

d. Physician control and management of all facets of medical care would insure the best quality and quantity of medical care individually and collectively.

e. There would never be a need for professional strikes under Not for Profit procedure.

f. Taxation by all governmental agencies could be curtailed as the private sector increases its performance. Politicians are now at a point of distress politically and can regain and improve their image by supporting lower taxes while still being able to insure a free flow of medical care to the public.

g. Organized medicine and its leadership should encourage Not for Profit activity among their membership instead of bargaining away the medical freedom of their members under "usual and customary" or other fixed fee arrangements.

h. Not for Profit procedure under proper guidance of the Illinois State Medical Society and organized medicine as a whole is the best bargaining tool we have against the forces that want to give us something we don't want and from which the public will not benefit.

i. Public Health agencies will be given credit for promoting a strike free system and organized medicine will improve its image by providing better medical services.

j. Free philanthropic physicians can and will supply more and better services than medically regimented paupers—success will be by-product of honest effort. Amen.

4. Not for Profit procedure and reimbursement for public aid patients.

a. Negotiations for the adjudication of fees by the Illinois State Medical Society for medical service is a dangerous precedent and a process to be discouraged.

b. The Illinois State Medical Society would gain much favor with practicing physicians if it allowed them to negotiate their own contracts with the public aid department.

c. Physicians who practice either individually or in groups could negotiate as a group on a renewable contract basis to render services to public aid recipients.

5. Benefits to the Illinois State Medical Society.

a. Illinois State Medical Society recognition and improved respect from their membership.

b. Removal of Illinois State Medical Society responsibility from financial negotiations with public aid department.

c. The Illinois State Medical Society could be free to promote better health care and, at the same time, furnish the physicians of the Illinois State Medical Society an incentive program to help provide this care.

d. The Illinois State Medical Society will set the pace for professionals across the land with a positive and bold approach to the medical problems of our time. (Times a wastin'—Lets get on the road.)

6. Benefits to the physician.

a. Financial freedom and ability to expand facilities to meet the need for community services will insure medical progress and physician gratification.

b. Improvement in the physician's ability to meet his personal and family obligations (no one can adequately help anyone unless his personal responsibilities are cared for). Family security could be vastly improved.

c. Personal and not government control of the individuals financial affairs is always to be favored and can be assured every practitioner in Illinois.

d. Physician control over all medical complexes. Schools, hospitals, etc., will be made possible by generating the necessary monies as a by product of service. (The Illinois State Medical Society should subscribe to this principle.)

e. The unwarranted invasion of government into the lives of physicians as well as the progress of Socialism in our land will be reversed by these ideas.

f. By using the law and the constitution, rights of citizenship would be strengthened by every doctor who subscribes to Not for Profit procedure.

g. Finally, Not for Profit procedure will benefit society directly, medical professionalism will be re-asserted and upheld, and politicians will be glorified for accomplishments. Amen.

Humbly submitted.

MICHAEL R. SAXON, M.D.,
Medical Director, Saxon Foundation.

VITAL ROLE OF FOUNDATIONS

In his final report as president of the Ford Foundation, Dr. Henry T. Heald contrasts the position of private philanthropy today with its status a century ago, when James Smithson made a \$500,000 bequest for the founding of the Smithsonian Institution.

The question of accepting Smithson's contribution was bitterly debated in Congress for a long time. Many legislators feared that the endowment would be an opening wedge to a government-supported university. Today, billions of federal dollars are spent in aiding not only governmental but also private educational institutions.

In the early days of the Carnegie and Rockefeller foundations, private philanthropy dominated the fields of public health and scientific research. By 1930, however, the distribution of public funds had greatly expanded as government took over responsibilities for libraries, rural health, and medical research that had initially been assumed by the private foundations. From 1930 to 1960, public expenditures in these fields increased tenfold.

PIONEER PROJECTS SUPPORTED

The private philanthropies may take satisfaction in the growing federal support for preschool education, antipoverty programs, and the arts, Dr. Heald observes. But he emphasizes that the foundations have provided the cutting edge for social advances by calling attention to new problems and by supporting experimental projects later adopted on a national scale.

"Private institutions can do much to assure that the American version of the welfare state remains free of the bleak connotations of that term—a supine citizenry, an overweening bureaucracy, and an erosion of individual initiative," Dr. Heald declares. "*The foundations' great advantages are flexibility (which includes the ability to persist in an objective as well as to shift priorities), experience, independence, and the freedom to innovate, experiment, and concentrate on highly selective efforts.*"

In contrast, government programs, dependent on public favor, are under close official surveillance. Even as this is written, congressional investigating committees are scrutinizing the grant programs of the National Institutes of Health and other agencies.

Government projects are under pressure for quick results. Because of the continuous publicity given to each venture and the widespread condemnation of every failure, the government usually devotes itself to amplifying existing approaches and avoiding experimental innovations. The laboratory atmosphere is missing.

The foundations, on the other hand, may support bolder and more creative efforts. Therefore, Dr. Heald stresses, *the private philanthropies should not necessarily abandon any field simply because the government invades it.*

Especially important is the suggestion that "*foundations can serve a major function in assisting evaluation, research, and monitoring of government efforts.*" As I have often said, I have yet to see an annual report of any governmental agency that frankly admitted its efforts had proved inadequate. Yet inadequacies and even failures do exist.

Another disadvantage of government in this respect is that it must function on a national scale and cannot differentiate geographically. Perhaps the concept of matching funds is helping to overcome this disability, since those regions that have the most advanced medical education and research are at the same time the areas most likely to make matching funds available for still further expansion and development. [Italics supplied.]

Mr. PATMAN. We have copies available which Dr. Saxon sent to us in advance for the press, so we will carry out his intention by delivering the testimony to the press. It is very unusual for him not to be here, since he was so insistent that he didn't want to be subpoenaed, and would be here in person to testify.

The committee will stand in recess until 10 o'clock tomorrow.

(Whereupon, at 11:30 a.m., November 13, 1967, the subcommittee was recessed, to reconvene Tuesday, November 14, at 10 a.m.)

TAX EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

TUESDAY, NOVEMBER 14, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 1
OF THE SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2359, Rayburn House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Corman.

Also present: H. A. Olsher, director, Foundations Study; Myrtle Ruth Foutch, clerk; and John J. Williams, minority counsel.

Mr. PATMAN. The committee will please come to order.

We had scheduled Dr. Michael R. Saxon to testify yesterday but he failed to appear, despite the fact that by letter of October 16, 1967, he stated that:

It will indeed be a privilege for me to discuss my activities with the Saxon Foundation and the program sponsored by Americans Building Constitutionally.

I shall now read a telegram we received from Dr. Saxon yesterday afternoon, and then place it in the record.

The telegram is addressed to the chairman and says:

Foundation Subcommittee Rayburn Bldg RM 2328 Wash, D.C. Because of current evaluation of the Saxon Foundation by IRS legal counsel advises me to refrain from testifying beyond written testimony submitted. M. R. Saxon, M.D., Medical Director, Saxon Foundation.

(The telegram follows:)

CHICAGO, ILL.

Hon. WRIGHT PATMAN,
*Foundation Subcommittee,
Rayburn Building,
Washington, D.C.:*

Because of current evaluation of the Saxon Foundation by IRS legal counsel advises me to refrain from testifying beyond written testimony submitted.

M. R. SAXON, M.D.,
Medical Director, Saxon Foundation.

Mr. PATMAN. I also want the record to show that Dr. Saxon had been here as a spectator during our earlier hearings. Yesterday afternoon, we issued a subpoena for Dr. Saxon to appear on Friday at 10 a.m., November 17, 1967.

Our witnesses today are Mr. J. Alton Lauren and Mr. Richard J. Stephenson, trustees, two of the three trustees of ABC, Americans Building Constitutionally.

If you gentlemen will come around to the table accompanied by your lawyers, it will be appreciated.

There are four of you and four chairs. I assume that will be sufficient.

Which one is Mr. Lauren? And Mr. Stephenson?

Mr. SMITH. He is right here, Mr. Chairman.

Mr. PATMAN. Will you gentlemen stand and be sworn?

Do you solemnly swear that the testimony that you shall give before the House Subcommittee on Foundations of the House Small Business Committee will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. STEPHENSON. I do.

Mr. LAUREN. I do.

Mr. PATMAN. You may be seated.

Please identify your counsel. Mr. Stephenson first.

**TESTIMONY OF J. ALTON LAUREN AND RICHARD J. STEPHENSON,
ACCOMPANIED BY TURNER L. SMITH AND GEORGE D. CROWLEY,
CHICAGO**

Mr. PATMAN. You are counsel for?

Mr. CROWLEY. For Mr. Stephenson and Mr. Lauren individually and as trustees.

Mr. PATMAN. And as trustee. All right.

And Mr.—

Mr. SMITH. Turner L. Smith, attorney in Washington, D.C., 888 17th Street NW.

Mr. PATMAN. Counsel for whom? Both of them?

Mr. SMITH. I represent both of them and represent ABC, and represent them individually, too.

Mr. PATMAN. All right, sir. Fine.

I would like to ask Mr. Lauren some questions.

Please state your full name and address, Mr. Lauren.

Mr. LAUREN. J. Alton Lauren, 53 West Jackson Boulevard in Chicago.

Mr. PATMAN. What is your occupation and business address?

Mr. SMITH. Mr. Chairman, may I be permitted to make a very brief statement before you proceed with your questions?

Mr. PATMAN. Yes, sir, you may proceed, sir.

Mr. SMITH. I was employed by ABC as general counsel in Washington, D.C. and any other place throughout the country earlier this year. It was at that time that I first met Mr. Stephenson on my right, and subsequently met Mr. Lauren, and from that point on I got engaged with foundation questions, tax exempt questions, visited the Internal Revenue and the like.

Then there came a time, as the chairman and as the committee and counsel and staff know, when Internal Revenue started an investigation by its Intelligence Division, which because of my own experience within the Tax Division of the Justice Department we know them as special agents, and it is a criminal investigation. And because of those circumstance, and the fact that there is an investigation going which may very well involve their liberty, these two witnesses are going to plead the fifth amendment today; and they so advised me.

Mr. George Crowley, whom I have known many, many years, is their Chicago counsel, and he is in a better position than I am to

answer questions you may want to ask about the records and such as that, and as to that, why, I will defer to him.

Mr. CROWLEY. Mr. Chairman, if I may be permitted a few remarks.

Mr. PATMAN. Yes, sir, Mr. Crowley.

Mr. CROWLEY. I have noted that a review of the prior testimony disclosed that the committee's authority to act was challenged. And at this time I respectfully ask the chairman to produce the empowering authorization to act.

I respectfully ask that the chairman produce the authority which delineates the scope of your inquiry, so that the witness and counsel may be in a position to determine the materiality and relevancy of a particular question.

Mr. PATMAN. Well, of course we would expect the attorneys to do some work on their own about investigations, too. The record, it is a matter of public record that the House Small Business Committee was created by resolution which was authorized by the Rules Committee of the House of Representatives, and was adopted by a unanimous vote of the House of Representatives. The committee is permitted to engage in investigation of certain things that were set forth in the resolution, and to also appoint subcommittees and chairmen of subcommittees for the purpose of conducting investigations. The Honorable Joe L. Evins of Tennessee was selected as chairman of the Small Business Committee, meetings were held, an organization meeting was held in particular, and certain subcommittees were appointed. One subcommittee was appointed on foundations, which we have had before in prior Congresses, in prior years. It was just a continuation, so there is nothing new about it. It is rather traditional for the committee to take up foundations, and we have been pursuing that about 5 years, and this is just a continuation of it.

I was selected as chairman of the committee, and other Members were placed on the committee to serve as representing the Foundation Study Committee of the House Small Business Committee.

We assume that you are acquainted with that. I assume that you have read these resolutions and that being true, I feel that it is as much documentation as we need under the law and the rulings of the courts in this country.

Mr. CROWLEY. Thank you, Mr. Chairman.

Mr. SMITH. Pardon me. Now, Mr. Chairman, I take it that implicit in what you say is that you are stating to these witnesses and to their counsel that the committee regards itself as well authorized to proceed with the investigation.

Mr. PATMAN. Yes, sir.

Mr. SMITH. Now, may I complete my opening remarks. I was saving it until that. In view of the Internal Revenue investigation now underway involving these two witnesses and their organizations, may I respectfully ask you, Mr. Chairman, and the committee to adjourn the hearing or discontinue these inquiries for the immediate time being, until we can clear up and conclude the Chicago Internal Revenue investigation.

Mr. PATMAN. Well, of course that would necessarily be overruled because we can't wait on any Government agency to clear up anything, because sometimes that runs into years. We have our own responsibility outside of what any agency has, and we do not feel that we are obli-

gated to wait for any Government agency action. Therefore your suggestion or motion is overruled.

I have been told by the very high authority, the very, very highest, that there is no criminal investigation of the individual tax returns of Messrs. Lauren and Stephenson being conducted by the Service as of now. That information was available this morning.

Mr. CORMAN. Mr. Patman.

Mr. PATMAN. Mr. Corman.

Mr. CORMAN. Mr. Chairman, I want to inquire whether counsel has been provided with a copy of House Resolution 53 and had an opportunity to review it.

Mr. CROWLEY. I have not; no.

Mr. CORMAN. May I at this time, Mr. Chairman, give it to the gentleman? It is relatively short, but it is the empowering resolution for the investigation.

Mr. CROWLEY. Thank you.

Mr. PATMAN. I assume you have seen it, Mr. Smith.

Mr. SMITH. I have generally.

Mr. CROWLEY. May I just make this brief comment.

Mr. PATMAN. Yes.

Mr. CROWLEY. That our clients, Messrs. Lauren and Stephenson, are here in response to a subpoena served on them calling for the production of records of Americans Building Constitutionally. Upon my advice as counsel on November 3, 1967, whatever books or records were then in their possession of ABC were turned over to Mr. Robert Hayes, the managing trustee at the ABC offices.

Mr. PATMAN. As of what date?

Mr. CROWLEY. November 3, 1967, at the ABC offices in Barrington. At that time Mr. Hayes had given testimony and is still under subpoena, and returned the following week to give further testimony. And as a result of this action, they are unable to produce and comply with your subpoena demanding the records of ABC.

Mr. PATMAN. They are two-thirds of the board.

Mr. CROWLEY. That is correct; but I advised them—

Mr. PATMAN. Why are they unable to get their own records? The two of them represent a majority and have charge of the records.

Mr. CROWLEY. As a matter of fact, Mr. Chairman, since Mr. Hayes was under subpoena, and as I understood it was still under subpoena, we turned over all the books to him, so that he might be in a position to act as he or his counsel saw fit in regard to the records and we were not to be called until after Mr. Hayes had we thought completed his testimony, but apparently he has not.

Mr. PATMAN. I assume that you knew that he refused to present them.

Mr. CROWLEY. I know that he did not present them. The date of his refusal I am not aware of.

Mr. PATMAN. Don't you think that would require some effort on the part of the majority of the trustees to make them available, since they are required to furnish them and they have the power to furnish them?

Mr. CROWLEY. Well, Mr. Hayes was testifying at the time, Your Honor.

Mr. PATMAN. Mr. Hayes was not here yesterday. He was obligated to be here under subpoena, and today, but he is not here today, I as-

sume. At least I don't know anything about it if he is. But you represent two-thirds of the three trustees, and under the law I assume that your majority would be construed as having charge and custody of the books and papers; wouldn't you?

Mr. CROWLEY. Well, Mr. Hayes is the managing trustee and as such I assume that the managing trustee has control.

Mr. PATMAN. In his testimony I think you will find that he denied that he was managing trustee.

Mr. CROWLEY. I thought I read his testimony to the contrary.

Mr. PATMAN. I am quite sure that what I said is correct.

Now, Mr. Lauren, by subpoena which was served on you, you were ordered to bring with you the following information:

1. A financial statement of Americans Building Constitutionally, for the 12 months ending September 30, 1967, including income and disbursements and balance sheet.

2. A list showing names and addresses of members of Americans Building Constitutionally, and the membership fee received from each one of them.

I am now ordering you to hand me the information described in that subpoena.

Mr. LAUREN. I respectfully decline to answer, invoking protection of the fifth amendment on the ground that my answer might tend to incriminate me.

Mr. PATMAN. You are directed to answer it, Mr. Lauren.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. We have requested by letter dated October 25, 1967, that you furnish us certain documents and information relating to the history and operations of your foundation. Will you please now send up the information and documents described in the attachment A which accompanied our request of October 25. You have that, I assume. It was furnished to you.

Mr. CROWLEY. Mr. Chairman, in regard to that request—

Mr. PATMAN. Yes, sir.

Mr. CROWLEY. We recognize the authority of the committee to issue subpoenas in connection with the production of records of the respective individual foundations, and we shall honor such subpoenas and produce the individual foundation records called for by a subpoena issued by your committee.

Mr. PATMAN. We assume that you have it now, and we would like to have it.

Mr. CROWLEY. We do not have the records with us.

Mr. PATMAN. Well, in the subpoena duces tecum you were of course required to present this information. The questions are asked here in attachment A.

Mr. CROWLEY. I don't recall that a subpoena was issued to Mr. Lauren in connection with these individual trusts.

Mr. PATMAN. All right. You are directed to bring this information in, and I assume that you will, according to what you have just said.

Mr. CROWLEY. That is correct, Mr. Chairman. This is under a subpoena.

Mr. PATMAN. Yes, sir.

Mr. CROWLEY. Thank you.

Mr. PATMAN. As you know, we had asked you to furnish the information relating to your foundation not later than November 7, 1967. We have not as yet received the data. Now, when will you have this information available? We want a definite time.

Mr. CROWLEY. How would 10 days be, Mr. Chairman?

Mr. PATMAN. Today is the 14th, isn't it? By the 24th?

Mr. CROWLEY. Produced by November 24.

(The information had not been received at time of printing.)

Mr. PATMAN. Thank you. By 10 o'clock in the morning of November 24. That will be satisfactory. I am informed that ABC—that is agreeable with you gentlemen, the witnesses, I mean Mr. Lauren. He is the one that we are interrogating about his foundation. This information relates to his foundation.

I am informed that ABC has at various times had bank balances ranging from as high as six figures to seven figures. However, I am also informed at the present time ABC's bank balance is very small indeed. What has happened to all that money, Mr. Lauren?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. How much money does ABC have in the bank today, Mr. Lauren?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. I direct you, as chairman of the committee, to answer the question.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. And I direct you to answer the following question:

How many members does ABC have as of now?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. As chairman of the committee, you are directed to answer this question:

How long have you been a trustee of ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. I direct you to answer the following question:

In how many States does ABC have members?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed by the chairman of the committee to answer this question:

How long have you known Robert D. Hayes?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question:

How long have you known James R. Walsh?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question :

Have the trustees of ABC kept minutes of their meetings and copies of the resolutions considered by them?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question :

Who has the minute book and supplementary records?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question :

In his testimony of November 7, 1967, Mr. James R. Walsh stated that there was a contract between the Walsh Family Foundation and ABC. I hereby order you to furnish this committee not later than November 16, 1967, a copy of this contract as well as a copy of the trustee's resolutions accepting the contract, and copies of all contracts to which ABC is a party.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question :

I am also ordering you to furnish this committee by November 16, 1967 copies of all minutes and supplementary information relating to the meetings of ABC trustees. Will you answer that question and will you furnish the information?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question :

Have the trustees of ABC given Internal Revenue Service access to any of ABC's records?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has the Internal Revenue Service taken any records or copies of records from ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Please describe the type of records that the Internal Revenue Service has been permitted to inspect.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Have you been engaging in any illegal practices in the operation of ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

If you haven't been engaging in illegal practices, then why would the disclosure of such information jeopardize your position?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question, Mr. Lauren.

It is true, is it not, that pressure has been put on you to keep you from disclosing information to the subcommittee?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

What kind of threats have you been subjected to?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has anyone threatened to use an injunction to keep you from disclosing information to the subcommittee?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

In what way has James R. Walsh been connected with ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Was James R. Walsh present at any of the meetings of the trustees of ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How many times do you recall seeing Mr. Walsh at those meetings?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Do you file a Federal income tax return as an individual?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Upon what legal basis do you contend that you are exempt from filing a personal Federal income tax return?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

James R. Walsh is credited with creating the ABC package and then selling the idea to Mr. Hayes. Is this the way it actually happened?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

What are the names and addresses of the banks or other financial institutions in which ABC has accounts?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

What are the names and addresses of the investment or brokerage firms in which ABC has accounts?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has ABC or any of its affiliates deposited any funds in foreign banks or in other foreign financial institutions?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

What are the names and addresses of the foreign banks or other foreign financial institutions in which ABC or its affiliates has deposited funds?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

According to the Wall Street Journal of October 25, 1967 your associate, James R. Walsh, Jr., has been linked "with a savings and loan association that had dealings with the Chicago underworld." Is this true?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has ABC received any part of its funds from any person or organization connected with the underworld?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has ABC received any funds from sources that are engaged in illegal activities of any kind?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

You are hereby ordered to furnish the subcommittee by November 16, 1967 the names and addresses of all organizations that have obtained membership in ABC without cost.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How many members of ABC have borrowed money from the organization?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How much money has ABC loaned to its members?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are hereby directed to furnish the following information to the subcommittee by November 16, 1967.

1. Name and address of every ABC debtor since date of organization.

2. Face amount of the loan.

3. Interest rate.

4. Date loan was made.

5. Due date.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has anyone paid \$10,500 for a membership in ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How many people have paid \$10,500?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has anyone paid more than \$10,500 for a membership in ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How many people have paid more than \$10,500?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the following:

Have any of the following foundations ever been a senior member of ABC? Just answer yes or no and I will read their names.

R. D. Hayes Family Foundation, Sales Analysis Institute Foundation, Walsh Family Foundation, Tudhore Foundation, Odell Tudhore Educational Trust, Saxon Foundation, Philippa Schuyler Me-

memorial Foundation, Hough's Encyclopedia of American Woods Foundation, Inc.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the ground that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

How much did it cost each of those foundations to become a senior member of ABC? Please give me the membership fee as I read their names: R. D. Hayes Family Foundation, Sales Analysis Institute Foundation, Walsh Family Foundation, Tudhope Foundation, Odell Tudhope Educational Trust, Saxon Foundation, Philippa Schuyler Memorial Foundation, Hough's Encyclopedia of American Woods Foundation, Inc.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Has ABC invested any of its funds?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

What type of investments has ABC made; that is, are the investments in securities, real estate, or what?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Do the members of ABC receive a financial statement at any time?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

At what intervals do members of ABC receive a financial statement?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question: Do the members of ABC receive a financial statement annually?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question: Will ABC give a member a financial statement upon his request?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Have you ever seen an ABC financial statement?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Have you ever inspected ABC's accounting records?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question: Who is the person in charge of ABC's accounting records?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. As a trustee of ABC have you ever requested a certified financial statement of that organization?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

As a trustee of ABC, have you ever requested an audit of that organization?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question.

