC 509(a)(3)(C) an employee of a corporation owned (over 35 percent) by a substantial contributor will be considered a disqualified person. In applying the holding of Rev. Rul. 80-207 to this example, the part-time employee would be treated as a disqualified person. Accordingly, Z would be considered controlled by disqualified persons. See Reg. 1.509(a)-4(j). Compare to the facts in PLR 8617119, extracted in 5A above.

Finally, in the example, the Service would have a problem with the "attentiveness" requirement under the integral part test. As discussed in part 4B(3)e above, the mere payment of a large sum without other supporting factors, will not ensure attentiveness if the grant does not equal 10 percent of Y's total support for the year.

Under the existing facts, Z would be classified as a private foundation.

6. Miscellaneous IRC 509(a)(3) Issues

A. Flow of Support and Foundation Status of the Supported Charity

A charitable organization may avoid private foundation status by qualifying as a publicly supported organization under IRC 509(a)(1)/170(b)(1)(a)(vi) or IRC 509(a)(2). Qualifying under IRC 509(a)(1)/170(b)(1)(A)(vi) requires an examination of the sources of support and the need to meet certain support limitation tests. Reg. 1.170A-9(e)(2) provides a 33 1/3 support test. Even if failing this test, an organization may qualify under a facts and circumstances test. Reg. 1.170A-(e)(3). Under such test the public support received by the organization must be at least 10 percent of its total support. Reg. 1.170A-9(e)(i). To meet the 33 1/3 and 10 percent tests, the public charity may include in its calculation

of public support from any single donor (individual, trust, or corporation) an amount that does not exceed 2 percent of the organization's total support for the year. Reg. 1.170A-9(e)(6)(i). An exception for the 2 percent limitation is made for gifts or grants from government units or public charities described in IRC 170(b)(1)(A)(vi). Reg. 1.170A-9(e)(6)(i). In contrast, all varieties of IRC 509(a)(3) organizations are subject to the 2 percent limitation.

IRC 509(a)(3) organizations are also subject to the operational test described in Reg. 1.509(a)-4(e). Basically, it provides that an IRC 509(a)(3) organization will be operated exclusively to support one or more specified organizations only if it engages in activities that support or benefit the publicly supported organizations. Generally, providing funds to an IRC 509(a)(1)/170(b)(1)(A)(vi) supported organization is the primary charitable activity of the 509(a)(3) supporting organization. Funds distributed to the IRC 170(b)(1)(A)(vi) supported organization would be taken into account for measuring the latter's public charity status. The EO Division has occasionally observed situations where the supporting organization makes grants to organizations that are not the supported organization in an apparent attempt to avoid having the distributions attributed to the supported organization, especially in those situations where the supporting organization is the dominant financial feeder of the IRC 170(b)(1)(A)(vi) organization which is subject to the two percent rule. In some cases, the IRC 509(a)(3) distributions could jeopardize the IRC 170(b)(1)(A)(vi) status of the supported organization and, as a result, like the collapse of a house of cards, would cause the loss of the supporting organization's IRC 509(a)(3) status.

In any case, to satisfy the IRC 509(a)(3) operations test requirement, pursuant to Reg. 1.509(a)-4(e)(1), payments may be made to organizations other than the specified publicly supported organization only under the following circumstances:

- (1) The payment constitutes a grant to an individual who is a member of a charitable class benefited by the specified publicly supported organization rather than a grant to the organization receiving it [applicable rules are set forth in Reg. 53.4945-4(a)(4)];**
- (2) The payment is made to an organization that is operated, supervised, or controlled by; supervised or controlled in connection with; or operated in connection with the publicly supported organization; or**
- (3) The payment is made to an organization described in IRC 511(a)(3)(B) (colleges and universities that are governmental agencies or instrumentalities).**

See 4B(1) above for discussion of GCM 38417 and IRC 509(a)(3) support of community trusts. See additional discussion in the 1993 EO CPE Text, at p. 245, et. seq.

B. The Scholarship Cases

As discussed earlier in this article, IRC 509(a)(3) organizations must satisfy organizational and operational tests. Reg. 1.509(a)-4(c)(1); Reg. 1.509(a)-4(e)(1). The state of the law has evolved through a line of cases, rulings, and GCMs dealing with scholarships granted to high school students for the purpose of pursuing advanced education. While the focus of this line of authority was on the IRC 509(a)(3) organization test, many of the authorities also dealt with the responsiveness test and the integral part test. This is because most cases (but not all) that addressed the issue fell under the "operated in connection with" relationship.

