

The application for the type of organizations which we are talking about in these hearings is called a form 1023 and is an application for tax exemption. That form requires specific information, the charter, names of the people involved, the type of activity or activities it intends to carry on, the bylaws, the way the State law will affect them, and so on. The organization can apply for that tax-exempt status. Generally, application is made before they begin activity. We formerly had a requirement that an organization operate for a year or more before making application, but that inhibited a great many—inhibited public organizations more than it inhibited private ones. So, we withdrew that preperformance test with the caveat that if we had any problems we would give a provisional ruling and come back and review it at the end of the year. The application is normally made some months before the organization wishes to begin activity. It is filed in our office in the locale in which the activity is to be performed, and if it is a clear-cut case our district offices are authorized to go ahead and rule. If it is a case which is out of the ordinary or unusual, it is forwarded to Washington. There is a conference procedure whereby we can request additional information or the organization can request some guidance in what it can and cannot do. Eventually we will issue a ruling which indicates that the organization does comply with the law, and indicates what the organization must do to assure the continuance of its exempt status.

Mr. MORTON. On that point, every foundation that is created is required to file form 1023.

Mr. COHEN. That is right. If they do not, we presume they are not entitled to exemption.

Mr. MORTON. As the result of the filing of that form, the Internal Revenue Service then makes a ruling?

Mr. COHEN. Yes, sir.

Mr. MORTON. Are decisions based on the application or on further investigation and conditions?

Mr. COHEN. It is generally based on the application and letters of intended activity. In unusual cases we require the founders or officials of the organization to come in to discuss with us what they propose to do.

Mr. MORTON. Any foundation, then, that is doing business as a foundation, that has not received that ruling and has not filed a form 1023, is operating illegally. Is that right?

Mr. COHEN. The problem is that the statute is not as clear as you or I might like it. The statute and the regulations together do require this. There is no per se penalty that I can impose.

Mr. MORTON. What does the statute actually say?

Mr. COHEN. The statute describes those types of organizations which are entitled to tax exemption. Based on the statutory authority of the Commissioner to require returns and information, which is in the Internal Revenue Code, we have issued regulations which say that these organizations must report their activities to us. The onus that we put on them, and which requires this filing, is that our field forces will presume that anyone who has not gone through this procedure is not entitled to exemption. Therefore, if someone makes a contribution to them, we would normally disallow a tax deduction for that contribution.