Have you ever signed an ABC check?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How many ABC checks would you estimate that you have signed?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. How many ABC checks would you estimate you have signed since October 1, 1967?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. CORMAN. Mr. Chairman, may I inquire of counsel, first of all, have you had an opportunity to review House Resolution 53?

Mr. CROWLEY. Yes, I have, Mr. Corman.

Mr. CORMAN. You can see by that resolution the reason for an investigation of this type is to ascertain, first of all, whether the executive branch is enforcing the existing law and, secondly, whether we want to make recommendations to the Congress to change those laws.

The tax laws go to the very heart of Federal responsibility. It may well be that there has been nothing improper done by these witnesses or any other, but we may want to recommend changes in the income tax laws.

I respect your advising your clients concerning the fifth amendment. I do not want to pursue a line of questions that will necessarily be responded to by the fifth.

On the other hand, I would like to know whether you would advise your client if it would be proper for him to answer general questions

in this area about the not-for-profit corporations and the foundations that are set up, to avoid taxes, and to answer them in hypothetical terms, without going into the specifics of ABC or any foundations that he has given some advice to, because we need to know, and we are going to find out one way or another, what is happening in this field. We can't intelligently make recommendations about changes, without knowing what the present system is, and what practices are.

For instance, when your client was asked whether or not pressures or threats had been brought against him to prevent his testifying, he responded with the fifth. That seemed to me to be a peculiar response. I can't see how he would be intimidating himself, or, might be prejudicing his position by answering whether or not he had been threatened or pressured to refuse to appear before this committee. Now, maybe I have missed something. You as counsel might help me in this respect.

Mr. CROWLEY. Well, giving a hypothetical answer, if pressures have been brought and if he acceded to pressures, why there may be some question of liability, and therefore I am respectfully advising him not to answer.

Mr. CORMAN. All right. Now, the other question. Would you be in a position to advise him to answer hypothetical questions about the usefulness of tax-exempt foundations and the avoidance of income taxes?

Mr. CROWLEY. May we have about 2 minutes to confer on this problem?

Mr. PATMAN. What about having a 5-minute recess?

Mr. CORMAN. All right.

Mr. PATMAN. We will have a 5-minute recess.

(A brief recess was taken.)

Mr. PATMAN. The committee will come to order.

Any statement which you desire to make, Mr. Counsel, you may do so.

Mr. CROWLEY. Mr. Corman, in view of the authority set forth in *United States v. Hoffman*, 341 U.S. Reports, we believe that for the witness to answer any questions of a relevant nature, be they hypothetical or not, it might well be construed as a waiver of his rights, and any information that may provide a link in the chain might constitute a waiver. It is upon that thesis that I as counsel have recommended this action.

Mr. CORMAN. Yes, sir. Now, one further question. Would that be the same advice you would give him concerning his testimony about the Lauren Foundation? Is it the Lauren Family Foundation?

Mr. CROWLEY. I believe it is the Lauren Family Foundation.

Mr. OLSHER. Doesn't he know?

Mr. CROWLEY. Yes; it is. As far as oral testimony; yes. As far as supplying the records, we would provide the committee, in response to a subpoena, with the records of that foundation.

Mr. PATMAN. Let me correct that. He is under subpoena now.

Mr. CROWLEY. That is correct.

Mr. PATMAN. Being under subpoena and subject to questioning by committee members, we are directing him to furnish that information. We consider that sufficient. Another subpoena is unnecessary. Do you accept that?

Mr. CROWLEY. We will accede to the Chair's statement.

Mr. PATMAN. All right, sir; fine.

Have you finished?

Mr. CORMAN. Yes, sir. I respect counsel's decision. I must say that it will be harder and it will take us longer, but we must find out how these foundations are operating. We may all be back together again some day, I suppose.

Mr. PATMAN. Now, you are directed to answer this question.

Does ABC have assets?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. How did ABC acquire those assets; from whom?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. What is the asset value of ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question has anyone ever told you how much ABC's assets are worth?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Have you ever inquired as to the value of ABC's assets?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question to whom would you make such inquiry.

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question Is ABC a philanthropic organization?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question Who benefits from it; from the ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question what is the purpose of ABC?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question has ABC filed an application for Federal tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question: Why hasn't ABC filed an application for Federal tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer: Who advised ABC that it does not have to file an application for Federal tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer: ABC has been in business now for over a year. Has the organization filed a form 990-A tax return?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Why hasn't ABC filed a form 990-A tax return?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Who advised ABC that it does not have to file a tax return form 990-A?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. What type of tax return, if any, has ABC filed for its first year of operation?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How much Federal income tax has ABC paid since the date it was organized?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How much State income and other taxes has ABC paid since the date it was organized?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How much local taxes, such as real estate, has ABC paid since the date it was organized?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Does ABC consider that it is exempt from paying gasoline taxes?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How many of the members of ABC have applied for Federal income tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. How many of those applications for tax exemptions have been refused by the Internal Revenue Service?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer. What is your foundation, a corporation or a trust?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Where and when was your foundation created under that name?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer: As I understand it, your foundation has not filed an application for Federal tax exemption, and it has not filed a form 990-A tax return since the date of its incorporation. This is true, is it not?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer this question. Why hasn't your foundation filed an application for Federal tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer the question. Who advised your foundation that it does not have to file an application for Federal tax exemption?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer: Why hasn't your foundation filed a tax return form 990-A?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. You are directed to answer. Who advised your foundation that it does not have to file a tax return form 990-A?

Mr. LAUREN. I respectfully decline to answer, invoking the protection of the fifth amendment, on the grounds that my answer may tend to incriminate me.

Mr. PATMAN. Now, you gentlemen, Mr. Lauren and Mr. Stephenson, will remain under subpoena, and of course under the oaths that you have taken, and we will have to let you know when we want you back here. It appears right now, the House meeting at 11 o'clock, we will have to be over there soon. We will be unable to sit this afternoon, because the House will certainly be in session, and in debate. Tomorrow we have the Secretary of the Treasury as a witness, and following him will be Mr. Cohen, Commissioner of the Internal Revenue Service, so that makes the next 2 days occupied.

That will be including Thursday. Friday we have a subpoena for Mr. Saxon to be here at 10 o'clock. Now, if your interpretation of the fifth amendment is correct, Mr. Counsel, Mr. Hayes has already waived because he answered a number of questions that he felt were important to him to answer. The same will apply to Dr. Saxon, because he not only has answered, he sent in testimony to be used in the proceedings, and they are in the proceedings as of yesterday. So that would of course cause them to lose their immunity, if your interpretation is correct.

I am not asking any question on that. I am just bringing it to your attention, sir.

Do you have anything else, Mr. Corman, before we recess?

Mr. CORMAN. I only would ask counsel if he might review again—I appreciate the fact that you did it very quickly here—the application of the fifth amendment in this area of responding to hypothetical questions about setting up foundations and the tax consequences. I don't want to unduly burden you with having to respond with that answer to a long series of questions.

On the other hand, as I pointed out to you, in the public interest we need badly to know what the situation is, and your clients may be some of the people who have some expertise in this field, and may be in a position to answer without incriminating themselves. I would just ask that you review that and if you can see any area in which in your view they can give us evidence, it will be appreciated by me and I think by the whole committee.

Mr. CROWLEY. Mr. Corman, please be advised that we shall review the position that we have been taking, and Mr. Chairman, might I state, in the interests of saving the committee time and everyone's time that the same situation controls as far as Mr. Stephenson is concerned, and if he were called at this time to respond to a similar line of questioning his answers would be the same, on advice of counsel.

Mr. CORMAN. It might be well for the record for Mr. Stephenson to indicate that, I think, just for the record.

Mr. STEPHENSON. My position, Mr. Chariman, would be as counsel outlined, identical with J. Alton Lauren, trustee of ABC.

Mr. PATMAN. I do not know of any other way to proceed except to ask you each question. Do you have any suggestion to make on that?

Would you suggest that we read all the questions at one time and have them make one reply, or would the interpretation of the court not permit that?

Mr. CROWLEY. I would think rather than laboriously going through that, if it is counsel's judgment as well as the chairman's judgment, that the questions could be drafted and stipulated, the answers thereto, rather than take up everyone's time to get the same end result.

Mr. PATMAN. Before you return, which looks now as though it will be sometime after Thursday of next week, before we can get to you again, we will look into the question and see if there is some way to prevent asking the questions and demanding a reply to each one. If there is some way around, of course it is in the interests of both sides to use it.

Mr. CROWLEY. Thank you, Mr. Chairman.

Mr. PATMAN. Right now I am under the impression we have to ask each question. That is the way I have been impressed. But if there is a way around it, we will do it.

Mr. CROWLEY. Thank you, sir.

Mr. PATMAN. Thank you gentlemen, very much, and your attorneys for coming.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. PATMAN. We will see you at the first opportunity.

The committee will stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 11:05 a.m., November 14, 1967, the subcommittee recessed to reconvene at 10 a.m., Wednesday, November 15.)

TAX EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

WEDNESDAY, NOVEMBER 15, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 1
OF THE SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2359 Rayburn House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman, Corman, and Morton.

Also present: H. A. Olsher, director, Foundations Study; Myrtle Ruth Foutch, clerk; and John J. Williams, minority counsel:

Mr. PATMAN. The committee will please come to order.

Today, we welcome Secretary of the Treasury Fowler. Aside from the fact that we try to be courteous to all who appear before this committee, we welcome him also because it is very seldom that anyone in the Treasury Department, let alone the Secretary himself, shows enough interest in the massive problem of tax dodging via foundations to travel all the way to the Hill to discuss the matter with Members of Congress.

During our 1964 hearings, I made the following statement:

The Secretary of the Treasury has testified that it is the Treasury's duty to be alert to all possible violations of law. The Secretary also says (1) he does not consider it proper for a foundation to engage in insider's stock deals, stock price manipulations, short sales, margin trading, speculation in commodity futures, or to act as an unregulated source of stock market credit, and (2) the SEC should be alerted to the possibility of a foundation's involvement in insider deals and stock price manipulations.

Yet, testimony before this Subcommittee indicates the following:

The IRS does not examine foundations to determine whether they are violating any Federal securities laws—including those relating to insider's stock deals, stock price manipulations, and unregulated sources of stock market credit.

The IRS has not collected any information as to the extent that foundations are involved in speculation and trading on margin.

The IRS has not collected any data on the involvement of foundations in corporate proxy fights.

The IRS does not examine the foundations to determine whether they are violating any CAB regulations.

The IRS does not examine foundations to determine whether their foreign operations may be in conflict with Government policies.

The IRS does not examine foundations to determine whether the foundations are channeling income and corpus in a direction that may hurt competitors and investors.

The IRS does not examine foundations to determine whether they are being used as a device for engaging in various trade practices which might be in violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division.

Few of the persons in the IRS who examine foundation tax returns would be sufficiently familiar with the antitrust law to know whether the practices as cited may violate Section 5 of the FTC Act or the Sherman Act.

The IRS does not examine foundations to determine whether there is a conflict of interest between the duties of a foundation's directors or trustees and their interests as officers, stockholders and employees of business corporations whose stock is controlled by the foundation.

The Secretary of the Treasury says that the Treasury does not know how many tax exempt foundations there are.

The Acting Commissioner does not know how many IRS employees are assigned to supervising tax exempt foundations.

The IRS generally leaves it up to the officers of a foundation to decide what salaries they pay and the expenses they desire to pay.

The Acting Commissioner does not know of any cases where compensation of officers, directors or trustees among the large foundations has been unreasonable or unjustified. Yet, Mr. Benson Ford received \$15,000 for attending three meetings of the Ford Foundation.

The IRS does not review a foundation's individual charitable donations.

The IRS has no rule of thumb regarding the percentage of income that a foundation must spend for the purpose for which it was granted tax exemption.

The IRS does not examine foundations to determine whether contributions are being made to the foundations by persons or organizations that supply goods or services to companies interlocked with the foundations.

The IRS does not know how much money was spent overseas by U.S. foundations in 1963.

The IRS does not examine foundations to determine whether they are making loans overseas that may be contributing to our balance of payments problem.

This is the most impressive record of do-nothing that I have seen in my 36 years in Congress. When it comes to the proper policing of tax exempt foundations, the IRS appears to be totally impaled in the quicksands of absolute inertia.

I regret to say that those observations are just as pertinent today as they were 3 years ago in 1964.

The U.S. Treasury has distinguished itself by indifference, indolence and bungling in facing up to the problem of tax dodging via foundations. For 5 years, we have been trying to discover whether the Treasury is alive or dead when it comes to supervising and scrutinizing the affairs of this Nation's tax exempt foundations.

Up to this point, all I can say is that I hope the Treasury is not dead, but I have not detected any promising signs of life in its supervision of foundations.

Because the Treasury has been so completely incapable of doing the job, I have, for 5 years, stated that a special Government agency should be established to oversee tax-exempt foundations. In May 1963, Mortimer M. Caplin, then Commissioner of the Internal Revenue Service, publicly agreed with me that the IRS is not the proper agency to exercise effective supervisory control of tax-exempt foundations, "if the kind of supervision and control exercised, for example, by the Securities and Exchange Commission over investment companies and public utility holding companies, should ever become necessary."

The success of the ABC scheme is proof enough that such supervision is desperately needed.

I should add, however, that, during our 1964 hearings, Secretary of the Treasury Dillon became very bold indeed and stated that "It may well be that, after considering the matter further, regulatory agency supervision will be considered a wise thing." Yet, the last 3 years, the

Treasury has done nothing to take the initiative so desperately needed in this area.

In my view, the Treasury, itself, has hatched the ABC tax-dodging scheme. Since 1921, Treasury regulations have required the filing of some type of application for tax exemption. And, since 1941, the Department's regulations have required foundations to file an annual information return. Yet, 46 years later, the exemption application is still required only by regulation and not by law. So, now the Treasury is faced with the ABC problem at the same time that it is trying to sell the Congress on a bigger tax bite.

Coming now to the particulars of our investigation of the organization known as Americans Building Constitutionally, I think it has become quite evident that the promoters of ABC have flagrantly defied the Treasury as well as this committee. Their defiance, of course, is built on the assurance that the Treasury Department is sluggish, if not dead, and that their manipulation of Treasury regulations will probably not result in any crackdown by the Secretary's men. Indeed, we would not now be plagued by the ABC and by the threat of similar organizations springing up, if the Treasury had been on its toes instead of on its back.

A POOR MAN'S LOOPHOLE IS NOW NEEDED

Also, the ABC scheme is noteworthy because it reveals that the Treasury has also closed its eyes to the irregular conduct of the foundations of middle-income tax-dodgers. Ordinarily, it has reserved its favoritism for the rich tax-dodger. We all know that the Treasury has traditionally treated the foundation tycoons with great sympathy and understanding, as though they were the underprivileged class. Now, it appears that the Treasury has turned its misdirected sympathies to the defense of the creators of middle-income loopholes. That leaves only the poor class; if poor people can develop their own loopholes and receive the same compassionate treatment from the Treasury, then every economic class of our citizens will be taken care of and our tax base will be wiped out altogether.

In anticipation of this eventuality, perhaps the Secretary will explain to us today how he proposes to support the Government in that not distant day when everyone—through the generosity of the Treasury—is permitted to have his own loophole.

I should like to say only one other thing with respect to ABC at this time; that is, if the operations of the foundation members of ABC are legal, the Secretary must so inform the Members of Congress so that they can transmit the tax-avoidance scheme to their constituents. We look forward to a statement of the Secretary's position on this with great eagerness, and hope that he can give it to us today in our discussion here.

I want to emphasize that I have no personal feelings against Secretary Fowler. However, I do feel strongly that the Treasury Department has been derelict in its responsibilities in the foundation field.

Mr. Secretary, we are delighted to have you today. And I believe

you have a prepared statement; and you may proceed in your own way, sir.

TESTIMONY OF HON. HENRY H. FOWLER, SECRETARY OF THE TREASURY, ACCOMPANIED BY SHELDON COHEN, COMMISSIONER OF INTERNAL REVENUE; STANLEY S. SURREY, ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY; AND JEROME KURTZ, TAX LEGISLATIVE COUNSEL, DEPARTMENT OF THE TREASURY

Secretary FOWLER. Mr. Chairman and members of the subcommittee, I should like to take this opportunity to state, as succinctly and directly as I can, both the record and the position of the Treasury Department on legislative reform relating to private foundations. If you or your staff have any questions concerning the administration and application of existing laws in various individual cases and situations, I shall refer all questions and leave the discussion to the Commissioner of Internal Revenue, in whom I repose the highest confidence.

Mr. PATMAN. Will you identify for the record, please, the gentlemen accompanying you?

Secretary FOWLER. Commissioner of Internal Revenue, Mr. Sheldon Cohen at my right; Assistant Secretary of the Treasury for Tax Policy, Stanley Surrey at my left, and Mr. Jerome Kurtz who is the Tax Legislative Counsel of the Treasury.

Mr. PATMAN. Yes, sir.

Secretary FOWLER. As I stated, Mr. Chairman, if you or your staff have any questions concerning the administration of existing laws in various individual cases or situations, I shall refer all questions and leave the discussion to the Commissioner of Internal Revenue in whom I repose the highest confidence. He is in charge of the administration of tax laws.

In his appearance before your committee in the summer of 1964, my predecessor Secretary Douglas Dillon stated:

As a matter of personal practice, I do not associate myself, and have disassociated myself ever since I was in the Treasury, with individual tax cases and tax questions, so that to the extent it is an individual case dealing with an individual taxpayer or an individual foundation which is not a taxpayer, but has to file information returns, I would not have any action. This has been left entirely to the Internal Revenue Service.

I, too, have followed Secretary Dillon's practice.

On detailed questions as to the various choices of remedy through modification of the laws applying to foundations, I shall call upon Assistant Secretary of the Treasury for Tax Policy Stanley Surrey, who was in charge of the study which resulted in the submission of the Treasury Report on Foundations which contained the Treasury Department's recommendations for new legislation concerning foundations. I resigned from the Treasury as Under Secretary in April 1964 and returned as Secretary in April 1965. In that interval, the Treasury completed its report and Secretary Dillon submitted it to the appropriate committees of Congress for implementation. While I am not familiar in detail with all of the choices open at that time and the

reasons for the selection of those which are included in the Treasury report, by reason of not being in the Treasury Department then, I endorse the principal recommendations and will support them if called before the House Ways and Means Committee and the Senate Finance Committee, the committees of appropriate jurisdiction in this matter.

From 1961 through 1964 the Department conducted an extensive study of the activities of private foundations and the operation of the present laws governing them. It analyzed the relevant administrative and litigation experience of the Internal Revenue Service and the Department of Justice. It made a special survey of a selected sample of about 1,300 foundations to secure new data about their characteristics and performance. Department representatives discussed the facts of the foundation world with lawyers, accountants, critics, administrators, and others familiar with foundation operations. Careful attention was given to the work of other investigators, including this subcommittee.

Drawing upon the information produced by this study, the Treasury Department concluded that six major problems exist among private foundations. The Department found, also, the presence of several additional problems of less general significance. In its Report on Private Foundations, submitted to the House Ways and Means Committee and the Senate Finance Committee early in 1965, the Department described these problems in considerable detail, provided a series of illustrations of each of them, and recommended quite specific revisions of existing Federal laws to deal with them.

That study did not conclude that the abuses outweighed the benefits to society of private foundations. Rather the report concluded, and I firmly believe, that private foundations fulfill a vital need of our society; the need for the pioneer and the vision of the experimenter. In this role, they both complement and supplement the services provided by government and by other nonprofit activities in general.

Thus, our recommendations were conceived within the framework of preserving this vital philanthropic activity. Our objective is the elimination of abuses engaged in by some and thereby to strengthen the institution itself.

We should not be misled or diverted from this goal by those who operate on the fringes of philanthropy or with the cloak of philanthropy but without philanthropic motive. The aberrations which they produce can be readily curbed either under existing law or if necessary by specific and selective legislative changes. It is a disservice to confuse those who pervert the law for private gain with those foundations which operate to sustain and advance philanthropy.

The Senate Finance Committee published the Treasury report at once. Later in the year the House Ways and Means Committee solicited written comments on the report from the general public. It published those comments in November and December of 1965.

In his 1966 Economic Report to the Congress, the President urged the Congress "to deal with abuses of tax-exempt foundations." In his Economic Report of 1967, the President again directed congressional attention to the need for reforms in this area. However, the Ways and Means Committee—its time during the past several years almost steadily occupied by other major tax and social security legislation—has not yet taken further action on the Treasury report.

An examination of the record, then, makes the Treasury Department position on foundation reform quite clear. Having studied the field thoroughly, the Department reported its findings to the Congress, made specific and detailed recommendations for legislative action, and has strongly urged adoption of those recommendations. The President has twice recommended action. The Department presently awaits the attention of the tax-writing committees to this important matter and stands ready to work on this important phase of tax reform with those committees in the customary manner and procedure when they are ready to proceed.

Mr. Chairman, that concludes my formal statement, but, in view of the fact that you made some other comments that I was not aware of until I arrived and heard them, I will indulge in a few supplementary remarks.

Mr. PATMAN. You may feel at liberty to do so.

Secretary FOWLER. Whatever I have to say—as you said, sir—I have great respect for you and this committee, and nothing that I say will be personal.

There was, I think, an early reference in your comments to “travel to the Hill” and a concern about tax dodging and the absence of such travel to the Hill by representatives of the Treasury Department. I think that comment could only come from one most uninformed about the travels of the Treasury Department to Capitol Hill in recent years having to do with tax reform.

Mr. PATMAN. Tax dodging.

Secretary FOWLER. Tax reform is the device customarily used as far as Congress is concerned, to change and modify our laws to deal with tax dodging. That is what we come up to the Hill to get: changes in the laws to deal with that.

And I might add that by the Revenue Act of 1962, and the Revenue Act of 1964, no matter how measured, far greater sums have been collected as the result of these extensive reforms than in all of the period of preceding history of the revenue or income tax laws, since they became a part of the law of the land in 1916.

A careful examination of the details of those two laws, I think, would inform your staff, who have given you this type of comment. The number of days which were spent in appearances before the House Ways and Means Committee, formal appearances on those two acts by Secretary Dillon, by me when I was Under Secretary, by Secretary Surrey, and others amount to hundreds and hundreds of days of hearing time.