The Service took a conservative position on the organizational and operational tests in GCM 36043, October 9, 1974. The facts of the GCM involved two different factual cases where trusts were established to provide funds for high school graduates for advanced study at specifically named institutions of higher learning. In each case, a bank was named as trustee. In one of the cases, a scholarship committee from the named college selected the high school student to receive the grant. Both trusts were held in the GCM to have failed the organizational test because neither trust document included language that the trusts were created to support or benefit the publicly supported organization. See Reg. 1.509(a)-4(d)(2). The two trusts described did not have the requisite language in the trust documents. Additionally, the GCM concluded that neither trust satisfied either the responsiveness test or the integral part test.

The holding of Rev. Rul. 75-437, 1975-2 C.B. 218 reached a similar conclusion. The failure under the organizational test is explained by the Rev. Rul. as follows:

The trust in the instant case does not satisfy this requirement of the 'organizational test,' because the trust instrument does not contain the requisite statement of purpose. Since the trust is not 'operated, supervised, or controlled by' or 'supervised or controlled in connection with' the publicly supported schools and governmental units, the fact that the educational purposes of the trust are consistent with those of schools and governmental units is not sufficient to satisfy the organizational test.

Under section 1.509(a)-4(d)(2) of the regulations, if the supported organization is neither 'operated, supervised, or controlled by' nor 'supervised or controlled in connection with' a publicly supported organization, then the 'specified' publicly supported organization must be designated by name in the supporting organization's articles unless there has been an historic and continuing relationship between the supporting organization and the supported organization and by reason of such relationship there has developed a substantial identity of interests between such organizations.

Rev. Rul. 75-437 goes on to conclude that the trust satisfies neither the responsiveness test nor the integral part test. GCM 36050, October 9, 1974, is the underlying GCM of Rev. Rul. 75-437.

The Service position addressed in the scholarship cases was challenged by three cases in the Tax Court. In Warren M. Goodspeed Scholarship Fund v. Commissioner, 70 T.C. 515 (1978), a testamentary trust provided scholarships to graduates of the high school in Duxbury, Massachusetts or bona fide residents of Duxbury for the purpose of attending Yale College. The trust was administered by the trustee, a bank. Yale College participated in the selection of the recipients of the scholarship grant. The case centered on the issue of the absence of specific language in the trust document that the trust was for the benefit of or to carry out the purpose of Yale University. The Court held that it was clear from the trust document that the trust was for the benefit of Yale University. The Court stated that the Regulations did not require more specific language. See the 1993 EO CPE Text, p. 243, footnote 8.

A similar result was reached in Nellie Callahan Scholarship Fund v. Commissioner, 73 T.C. 626 (1980). The facts of the case disclose that the graduates of Winterset Community High School were eligible to a scholarship to attend a school located in Iowa. The selection committee for the scholarship consisted of officials of the school board and the principal of the high school. The Callahan case focused, however, not on the organizational test but on the responsiveness test and the integral part test. In this case, the Service argued that the Trust document failed to name the designated beneficiaries of the trust and, thus, failed under Reg. 1.509(a)-4(i)(2)(iii)(b). The Court found, however, that there was no doubt as to the intended beneficiary of the trust, citing Goodspeed as authority. Further, the Court found compliance with the integral part test under Reg. 1.509(a)-4(i)(iii)(b).

In Cockerline Memorial Fund v. Commissioner, 86 T.C. 53 (1986), the responsiveness test and the integral part test were again at issue as well as the organizational test. After finding compliance with the responsiveness and

integral part test, the Court addressed the organizational test. Under the rule provided by Reg. 1.509(a)-4(d)(2)(iv), the Court found a historic and continuing relationship between the supporting organization and the public supported organization.

In light of the outstanding Tax Court cases, the tax law specialist may wish to approach comparable cases judiciously.

C. Nonexempt Charitable Trusts (NECTs) Under
IRC 4947(a)(1) and 509(a)(3)

In recent years, the Service has received multiple requests in batches from NECTs, many of which have never filed an income tax or information return. This activity may often be due to the national rise in mergers and acquisitions of smaller institutions by larger institutions in the banking industry. The new or acquiring financial institution takes inventory, discovers the NECTs, and, after reviewing the filing requirements of charitable and split interest trusts in Rev. Proc. 83-32, 1983-1 C.B. 723, brings the tax delinquents into compliance. Often this may involve closing agreements since there may be late filing penalties and interest charges and Chapter 42 taxes due in the case of NECTs that are private foundations.