The collateral and informal colloquy with committee members concerning these laws, answering their questions, and dealing with their concerns about various aspects of them, would add many days to those totals of formal hearings. So, it is an uninformed comment to talk in a derogating fashion about travel to the Hill with the concern about tax dodging. It is a kind of comment, with references to whether or not the Treasury is dead, that one could equally well say: “Is Congress dead?” It does not advance the dialog to deal in these terms.

No, the Treasury is not dead in this area any more than God is dead because some of his children occasionally are wayward in their activities.

As you will see from the Treasury report, we readily recognize that there are serious abuses by various private foundations which are in

serious need of correction, both by changes in law and by more effective administration of existing laws which we have been earnestly trying to attain in recent years.

But, in the words of the Treasury Department report, in dealing with this problem I would like to say that looking at the vital role these institutions—private foundations—play in our society, in evaluating the three broad criticisms that have been made of them and analyzing those criticisms, it seems to us that the proper course is prompt and effective action to end the specific abuses extant among the foundations rather than to try to destroy them as institutions.

I commend to you and your staff an excerpt from Sir Thomas More's "Utopia," which I think has some reference to the problem we are concerned with in our respective attitudes.

Sir Thomas More said:

If evil persons cannot be quite rooted out, and if you cannot correct habitual attitudes as you wish, you must not therefore abandon the Commonwealth * * * you must strive to guide policy indirectly, so that you make the best of things, and what you cannot turn to good, you can at least make less bad. For it is impossible to do all things well unless all men are good, and this I do not expect to see for a long time.

So said Sir Thomas More.

Now, you also made some references to the fact that Internal Revenue agents did not examine foundations and report on the violations or grounds for believing that they might have violated a large number of other Federal laws, such as your Robinson-Patman Act, such as the other antitrust laws, such as the Securities and Exchange Exchange Commission law, such as the CAB laws.

Let me point out that the Internal Revenue Service does not examine corporations on all of these subjects. They leave the primary responsibility for administration and enforcement of these laws to the duly constituted agencies that have been provided by the Congress and directed to enforce these laws. And while I think there should be, and I hope there is, an adequate practice that whenever evidence of such a violation comes to the Internal Revenue Service, it would pass that information on to a sister agency, it is no reflection on the Internal Revenue Service that private foundations violate the anti-trust law, or that private foundations violate the Civil Aeronautics Board's regulations, or violate the laws enforced by the Securities and Exchange Commission or by the Federal Trade Commission. You should have before you the representatives of those agencies, to find out whether they have been enforcing the laws for which they have primary responsibility with regard to foundations.

Now, with regard to what has been done in the last 3 years since the 1964 hearings, in the field of administration and enforcement, I think the record will speak for itself. I will leave it to Commissioner Sheldon Cohen to develop the story and the account of what Internal Revenue Service has done to strengthen the enforcement of these laws.

Let me say, Mr. Chairman, that when I first became familiar with this problem, when coming into the Treasury Department as Under Secretary in 1961, in the light of my own examination and reading some of your early reports, I shared with you the conclusion of those early reports, that in the years preceding there had been a degree of laxity in enforcing the existing laws as regards private foundations.

I found that the degree of laxity could be corrected in some major respects. Efforts were undertaken and we have followed through on

them in recent years. I think particularly, as Commissioner Cohen will indicate, this has been intensified as the Service has had increased personnel made available to it, and as the automatic data processing system, which has been in the process of installation and operation over the past years, has given the Service better tools to do the job.

But I would agree with you that a great deal needed to be done at the outset to improve the administration of the laws. I think a considerable amount of progress has been made. I would not contend that progress is sufficient for either you, or your committee, or Commissioner Cohen and the Internal Revenue Service, to pause in the pursuit of a better enforcement pattern.

I certainly do not think this progress allows us to abandon the effort to change the law to deal with the abuses to which the specific recommendations in this report are directed.

I do believe that the effort to intensify the enforcement of existing laws in this area and to strengthen the legislation on the books is a desirable one, and I certainly have done everything I reasonably could to encourage it.

Now, let me say I do not think we will ever reach perfection in these matters. One could always use a great deal more manpower in enforcing Internal Revenue Service laws and achieve a higher state of perfection. We have persistently appealed to the Congress for increased appropriations to make increased staff available, so that it could be reasonably allocated among the various responsibilities of the Service.

We have sought diligently to obtain appropriations to install all the most modern and efficient mechanical devices in the so-called automatic data processing system, and we shall continue to persist in that effort.

There is a point at which one reaches the law of diminishing returns, and the appropriations committees, the appropriation authorities of the Congress, are quite proper in granting this increase in available manpower and equipment to the degree that they think is consonant with frugal administration of this important phase of our activities.

In this connection, we would always appreciate any assistance and support from this committee in encouraging increased availability of appropriations and manpower.

With regard to the ABC matter which you made reference to on the mass foundation formation, I shall only call your attention to the news release of the Treasury of October 12, in which—and I quote:

The Internal Revenue Service said today that for the past eight months it has been looking into widely promoted plans for tax avoidance through the use of private foundations or family trusts and is examining a number of foundations created under these plans.

The IRS statement was made in response to inquiries resulting from Representative Wright Patman's announcement that the House Subcommittee on Foundations, which he chairs, will conduct hearings on "tax-dodging foundations" starting on October 30.

IRS expressed doubts about the legality of this type of foundation and warned that the tax consequences to those who participate could be adverse.

While it cannot discuss individual cases, IRS said the schemes for escaping tax follow a general pattern and usually involve creation of one or more private foundations. The taxpayer turns over to the foundation his business assets and all, or a substantial part of, his other assets and becomes the director or trustee of the foundation.

The promoters of the plan usually represent that a taxpayer can operate his business under cover of the foundation as an "educational" or "research" activity exempt from Federal income tax. IRS said, however, the mere coloration of an otherwise profit-making business with ostensibly exempt purposes does not make it exempt under the law. One of several things may happen as a result of a tax examination, IRS said. All of the income may be taxed to the founder as being income earned by him, or the foundation's alleged exempt status may not be recognized and the business income may be taxed in the usual way.

Moreover, even if the foundation is recognized as exempt, its business income might nevertheless be subject to tax as unrelated business income. Also, benefits that the founder or his family receive from the foundation, whether in cash, property, or services, might be treated as taxable income to the founder.

That is the end of the IRS release. I know that Commissioner Cohen, who is much more familiar than I would be, for reasons that I have just previously stated, is fully familiar with the operations of the IRS in this area, and in his statement tomorrow before the committee, I believe he will deal with the so-called ABC or mass foundation matter.

Mr. PATMAN. Mr. Secretary, I have some policy questions only you, I believe, would be competent to answer, and I would like to ask them first and, then, of course, I would yield to the committee members to ask such questions as they may desire next.

Mr. Secretary, during our hearings in 1964, we asked Secretary Dillon how many private, tax-exempt foundations there were in the country. The Secretary finally admitted that the Treasury did not know how many foundations there were in existence. He said, however, that such information would be available in "about a year" when the Treasury will have installed all of its electronic data equipment.

Mr. Secretary, this is 3 years later. How many private tax-exempt foundations do we have in this country?

Secretary FOWLER. Our best estimate would be around 25,000.

Mr. PATMAN. 25,000. You mean, that is all the foundations?

Secretary FOWLER. That is right; private, tax-exempt foundations.

Mr. PATMAN. Mr. Secretary, as we all know, we have had a persistent balance-of-payments deficit for some years, and the Government has had to take a number of steps to try to improve that situation. All Americans were asked to help out because our payments deficit has been one of the most serious problems facing our Nation; isn't that correct, Mr. Secretary?

For example, the limit on the amount which American tourists can bring into this country duty free was lowered from \$500 to \$100 per person, effective September 9, 1961, and this lower limit was made permanent by legislation approved June 30, 1965.

In addition, the Government has asked industry to curtail spending and investments overseas. As I recall it, the Commerce Department and the Federal Reserve have furnished businessmen, banks, and other financial institutions with guidelines to reduce the flow of capital abroad.

The spending of dollars by an American overseas hurts our balance of payments no matter who the spendthrift may be.

I believe that you agree to that, Mr. Secretary?

Secretary FOWLER. I have some comments when you have finished your statement.

Mr. PATMAN. Yes, sir.

Would it be fair to say that, if that spendthrift is a tax exempt foundation and not John Q. Public, the foundation culprit needs exposure and closer supervision, Mr. Secretary?

During our 1964 hearings I asked Secretary Dillon whether, during his term of office, the Treasury has, on its own initiative, ever forwarded to congressional committees, the White House, or other Government departments information regarding foundation activities which may be contributing to our balance-of-payments problem. The Secretary's answer was that he didn't "know of any."

Today, we are no further ahead than we were 3 years ago, in 1964, Mr. Secretary.

A quick review of the current records of only two of the 600 foundations we have under study shows that the Agricultural Development Council, Inc., of New York City, a Rockefeller-controlled foundation, made the following overseas grants, among others, in dollars during 1965 and 1966:

Year	Donee	Amount
1965-----	India Society of Agricultural Economics, Bombay, India.....	\$50, 000
1965-----	English Language Education Council, Inc., Tokyo, Japan.....	142, 280
1966-----	do.....	169, 000
1966-----	Indian Agricultural Research Institute, New Delhi, India.....	47, 000
1966-----	India International Center, New Delhi, India.....	10, 006
1966-----	Sie Kwat Soen, Presidium of Vice Prime Minister of the Republic of Indonesia, Djakarta, Indonesia.	15, 664

The Agricultural Development Council, by the way, has not been audited by the Internal Revenue Service since 1964.

In 1966, the Pew Memorial Trust, of Philadelphia, handed \$100,000 to the Asociazione per Universita International Degli Studi Sociale Pro Deo, Rome, Italy.

Is there something I don't know about, Mr. Secretary, which puts a Rockefeller Foundation, or any other foundation, above the law?

Would you agree, Mr. Secretary, that the present number and size of tax-exempt foundations dictates that consideration should be given to a regulatory agency approach for their supervision?

By the way, as a footnote to this \$15,664 payment to Mr. Soen, I am informed that Mr. Soen is something of a mystery man today. He was reportedly the principal economic adviser to Vice Prime Minister Djuanda who died in 1963, but since then Mr. Soen has dropped out of sight and no one knows exactly what has happened to him. Do you know anything about him, Mr. Secretary?

Secretary FOWLER. No.

Mr. PATMAN. Do you think, Mr. Secretary, that the extent to which tax-exempt foundations influence or control businesses, directly or indirectly, should be the object of continuous public inquiry, so that both the stockholders, employees, and the general public have this information?

Secretary FOWLER. You ask me a series of questions, you go on, and I can't keep track of them—I would like to take them one by one, Mr. Chairman. That is the only orderly way to proceed.

Mr. PATMAN. I asked you things that I did not think there could be any serious question about.

Secretary FOWLER. The one about the balance of payments. This is again the reflection of a complete ignorance of what is going on.

Secretary FOWLER. Forces at home and abroad that are destructive of the society's values that the directors of the Ford Foundation think should be preserved.

Mr. PATMAN. I have one other question about perpetuity and that is the only policy question that I want to ask at this time.

It seems to me that our people have the right to expect that everyone should pay his fair share of taxes and not be allowed to avoid taxes through the device of tax dodging foundations. Hence, I believe, Mr. Secretary, that the time has arrived for the Treasury to examine critically the basic question of foundations being permitted to exist in perpetuity.

Mr. Secretary, since the law against perpetuities is enforced against individuals, why shouldn't it be enforced against these huge, impersonal foundations?

The Treasury's proposed reforms of February 5, 1965, which were submitted to the Ways and Means Committee and the Senate Finance Committee, indicate that you are opposed to a limitation on the life of a foundation. Why do you favor perpetuities and object to the liquidation of these tax exempt titans within a reasonable period of time?

Don't you think, for example, that the biggest of all foundations, the Ford Foundation, should be liquidated in some foreseeable time?

Would you comment on that, Mr. Secretary?

Secretary FOWLER. Yes, at some length, Mr. Chairman.

The foundation report did not specifically recommend an absolute limit on the lives of private foundations.

Mr. PATMAN. By the way, do you have a copy of that report that we may insert in the record?

Secretary FOWLER. I would like to have it in the record.

Mr. MORTON. Mr. Chairman, would the chairman yield?

I have a copy here, and it is interesting that we had to send to the Ways and Means Committee to get it.

Mr. PATMAN. Yes, we had them available through this committee—we did this report.

Secretary FOWLER. There has been no lack of them at the Treasury Department.

Mr. PATMAN. We just wanted the recommendations—not the report, yes.

You have the report. We will insert it.

(See exhibit No. 8, p. 1031.)

Mr. PATMAN. These are available to all the members.

Secretary FOWLER. The report did not recommend that a death sentence be imposed on foundations. It suggested a middle ground requiring the termination of the donor's control of his foundation after 25 years. Personally, I can see merit in the report's positions.

In any event, it seems to us that termination of the life of the foundation itself after a prescribed period is not necessary.

First, termination is not necessary to prevent foundations from accumulating income.

Our recommendations in the foundation report which would require current distribution of income would maintain the benefits of foundation existence while assuring that charity and the other appropriate purposes of the foundation receive the income produced by the contributed funds.

Second, termination is not necessary to prevent foundations from obtaining a disproportionately large share of our national economy.

because the relevant data suggests that foundations are increasing in wealth only in proportion to the rest of the economy.

While the available data is admittedly less than complete, the results of periodic surveys undertaken by the New York Stock Exchange, summarized in table 8, page 75, of the foundation report, shows that foundation ownership of total securities listed on the exchange was 2.6 percent in 1950 and the same, 2.6 percent, in 1963, with fluctuations between 2.8 and 2.5 percent during the intervening period.

At the end of 1966, foundation ownership was down to 2.1 percent. Since it is reasonable to assume that foundations hold a large portion of their funds in listed securities, the New York Stock Exchange survey information reliably indicates that there have not been significant changes in the relative size—the relative size, I emphasize—of foundations from 1950 to 1963. Thus, it would appear that the proposal for a death sentence for foundations is not necessary to prevent disproportionate foundation growth.

Finally, third, termination is not necessary to eliminate any dangerous concentration of uncontrolled economic and social power, because the larger foundations which might present this potential danger are already acting to broaden their staff and management to disinterested outside persons.

While there may be specific instances to the contrary, the larger foundations have established independent boards of directors, hired professional staffs and accepted public scrutiny of their operations.

Now, I have addressed myself to the three reasons usually advanced as to why there should be a 25-year life to the foundations and have indicated why, in view of their value as institutions in our society, we believe they should have a continuing role. Let me say, again, that private philanthropy plays a very special, a very vital role in our society, and besides providing for areas into which the Government cannot or should not advance, such as religion, private philanthropic organizations can be uniquely qualified to initiate thought and action, experiment with new and untried ventures, dissent from prevailing attitudes, and act quickly and flexibly.

Private foundations have an important part in this work. Available even to those of relatively restricted means, they enable individuals or small groups to establish new charitable endeavors and to express their own bents, concerns, and experience. In doing so, they enrich the pluralism of our social order.

Equally important, because their funds are frequently free of commitment to specific operating programs, they can shift the focus of their interest and their financial support from one charitable area to another. They can hence constitute a powerful instrument for evolution, growth, and improvement in the shape and direction of charity.

So run the conclusions, Mr. Chairman, in the summary of the Treasury report. I would like to make several observations in the light of the role of these private foundations in line with what has been said. I think that they supply a very useful and necessary outlet and supplement to the growing concern and role of Government at Federal State, and local levels.

MR. PATMAN. I dislike to interrupt you, Mr. Secretary, but I wanted to follow up with one question on that very point that you are touching right now, if I may do so, and that will be all the questions I want to ask.

Secretary FOWLER. All right, sir.

Mr. PATMAN. And that will be: In our hearings, the Acting Commissioner of Internal Revenue, Mr. Harding, was asked this question right along the line you are talking about now.

If every American had a tax exempt foundation, where would the federal, state and local governments obtain funds for their operations?

Mr. Harding's answer was:

This is a rather speculative question, Mr. Chairman. I am probably not competent to answer it, but I would assume if every American taxpayer was an exempt organizations, there would be no funds available at any of the levels for those operations.

I want to know if you agree with that?

Secretary FOWLER. Mr. Chairman, your question set up a strawman, and Commissioner Cohen will indicate that there is no possibility under the laws as they exist today, and certainly this is a result that Congress will not permit. You are setting up the possibility that all of the income would fit into exempt institutions and be exempt of taxes.

Mr. PATMAN. Family income, Mr. Secretary, family income.

Secretary FOWLER. Commissioner Cohen will deal tomorrow with the reason why that statement is a complete strawman and just draws an illusion across this whole subject that I think we can dispose of in the hearing tomorrow.

Mr. PATMAN. I hope you are correct, but they have gone into 50 States with it.

Secretary FOWLER. Well, the Revenue Service is also at work in 50 States, and I do not have any apprehensions that every American is going to have his family income absorbed into an exempt foundation. But let me come back to my basic point:

These private institutions, as I have described, I think are a modern reflection of something that is very vital and important in America.

De Tocqueville, the French traveler, the French observer, whose writings and observations are well known to you, said:

These Americans are the most peculiar people in the world. In a local community in their country a citizen may conceive of some need which is not being met. What does he do? He goes across the street and discusses it with his neighbor. Then what happens? A committee comes into existence. Then the committee begins functioning on behalf of that need and—you won't believe this, but it is true—all of this is done without reference to any bureaucrat.

So said de Tocqueville.

Now, I am very much in favor of having bureaucrats concern themselves with the problems of education, with the problems of health, with the problems of welfare, with the problems of charity, I am very much concerned that these activities at the Federal, State, and local government levels be adequately supported and organized.

But I am also very much concerned that the private citizen be able to pursue his bent in dealing with these problems in the areas where he believes that more needs to be done, or something different needs to be done; and I think the private foundations are a useful supplement, a desirable supplement, and, indeed, perform an essential role in the private sector in complementing the work that can be done in the public sector.

In proposing a death sentence for a foundation at the end of 25 years, I think there could be a certain analogy. It would be just as

sensible to provide that a college or a university or a health organization or any organization organized to carry on a charitable educational work of that nature, or, indeed, a Government bureau be automatically terminated at the end of 25 years—

Mr. PATMAN, I hope you will reexamine that statement.

Secretary FOWLER (continuing). Its furniture distributed, its personnel fired, its staffs dismembered, and so forth.

Mr. PATMAN. I hope you will reexamine that statement. I do not believe you will agree with it.

Secretary FOWLER. I will be willing to stand on it.

Mr. MORTON. If the Chair will yield?

Mr. PATMAN. I am going to ask that the gentleman from Maryland ask questions now, if he would like. Mr. Morton.

Mr. MORTON. I am privileged to have the opportunity to meet here with the Secretary, and I hope, in reexamination of that statement, that he will reiterate it. I could not agree with him more.

I think we are dealing with apples and oranges here. I am very much disturbed about the hearing, because we are indicting foundations, per se, and this to me is very uncomfortable.

Let me ask you, Mr. Secretary, if, in the course of the submission of this report to the Ways and Means Committee of the House and to the Finance Committee of the Senate, have there been follow-on discussions as to whether in the near future legislation will be considered that would implement the recommendations of this report?

Secretary FOWLER. Yes, there have.

Mr. PATMAN. In other words, this report did not end the matter as far as the relationship between the Treasury Department and the Congress is concerned?

Secretary FOWLER. Not at all. As a matter of fact, it would be our expectation that our recommendation would be considered by the Ways and Means Committee in the near future. However, this is a decision ultimately for the House Ways and Means Committee. Under our constitutional setup, revenue legislation has its origin in the House of Representatives, and the timetable and schedule of such legislation are a matter for the House Ways and Means Committee to determine.

This matter has been looked into by the House Ways and Means Committee. The House Ways and Means Committee has elicited the comments from a variety of sources regarding the Treasury report, as I think is a preliminary to holding public hearings.

Since these comments have been made and have been in hand for some time and we have all had a chance to analyze them and review our recommendations, I would think the next step would be public hearings.

Mr. MORTON. We are probably going to have to close the hearing. May I ask one other question, however?

In the course of developing these recommendations and this report, there seems to be a general opinion, and I think it is an erroneous opinion, that if foundations were liquidated, the Federal Government would receive a great deal more revenue because of a mysterious economic happening. Within the Treasury Department have economic studies been made that would actually reflect what effect on the Treasury of the United States would the liquidation of foundations or the cessation of not-for-profit foundations have?

Secretary FOWLER. Let me give you some rough figures which I think will give you a measure of what will happen. In the calendar year 1967, the taxable income for individuals was \$322 billion, for corporations, \$73 billion. Our estimate of the income of foundations during that period was 1 to 1½ billion, the income that they earned on their properties. I think that gives you a measure, 1 to 1½ billion as against 400 billion.

Mr. PATMAN. Mr. Morton has agreed to yield to Mr. Corman to make a brief comment, and then we have to go to the floor.

Mr. CORMAN. Mr. Secretary, we, among other things, are concerned about economic concentration and its effect on small business which may, in reality, be in competition with foundations that are in business. Would that be a concern of your Department? Or would that lie in some other executive branch?

Secretary FOWLER. Mr. Corman, the foundation involvement in business is a concern. It was the subject of intense examination by the Treasury, in the study I have referred to, and is the subject of one of the recommendations in the report.

Specifically, the report proposes the imposition of an absolute limit upon the participation of private foundations in active business, whether presently owned or subsequently acquired. The recommendation would prohibit a foundation from owning, either directly or through stockholdings, 20 percent or more of a business unrelated to the charitable activities of the foundation, within the meaning of section 501(c)(3) of the law. Foundations would be granted a prescribed reasonable period, subject to extension, in which to reduce their present or subsequently acquired business interests below the specified maximum limit.

This is a concern of the Treasury Department and the Internal Revenue Service, not only in the field of foundations but as to business activities of an unrelated nature carried on by other tax-exempt organizations and foundations.

The recent *Clay Brown* case in the Supreme Court which ruled against the Internal Revenue Service in a given situation, has caused us great concern. Legislation is pending before the Congress to deal with a change in the law to, in effect, meet the problem created by that Supreme Court decision.

Mr. CORMAN. Yes. The other question is this: You indicated that one of the basic purposes of a tax-exempt foundation is so that there can be activity in areas in which the Government should not enter, such as religion. But it seems to me that the moment you get tax exemption the Government is, maybe indirectly, rather substantially involved in that there is revenue which would come to the Government which would be the subject of public expenditure that is not available for public expenditure but goes into an area that, as you indicated, the Government probably should not enter, and that seems to be the position of ABC in their brochures, that the people who do not like the way that the public expenditures are being made, that they can set up a tax-exempt foundation and control how the money is spent, and I assume this may be legitimately done. Doesn't that present us some problems?

Secretary FOWLER. My assumptions and yours about the type of operation represented by the ABC are not the same, and Commissioner Cohen will deal with it.

Mr. CORMAN. No, I did not say that; they said it. I did not agree with it. But that is the whole reason for their existence. They do not like the way we are spending the money.

Secretary FOWLER. The motivations that cause a given donor to decide that he is going to create a foundation may be many. What the law requires is that the donation be dedicated to the types of activities prescribed by the law.

Whether the donor has a motivation of doing that because he is concerned, let us say, about the field of which the foundation is dedicated or whether he would like to see the foundation obtain the funds spent in this particular activity, rather than to go to the Internal Revenue Service, are matters I do not think we inquire into and analyze, saying, "Well, he did it for this motive or that motive."

Mr. CORMAN. Oh, no, sir. But that is my worry if he sets up a system which leaves that decision to him. Let's take the substantial taxpayer who may not like the war in Vietnam, I take it he can set up a foundation. He sets it up properly and carries out the purposes required by the law and can see that his money does not come to the Federal Government. It goes for some other charitable purpose.

Is that correct statement?

Secretary FOWLER. Well, I think my answer to that would be that the figures that we have that are developed in the appendix to this report, which are the most up-to-date figures we have, do not indicate any such trend.

Mr. CORMAN. I do not mean to set up an unreasonable strawman. On the other hand, ABC has set it up for me.

Secretary FOWLER. I think that it will be knocked down, too.

Mr. PATMAN. We will have to go soon.

Mr. Secretary, I have talked to Mr. Corman, and I have talked to Mr. Morton, and they do not wish to ask you to come back tomorrow for interrogation. They are willing to interrogate the members of your staff and Mr. Cohen, as you suggested.

I do not want to ask you to place in the record the 25,000 foundations, but I do not want to make available to this committee the names and addresses of those 25,000 foundations.

Secretary FOWLER. Commissioner Cohen, who will be here tomorrow to entertain you, who has the automatic data processing equipment—

Mr. PATMAN. If it will be satisfactory, with you.

Secretary FOWLER. He knows what the problems are. I will abide by his decision.

Mr. PATMAN. It will be all right. There may be names we do not have.

Secretary FOWLER. It may well be. You may have the names of some people who should file tax returns who have not filed tax returns. We will be delighted to have them.

Mr. PATMAN. Thank you very much for your appearance.

Secretary FOWLER. Thank you, sir.

Mr. PATMAN. We will look forward to having these gentlemen before us tomorrow morning at 10 o'clock.

The committee will stand in recess until tomorrow morning at 10 o'clock, here in this room.

(Whereupon, at 11:15 a.m., November 15, 1967, a recess was taken until 10 a.m., Thursday, November 16.)

TAX EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

THURSDAY, NOVEMBER 16, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 1
OF THE SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2359 Rayburn House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman, Corman, and Morton.

Also present: H. A. Olsher, director, Foundations Study; Myrtle Ruth Foutch, clerk; and John J. Williams, minority counsel.

Mr. PATMAN. The committee will please come to order.

This morning we have a continuation of the hearing we had yesterday, and, first, we would like to have a statement from Mr. Sheldon S. Cohen, Commissioner of Internal Revenue.

Mr. Cohen, you may proceed in your own way.

TESTIMONY OF SHELDON S. COHEN, COMMISSIONER OF INTERNAL REVENUE, ACCOMPANIED BY STANLEY S. SURREY, ASSISTANT SECRETARY OF THE TREASURY, DEPARTMENT OF THE TREASURY

Mr. COHEN. Good Morning, Mr. Chairman.

I am glad to be with you this morning to give you and up-to-date report on our activities as they relate to your field of interest, both in the private foundation area and in the more broadly based tax-exempt organization area.

In the summer and early fall of 1964, former Commissioner Caplin and Acting Commissioner Harding appeared before this subcommittee to discuss the administration of the tax laws as they may apply to tax-exempt organizations; in particular, as they apply to so-called private foundations. We ought to describe what we mean by "private foundation" since the statute nowhere defines the term. It is a term that is used and has no legal definition. By "private foundation" we mean organizations of the type described in section 501(c)(3) which are devoted to "charitable" purposes and which receive no substantial part of their support from the general public or governmental bodies.

At that time it was pointed out that beginning in 1961 the Internal Revenue Service embarked on a many faceted program for strengthening compliance with the tax law applicable to foundations and charitable trusts. The major points of this program included: (1) expanding audit coverage of exempt organization; (2) greater service effort in

assisting exempt organizations in voluntarily complying with the law; (3) improvement of the Service's internal controls and administrative procedures; and (4) and affirmative litigation policy designed to obtain judicial resolution of difficult legal issues and to give authoritative guidance to field personnel in their administration of the law.

Since my appointment to the office of Commissioner of Internal Revenue in January of 1965, we have carried on the program initiated by Mr. Caplin and Mr. Harding and have tried to amplify and to improve on those programs where possible.

I would preface my remarks on our administration of tax-exempt foundations with the assurance to the subcommittee that we are fully aware of the problems in this area, as developed by this subcommittee, and have taken positive action to effectively deal with them.

I will not comment on the history of the law applicable to tax-exempt organizations or the historical difficulties of administering that law. These matters have been fully discussed in the hearings held by this subcommittee in 1964 and are a matter of public record. Many of the deficiencies of the statutory provisions we are operating under were also brought out in the Treasury Department report on private foundations. I will limit my remarks to the administrative improvements which have taken place during my tenure as Commissioner.

The Service has conducted field audits of 47,754 returns of exempt organizations during fiscal years 1964-67. These audits involved 31,490 different organizations. As we discussed in the 1964 hearings, in order to select these returns for audit many more were subject to our classification procedures. We estimate that we screen and review about 14 returns for each one chosen for field audit. Thus, approximately 500,000 exempt organization returns were screened during this 4-year period.

These examinations resulted in recommended revocation of the tax-exempt status of some 930 organizations.

In the area of so-called private foundations and charitable trusts, which account for fewer than 10 percent of the registered exempt organizations, we audited the books and records of 4,335 organizations during the same period. We screened about 14 times that many. These examinations represented about 14 percent of our total examination of exempt organizations. As a result of these audits, revocation of tax-exempt status was recommended in 82 cases, or about 2 percent of the total examinations.

As this subcommittee knows, the examination of exempt organizations is but one narrow area of a vast range of responsibilities assigned to the Internal Revenue Service. Because our resources are not sufficient for all purposes, we must constantly review the various allocations of our manpower in order to achieve the most efficient discharge of all responsibilities. To the extent that we can improve the allocation of resources to the problems of exempt organizations in general, and private foundations in particular, we will certainly do so. This is something that is always relative to all of the problems before us that in varying degrees are not in need of attention.

In pursuing our active litigation program we have not been as successful as we would have hoped in securing judicial sanction of our interpretations of the law which would serve to limit the activities of an exempt organization. For example, in the *Clay Brown* litigation, which was heard by the Supreme Court, we lost the issue dealing with

the validity of the so-called "bootstrap" acquisition of a going business by a charitable organization. A bill which would curtail this type of acquisition by an exempt organization is presently pending in the Congress. It is a joint effort of Mr. Surrey's staff, my staff, and the staff of the Joint Committee on Internal Revenue Taxation, in cooperation with the bar association and the accounting groups who all feel that this kind of activity is beyond the pale of activity for tax-exempt organizations. We are hopeful that it will be acted on promptly and favorably. We are continuing an active litigation policy in that area and have recently tried a case in the Tax Court on a similar issue in which we took the position that a so-called charitable organization which acquired a number of active businesses was not conducting its affairs as the statute contemplated an exempt organization would. That case is now pending decision in the court.

To return for a moment to our audit program, since 1964 we have been sharpening our audit guidelines on exempt organizations. Our aim is to make it easier for an agent to effectively audit an exempt organization with a minimum expenditure of time so that we may gain additional coverage within the limitations of available audit manpower. Four years ago we created a mandatory 2-week training course for new examiners and audit personnel engaged in the examination of exempt organizations. To date almost 500 employees of the Service have completed this course. Through this program, and our related activities and programs, we are developing a corps of revenue agents who are more familiar with exempt organizations and who are contributing to better administration of this particular phase of tax law.

I do not intend to burden this subcommittee with statistics, but I think it puts our problems in perspective to note that in 1964 Mr. Caplin pointed out that between 1939 and 1962 the number of "charitable" tax-exempt organizations increased from 14,500 to 71,850. At the present time the ranks of this class of tax-exempt organization have swelled to approximately 100,000. Our files also show that the number of exempt organizations of all types are increasing at the rate of nearly 20,000 per year. Appropriations for audit manpower, however, have not increased comparably. Whatever added audit coverage we have been able to achieve has come about through more effective use of our manpower—and this despite the complicated statutes which make administration difficult.

Mr. Caplin also pointed out that between 1950 and 1962 the number of returns filed by tax-exempt organizations increased from slightly over 100,000 to over 250,000. In this past year alone we received over 309,000 returns from tax-exempt organizations.

These figures demonstrate that our administrative problems are becoming more difficult with each passing year.

We are expanding the use of our data processing capabilities to help cope with the administrative problems created by the burgeoning number of exempt organizations. To this end we created an exempt organization master file (EOMF) in 1964. We presently have the records of approximately 325,000 organizations on this file. This facility will give us the capacity for determining compliance with the filing requirements of the law and the means for economic and effective processing of returns. To some extent it has proved helpful in selecting organizations for audit examination. This is a developing capability and in time and with experience I am confident that we will be able

to improve substantially our internal management of our exempt organization system which by its nature is nebulous and difficult. Although these entities pose more and different problems of administration, our data processing history with respect to other returns fortifies this belief. As we gain experience with the use of the system, we have greater capabilities of analysis and examination.

The EOMF facility is geared to identifying private foundations and should be of aid in identifying those organizations which should be subjected to special examinations.

There is a basic limitation, however. In our tax system based on the philosophy of voluntary compliance we must rely heavily on what the taxpayer (or tax-exempt organization) tells us. In the tax-exempt organization field, however, what we are told as facts concerning purpose, assets, and so forth, is not necessarily so important as what the organization does on a day-to-day basis. Activities as such are difficult to discern from financial statements. The best way to find out what an organization is doing is to have someone observe it in operation. The point is, effective administration of the exempt organization area must be heavily based on manpower, not machine power.

I do not intend to suggest that all or even a large percentage of the exempt organizations require constant surveillance. We believe our audit experience indicates rather conclusively that a great majority of the exempt organizations, including private foundations, are complying with the requirements of the tax laws.

In an attempt to promote voluntary compliance, the Service has, during the last 2 fiscal years, published 87 revenue rulings and revenue procedures relating to exempt organizations. In the first 4 months of fiscal year 1968 we have published 38 more rulings in the same area. The purpose of these rulings is to convey the limits of the law to those persons involved with or planning the creation or operation of exempt organizations.

The revenue ruling activity is carried out by our Assistant Commissioner (Technical), all of whose employees are in the national office. In 1965, we reorganized our technical staff and in so doing, strengthened the administration of exempt organizational work. At the present time, we have more than 100 employees in our technical organization who work exclusively on exempt organization matters. This represents the greatest allotment of technical manpower to a single area of responsibility in the national office.

I have only touched briefly on highlights in our exempt organization program. We feel that there has been steady and marked advancement toward achieving the goals of our program within the limitations imposed on us by manpower and law. We will continue to pursue and refine this program.

I might add that I have followed the proceedings of this subcommittee with keen interest. One of the focal points of attention in the last several weeks has been the acquisition by grantor controlled tax-exempt private foundations of going businesses previously carried on by that grantor.

In the past several years we have faced similar situations and have been successful in denying tax-exempt status to the organization. For example, in two recent cases, *Cranley v. Commissioner* (20 TCM 20 (1961)) and *Sonora Community Hospital v. Commissioner* (46 TC 519 (1966)) the facts indicated that doctors had established purported

charitable organizations by which they were employed to carry on activities related to their practice of medicine. In each case the taxpayers failed to show that the organization was operated exclusively for charitable purposes. This result was in large part dictated by the facts showing that the individual doctors themselves received substantial benefits from the organizations they established. Without dwelling on the legal points involved, I think it fair to say that we anticipate equal success in denying tax-exempt status to any other organization set-up in the guise of a charitable organization but operating for the convenience of its founder.

Thank you, Mr. Chairman.

Mr. PATMAN. Thank you very much, Mr. Cohen. That is a very informative statement. We appreciate the information.

I would like to ask you to break down these tax-exempt organizations, with reference to foundations, the number of foundations in the several hundred thousand tax-exempt organizations.

Mr. COHEN. The rough figures are approximately 42,000 or 43,000 foundations in general. The ones that we classify as private, that is, the ones controlled—

Mr. PATMAN. Privately controlled.

Mr. COHEN (continuing). Are slightly under 25,000. We think that that figure needs some purification, and our people have been working for the last several months and hope to be finished by the end of the year with the purification of that list.

Mr. PATMAN. We want that list, Mr. Cohen. How soon can we get it.

Mr. COHEN. If you would like the purified list, after we have gotten some of the bugs out of it, we probably can have it for you shortly after the first of the year. In 1964 we sent out a questionnaire to all of the exempt organizations that we had any record of and we asked them to self-classify themselves. Then, we fed this information into the computer. In studying the records, our people have determined that a number of organizations, for example, Veterans of Foreign Wars posts, have classified themselves as foundations. It is an obvious error, and for your benefit as well as ours, we ought to purify that list.

Mr. PATMAN. Yes, sir.

Mr. COHEN. We could get you a record today of 325,000 exempt organizations less expensively than we can produce the smaller list, but if you want the list of foundations only we will need some time.

Mr. PATMAN. We want the ones we are concerned about, the privately controlled foundations.

Yesterday, Mr. Morton had the floor and he yielded to Mr. Corman. Mr. Corman, we will resume with Mr. Morton if he would like to ask questions at this time, and then we will continue with you.

Mr. MORTON. Thank you, Mr. Chairman.

First, Mr. Cohen, let me say that we are delighted to have you here. We appreciate your taking the time from what I know is a busy schedule.

Is there any action that an organization must take in setting itself up as a not-for-profit foundation, or otherwise eleemosynary institution with the Internal Revenue Service?

Mr. COHEN. Yes, sir.

Mr. MORTON. Specifically, what is that action?

Mr. COHEN. The regulations provide that for an organization to qualify for exempt status it shall file an application for exemption.

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.

Mr. MORTON. Then, this list that you are going to furnish, pursuant to the request of the chairman, will be a list of foundations which have received this ruling and which have complied with this regulation. Is that correct?

Mr. COHEN. Our list would only include those which have met the proper test.

Mr. MORTON. Do you believe that there are many foundations or organizations operating as foundations under what they believe is a tax-free system which have never come to the attention of the IRS?

Mr. COHEN. Not a great many. There are some, and one of the reasons for developing the list which has just recently been completed and, as I indicated, now being purified, is that we are now working printouts of that list for each of our districts. We can distribute to each district office the names of the organizations that are on our list which operate in their areas. The district office can verify the existence of those organizations and, by various investigative techniques, verify if other organizations exist which should have filed. That kind of organization we would want to investigate.

We have also instituted a program with several of the States' attorneys general in which we have offered to supply them with lists of organizations operating within their States so they might aid us. This is, after all, primarily, a State responsibility, the creation of organizations coming within the State law. For example, if an organization is operating under a Maryland charter, the Maryland authorities do have the basic responsibility for overseeing its activities. So, we have experimented, and I think, in at least two or three instances, the States have cooperated with us in making information available to the State attorney general. The Texas attorney general was the first one to ask for a list of all the exempt organizations operating in the State of Texas. We supplied him with the list and he is going to aid us in policing this field.

Mr. MORTON. Mr. Commissioner, does this work in reverse? For example, we have had testimony here concerning the establishment of foundations in the State of Illinois. I assume that the office in the State of Illinois which would handle that would be the office of the secretary of state.

Mr. COHEN. I believe so.

Mr. MORTON. When these foundations are formed, is there liaison between IRS and the State governments which brings these foundations to your attention?

Mr. COHEN. In this particular situation there was excellent cooperation between State authorities in both California and in Illinois and our people beginning quite some time ago. We began getting reports about a year ago of the creation of numerous foundations that appeared to be out of the ordinary. We began a low-scale investigation, because we did not realize the extent of it. Starting about 8 or 9 months ago, we began a very intensive investigation to gather the names of any organizations that appeared to be operating in this pattern, and we had the cooperation of the State authorities in that effort.

Mr. MORTON. As far as the operation of foundations, has this investigation brought to light considerable malpractice or practice which does not fall within the spirit of the regulations?

Mr. COHEN. I would not like to get too much into the details of this particular investigation since it is still underway. I might say, however, that in the case of a number of foundations involved in this particular operation which has been discussed before the committee for the last several weeks, we have conducted audits of the individual members of those organizations. A number of them have already agreed with us that what they did was entirely improper and have agreed to pay the tax on the income which was allegedly transferred to the foundation. We have already closed a number of cases on that basis.

Mr. MORTON. The area that concerns me in this whole thing is that these foundations are providing services, travel, perhaps automobiles, club memberships, and other fringe benefits that normally, if the foundation did not exist, would be acquired with after-tax income. That seems to be the real crux of this matter.

Mr. COHEN. In the cases we have looked at so far, as I indicated, the taxpayer, the individual who created the foundation, has agreed with us that what he did was improper and has agreed to pay the tax on all of this income. It had been earned by him in the first instance, as if the foundation had not existed.

Mr. MORTON. If the foundation has not filed a form 1023, and if it is in operation without this ruling, what is the penalty that would be levied against such a foundation if this came to your knowledge?

Mr. COHEN. The problem there is that our law today only has—I think it was the White Queen or the Red Queen—I was reading “Alice in Wonderland” to my child this summer, and she said, “Off with her head!” and the only punishment that we have under the present law is either to bless them or curse them. You chop off their heads or nothing.

Under the foundation report, the Treasury has made recommendations for imposition of a \$10 a day penalty for every day that the proper reports are not filed. We think this type of penalty will go a long way toward improving compliance here. The problem here is that even with a valid foundation you sometimes get noncompliance in this area, and you do not want to deny exempt status for minor infractions. When we are talking about fringe operators such as the ones we’re discussing, where they are clearly beyond the statutory requirements, we disallow the exempt status and, we disallow the deduction for any contributions made to it. In appropriate cases we may tax the income of the foundation to the grantor.

He may or may not have civil penalties, and he may or may not have criminal penalties, depending on the extent of involvement.

Mr. MORTON. You make an effort to recover back taxes?

Mr. COHEN. Yes, sir; absolutely.

Mr. MORTON. Now, let me ask you this, Mr. Commissioner:

What is the annual requirement of a tax-free organization such as a foundation, as far as the IRS is concerned?

Mr. COHEN. The organizations that we are talking about, are required to file an annual form 990-A, which is an information return that gives us an outline of the activities that are carried on during the year.

Mr. MORTON. We have received some testimony here from foundation operators that indicate that they do not believe that it is necessary

to file an annual form 990. Is there some vagueness about the law? Is the regulation clear?

Mr. COHEN. It is a rather curious thing. They may have said this, but most of the foundations we have found did file the 990-A's. One can speak a little more bravely than one can act on occasion, and the organizations, many of the organizations here were formed only recently. Most of them are less than a year old. So, I cannot tell you whether their 990-A is in the file or not until their year is up, until their filing period has run its course. But several organizations like this that were organized by people who subscribe to this particular service have filed returns.

Mr. MORTON. What about pension trusts and endowment funds of colleges, universities, churches, hospitals, and the like? Are they also required to file the same form?

Mr. COHEN. Some are, and some are not. The general educational institutions are not. Pension trusts; yes, sir. We can give you, if you like, a list of those who are required and those who are not. The statute is specific on that.

Mr. MORTON. For the foundations, there is no question?

Mr. COHEN. No doubt about it at all.

Mr. MORTON. What does this form include? What information is required?

Mr. COHEN. In the general statute—and I will read what the statute says. The form is more expansive than this: The statute says that gross income for the year, expenses attributable to income, disbursements, accumulated income, accumulation at the beginning of the year, within the year and at the beginning of the year, its disbursements out of principal for this year and prior years, a balance sheet, and the total contributions and gifts received during the year.

If you would like it for the record, we can submit a copy of the form 990-A. I think it might be helpful.

Mr. PATMAN. Yes, sir; we would like to have it inserted at this point, please.

Mr. COHEN. We will supply one.

(IRS Form 990-A appears as exhibit 9 at p. 1144.)

Mr. MORTON. Mr. Commissioner, the form 1040, such as I file, includes an addenda covering farm operations. It goes into great detail as to revenue and expenses of the farm I operate. Is there anything parallel to that in this form that goes into detail covering the expenses that are paid by a foundation, the principals, trustees or founders of the foundation, et cetera?

Mr. COHEN. Yes, sir. I will read some of the lines: "Gross receipts, cost of operation, gross profit, interest, dividends, rents, royalties, gain from sale of any assets, other income, expenses of earning income, expenses of distributing current and accumulated income, contributions, accumulation of income." The form has a supplemental schedule showing compensation of officers, other wages and salaries, interest, taxes, and rents that they might have paid. There are a number of questions on the back of the form.

One of the questions relates to any benefits that the founder or any person closely related to him might have received from the organization. If the box is checked, details are asked for.

Mr. MORTON. If a foundation made a contribution to a university in any amount for endowment, for scholarship funds or for any legitimate purpose whatsoever, and a close relative of one of the founders of that foundation or principals involved in that foundation had a son or a daughter who attended this college under some sort of special privilege, reduced tuition, or the like, would this show up on the form?

Mr. COHEN. It should if they answered it properly. We have discovered such instances. These are prohibited transactions, and would generally cause the lifting of the exemption. The statute describes as a prohibited transaction the granting of certain types of benefits to the founder or close members of his family.

Mr. MORTON. Yesterday, the Secretary discussed the report that was submitted to the Committee on Ways and Means of the House and the Finance Committee of the Senate. It apparently is the result of a great deal of work in this area. The Secretary also spoke of legislative recommendations that were made. He also said that conversations following that report were held with the proper people on those committees. Do you feel that there should be considerable legislative "tightening up" in this area? How do you appraise or evaluate the legislative requirements that you would like to have in this area?