Pursuant to Rev. Proc. 72-50, 1972-2 C.B. 830, as superseded in minor part by Rev. Proc. 76-34, 1976-2 C.B. 657, a charitable trust classified as a 4947(a)(1) trust may request a determination from the Internal Revenue Service as to the status of the trust under IRC 509(a)(3) even though the trust has neither obtained nor seeks exemption under IRC 501(c)(3). Exemption per se may not be relevant since IRC 4947(a)(1) trusts are exempted from the notice requirements of IRC 508(a). See Reg. 1.508-1(b)(7)(iv). A determination letter issued by the Service that the requesting IRC 4947(a)(1) trust qualifies under IRC 509(a)(3) will allow such organization to avoid retroactively the imposition of the private foundation rules. See section 5.01 of Rev. Proc. 72-50. However, the delinquent trust could still be subject to late filing penalties and interest charges.

D. IRC 509(a)(3)'s Supporting IRC(c)(4)'s, (c)(5)'s, and (c)(6)'s
--Foundation Status of the Supported Organizations

The last sentence of IRC 509(a) reads as follows:

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

This provision had the dubious honor of being placed at least twice in the Gobbledygook column of the defunct Washington Star (D.C.). In essence, it provides that an organization may qualify as an IRC 509(a)(3) organization if it: (1) supports a section 501(c)(4), (5), or (6) that has public support characteristics of a section 509(a)(2) organization; and (2) meets the 509(a)(3) tests. See Reg. 1.509(a)-4(k).

The provision does not provide for a legal conversion of the section 501(c)(4), (5), or (6) supported organization into a section 501(c)(3) and/or section 509(a)(3) organization for classification purposes. This flip/flop interpretation was made in PLRs 8650091, September 22, 1986 and 8933059, May 25, 1989. The E:EO Division is presently revisiting these PLRs.

E. Organizations Supporting Action Organizations Exempt Under IRC 501(c)(4)

Many educational organizations forego IRC 501(c)(3) status and accept IRC 501(c)(4) status because of substantial lobbying expenditures that would exceed the liberal limits allowed under IRC 501(h)/4911 provisions. In addition, such organizations may wish to be regulated under the less restrictive primary activities test of the social welfare exemption provisions in order to occasionally intervene in political campaigns directly or through an IRC 527(f)(3) segregated fund. See Rev. Rul. 81-95, 1981-1 C.B. 332.

The trade-offs for the degree of freedom to engage in legislative advocacy and political campaign activity that would be precluded under IRC 501(c)(3) are the losses of contributions from donors, that would be deductible under IRC 170(c)(2), and private foundation grants that are subject to IRC 4945. Many of these educational action IRC 501(c)(4) organizations create 501(c)(3) organizations that are funded by the same members or contributors of the IRC 501(c)(4)s. These IRC 501(c)(3) entities may have only one purpose and that is to channel funds to pay for the programs of the IRC 501(c)(4) organizations. These 501(c)(3) entities generally claim IRC 509(a)(1)/170(b)(1)(A)(vi) public charity status. They accordingly make the IRC 501(h) lobbying election to fall under the IRC 501(h)/4911 expenditures' tests to cover any distributions to the IRC 501(c)(4) entities that may secondarily pay for legislative activity associated with funded educational projects.

The IRC 501(c)(3) entity and the IRC 501(c)(4) entity may be structured so that there is no interlocking directorate or a situation where there is a majority of the IRC 501(c)(4)'s directors who are also members of the board of directors of the IRC 501(c)(3) entity. However, the reality of the interrelationship reveals that year after year, the IRC 501(c)(3) entity exists only to fund the IRC 501(c)(4)'s programs and does little if anything else except solicit funds (through the IRC 501(c)(4)'s fundraising component) and maintain an investment portfolio.

This coziness between a IRC 501(c)(4) organization and a IRC 501(c)(3) organization may not have been contemplated by Congress. The totality of the tax exemption and deductibility statutory framework provides that: IRC 501(c)(3) prohibits political campaign intervention and imposes limits on legislative activities; IRC 170(c)(2) restricts deductibility to IRC 501(c)(3) organizations and not IRC 501(c)(4) organizations; and IRC 504 requires denial of IRC 501(c)(4) exemption status to section 501(c)(3) organizations that lose exempt status because of excessive lobbying or political campaign intervention. See also discussion of IRC 504 "transfer" rules in Lobbying Issues, part 5, in this EO CPE text. Under the circumstances of the relationships between the organizations described above, there is a question of whether tax deductible contributions should be allowed and IRC 501(c)(3) exemption recognized to an entity that is in effect a mere conduit for a IRC 501(c)(4) that would not be recognized as a IRC 501(c)(3) if the existing IRC 501(c)(4) was legally merged into it. There is also a question of whether such a conduit IRC 501(c)(3) is eligible to make the IRC 501(h) lobbying election.