Mr. COHEN. I think Assistant Secretary Surrey who is in charge of the Treasury's tax legislative program can perhaps answer this better.

From an administrator's point of view, the more explicit the statute and the more tools we have to work with and the more clearly the rules are spelled out, the more easily the statute is administered both from the governmental standpoint, and, indeed, from the private institution's standpoint.

From our standpoint, we would like considerable tightening up in the area of business activity and certainly in the area of sanctions, as I mentioned. There must be some better means of controlling exempt organizations.

We have a feeling—and this is a personal feeling as a lawyer and as an administrator, that the courts are somewhat liberal in their enforcement of the cases we bring before them because the alternatives that they face are stark black or white. For minor transgressions, we are required to disallow the exemption, consequently the courts tend to give liberal interpretations to the law to cover the minor transgression. That allows the next fellow who is not nearly so honest as the first one to try to take advantage of that minor expansion of the law that the courts have interpreted. To the extent that we can have rational and reasonable rules to operate under, we think that we could make our enforcement more effective with the same amount of manpower.

Mr. SURREY. I might add, Mr. Morton, of course, I agree with the Commissioner, but I think there are certain abuses in this foundation area that even with the best enforcement he is not permitted to reach because the law does not go that far, and that a number of the recommendations in the Treasury's report are necessary to reach what the Treasury thinks are abuses under the law. That is not said in relation to the ABC situation, which I think can be dealt with under

existing law. But with respect to some of the other matters that this committee has referred to, involvement of foundations in business and the like, those matters do require legislation to be dealt with, and that is why the Treasury Department is very much interested in our recommendations proceeding to legislation.

Mr. MORTON. Commissioner, at your district office level, or even regional office level, do you have foundation specialists who handle the returns of tax-exempt organizations and who are really qualified in this particular area beyond their qualification in general Internal Revenue matters?

Mr. COHEN. Yes, sir. In each district office we have a group that deals with pension problems and exempt-organization problems. This is their area of responsibility. They study the exemption applications that come in. The agents in the field who look at the returns of these organizations are the agents who have been through the special training course concerning exempt organizations. We do not have enough specialists yet, and we are training more.

Also, the instructions to the field are: If the problem is new and unique and you think you need help, call on the national office. We have technical advice procedures whereby field personnel are authorized—and, indeed, are encouraged—to send the difficult problems to the national office, to the 100-man technician group that I mentioned who have a great deal of expertise in the exempt organization area. Thus, we can become aware of the new problem nationally.

This is the way we coordinate our procedures. If new problems come up, for example if this ABC problem comes up, the agent in the field will notify us immediately that this is something new, it is unique. We get a bulletin out to all of our other district offices that something out of the ordinary has been identified in one district and others should be aware of what is going on. Such a bulletin went out in this case.

Mr. MORTON. To your knowledge, Mr. Commissioner, do the States which have income taxes require the same general type of reporting and ruling as far as State income taxes are concerned that you do?

Mr. COHEN. Most of them do. A number of the States merely rely on our activities. But most of the States have their own supervision, and, indeed, some of them, for example Michigan, Ohio and California have a registration procedure. The Attorney General in New York is now instituting a more active program. I use those states as illustrations and do not intend to suggest that other states are not doing a great deal also. Those States are the ones that come to mind since they have been working with us and keeping us informed of their more vigorous activities in this area.

Mr. PATMAN. Mr. Morton, would you find out if he is referring to foundation returns, now?

Mr. MORTON. Yes, I think we ought to clarify this. Do the States require the filing of annual returns by all tax-exempt organizations or just by foundations?

Mr. COHEN. We are talking about 50 States, and we are probably talking about many different systems. So, it would be difficult to generalize. By and large, they have some measure of control. Some have better procedures than others. Some have more effective registration systems; some less. Some States have done virtually nothing, and others have very sophisticated procedures.

Mr. MORTON. In other words, there would be an advantage to set up the foundation in one State versus another, similar to the advantage in the setting up of corporations in some States as compared to others.

Mr. COHEN. We have not noticed that, because I think the most effective controls, at least to the present time, have been at the federal level and they are applied uniformly. I suspect, to the extent that some States are now beginning more vigorous enforcement, what you suggest could possibly become true.

Mr. PATMAN. Will you yield there, sir?

Mr. MORTON. One more question, and I will reserve the balance of my time, Mr. Chairman.

Mr. PATMAN. All right.

Mr. MORTON. Control activities, obviously, have been accelerated in the past few years. You have become more concerned.

Has this acceleration of activity in the control of tax-exempt organizations, including foundations, been motivated by publicity or actions of this committee, or the chairman, or has there been a general pattern of tightening up and improving of the administrative procedures within the Service?

Mr. COHEN. I think both have been contributing factors. Before World War II, we had virtually no foundations. There were a small number. It was not very popular. Advantages of these things have been pointed out. I suppose our society has, in many ways, been moving toward—at least I hope this is true—a more altruistic attitude toward life. At the same time, some attitudes may be becoming more crass. I know both of these developments are going on at the same time. After World War II the number of exempt organizations began to increase in an almost geometric progression. The Service began with little or no capability in this area but soon began to realize the dimensions of the problems presented by this expansion. This committee has been helpful in pointing out the problems peculiar to private foundations.

We now have a fairly sophisticated knowledge of what is going on in the exempt organization universe, and we have developed a pretty good enforcement program. I will not pretend it is a perfect enforcement program. I am hoping next year it will be better, and to the extent we have greater manpower it certainly will be better. If you had said 25 years ago that we were going to have thousands of exempt organizations in 1967—and I say, we have 325,000 names of such organizations on our files today—any employee of the IRS would have laughed. But it is true today, and we have to face the real problems presented by this great number of organizations.

Mr. MORTON. Thank you, Mr. Cohen.

Thank you, Mr. Chairman. I will reserve the balance of my time.

Mr. PATMAN. I want to just ask a few simple questions.

Is it not true, Mr. Cohen, that fewer than probably 12 States have a law requiring foundations to file any kind of a return?

Mr. COHEN. There are not too many, sir.

You probably have more up-to-date knowledge on that than I do.

Mr. PATMAN. You can place it in the record, can you not?

Mr. COHEN. Yes; we can check.

Mr. PATMAN. Place the information in the record.

(The information referred to follows:)

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., December 6, 1967.

Hon. WRIGHT PATMAN,
*Chairman, Subcommittee, Foundation Study,
Select Committee on Small Business,
Washington, D.C.*

DEAR MR. CHAIRMAN: During my appearance before your Subcommittee on November 16, 1967, you inquired as to the extent to which the 50 states and the District of Columbia have set up registration and reporting requirements that are applicable to various kinds of charitable organizations.

As you will recall, I stated that all nonprofit entities being operated in the form of a corporation appeared to have a common registration requirement. My basic premise in this regard was that a filing of the original corporate charter or articles of incorporation with some public official has been universally made a condition to the initial creation of all kinds of corporations. Our survey confirms this situation which is, of course, a matter of considerable importance in the present connection in view of the fact that an incorporated organization is far more common than an unincorporated one in the private foundation field.

Our survey also discloses that there are only 11 jurisdictions which presently have any broad statutory programs in force which require the trustees of an unincorporated trust for charitable purposes to file a registration statement and periodic accountings with the state attorney general's office. As a general proposition, the statutes in this first principal group of 11 jurisdictions (California, Illinois, Massachusetts, Michigan, New Hampshire, New York, Ohio, Oregon, Rhode Island, South Carolina, and Washington) tend to follow the provisions of the Uniform Supervision of Trustees for Charitable Purposes Act (U.S.T.C.P.A.) although several of them antedate the initial adoption of such Act which did not occur until 1954. In most instances, these statutes, which are generally applicable to corporate trustees as well as natural persons, provide for the exemption of several fairly broad classes of charitable institutions. Such an exemption is frequently provided for with respect to all incorporated educational, religious and hospital organizations but there is otherwise very little uniformity in this first principal group as to the kinds of charitable organizations so exempted.

It is readily apparent that an attorney general in one of our first group of 11 jurisdictions can reasonably expect to have a distinct advantage over his counterparts in most of the remaining states whenever he tries to assemble a useful body of enforcement information about the respective affairs of all the various affected trusts for charitable purposes which are being maintained within his state. Several other worthwhile local sources of information would nonetheless be available to an attorney general in the other 40 jurisdictions covered by our current study.

It should be observed that courts of equity have traditionally entertained a wide variety of suits to enforce the proper use and application of any and all kinds of trust funds without the benefit of any express statutory authority for such action. In any case involving a charitable trust, the attorney general of the particular state concerned is ordinarily treated as an appropriate representative of the general public for the purpose of instituting and prosecuting such an enforcement suit.

It is also an accepted general principle in the law of decedents' estates that no testamentary provisions for the creation of a charitable trust can become fully operative until after the will containing such provisions has been properly established by a statutory probate proceeding. A judicial accounting as to the receipt and disposition of the assets in each estate is commonly required in connection with each probate proceeding, and a detailed study of the resulting local records could thus be expected to uncover the identity and general nature of a comparatively large number of charitable trusts.

There are numerous differences in this extent to which the various states and the District of Columbia have made statutory provision for the filing of something more than one final accounting in connection with the administration of estates, or have imposed specific judicial accounting requirements for nontestamentary charitable trusts. Our survey indicates that 16 jurisdictions (Colorado, Delaware, Florida, Indiana, Kentucky, Louisiana, Maine, Nevada, New Mexico, New Jersey, North Carolina, Utah, Vermont, Virginia, West Virginia and Wis-

consin) have statutory provisions which call for the submission of a periodic judicial accounting or some equivalent thereof at a local level with respect to one or more major classes of testamentary charitable trusts. Many of these same 16 jurisdictions have also imposed a similar statutory requirement with respect to all corresponding nontestamentary charitable trusts. In another 12 jurisdictions (Connecticut, District of Columbia, Hawaii, Iowa, Kansas, Maryland, Minnesota, Mississippi, Missouri, North Dakota, South Dakota, and Tennessee) the filing of one or more of such judicial accountings is directly provided for by statute or court rule at certain times or under certain conditions with respect to at least some classes of charitable trusts of both a testamentary and nontestamentary nature.

There are several instances among our first 11 attorney general report states in which a broad statutory requirement for the submission of periodic financial reports to some essentially local court can be found in a state which also requires the filing of an identical type of financial report with the attorney general of that same state. No similar situation obtains elsewhere with the sole exception of Vermont where the pertinent statute provides for the filing of annual financial reports at the probate court level and also calls for the submission of copies of all such reports to the Department of Institutions, an independent administrative office at the state level.

There have been some instances in which a state attorney general's office has carried on a broad supervisory program with respect to the affairs of charitable organizations without having the benefit of any special registration and reporting statute. Such an active supervisory program normally entails the creation of a separate charitable trust division in the attorney general's office and the assembly of factual information with regard to both the identity and current financial status of all known charitable organizations within the particular jurisdiction concerned. Both New York and Washington had already carried out an extensive amount of such work in advance of the times (1966 and 1967, respectively) when the fairly comprehensive registration and reporting statutes referred to above were first enacted in such states. Other well-established supervisory programs of an essentially nonstatutory character are also being actively carried on at the present time in Hawaii, Pennsylvania, and Texas.

A recent book, *Foundations and Government*, which was written by Marion R. Fremont-Smith of the New York bar (Connecticut Printers, Inc., Hartford, Conn. 1965), contains a detailed and informed discussion of the registration and reporting requirements imposed on charitable organizations by the several states and the District of Columbia.

With kind regards,

Sincerely,

SHELDON S. COHEN, *Commissioner*.

Mr. PATMAN. Several years ago, former Commissioner Caplin informed us that there were 1,200,000 tax-exempt organizations of all types at the close of 1960. How many are there now?

Mr. COHEN. We would have to estimate how many such organizations exist. Our records would not contain a complete list since organizations such as the Boy Scouts of America have a group ruling. Technically speaking, every Boy Scout troop is an exempt organization.

Mr. PATMAN. Compared to 1,200,000 in 1960, would you place in the record the approximate number?

Mr. COHEN. We can give you an approximation. We know that somewhere between 15,000 and 20,000 exemption applications are received by the Service each year. That is a pretty solid figure.

Mr. PATMAN. That would be about—

Mr. COHEN. The number of registered exempt organizations grows at a rate of almost 20,000 a year.

(The information referred to follows:)

A comprehensive review of yearbooks, directories, and IRS records indicates there are over one million organizations exempt from income tax under sections 501(a) and 521 of the Internal Revenue Code. A reasonable estimate would place this universe somewhere between 1,300,000 and 1,600,000 organizations.

This figure would not include certain church organizations (e.g., missionary societies, men's and women's clubs, organized Sunday School classes, etc.), and students' clubs (Science Clubs of America, honors society chapters, language clubs, etc.).

The IRS Exempt Organization Master File (EOMF) contains entity records for approximately 325,000 tax exempt organizations, excluding pension trusts. This figure reflects all independent organizations exempt under individual rulings and determination letters, and subordinate organizations (other than 23,000 credit unions and Federal land bank associations) covered by group rulings which are required to file annual returns in the Form 990 series.

Fraternal beneficiary associations exempt under section 501(c)(8) are not required to file returns and local units of such associations are not included in the master file. Reference to IRS group ruling files and to the Encyclopedia of Associations indicates that there are approximately 144,000 local units in this category.

While the master file reflects approximately 100,000 organizations exempt under section 501(c)(3), this does not include a great majority of subordinates of such organizations not required to file returns. Reference to IRS group ruling files, the Encyclopedia of Associations, the Statistical Abstract of the United States, and church yearbooks and directories produce an estimate of organizations in this category as follows:

Churches	352,000
Scouting organizations	298,000
Private schools	22,000
PTA's	55,000
Hospitals	7,000
4-H Clubs and similar organizations	120,000
YMCA's and similar organizations	4,000
Health organizations	15,000
Community chests or funds	2,500
Social welfare type charities	26,500
Education (noninstitutional) organizations	20,000
Provisions for additions to directories	50,000
Subtotal	972,000
Less section 501(c)(3) organizations on EOMF	100,000
Total of 501(c)(3) organizations not on EOMF	872,000

Adding the number of section 501(c)(3) organizations not on the master file (872,000), the number of exempt organizations on the master file (325,000), the credit unions and Federal land bank associations (23,000), and the section 501(c)(8) organizations (144,000), gives us a revised estimate of 1,364,000 exempt organizations. However, it is reasonable to believe that there are still many organizations not accounted for. With some allowance for this latter group, it is estimated that one and a half million is a reasonable approximation of the universe of tax-exempt organizations.

Mr. PATMAN. Mr. Corman?

Mr. CORMAN. Thank you, Mr. Chairman.

Mr. Director, will you speak a moment about the family foundation?

What is the test of their tax exemption?

I assume that one of those tests is how they spend the money.

Mr. COHEN. The code indicates that an organization operated exclusively for charitable, religious, or a number of other purposes, no part of the benefits or income of which inures to the private shareholder or individual, is exempt from the income tax. The general test established by the code is that the organization must be organized and operated for charitable, religious, or educational purposes and its income must not benefit a private shareholder or individual. There

is likewise a test that an organization exempt under section 501(c)(3) must not be engaged in lobbying activities or political activities.

Mr. CORMAN. The principal test, if not the sole test, goes to how they spend their funds?

Mr. COHEN. That is right. But how they raise them is also considered.

Mr. CORMAN. As I understand the 1023 and the 990, if one is setting up a legitimate foundation that is going to spend its funds for legitimate purposes specified in the code, the only consequence of a failure to file the forms is that he will have to rebut the presumption that he was not valid; is that correct?

Mr. COHEN. That is correct.

There is a penalty for willful failure to file returns. This is a criminal sanction for willful failure to file a return.

Mr. CORMAN. What is the criminal sanction?

We are assuming for the moment that he is complying with the law in every respect except that he has not filed a return. What is the penalty for not filing a return?

Mr. COHEN. The return is different from the application. There is no sanction for failure to file the application but there is a sanction for willful failure to file a return required by law; that is a criminal offense. The penalty specified is imprisonment for not more than 1 year or a fine not exceeding \$10,000. It is a criminal sanction, and it is therefore rarely, if ever, resorted to.

Mr. CORMAN. Is there a statutory requirement to file a 990?

Mr. COHEN. Yes, sir.

Mr. PATMAN. Or by regulation?

Mr. COHEN. There is a statutory requirement to file the 990.

Mr. PATMAN. How about the application?

Mr. COHEN. The application is required by regulation, but it is authorized under the code. The form 990-A is required to be filed by the code.

Mr. PATMAN. Excuse me, Mr. Corman.

Mr. CORMAN. This is an annual return?

Mr. COHEN. An annual return.

Mr. CORMAN. They cannot go longer than a year legally without some contact with IRS?

Mr. COHEN. That is right. As I indicated, even these, where the advertisement said you do not have to file, the organizations that we have seen so far have filed.

When you get to the end of the year and you know there is a criminal sanction for failure to file, you may well be persuaded to file a return.

Mr. CORMAN. Have there been advertisements concerning this?

Mr. COHEN. In some of the material that I have seen that has been discussed before the committee there was a suggestion that returns do not have to be filed.

Mr. CORMAN. Is it the 990 or the 1023?

Mr. COHEN. I think they tried to give the impression that neither was required.

Mr. CORMAN. Might there be some efficacy in making the filing of the 1023 a condition precedent to the exemption?

Mr. COHEN. I think it would be a fine idea. A good sanction there might be the same kind of civil sanction that is suggested in the Treasury report for failure to file, for the delinquent filing of a form 990. There it was recommended that a \$10 penalty be imposed for every day that the return is delinquent, up to some maximum amount. It would certainly bring it forcibly to people's attention that one does not neglect this sort of obligation.

Mr. CORMAN. If one attempted to set up a foundation and it turned out that it was not, that their expenditures were not properly exempt and that they owed taxes, is there any criminal consequence or is it all civil?

Mr. COHEN. Most of the sanctions are civil. I should mention that one of the consequences that has never been pointed out to the people who have been solicited by this recent group, one which is a very real consequence, is that the attorney general of almost all of the States has the authority, when someone abuses a charitable organization, to petition the court for the appointment of substitute trustees. That is, the State attorney general can petition a court for the abolition of the existing board of directors or trustees and for the institution of a public board.

We have had a case in Washington involving a hospital which attempted to distribute its assets to its founders. We are now pursuing a tax court case which has been tried. The attorney general of that State has petitioned the State court for the appointment of receivers, if you will, to recover the assets and to devote them to charitable purposes. This illustrates the consequences that the people who would get involved in manipulation of supposedly charitable organizations might suffer—whether they recognize it or not. The possibility exists that should they abuse the trust and should the State exercise the proper authority, then the assets of the organization may be gone forever.

Mr. CORMAN. I take it that all of these entities are a matter of public record at the State level when they are initiated?

Mr. COHEN. Almost all of these organizations are operating in corporate form.

Mr. CORMAN. Is it possible for a tax-exempt foundation to be set up without there being a public record of it?

Mr. COHEN. In some States, you can create a trust without a public record. We have discovered a couple of this type organization through other avenues. The first one that we discovered when an agent audited a doctor's return and saw that there was no income reported for the last quarter of the year. The agent began to ask questions and the whole thing unravelled. So that even though an organization may not show on State records, we may be able to find the organization through an audit of an individual's tax return.

Mr. CORMAN. There was considerable advertising concerning the potential tax deductibility of benefit which might inure to the principal, such as the use of a car, the expenses of the home, if the foundation owner lived in his home. Is it fair to assume that no item that inures to the founder would be exempt through a tax-exempt foundation that would not be exempt on an individual tax return?

Mr. COHEN. That is right. The rules here are the same rules that we apply across the board. If the individual receives his income by way

of certain noncash benefits it is, nonetheless, income. In the two cases that I mentioned in my opening statement, the *Cranley* case and the *Sonora* case, the courts there found benefits inuring to the founder of the organization and just threw the whole thing out.

Mr. CORMAN. So that as far as you can see—and as far as I can see—the only advantage of the foundation to the individual, assuming that it is legitimate, is that he gets around the percentage limitation that he is allowed as an individual for charitable contribution?

Mr. COHEN. Well, if he devotes the assets to charity, he can take a deduction for assets contributed; yes, sir. If there is income flowing from those assets which is permanently devoted to charity, fine. That is what the law contemplates. There may be some advantage to that.

Mr. CORMAN. As an individual, what is his limitation?

Mr. COHEN. The limitation is in most cases 20 percent of the individual's adjusted gross income for the year. In the case of contributions to certain types of charitable organizations, for example, educational organizations, the limitation is 30 percent of adjusted gross income.

Mr. CORMAN. He can give that 30 percent of his gross—If he sets up a foundation there is no limit?

Mr. COHEN. He is still limited in the number of dollars he can contribute to the foundation and deduct for income tax purposes. If the foundation has income, separate and apart from his own income, then the foundation, yes, sir, can have income of any amount without paying tax.

Mr. CORMAN. He can become an employee of the foundation, I take it.

Let us assume for the moment that the doctor is trying to do this thing legitimately and he makes a hundred thousand dollars a year gross. Can his patients pay the foundation?

Mr. COHEN. I think when we are talking about that kind of activity we are not talking about a reality. If the foundation's principal purpose is running a medical practice, it is not exempt from tax. Its principal purpose has to be an exempt purpose. So, you start from a fallacious assumption and your result is a fallacious result. These people just assumed the fallacious assumption.

Mr. CORMAN. That is very interesting.

Mr. COHEN. If you were to tell me that you would contribute General Motors stock, or the stock of a closely held company, to a foundation, the foundation can receive income from those assets without present limitations. There are ways it can be done. But you have given up your assets. You do not get them back.

Mr. CORMAN. You do not see any possibility of their being able to legitimately create a foundation to absorb the income from personal services of a professional man?

Mr. COHEN. I have not seen one yet.

Mr. CORMAN. Hypothetically under the code?

Mr. COHEN. I do not think so.

Mr. CORMAN. I am assuming for the moment that everything else is proper—he really does devote all of that income to the foundation and the expenditures are proper under the code.

Mr. COHEN. The end function can be charitable and the foundation can still be nonexempt, because its principal purpose is carrying on a

business. The fact that I, as an individual, decide to devote 70 percent of my income to charity, that does not make me a charitable organization.

Mr. CORMAN. Is it fair to say that people are more altruistic before tax dollars than after tax dollars?

Mr. COHEN. In most fundraising activities, in most communities, there is a good deal of social pressure involved here, also. Charities keep telling us that without the tax deduction they would have a difficult time raising money.

Mr. CORMAN. Yes.

Mr. SURREY. If you will look at the percentage of income, national income, going to charities over the years, that percentage is amazingly constant regardless of the ebb and flow of the tax rates.

Mr. COHEN. There are social motivations here beyond the tax motivation. If you are talking about an individual situation, it is somewhat different.

Mr. CORMAN. What is the total tax base lost?

Mr. COHEN. I think the amount of charitable deductions shown on returns is about \$10 billion. I can give you the exact figure, but it is close to \$10 billion.

Mr. CORMAN. Would you speculate as to what income bracket that would generally fall in?

In other words, if you took it across the board, where would you wind up?

Mr. COHEN. That is difficult to answer. In our compilation of the statistics of income, we have charts which would show by income class the dollar amounts of contributions. I would not like to speculate, but I think you would find, as with all things, cash contributions are made by people in all income classes. If you are talking about property contributions, then you are talking about the people in the middle and upper income brackets.

Mr. SURREY. This is for 1962, and it is probably the same now. Then, the figure was \$7.5 billion. Of that \$7.5 billion, a billion dollars was from the group under \$5,000. Nearly \$3 billion in the class of \$5,000 to \$10,000, and a billion seven in the \$10,000 to \$20,000 class, and then about \$800 million in the \$20,000 to \$50,000 class; then about \$500 million in the \$50,000 to \$200,000 class; and then \$200 million in the \$200,000 to \$1 million class, and \$90 million over \$1 million. So, the large bulk comes from below \$10,000, which indicates in large part that a good deal of giving is unrelated to the tax inducement, since only the very large contributions are affected by the difference between before-tax dollars and after-tax dollars.

Mr. CORMAN. Trying to extrapolate those figures, you can figure a third of that \$10 billion is lost taxes?

Mr. COHEN. I think it would be slightly less than that.

We could give you an estimate of that.

Mr. CORMAN. It would be interesting to know. Not an exact figure but an estimate of the tax lost, and the tax base lost, in the last fiscal year that is available.

Mr. COHEN. The latest statistics of income would be for 1965.

Mr. CORMAN. That would be interesting to have.

Mr. PATMAN. That may be inserted at this point.

(The figures referred to follow :)

The following chart indicates the amount of charitable contributions claimed by individual taxpayers, separated according to the level of the adjusted gross income of the contributor. These statistics were taken from "Statistics of Income—1964—Individual Income Tax Returns" which contains the most recent information on this subject.

Adjusted gross income classes	Contributions	
	Number of returns	Amount (thousands)
Total, taxable returns.....	24,051,665	\$7,897,858
Under \$1,000.....	9,831	725
\$1,000 under \$2,000.....	319,519	35,190
\$2,000 under \$3,000.....	867,973	119,849
\$3,000 under \$4,000.....	1,427,592	236,370
\$4,000 under \$5,000.....	1,963,363	356,757
\$5,000 under \$6,000.....	2,507,322	500,283
\$6,000 under \$7,000.....	2,781,854	605,392
\$7,000 under \$8,000.....	2,757,311	655,577
\$8,000 under \$9,000.....	2,407,380	624,600
\$9,000 under \$10,000.....	1,906,584	548,614
\$10,000 under \$15,000.....	4,645,655	1,629,278
\$15,000 under \$20,000.....	1,190,218	609,562
\$20,000 under \$50,000.....	1,079,926	987,473
\$50,000 under \$100,000.....	151,958	401,686
\$100,000 under \$500,000.....	33,681	392,845
\$500,000 under \$1,000,000.....	1,037	72,898
\$1,000,000 or more.....	461	120,759

Mr. CORMAN. I have no further questions.

Mr. PATMAN. I would like to ask some questions. Maybe you will have some by the time I finish.

Mr. CORMAN. Thank you, Mr. Chairman.

Mr. PATMAN. Mr. Cohen, the IRS assessed five of the foundations in our study that we exposed about \$28 million. You recall it. Three of these five foundations have been in the Tax Court for 2 years here in Washington. I understand that the delay has been due to IRS.

Is that correct?

Mr. COHEN. I do not know that that is the case. I can find out from the Chief Counsel's office.

Mr. PATMAN. You may extend your remarks in the record.
(The information referred to follows:)

DECEMBER 6, 1967.

Re David, Josephine & Winfield Baird Foundation, Inc., Docket No. 7244-65.
Winfield Baird Foundation, David G. Baird, Trustee, Docket No. 7245-65.
Public Health Foundation For Cancer and Blood Pressure Research, Inc.,
Docket No. 3034-65.

Hon. WRIGHT PATMAN,
Chairman, Subcommittee No. 2, Foundation Study, Select Committee on Small
Business, House of Representatives, Washington, D.C.

Dear Mr. CHAIRMAN: At the hearing before your Subcommittee on November 16, 1967, you requested information as to the causes of delay in litigation in three of five foundation cases. Mr. Harry Olsher subsequently indicated to a representative of the Chief Counsel's Office that the above-designated cases were those to which you were referring in the discussion shown on page 530 of the transcript of the hearing.

On August 4, 1965, letters were sent to the above Baird Foundations revoking their exempt status for the years 1960 to 1964, inclusive. Jeopardy assessments were made against the two Baird Foundations for these years.

Statutory notices of deficiencies were issued to the Baird Foundations on October 1, 1965 and petitions therefrom were filed with the Tax Court on December 30, 1965. For the Winfield Baird Foundation, the petition was executed by David G. Baird, Trustee, and for the David, Josephine & Winfield Baird Foundation, Inc., the petition was executed by David G. Baird as President. The peti-

tioners were not represented in the Tax Court by an attorney of record at that time.

On October 27, 1966 and August 8, 1967, conferences were held by the Service with Mr. Norman Raskin, an employee of the foundations. At the first conference in October of 1966, Mr. Raskin made certain contentions which necessitated a further examination by revenue agents. This examination was completed in May of 1967. At these conferences, Mr. Raskin was informed that we felt that it was almost impossible to discuss the legal questions involved and prepare the cases for trial under the rules of the Tax Court unless the petitioners were represented by counsel.

These cases were first set for trial by the Tax Court on March 6, 1967 but were continued on the agreed motion of the parties due to the supplemental investigation that was being made at that time.

Under date of September 5, 1967, the Tax Court set the above cases for report as to their status at the New York session beginning December 4, 1967. It was not until September 15, 1967, that the petitioners employed counsel and he entered his appearance as attorney of record.

At the report on the cases on December 4, 1967, we intend to request the Court to place the cases on a trial calendar in New York City.

The Public Health Foundation For Cancer and Blood Pressure Research, Inc., Docket No. 3034-65, is related to several other cases now pending before the Tax Court. These other cases are: The Rock Ledge Institute, Inc., Docket No. 3035-65, Falmouth, Ltd., Docket No. 3036-65, James H. Rand, Docket No. 4662-65, Florida Oceanographic Society, Inc., as transferee of Public Health Foundation, Docket No. 2688-65, Evelyn H. Heerman, Docket No. 2950-65, the Estate of Raymond E. Hackett, et al., Docket No. 1441-65, and Winfred C. Hoyt, et ux, Docket No. 3085-65. Petitioners in Docket Nos. 2688-65, 1441-65 and 3085-65 have requested trial in Miami, Florida Docket No. 2950-65 is calendared for report to the Court on February 12, 1968.

The statutory notices of deficiency were issued to the taxpayers in Docket Nos. 3034-65, 3035-65 and 3036-65 on March 5, 1965 and petitions therefrom were filed with the Tax Court on June 1, 1965. The respondent's answer in Docket No. 3035-65 was filed with the Court on July 21, 1965. On August 2, 1965, the Court granted the respondent's motion to extend time for filing answer in Docket No. 3034-65 from the due date of August 2, 1965 to September 15, 1965. On August 3, 1965, the Court granted a similar motion to extend the time for filing answer in Docket No. 3036-65. The reasons for the motions were the substantial deficiencies involved in the two cases and the additional time needed to assemble the necessary data essential to preparing detailed affirmative pleadings. On September 13, 1965, the respondent's answers in Docket Nos. 3034-65 and 3036-65 were filed with the Court. The petitioner's reply in Docket No. 3036-65 was filed on October 25, 1965.

On October 8, 1965, the petitioner in Docket No. 3034-65 filed a motion to require a more definite statement of affirmative allegations in answer, and on the same date filed a motion to extend time for filing reply pending disposition of motion to make more definite and certain. The latter motion was granted by the Court on October 11, 1965. The Court set a hearing on the motion for more definite statement for December 1, 1965, and provided for "proper amended pleadings" to be filed by November 17, 1965.

On November 12, 1965, the Court granted the respondent's motion for extension of time to December 22, 1965, to file amended pleadings and for continuance of hearing to January 12, 1966. The basis stated for the requested extension was the complexity of the transactions involved, as well as the minute detail requested by the petitioner. On December 10, 1965, an amended answer was filed in Docket No. 3034-65 and because of that filing, the Court, by Order dated December 23, 1965, denied the petitioner's motion for more definite statement. A reply was filed by the petitioner on January 28, 1966.

A statutory notice of deficiency was issued to James H. Rand for protective purposes and is a duplication of the liability asserted in Docket No. 2950-65. Inasmuch as Mr. Rand was outside the United States at that time, the petition was governed by the 150-day filing requirement and was filed with the Court timely on July 30, 1965 (Docket No. 4662-65). The respondent's answer thereto was filed on September 23, 1965.

On October 8, 1965, petitioner filed a motion to require a more definite statement of affirmative allegations in the answer, as well as a motion to extend time for filing a reply pending disposition of the motion to make more definite and

certain. The latter motion was granted by the Court on October 11, 1965. Hearing on the motion for more definite statement was set by the Court for December 1, 1965, with November 17, 1965, being the due date for the respondent to file amended pleadings.

On December 1, 1965, the respondent filed a notice of objection to the petitioner's motion for more definite statement, alleging, in effect, "that the affirmative allegations of the answer" were adequate. On December 1, 1965, a hearing on the petitioner's motion and the respondent's notice of objection was held before Judge Dawson in Washington. Judge Dawson granted the petitioner's motion and allowed the respondent 60 days within which to file an amended answer, as evidenced by an Order entered on December 1, 1965, extending the time to February 1, 1966.

On February 1, 1966, the respondent's amended answer was filed with the Court, and the petitioner's reply thereto was filed on March 11, 1966.

It was not until March 11, 1966, that this group of cases was, in its entirety, at issue. Henceforth, all action taken thereafter relates to the entire group of cases unless otherwise specified.

In spite of efforts on the part of the Offices of Regional Counsel and the Appellate Division, a joint settlement conference with the various attorneys and petitioners involved in these cases could not be arranged until May of 1966.

On May 12 and 13, 1966, a settlement conference was held in Docket Nos. 3034-65, 3035-65, 3036-65 and 4662-65. That conference was, to a large extent, exploratory in nature to discuss with petitioners' attorneys the adjustments made in the statutory notices of deficiency and the bases therefor. It was agreed at the end of that conference that a subsequent conference would be scheduled after further review of the approximately 300 or more exhibits for the purpose of tracing the numerous transactions involved in these cases through the books and records of the various organizations involved.

The conference in Docket No. 2688-65 was held in May of 1966, and it was agreed that action in that case would be postponed until such time as the transferor case of Public Health Foundation, Docket No. 3034-65, had been disposed of.

A further settlement conference was set in Docket Nos. 3034-65, 3035-65, 3036-65 and 4662-65 for the week of October 24, 1966. That conference was held on October 27 and 28, 1966. The transactions involved in these cases were at that conference discussed at greater length and in greater detail, with the petitioners being fully advised as to the bases for the adjustments.

A further conference was held in December. Certain major issues were again discussed, and the petitioners made an informal settlement proposal of these cases. The multiplicity of petitioners and their several representatives, the complexity and number of transactions involved, together with the multitude of books and records, and need to agree on the facts to be stipulated in event of trial, all have contributed to the time required to reach the proper decision regarding settlement or trial.

On January 10, 1967, the petitioners' settlement proposal in Docket Nos. 3034-65, 3035-65, 3036-65 and 4662-65 was transmitted to the Appellate Branch Office, Miami, Florida. On January 30, 31, and February 1, 2 and 3 of 1967, discussions were held with petitioners' counsel on the various issues involved in these cases. It was agreed that representatives of the parties would jointly examine the documents and records in the cases for the purpose of evaluating the petitioners' settlement proposal. Due to various other matters involving the convenience of both parties the representatives were unable to meet until October of this year. For a two-week period of October 16 through 27, 1967, representatives of the petitioners and the Service met for the purpose of evaluating these cases from both settlement and litigation aspects.

A further conference in Docket Nos. 3034-65, 3035-65, 3036-65 and 4662-65 has been set for December 6, 1967, at which time the petitioners' attorneys will be advised of the Service's view with respect to their settlement proposal.

Throughout the entire history of these cases (the Public Health Foundation group), all of the petitioners' representatives have been thoroughly and completely advised as to the status of the cases insofar as the consideration being given by the Offices of Regional Counsel and the Appellate Division. These cases have not appeared on any trial calendars. They have been reported as "not ready" by all parties concerned.

I trust the foregoing answers your inquiries as to the status of these cases.

Sincerely yours,

SHELDON S. COHEN, *Commissioner*.

Mr. COHEN. Generally, that type of case involves complex issues and a serious attempt is made by the parties to stipulate as many of the relevant facts as possible. The Tax Court likes to get the case as clean as it can before trial, and requires stipulation and agreement of facts. That, usually, is a long, arduous process when dealing with a group of attorneys. But we will find the exact reason for you, sir.

Mr. PATMAN. The number of employees necessary to properly service and police these million to a million and a half tax-exempt organizations and foundations must be a tremendous number. How many would you say actually are required to properly police them?

Mr. COHEN. Any figure that I give you is purely speculative.

It is a question of what kind of organization we are talking about, what degree of supervision one needs.

Mr. PATMAN. Depends upon the category?

Mr. COHEN. I can tell you right now, every year for the last 3 years, I have gone to the Appropriations Committee, and I have asked for an increase in the number of revenue agents for this and other areas. Every year the committee has granted me some increase, but the number has been vastly smaller than the number that I think is required to do the job.

Mr. PATMAN. How many full-time employees do you have in the tax-exempt organization branch now?

Mr. COHEN. In Washington?

Mr. PATMAN. Yes, sir.

Mr. COHEN. One hundred. That is, 100 of the 700 that exist in that whole organization. There are 700 employees in the national office in the technical organization, and 100 of them are involved in this one area, the largest single commitment of manpower.

Mr. PATMAN. 700 in all?

Mr. COHEN. Yes, sir.

Mr. PATMAN. In the tax-exempt branch?

Mr. COHEN. One hundred out of the 700. There are 700 people in that technical organization.

Mr. PATMAN. I understood that the 700 relate to tax-exempt organizations.

Mr. COHEN. The 700 relate to all of the rulings of any kind, and over 100 are devoted to this one area.

Mr. PATMAN. Do you not think that that is a rather small number?

Mr. COHEN. When you think that 700 persons are devoted to all of the technical areas, covering the thousand pages of statutory material in the code, and one-seventh of those are devoted to the area covered by 10 pages of code, why, I think it is a fairly large commitment of manpower.

Mr. PATMAN. It is not meaningful to me about pages of code, because one law can be rather long and not have too much in it, and another law can be short and be pretty meaningful.

Mr. COHEN. In your million figure, you are probably talking about thousands of organizations of one kind of denomination of church and thousands of another kind of denomination of church, and thousands of Boy Scout troops, hundreds of secondary schools, hundreds of DAR chapters, Veterans of Foreign Wars posts, American Legion posts. This kind of organization requires little or no supervision and presents no problem. The category that you and I are generally talking about is

a very limited category. I indicated we have picked up and looked at a half million returns involving foundations in the last 4 years.

Mr. PATMAN. How many people do you have investigating, or called investigators or some name similar to that, to see if these foundations are doing their job properly or improperly?

Mr. COHEN. As I indicated, we have trained 500 revenue agents specially for exempt organization work.

Mr. PATMAN. Are they all working for you full time?

Mr. COHEN. Every revenue agent has some knowledge of this particular area. We try to train enough specialized manpower so that when we have a concentration of these organizations or where we have specialized problems, the personnel with specialized training can be used. We are going to increase the number of specially trained people this year.

Any one of our 14,000 or 15,000 revenue agents is capable of looking at one of these organizations and can be called on if the need is there.

Mr. PATMAN. I am sure that is correct. But I was just wondering how many actually had surveillance.

Mr. COHEN. In effect, these 500 people are specially trained to do the job.

Mr. PATMAN. In other words, they are dealing with 25,000 foundations, and also all the others?

Mr. COHEN. Some of the others, yes.

Mr. PATMAN. Some of the others.

Mr. COHEN. When you look at it in terms of 14,000 revenue agents in charge of 72 million individuals and about 2 million corporations, the allocation manpower to exempt organizations is probably greater.

Mr. PATMAN. Suppose a foundation has one or more people on the payroll and their titles were a little cloudy, and you could not tell what they were doing, and they are in politics. How do you find out whether they are working in political campaigns?

Mr. COHEN. We get a lot of intelligence from each of our district officers around the country who survey the newspapers each day to see what might be of interest. If you see someone engaged in politics and know his relationship with an exempt organization, you get a little worried. That might signal an audit.

Mr. PATMAN. You would not want to rely on that means of enforcement, would you?

Mr. COHEN. We have revenue agents out in the field who inquire into the activities of the organizations in their jurisdiction. A number of the organizations whose exemptions have been lifted during the past few years were found to be engaging in lobbying or engaging in political activities which is beyond the pale. I can't say we have caught every organization which has done so, but we are alert to the problem. We welcome any help that anybody can give us.

Mr. PATMAN. I wonder if you are alert to this area, where a foundation is being used to even pay the donor's alimony to ex-wives?

Mr. COHEN. I think there is a particular case that you have in mind, which is in litigation. There a foundation was used for that purpose.

Mr. PATMAN. I was discussing that with a foundation man the other day, and he said that he knew where one man in a foundation was paying five wives.

Mr. COHEN. We found the first one you mentioned, and if you supply the name of this other one to me, I would like to look into it.

Mr. CORMAN. Before we leave this area of politics, you must have some difficulty in deciding whether or not an activity is politics or whether it is education in patriotism.

Mr. COHEN. It is not the easiest job in the world.

Mr. CORMAN. For the record, could you give us some idea of just what you look at?

Mr. COHEN. The question is really whether it is an action organization. If it is an organization, for example, that invites people of all stamps of political opinion to come and discuss issues with it, that is one thing. If it is an organization that takes a position on legislation and says we advocate this legislation or that legislation or this view or that view, that is clearly lobbying activity or clearly political activity. If the organization endorses a candidate, that is clearly a political activity. There are other areas where it becomes more of a judgmental factor. In one case we had a group of lawyers sit down and read everything that had been written by or about the organization, view every film that it had ever distributed, review every radio and TV pronouncement it had sponsored, and weigh all of this against the statutory requirements. It is a difficult job and requires an awful expenditure of manpower. Would that the Congress give us a clearer test?

Mr. CORMAN. If we take the case that you have mentioned where you have a tremendous amount of investigation, if you determined from that, that all of the activity at one end of the spectrum of politics, whichever one it might be, then would that cause people to lose their tax-exempt status?

Mr. COHEN. Yes. The more troublesome case involves lobbying activity which under the code, must be measured in terms of substantiality. When that provision was before the Congress, Senator LaFollette in clear and undeniable terms said that this was going to create administrative problems, and that Congress ought to deny exemption to any organization which gets into lobbying to any extent—not to a substantial extent—to any extent. Congress chose to adopt the substantiality test. It does give us problems.

Mr. CORMAN. Are there pending suggestions for statutory change concerning that aspect?

Mr. COHEN. Not at the moment.

Mr. PATMAN. Now, you mention on page 3 of your statement about revocations being recommended. What happened to those recommended revocations and to whom was the recommendation made?

Mr. COHEN. Well, the District Director has recommended the revocation of exempt status. In each of the cases the District Director served a notice on the organization.

Mr. PATMAN. To whom did he make the revocation recommendation, to a superior officer?

Mr. COHEN. The procedure runs like this. The agent reviewing the organization reaches what to him is the proper determination. This decision is reviewed by his immediate supervisor, and that goes to the District Director. Then, assuming they all agree that exemption should be withdrawn, the organization is so notified. The notice advises the organization that we propose to deny it exempt status as of whatever

given date it might be, and it has certain appellate rights, administrative appellate rights.

Mr. PATMAN. In the courts?

Mr. COHEN. Both administrative, and in the courts.

Mr. PATMAN. But they have got to pursue their administrative rights first.

Mr. COHEN. That is right. I was in error a minute ago. The District Director does not get involved in the proposal to deny exempt status. It is the supervisor who authorizes this. When the organization is notified of the proposal to revoke its exempt status it has two levels of appeal. An appeal may first proceed within the district office, and then on to the national office. If the organization is still unsatisfied, it can appeal to the courts.

Mr. PATMAN. On page 4, you state that 82 cases were recommended for revocation. Now how many of those 82 cases stood up?

Mr. COHEN. Most of them are still pending. The process is over a 3-year period here. Many of those cases are within the last year or two.

Mr. PATMAN. We do not know where we stand on it.

Mr. COHEN. I can tell you how many final revocations there were.

Mr. PATMAN. Tell me that.

Mr. COHEN. I do not have the precise figure at this moment.

Mr. PATMAN. Put them in the record, of the 82 how many are final and how many are pending.

(The information follows:)

U. S. TREASURY DEPARTMENT,
COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C., December 8, 1967.

HON. WRIGHT PATMAN,

*Chairman, Subcommittee, Foundation Study, Select Committee on Small Business,
Washington, D.C.*

Dear Mr. CHAIRMAN: During my appearance before your Subcommittee on November 16, 1967, you asked for the final action taken on the 82 cases involving recommended revocation of exempt status arising in fiscal years 1964-1967. We have been unable to assemble the data you wish for the 32 cases which arose in fiscal year 1964.

Of the remaining 50 cases (fiscal years 1965-1967), 28 resulted in revocation of exempt status, seven are presently pending in the courts or National Office, and 15 were closed without denial of exempt status.

With kind regards,

Sincerely,

SHELDON S. COHEN, *Commissioner.*

Mr. PATMAN. On page 3, line 5, of your statement, in your reference to audits, you refer to fiscal years 1964-67. Do you mean the 4 years, 1964 through 1967, or 3 years, 1964 to 1967?

Mr. COHEN. I think 4 years.

Mr. PATMAN. Three years; yes.

In the last paragraph of page—

Mr. COHEN. In 1964, we were just getting the program underway.

Mr. PATMAN. Just getting it underway.