IRC 501(h)(4)(F) prohibits IRC 509(a)(3) organizations that support IRC 501(c)(4) organizations from making the lobbying election under IRC 501(h).

According to the General Explanation of the Tax Reform Act of 1976 (Blue Book), page 415, footnote 10:

Also organizations which are public charities because they are support organizations (under sec. 509(a)(3)) of certain types of social welfare organizations(sec. 501(c)(4)), labor unions, etc. (sec. 501(c)(5)), or trade associations (sec. 501(c)(6)) are ineligible to make this election.

The IRC 501(c)(3) organizations described herein claim eligibility to make the lobbying election through IRC 509(a)(1)/170(b)(1)(A)(vi) status. However, they are clearly IRC 509(a)(3) organizations also. Does that fact make them ineligible to make the lobbying election? Congress would have appeared to deny IRC 501(h) accessibility to organizations that support exempt action organiza-

tions. If ineligible to make the election, the IRC 501(c)(3) organizations discussed here would have to apply closer scrutiny in funding programs of the IRC 501(c)(4) organizations to ensure that any lobbying is insubstantial under the vague substantial part test of IRC 501(c)(3).

In regard to the threshold issue of IRC 501(c)(3) exempt status, the 1976 Blue Book provides the following on page 411, footnote 7, in commenting about public charities and the legislative activity tests under IRC 501(c)(3), 501(h), and 4911:

This Act deals only with whether an organization is to be treated as violating the lobbying activity limits of the law. The Act does not affect the question of whether an expenditure might cause the organization to lose its charitable status because the expenditure violates the requirement that the organization be organized and operated "exclusively" for charitable, etc. purposes. (The Supreme Court has defined "exclusively" in this context to mean that there is no nonexempt purpose that is "substantial in nature." Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945)). Also, the Act does not deal with the circumstances under which an expenditure might be treated as electioneering, which constitutes another cause for loss of exempt status.

In the scenario described herein, the IRC 501(c)(3) organization has no other purpose or activity except fund the IRC 501(c)(4) action organization. The IRC 501(c)(4) is receiving indirectly IRC 170(c)(2) tax deductible dollars that it could not receive directly. Is the IRC 501(c)(3) promoting a substantial nonexempt purpose under these circumstances? Or has Congress inadvertently created a loophole allowing organizations supporting IRC 501(c)(4) action organizations to meet IRC 501(c)(3) qualifications through the "gobbledygook" provision of IRC 509(a)(3)?

Headquarters is reviewing this matter.

F. Review the 1023 - Is the Private Foundation Applicant a Qualified Public Charity?

Tax Law Specialists should review whether a 501(c)(3) applicant may qualify as a supporting organization under IRC 509(a)(3) (or under some other public charity category) even if the organization has checked off Private Foundation status on its 1023. Headquarters occasionally considers private letter ruling and technical advice cases involving challenging chapter 42 issues which would not have been raised if the subject organizations were properly classified as public charities during the application process.

Once an organization is classified as a private foundation, the organization will always be treated as a private foundation, including paying an IRC 4940 tax, unless it terminates its private foundation status under IRC 507(a)(1)(B). In order to terminate private foundation status, the organization must notify the Key District Office. See 1982 and 1989 EO CPE texts at pages 93 and 119 respectively; PLRs 8617119 and 9407029; and Reg. 1.507-2(b)(3). During the 60 month termination period, the organization must still file 990PF returns. These IRC 507 termination requirements may be onerous for the organization. Thus, it is helpful to the organization, and the Service in the long run, if the private foundation/public charity status is correctly determined at the outset.

7. Conclusion

Many IRC 501(c)(3) organizations seek to avoid private foundation status through classification as a supporting organization under IRC 509(a)(3). Achieving IRC 509(a)(3) status is often a matter of tax planning for organizations contemplating conversion or reorganization transactions. A working knowledge of the "operated in connection with" integral part test is crucial to developing the issues related to the determination of IRC 509(a)(3) status. It is also important to keep up with current developments in this evolving area through a review of the important Miscellaneous Issues discussed in this article.

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