In the last paragraph of page 3 of your statement, you say that the IRS audited the books and records of 4,335 organizations and charitable trusts. Were these field audits, Mr. Cohen?

Mr. COHEN. Everyone of them. Everyone of them were field audits; yes, sir.

I would say that this is the only area that we use solely field audits. We do not use office audits.

Mr. PATMAN. How many field audits of foundations and charitable trusts, did the IRS conduct in each of the fiscal years 1964 through 1967?

Mr. COHEN. You want the breakdown?

Mr. PATMAN. That is foundations and charitable trusts.

Mr. COHEN. The 4,300 is the total. Approximately 1,200 a year. Some years it is higher and some years it is a little lower.

Mr. PATMAN. On page 3, the last paragraph of your statement, you say that private foundations and charitable trusts account for fewer than 10 percent of the registered exempt organizations. How do you know that foundations and charitable trusts account for fewer than 10 percent of the registered organizations?

Has the IRS separated the foundations and charitable trusts from the other exempt organizations and counted them?

Mr. COHEN. Yes, sir. Our exempt organization master file contains records on some 325,000 organizations. Of this total, approximately 25,000 are classified as private foundations.

Mr. PATMAN. Now, with respect to this organization ABC, Americans Building Constitutionally, I will not ask you to disclose anything that would be harmful to you in your investigations which are being pursued now, but there are no doubt certain things you could probably tell us about and see if it coincides with the information we have.

The information we have is that this organization first started over in Barrington, Ill., in about the spring of 1966—that is when there was talk about it.

Mr. COHEN. It began in the summer of 1966, we think.

Mr. PATMAN. And they began to have meetings of people who were affluent and had more than just the average income. The low-income group, they could not appeal to them because they could not make any profit out of it. But, people making large salaries who had large incomes, they could be appealed to this way. We were told that they would start out by asking all the affluent people in that area to come to a certain meeting, very secretive, closed doors, nobody could get in unless they were identified. And, then, when they got in, they were given this sales talk, about how they could save taxes, if they would follow the recommendations of the ABC official and for \$1,000 to \$1,050, they would give them the first 30 hours of a pep talk or sales talk to try to convince them that they should become members.

Does that coincide pretty well with your information?

Mr. COHEN. That is the general pattern.

Mr. PATMAN. They had 30 hours of—call it brainwashing, or whatever you want to call it—of pitch from their salesmen about how they can save taxes. We would all agree that you are not expected to pay taxes that you are not legally required to pay. They said you can avoid taxes legally under the Constitution, and that is where they got their name, Americans Building Constitutionally. They say they are going according to the Constitution.

If you want to go further, after the \$1,050, they will take your lawyer and put him in a room and they will take all the lawyers at the same time for \$4,050.

Mr. COHEN. You know, Mr. Patman, I practiced law for a little while, and I think you could go to almost any reputable law firm and get a first-rate charter drafted for less money than any of these fees.

Mr. PATMAN. I know, but this is a kind of peculiar organization on a high-plane pitch, or big money. After they got the \$4,050, they were told that in order to be full-fledged members they had to pay the aggregate of \$10,500. Obviously, you would not get too many people in that, but they got quite a few people.

Mr. COHEN. We have not found very many who went that far. Most of them were at the lower level.

Mr. PATMAN. But they were promised: "If you bring in your neighbors who are in a position to take a membership and he pays us \$10,500, we will pay you your \$10,500 back."

Mr. COHEN. It was not quite that way, as I understand it. They would apparently pay the original subscriber some portion of the fees collected from the member he brings in.

Mr. PATMAN. Pay a portion of it back, and if you brought in two members, maybe he would get the whole amount back.

Any way, they had an appeal, and it started over there, and they went to Barrington and put up their national office. They had quite fine headquarters over there.

Have your agents reported to you?

Mr. COHEN. Our agents have been there. I have not asked what kind of building it is. That kind of detail I was not concerned with.

Mr. PATMAN. Anyway, it is a place that would impress you as being very important, from what I have been told. The founder of this plan, Mr. Walsh, started it in 1964, with the answers to questions that were given to us by the IRS showing that certain tax exemption was legal, and so forth. He started from there and built it all up and put it in a package.

Mr. COHEN. I think one of the things that has occurred here is that when one takes statements people make in isolation and lumps them with other statements that other people have made at other times, one comes to an illogical result, and, perhaps, they realize this problem now. Also, the fact that a court would allow a foundation to do one thing and another one to do one other thing, and a third one to do another thing, and a fourth one to do a different thing does not mean any court will allow a single foundation to do all of them.

Mr. PATMAN. Yes, sir.

Now, Mr. Walsh, they did not put him in the foundation; he is not in the foundation. They bought his package; he has a contract with them to pay back certain fees and take care of him that way. But he does not belong to the foundation.

Of course, the Wall Street Journal had some very interesting articles about Mr. Walsh, and I asked Mr. Hayes if he investigated Mr. Walsh before he accepted that package. He said that he did not investigate Mr. Walsh at all. Obviously, from the disclosures made by the Wall Street Journal, if Mr. Hayes had known all that he probably could not have accepted it. But at the same time, a lot of people have been out a lot of money.

Now, suppose this results in it being just a big fraud and these people are being robbed or being defrauded of their money, are you going to make recommendations to the local district attorneys and to the Department of Justice?

Mr. COHEN. The attorney general, for example, in California, has already begun some independent investigation in which we are co-operating. We would welcome the cooperation of the other local

authorities. Yes, sir; we would certainly hope that the appropriate local authorities would look into this scheme with us.

Mr. PATMAN. Thank you, sir.

I have three or four written questions I want to ask you.

By letter of September 6, 1967, we asked the Internal Revenue Service—I should say that the letter is dated September 6, 1967. We asked the Internal Revenue Service to furnish us the names and addresses of 800 members of ABC as well as copies of their applications for Federal tax exemption. About 7 weeks later, by a letter of October 23, 1967, the Internal Revenue Service informed us that it had “not yet been successful in identifying the 800 members.”

How much closer are you in providing us the names and addresses of the members of the ABC now, Mr. Cohen?

Mr. COHEN. We have had a pretty active investigation going on for 8 months. Before that we were some 3 or 4 months in laying the groundwork for that investigation. Many organizations are concerned. I don't think there is anything like 800 members. There may be, but we have yet to discover that many. We have leads to a great many organizations. They are part of our active investigation. I do not think it would be appropriate to make those names public. If, on a confidential basis, you or Mr. Olsher would like to discuss these names, I would be glad to discuss them. But I do not think we ought to supply the names at this point in the investigation.

Mr. PATMAN. We will accept your statement on that. We will abide by it.

In other correspondence, I asked you to send us applications of more than 60 alleged members of ABC and you furnished us a list showing the information which I should now like to place in the record, that is, the names of the foundations and the other information.

I will place that in the record.

(The list referred to follows:)

<i>Name and address</i>	<i>Remarks by IRS</i>
Barbara Wright Adams Foundation, P.O. Box 1753, Newport Beach, California.	No record of exemption application.
The Alentar Foundation, Santa Fe Springs, California.	Do.
Kenneth E. Bernd Foundation of California, 541 Farmer's Lane, Santa Rosa, California.	Do.
Stephen A. Duff Foundation, 1104 Irwin, San Rafael, California.	Do.
The Fahy Foundation, 6 Rivo Alto Canal, Long Beach, California.	Do.
S. C. Forjays Foundation, 12501 Christy Lane, Los Alamitos, California.	Do.
Foundation for Economic and Social Progress, 2812 Tigertail Drive, Rossmoor, California.	Do.
Harkae Foundation, 55 Rosewood Drive, Atherton, California.	Do.
David Heersink Foundation, 913 W. Roseburg Avenue, Modesto, California.	Do.
Husted Foundation, 12540 Hawthorne Boulevard, Hawthorne, California.	IRS will advise the committee further re this foundation.
Ives Foundation, 484 Clover Crest Drive, Cloverdale, California.	No record of exemption application.
Johnson Foundation of California, 801 Rosemont Road, Oakland, California.	IRS will advise the committee further re this foundation.

<i>Name and address</i>	<i>Remarks by IRS</i>
Carol Terrell H. Root Foundation, 1879 Newport, Costa Mesa, California.	No record of exemption application.
Lester M. Wyatt Foundation, 4228 S. Main, Sebastopol, California.	Do.
Forensic Science Institute, Vivian Hotel, 1723 G Street NW., Washington, D.C.	Do.
Americans Building Constitutionally, P.O. Box 575, Barrington, Illinois.	Do.
D. W. Anderson Foundation, 59 E. Downer Place, Aurora, Illinois.	Do.
Chandler Foundation, 4901 Main Street, Downers Grove, Illinois.	IRS comment has not as yet been received by the committee.
Robert W. Draege Foundation, Mount Vernon, Illinois.	No record of exemption application.
M. J. Harris Foundation, 742 W. Dempster, Mount Prospect, Illinois.	Do.
R. D. Hayes Family Foundation, P.O. Box 575, Barrington, Illinois.	Do.
Herbert M. Hines Foundation, 2114 N. Elmwood, Waukegan, Illinois.	IRS comment has not as yet been received by the committee.
J. W. Hines Foundation, 2403 Cherry, Mount Vernon, Illinois.	No record of exemption application.
L. J. Hines Foundation, Whittington, Illinois.	Do.
C. V. Hoskins Foundation, Mount Vernon, Illinois.	Do.
Dr. Julia Hussman Foundation, 15 Park & Shop, Elk Grove Village, Illinois.	Do.
Dr. Lothar H. Hussman Foundation, 111 S. Northwest Highway, Palatine, Illinois.	Do.
Jefferson County Research Associated, 1101 Broadway, Mount Vernon, Illinois.	Do.
Kellogg Foundation, Yorkville, Illinois.	Do.
J. D. Kirk Foundation, 308 N. Forrest Avenue, Oak Park, Illinois.	Do.
J. F. La Lumondier, Sr., Foundation, 107 South 20th, Mount Vernon, Illinois.	Do.
J. Alton Lauren Foundation, 53 West Jackson Boulevard, Chicago, Illinois.	Do.
Clarice McWilliams Foundation, c/o Americans Building Constitutionally, P.O. Box 575, Barrington, Illinois.	Do.
Roy D. Massner Foundation, 4901 Main Street Downers Grove., Illinois.	Do.
S. B. K. Foundation, 675 S. Plum Grove Road, Palatine, Illinois.	Do.
Sales Analysis Institute Foundation, P.O. Box 575 Barrington, Illinois.	IRS will advise the committee further re this foundation.
Dr. H. Lee Sargent Foundation, 200 Brentwood Drive Des Plaines, Illinois.	No record of exemption application.
Saxon Foundation, 143 S. Lincoln Avenue, Aurora, Illinois.	Do.

<i>Name and address</i>	<i>Remarks by IRS</i>
Russell Spencer Foundation, Thompsonville, Illinois.	No record of exemption applica- tion.
Vernon Spencer Foundation, 602 South Russell Street, Marion, Illinois.	Do.
Richard J. Stephenson Foundation, c/o Americans Building Constitutionally, P.O. Box 575 Barrington, Illinois.	Do.
Tudhope Foundation, 511 Woodland Lane, Northfield, Illinois.	Exemption application approved 6/27/67. Application now being reviewed by IRS national offices.
Michael Ushijiima Foundation, c/o Americans Building Constitutionally, P.O. Box 575. Barrington, Illinois.	No record of exemption applica- tion.
Walsh Family Foundation, c/o Americans Building Constitutionally, P.O. Box 575, Barrington, Illinois.	Do.
Wunsch Foundation, Yorkville, Illinois.	IRS will advise the committee fur- ther re this foundation.
Massner Foundation, 130 E. 12th Street, Davenport, Iowa.	No record of exemption applica- tion.
R. E. Bolthouse Clinic, 2101 Peck Street, Muskegon Heights, Michigan.	IRS comment has not as yet been received by the committee.
R. O. Hayes Foundation, 4340 Crest Knoll Drive, Grand Blanc, Michigan.	No record of exemption applica- tion.
Mark D. Julian Foundation, 862 Juneau Road, Ypsilanti, Michigan.	Do.
Lininger Foundation for Educational Exchange, West New York, New Jersey.	Do.
J. T. C. Foundation, 210 W. 101 Street, New York, New York.	Do.
Hough's Encyclopaedia of American Woods Foundation, Inc. 39 Gramercy Park, New York, N.Y. 10010.	Do.
Philippa Schuyler Memorial Foundation, 270 Convent Avenue, New York, N.Y.	IRS will advise the committee fur- ther re this foundation.
The Foundation for the Advancement of the Civilizing Arts, New York, New York.	No record of exemption applica- tion.
H. G. Ferguson Foundation, 7103 Tifton Drive, Yakima, Washington.	Do.
Glaspey Foundation, Yakima, Washington--	Do.
Jere Irwin Foundation, Yakima, Washing- ton.	Do.
Layman Foundation, Union Gap, Washing- ton.	Do.
J. Orkney Foundation, 610 S. 32nd Avenue, Yakima, Washington.	Do.
Syd Orkney Foundation, 2809 Summitview Avenue, Yakima, Washington.	Do.
The Floyd Paxton Foundation, Yakima, Washington.	Do.

<i>Name and address</i>	<i>Remarks by IRS</i>
Jerre H. Paxton Foundation, Yakima, Washington.	No record of exemption application.
Hap Robinson Foundation, 8503 Kail Drive, Yakima, Washington.	Do.
Herbert M. Himes Foundation, 2114 N. Elmwood, Waukegan, Illinois.	Do.
R. E. Bolthouse Clinic, 2101 Peck Street, Muskegon Heights, Michigan.	Do.
Chandler Foundation, 4901 Main Street, Downers Grove, Illinois.	Do.

Mr. PATMAN. Mr. Cohen, will you please tell this committee exactly what you are doing with respect to the organization known as Americans Building Constitutionally?

You have already explained pretty well what you have done on that.

You expect to pursue it, I am sure, and do everything that is possible to unravel it.

Mr. COHEN. There are both revenue agents and special agents assigned to that investigation.

Mr. PATMAN. I imagine you have your very special agents on that.

Mr. MORTON. Mr. Chairman, can we get back into this for a moment?

Mr. PATMAN. Just a moment.

Either exemption applications or foundation tax returns are required by law; is that not correct?

Mr. COHEN. Tax returns are required by law.

Mr. PATMAN. They are required. That is 990?

Mr. COHEN. Form 990-A, yes, sir.

Mr. PATMAN. But the exemption application is not?

Mr. COHEN. Well, the code authorizes the Secretary of the Treasury or his delegate, in this case, the Commissioner of Internal Revenue, to require anyone to file such returns or make such statements as may be necessary to show whether the person is liable for any income tax. In regulations issued under this authority we require the application for exemption.

Mr. PATMAN. Mr. Morton, you may ask questions.

Mr. MORTON. I understood that, in a reply to a question asked by the chairman and by the distinguished gentleman from California, you said that lobbying and political activities could not be done by a foundation. Is that not correct?

Mr. COHEN. Not by any organization exempt under section 501(c)(3) of the code.

Mr. MORTON. What about COPE and its activities?

Mr. COHEN. COPE is not exempt under section 501(c)(3). Labor organizations are not exempt under that section. Business leagues are not exempt under that section. They are exempt but under other sections of the law.

Many people say to me: "Why can such and such a business league engage in lobbying?" Organizations such as the American Medical Association or the National Rifle Association, do not have exemption under the provision which imposes the restriction on political or lobbying activities. Therefore, we do not have any recourse in the case of activities of organizations which do not claim to be charitable organizations.

Mr. SURREY. The contributions to the charitable organizations are deductible by the individual contributor, but not the contribution to the organizations you mention, which are exempt under other sections.

Mr. MORTON. I see what the difference is. Thank you very much.

Mr. CORMAN. Mr. Chairman, I wanted to ask one further question. The more I think about this: How difficult your job must be.

Mr. COHEN. I get shot at from all sides.

Mr. CORMAN. We really do get the Government making some very substantial decisions concerning political activities, and I would think if you have any idea about legislative change that we really ought to get the administration off the hook if possible, or at least with a little bit more objective tests than the ones which apparently exist, because I think that is a very hazardous thing, and particularly considering the fact that so much political activity today is in the form of "education." I should think that your job would become more and more complex, in the greater and greater threat that you are either stifling patriotism or permitting tax dollars to go for political activities.

Mr. SURREY. I might say that what you say has merit, Mr. Corman, but, on the other hand, this is a problem that a great many people have worried themselves about and concerned themselves about for a great many years, and it is not easy to come up with more objective tests than are in the law today.

I think, if we could reach new tests readily, we would have reached them some time ago.

But you are dealing, essentially, with a concept that Congress has in mind. They do want to support education, and they do not want to support propaganda. It is very difficult to draw that line.

The regulations provide considerably more detail than the statute and they have been available in the form they are now in for about 10 years, and yet I have not seen anybody suggest more objective tests than are contained in them. Given the basic concept, one can go just so far and the rest does fall upon the administrator and the courts to make these final decisions.

Mr. CORMAN. We are satisfied you are doing the best you can. It is all right with me but it must be a tough job.

Mr. PATMAN. Mr. Surrey, do you think that the extent to which tax-exempt foundations influence or control businesses, directly or indirectly, should be the object of continuous public inquiry so both the stockholders, employees, and the general public have this information?

Mr. SURREY. Yes, sir. Of course, I think we would go further than that and I would say that we would very much prefer legislation that ends it.

Mr. PATMAN. Have you made any such recommendation?

Mr. SURREY. Yes, sir.

Mr. PATMAN. Where are those recommendations?

Mr. SURREY. Those recommendations are in the Treasury report, and one distinct recommendation——

Mr. PATMAN. 1964?

Mr. SURREY. 1965.

Mr. PATMAN. 1965?

Mr. SURREY. Yes, sir.

Mr. PATMAN. All right, sir. I think I would send them up every now and then if you do not get any action on those.

Mr. SURREY. The President has referred to those twice and as Secretary Fowler said yesterday we are hoping for consideration in the near future.

Mr. PATMAN. I understand you are going to send up a tax message in which, this would be involved?

Mr. SURREY. The President has said that would be the case.

Mr. PATMAN. Foundations today have tremendous influence on our economic, social, and educational lives. This vast accumulation of funds was made possible by the public (taxpayers and customers). But the public has nothing to say about their management even though the creators of these funds often escape Federal and State inheritance and estate taxes.

I have heard it said many times that, if there were no tax-exempt foundations, the Government would have to increase taxes in order to do the job that the foundations are doing. The answer is that, despite the work the foundations do, the Government seems to continually need more and more taxes and the public must, of course, make up what these foundations fail to pay and what their creators fail to pay.

Is it not true, Mr. Surrey, that tax-exempt foundations are subsidized by the people who do pay taxes?

Mr. SURREY. The Internal Revenue Code does allow a person to reduce his taxes by making contributions to philanthropic organizations, including foundations. Also, the Internal Revenue Code does exempt from income tax the income of philanthropic organizations along with other tax-exempt organizations and the philanthropic group does include foundations. These are conscious decisions by the Congress that in the United States our society is well served by this form of encouragement to philanthropy.

On the other hand, as is true with many activities, over time one sees that there are certain abuses which should be controlled and ended, and the Treasury Department study indicates that while Government encouragement to philanthropy, the kind that exists in the Internal Revenue Code and is found in the foundation area is desirable, nevertheless, there are patterns of abuse of that encouragement which should be ended.

Mr. PATMAN. I want to say something for the record briefly in connection with one of the statements made by Secretary Fowler on the balance-of-payments problem.

Yesterday I mentioned that the Agricultural Development Council, Inc., of New York City, a Rockefeller-controlled foundation, and the Pew Memorial Trust, of Philadelphia, had made certain overseas grants, among others, in dollars totalling \$533,950 during 1965 and 1966. I listed those grants, which indicate that, of the \$533,950, \$311,000 was spent in Japan by the Agricultural Development Council and \$100,000 was spent in Italy by the Pew Memorial Trust.

After I made my statement, Secretary Fowler attempted to explain by indicating that the underdeveloped countries of the world are exempt from the voluntary control measures respecting the balance-of-payments problem. I wish to point out that Japan and Italy, which is where the bulk of this \$533,950 went, can hardly be classed as underdeveloped countries.

Secretary Fowler also failed to point out that any shipment of U.S. currency, be it in the form of an investment using U.S. dollars by a U.S. corporation in a foreign enterprise or the making of a grant in dollars by a U.S. foundation to a foreign entity, by definition adversely affects our balance of payments. In other words, any dollar outflow from the United States regardless of its intended purpose constitutes a negative entry in our balance-of-payments table and can very easily cause a further drain on our gold supply. This is so because of the simple fact that, when a dollar is invested overseas in a foreign corporation or when a grant is made overseas in dollars, they can be utilized—once they find their way into the central bank of that foreign country—to demand payment in gold for those dollars.

If Secretary Fowler wants to comment on that, he is privileged to do so in the record.

Mr. SURREY. I might just add, Mr. Chairman, that I would suppose one could also find a number of instances where other forms of philanthropy did involve expenditures of sums in countries, other than the less-developed countries, such as church groups, missionary groups or the like. There has never been a restriction on philanthropy as such.

Mr. PATMAN. I am referring to investments abroad principally and I picked out those that are just isolated instances. What concerns me about the Treasury, and the great disappointment I have with the Treasury—is that we are the only country on earth that does not have some control over the export of our capital. No other country fails to have some type of control over the export of its capital, its currency and its credit.

Is that a correct statement, Mr. Surrey?

Mr. SURREY. I would not want to say how detailed it is. Most of the countries have been attempting to move more and more to fewer and fewer controls.

Mr. PATMAN. I know, but they still have it. I asked Mr. Fowler that one time. I would like to bring it up when he is here, but he has been excused. However, he can answer it if he wants to. He thought there is another country and I said, "Well, Mr. Fowler, if you will let me know what country it is I would appreciate it," but he has never let me know. There is no other country. Since we are the only country doing that, it would certainly be to our benefit and a help to our people to have some sort of export control, to keep a few big banks in New York from furnishing billions of dollars overseas when they want to. That is causing a lot of our problems, just a half dozen banks in this country. Yet we are not making any attempt at all to control the export of capital and credit. I hope that he remembers that other country, and I would like to have the name of it.

Mr. SURREY. That is going into another issue, Mr. Chairman, than the one we have here today.

Mr. PATMAN. That \$500,000 is equal to the amount of duty-free goods that 5,000 Americans would be permitted to bring into this country at \$100 per person. They are restricted because of carrying out the policy that we have in mind. So that is one or two foundations getting as much benefit there, you might say, as 5,000 people.

You are familiar, of course, with the Foundation Library Center which is the propaganda agency for the big foundations. Is the

Foundation Library Center still photocopying tax records of the foundations at the IRS headquarters, Mr. Cohen?

Mr. COHEN. Yes, sir.

Mr. PATMAN. It is true that the IRS has not been charging the foundation for photocopying these records?

Mr. COHEN. No, sir; we are charging them.

Mr. PATMAN. You are charging them?

Mr. COHEN. They are using their own equipment, but we charge them for whatever our people must do.

Mr. PATMAN. How much do you charge them?

Mr. COHEN. I have forgotten the amount. It was worked out.

Mr. PATMAN. Put the amount in the record when you look over your transcript.

Mr. COHEN. I think Mr. Harding testified to this. I doubt if the amount has changed since that time. I will verify it.

Mr. PATMAN. It was 10 cents a page in 1964.

Mr. COHEN. I believe it is still the same.

(The information follows:)

In 1963, under revised regulations designed to give greater public access to information reported by tax exempt organizations, the Internal Revenue Service agreed to permit the Foundation Library Center to copy, on a continuing basis, the public record portions of annual returns filed by foundations. Copying was to be performed by Library Center personnel using supplies and equipment procured and paid for by the Center, which also would reimburse IRS for incidental expenses at the rate of \$0.02 per reproduction per page. This agreement remains currently in effect.

Mr. PATMAN. In mentioning the American Medical Association you did not elaborate and I want to point out that the American Banking Association is the biggest lobby in Washington or in the United States. They are a hundred years old and they have lots of knowledge about how to get things done. They are usually successful.

Mr. COHEN. They are not exempt under section 501(c)(3).

Mr. PATMAN. But, do they not have a foundation?

Mr. COHEN. I am not sure, sir.

Mr. PATMAN. You might look into that. I have a feeling that the funds somehow or another get over from the foundation to the lobbying activities, and if you will take a close look at it I will appreciate it very much.

The exemption applications subsequent to 1948 and the public portions of the foundation tax returns, the form 990-A, are open to public inspection at the IRS district offices as well as Washington, is that correct?

Mr. COHEN. Yes, sir.

Mr. PATMAN. That is public inspection?

Mr. COHEN. Yes, sir.

Mr. PATMAN. At either here in your office or in the district offices?

Mr. COHEN. Yes.

Mr. PATMAN. Open for public inspection?

Mr. COHEN. Yes, sir.

Mr. PATMAN. I am going to hand you a copy of a form letter which was received by Mr. Byron E. Calame, a member of the staff of the Wall Street Journal in Los Angeles, Calif. Then I shall read it to you and ask you whether this is in accord with the IRS policy of public inspection of exemption applications.

This is a letter to Mr. Byron Calame of the Wall Street Journal, who is the author of those two articles in the Wall Street Journal about the ABC and his request is dated—this letter is dated August 18, 1967, which was received, the request was received August 11, 1967. It is a request for the exemption application of a foundation by the name of Odell Tudhope Educational Trust of Northfield, Ill. The reply received by him from the district director said, "The information requested in your letter may be furnished only upon authorization of the taxpayer. If the taxpayer will write us a letter over his or her signature, authorizing us to give this information, we shall be glad to do so. Very truly yours, District Director."

It says, "Your personal check is returned." And then, "Over."

Then it says, "If you have authority to obtain a copy of the desired exemption application, please contact us again. Copies of records that are available to the public cost \$1 a page. After the proper identification is furnished, and the desired copies are mailed to you, you will be billed."

(The letter follows:)

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
August 18, 1967.

MR. BYRON E. CALAME,
6261 Vernon Street, Long Beach, Calif.

Request received: August 11, 1967.

Name: Odell Tudhope Educational Trust of Northfield, Ill.

The information requested in your letter may be furnished only upon authorization of the taxpayer. If the taxpayer will write us a letter over his or her signature, authorizing us to give this information, we shall be glad to do so.

Very truly yours,

DISTRICT DIRECTOR.

Your personal check is returned, No. 44.

If you have authority to obtain a copy of the desired exemption application, please contact us again.

Copies of records that are available to the public cost \$1 a page. After the proper identification is furnished, and the desired copies are mailed to you, you will be billed.

MR. PATMAN. Is this in accord with your policy of public inspection?

MR. COHEN. He has written to the wrong office in the first place.

MR. PATMAN. Why did you not tell him that?

MR. COHEN. He didn't know that.

MR. PATMAN. The fellow who got the letter knew that, did he not?

MR. COHEN. No, how would he know?

MR. PATMAN. The district director?

MR. COHEN. No.

MR. PATMAN. They mention the foundation.

MR. COHEN. You may apply to the district director in the district in which the organization is registered. Now, this particular organization was not registered with the district director in Los Angeles.

MR. PATMAN. Is it not the policy—is not the policy the same all over, a national policy?

MR. COHEN. We don't have files of all organizations in all offices. The district director in Illinois has the ones for Illinois, the district director in California—

MR. PATMAN. Why did he not explain that to him? Here he is leading him to believe he has to get the consent of that organization.

Mr. COHEN. The problem here is that, I am sure, the employe just didn't recognize the name of the organization, didn't have it on the list as an exempt organization, and just sent a form letter. If this letter had been sent to the proper office he would have gotten a proper reply. And the fact—

Mr. PATMAN. He does not know which is the proper office.

Mr. COHEN. This particular organization was under investigation at the time and the file wasn't even available in the Chicago office.

Mr. PATMAN. I do not think that is a forthright answer, my dear sir.

Mr. COHEN. Those are the facts, sir.

Mr. PATMAN. If your system is like that, it ought to be changed. You are giving people the runaround. Now, this fellow writes to this office, this district director, and he wants this information about this designated foundation. If the director does not have it, it occurs to me that—if you want to be forthright with the people and give them the best information possible—the director should say it is not at this office, instead of giving them a runaround.

Mr. COHEN. That is our normal procedure. As I indicated, the clerk made a mistake.

Mr. PATMAN. The district director signed it.

Mr. COHEN. Whoever supplied the letter for the district director made the mistake. The district director would not see every letter from his office.

Mr. PATMAN. You take a look at your system or policy. That could only impress someone as being a sort of runaround. You are not giving him the correct information he needs or as much as he should expect from the district director.

By the way, we have had increasing complaints from the press about the delay and their inability to obtain access to the same type of IRS documents. How do you account for this?

Mr. COHEN. I haven't had any complaints on that subject so I can't speak to it.

Mr. PATMAN. You are telling me again that these records are public, either through the Washington office or the district director having the records, and there is no charge for it, free examination.

Mr. COHEN. Free examination.

Mr. PATMAN. Free examination. All right, then, that makes it a lot better.

As you know, Treasury regulations require a tax-exempt foundation to file a schedule with its tax return showing certain important information when assets are sold or exchanged. The Henry Francis du Pont Winterthur Museum of Wilmington, Del., a Du Pont controlled foundation with assets of \$66 million, had capital gains of \$10,317,617 in 1965. I am going to hand you the foundation's 1965 tax return. Please ask your aids to check the return and then tell us whether it is correct that the foundation only submitted a schedule for \$56,617 of that capital gain, and failed to submit a schedule for \$10,261,000 of the gain?

Mr. COHEN. I will take your word for it, sir.

Mr. PATMAN. You have got it. It is right before you.

Mr. COHEN. Which schedule is it? There are about 15 schedules attached to the return. I would be glad to check it. It may be they filed an incomplete return, in which case we would be glad to follow up on it.

Mr. PATMAN. I assume you often have that.

Mr. COHEN. It is not unknown.

Mr. PATMAN. During our hearing on August 10, 1964 (page 137 of the printed record), I asked Acting Commissioner Harding whether the IRS has found that the Leonard C. Hanna, Jr., Fund of Cleveland has complied with all statutory requirements in its final liquidation.

By letter of October 26, 1964, the IRS informed us that it "has not completed its consideration of the fund's operations."

On December 3, 1964, the IRS informed us that they expected to complete their field audit work on the fund by February 28, 1965.

Now, by letter of October 12, 1967, 3 years after our request of October 10, 1964, the IRS informed us as follows:

"In accordance with requests made by you in connection with hearings conducted by your Subcommittee on Foundations, this is to advise that we have completed our audit of the Leonard C. Hanna, Jr., Fund, of Cleveland, Ohio, and have found the organization to have complied with provisions of the Internal Revenue Code applicable to such exempt organizations."

Mr. Cohen, would you call this a dynamic performance, 3 years after we requested the information?

Mr. COHEN. The audit was completed rather rapidly. The issue was, did the organization comply with the law. The matter was submitted for complete legal review. There were a great many matters here involved. It was reviewed and additional information was requested and supplied. The activity went on. The organization has its right to make its views known. We have to sit and listen, we have to wait for briefs.

Mr. PATMAN. You think they advised us as quickly—

Mr. COHEN. I would like to say we would like to do everything within 30 or 60 days.

Mr. PATMAN. You think 3 years is a reasonable time?

Mr. COHEN. I would have preferred to have been able to provide you with the information more quickly.

Mr. PATMAN. You think it is not uncommon for it to be 3 years?

Mr. COHEN. It is not unknown.

Mr. PATMAN. I wish to announce that the U.S. marshal in Chicago has informed us that he has served Dr. Michael R. Saxon for appearance here at 10 tomorrow. Dr. Saxon is the member of the ABC who failed to show up here on Tuesday when he promised to testify.

However, we had his printed testimony and I believe you were furnished a copy of it the other day.

Mr. COHEN. I haven't looked at it myself. I think our people have it.

Mr. PATMAN. Mr. Corman?

Mr. CORMAN. First of all, of the approximately \$10 billion in charitable contributions, I think that is only part of the total that I wanted to get at. What about the income of foundations that are exempt?

Mr. COHEN. I think Mr. Surry suggested about a billion and a half dollars income of the various foundations.

Mr. CORMAN. Is that the tax base or tax loss?

Mr. SURREY. That was the income—the tax base in your terminology. In 1962 it was a little over a billion dollars. It may be up somewhere to a billion and a half today.

Mr. CORMAN. Probably much of that would fall in the regular corporate rate.

Mr. COHEN. Yes.

Mr. CORMAN. Probably another half or three-quarters of a billion of tax loss.

Mr. COHEN. Yes.

Mr. CORMAN. A reasonable estimate?

Mr. SURREY. As the Secretary indicated, we have to keep this in some perspective. Our tax on individuals runs to \$64 billion on a calendar basis and nearly close to \$30 billion on corporations.

Mr. CORMAN. Just when we have so much trouble finding \$400 million for the poverty program, and I wonder about the altruistic purposes of some of these foundations.

From the filing of the form 1023 and form 990, if I could address the problem at the moment, not the foundation as such, but the donor giving to what he thinks is a tax-exempt foundation and it turns out it is not, what are the consequences for him?

Mr. COHEN. The rules are different for different kinds of donors. We put out a publication called "Publication 78," which is a list of the exempt organizations to which contributions may be made and deducted on the income tax return. The so-called third party, innocent donor, may rely on this list for purposes of determining whether his contributions are deductible, until we put out notice that there is a revocation of exempt status. That same assurance is not given to the so-called insider. The regulations provide that if a person closely associated with a foundation is the one who causes, or has reason to know that there is a violation the deduction claimed for contributions made by him might be disallowed. We have two separate procedures. One is for the so-called innocent contributor and the other for the person who is in a position to know the exact status of the donee-organization.

Mr. CORMAN. Are there civil and criminal consequences?

Mr. COHEN. Civil consequences. There might or might not be criminal consequences, depending on the degree of the violation.

Mr. CORMAN. There probably would be under this sole proprietor kind of information. They are clearly not tax exempt, but if he went on the assumption for a couple or 3 years?

Mr. COHEN. Yes, sir; there is a greater possibility of asserting a criminal violation there.

Mr. PATMAN. I would just like to make one statement about the ABC.

I am glad that you are interested in that, and I am encouraged by the investigation that you are making. The way it looks to me, the ABC people based their appeal on the fact that rich people are getting tax exemptions through the foundation method and that they will use exactly the same method for less affluent people of our country, provided they can pay \$10,500 each for the knowledge and information. In other words, they promise the same benefit that the very rich get. Now, if the very rich and other affluent people get out of taxes through loopholes, do you not think that the poor man is entitled to a loophole, too, somewhere along the line? Because he cannot bear all these burdens.

Mr. COHEN. I don't think the so-called affluent are getting any tremendous advantage out of this. I don't know what the advantage is. We hope there aren't too many abuses. We don't discover too many. We find some. Therefore, I hope we don't have to open up the tax law to any more loopholes. I would characterize them as unjustified benefits since most of the so-called loopholes were consciously enacted by the Congress.

Mr. PATMAN. That is correct, and I think it is the duty of IRS to point out these loopholes as quickly as you discover them. I am not on the tax writing committee, the Ways and Means Committee, that would have to do with these loopholes and gimmicks in the tax laws. But it appears to me that a report from the Secretary of the Treasury which goes to all Members of Congress would be very helpful in pointing out things that needed to be done in order to stop loopholes. I wish the Secretary of the Treasury at the end of each year or better yet at the beginning of each Congress will point out to all Members of Congress the legislation that is needed to stop these loopholes and prevent their use against the public interest.

Mr. SURREY. I think you will find, Mr. Chairman, that the Treasury has been very diligent in acting in this area to perform as the Secretary said the other day, and it is also our hope that there will be a tax reform program which the Ways and Means Committee can occupy itself with next year.

Mr. PATMAN. Yes, sir. I appreciate the fact that that is being talked about, and I hope it materializes and is set for some time next year.

The committees have more legislation all the time, and they do not always get around to some of these things. The tax writing committees, the Ways and Means and the Finance Committee in the Senate, have been so busy in other matters, they just naturally could not get to it, and it is understandable that they did not.

I appreciate very much the information you gentlemen have furnished and for your appearance and testimony.

The committee will stand in recess until 10 o'clock in the morning here in this room.

(Whereupon, at 12 noon, November 16, 1967, the subcommittee recessed, to reconvene on Friday, November 17, at 10 a.m.)

TAX-EXEMPT FOUNDATIONS: THEIR IMPACT ON SMALL BUSINESS

FRIDAY, NOVEMBER 17, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 1 OF THE
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2359 Rayburn House Office Building, Hon. Wright Patman (chairman of the subcommittee) presiding.

Present: Representatives Patman and Corman.

Also present: H. A. Olsher, director, Foundations Study, Myrtle Ruth Foutch, clerk; and John J. Williams, minority counsel.

Mr. PATMAN. The committee will please come to order.

I wonder if Dr. Michael R. Saxon is here or accounted for.

Miss Clerk, you know Dr. Saxon, do you not? He was here the other day. Do you know him? Do you know his attorney?

He is not here, is he?

Miss FOUTCH. No, sir.

Mr. PATMAN. All right.

And Dr. Saxon doesn't answer, so he is not here.

A subpoena was served on Dr. Saxon on November 14, 1967. He was ordered to bring with him all books, documents, records, and papers of the Saxon Foundation which contain the following information:

All contracts to which the Saxon Foundation is a party.

The names and addresses of each ABC applicant from whom the Saxon Foundation received fees and the amounts of each such fee.

Names and addresses of the foundation's donors since date of organization, including amount contributed by each donor.

Names and addresses of donees since date of organization, including amount paid to each donee.

Amount of salary, fees, and expenses paid to Dr. Saxon by the foundation since date of organization, itemized so as to indicate whether the payments were salary, fees, or expenses.

Amount of salary, fees, and expenses paid to Mrs. Saxon by the foundation since date of organization, itemized so as to indicate whether the payments were salary, fees, or expenses.

The income and disbursements statement which accompanied Dr. Saxon's letter of November 2, 1967, shows that the Saxon Foundation received \$31,500 in ABC membership fees. He was ordered to forward the names and addresses of each member from whom the Saxon Foundation received these fees and the amount of each such fee.

The income and disbursements statement, which accompanied Dr. Saxon's letter of November 2, 1967, shows \$28,760 as "paid to ABC and

other contributions." He was ordered to indicate how much of that \$28,760 was paid to ABC and the amount that was paid out for "other contributions."

Dr. Saxon has not honored the subpoena which was served on him 2 days ago in Chicago, so we will insert here a copy of the subpoena and a copy of the return of the marshal who served the subpoena. The original will be retained here in this office subject to review by any interested person.

(The documents referred to follow:)

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To: Mr. Joseph N. Tierney, United States Marshal.

You are hereby commanded to summon Dr. Michael R. Saxon, 143 South Lincoln Avenue, Aurora, Illinois, to be and appear before the Subcommittee No. 1 of the Select Committee on Small Business of the House of Representatives of the United States, of which the Honorable Wright Patman is chairman, and to bring with him all books, documents, records and papers of the Saxon Foundation which contain the information requested, described and set out in Schedules 1 and 2, which are attached hereto and made a part of this subpoena, in Room 2359, Rayburn House Office Building in the city of Washington, on November 17, 1967, at the hour of 10:00 a.m., then and there to testify touching matters of inquiry committed to said Committee; and he is not to depart without leave of said Committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 13th day of November, 1967.

WRIGHT PATMAN,
Chairman, Subcommittee No. 1.

Attest:

W. PAT JENNINGS, *Clerk.*

Served this writ on the within named Dr. Michael R. Saxon by delivering a copy thereof to him in person at 1306 W. Downer Place, Aurora, Illinois, this 14 day of Nov. A.D., 1967 and at the same time informing him of the contents thereof.

J. N. TIERNEY,
U. S. Marshal
(By R. REID, *Deputy*).

SCHEDULE 1

All contracts to which the Saxon Foundation is a party.

The names and addresses of each ABC applicant from whom the Saxon Foundation received fees and the amounts of each such fee.

SCHEDULE 2

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
Washington, D.C., November 6, 1967.

Dr. MICHEL R. SAXON,
Medical Director, The Saxon Foundation,
Aurora, Ill.

DEAR DR. SAXON: Thank you for the information enclosed with your letter of November 2, 1967. The following is additional information required in connection with our study of tax exempt foundations and charitable trusts:

(1) Names and addresses of the Foundation's donors since date of organization, including amount contributed by each donor. This was requested in Item 8 of our Attachment A of October 3, 1967.

(2) Names and addresses of donees since date of organization, including amount paid to each donee. This was requested in Item 8 of our Attachment A of October 3, 1967.

(3) Amount of salary, fees, and expenses paid to you by the Foundation since date of organization. Please itemize so as to indicate whether the payments were salary, fees, or expenses.

(4) Amount of salary, fees, and expenses paid to Mrs. Saxon by the Foundation since date of organization. Please itemize so as to indicate whether the payments were salary, fees, or expenses.

(5) The income and disbursements statement which accompanied your letter of November 2, 1967 shows that the Saxon Foundation received \$31,500 in ABC membership fees. Please forward the names and addresses of each member from whom you received these fees and the amount of each such fee.

(6) The income and disbursements statement, which accompanied your letter of November 2, 1967, shows \$28,760 as "paid to ABC and other contributions." Please indicate how much of that \$28,760 was paid to ABC and the amount that was paid out for "other contributions."

Sincerely yours,

WRIGHT PATMAN,
Chairman Subcommittee No. 1.

Mr. PATMAN. Mr. Corman, do you know of anything else we should do?

Mr. CORMAN. No.

Mr. PATMAN. Since our witness is not here and he has refused to honor the subpoena, the committee will stand adjourned subject to the call of the Chair.

(Whereupon, at 10:15 a.m., November 17, 1967, the subcommittee adjourned, subject to the call of the Chair.)

(The following was received subsequent to the hearings for inclusion in the record:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 1, 1967.

HON. WRIGHT PATMAN,
*Chairman, Foundation Subcommittee of the Select Committee on Small Business,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: I hereby request that the attached copy of my statement on tax-exempt foundations be included as part of the printed record of the hearings on tax-exempt foundations being conducted by the Foundation Subcommittee of the Select Committee on Small Business.

Kind regards.

Sincerely yours,

JOHN M. MURPHY,
Member of Congress.

STATEMENT BY REPRESENTATIVE JOHN M. MURPHY OF NEW YORK

Thank you, Mr. Chairman, for the opportunity to participate today in these hearings on the tax-exempt status of private foundations. This subcommittee has made a valuable contribution over the years in investigating the abuses of certain tax-exempt organizations, and these hearings will add to an already considerable accumulation of information on the subject. Hopefully, they will result in legislative recommendations to correct the present weaknesses in our tax laws concerning tax-exempt organizations.

I will not attempt to appear today as an expert on foundations, because the credentials of this subcommittee are such that I would be on very uncertain ground from the beginning. There is, however, one specific weakness in our tax laws with which I am particularly concerned, and I will limit my statement to a discussion of that one subject.

I am referring to that part of our tax laws dealing with businesses controlled and operated by tax-exempt foundations, and the competitive advantage such businesses have over regular taxpaying business firms.

A foundation may own a controlling interest in a business, an interest of sufficient magnitude to exert considerable influence over the conduct of the business, or it may own and operate a business directly. In each case the

foundation's tax-exempt status gives it an unfair advantage over its taxpaying competitors.

For example, because contributions to tax-exempt foundations are deductible by the contributor for Federal income tax purposes, a foundation can capitalize its business much easier than a taxpaying business. Furthermore, when a foundation owns or controls a business it is relatively free from the demands of shareholders for current income distribution, and thus can accumulate such income for investment in the business to improve its competitive position, or can absorb a loss when the business is declining; taxpaying businesses, on the other hand, are subject to pressure from stockholders and must usually return part of their current income to the stockholders. In addition, many tax-exempt foundations, particularly those involved in scientific research and development, actively compete for research and development contracts and are often able to bid for business at a break-even figure that cannot be matched by their taxpaying competitors.

The only significant action taken to curb these abuses was the Revenue Act of 1950, which subjected the unrelated business income of foundations to ordinary taxes; Section 513(a) of the act defines "unrelated trade or business" as "any trade or business the conduct of which is not substantially related (aside from the need of such organizations for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption." This section was written to prevent tax-exempt organizations from competing unfairly with ordinary, taxpaying businesses.

Experience has shown, however, that there are many loopholes in this restriction on the unrelated business income of tax-exempt foundations. For example, the 1950 statute does not apply to rents derived from unrelated business property. Foundations can rent business assets to one of their own business subsidiaries, receive most of the profits by charging high rent which is exempt from the unrelated business tax, and thus accumulate large amounts of tax-free capital.

The 1950 statute also exempts rent from a lease that is not longer than five years if the lessor has an outstanding indebtedness with respect to the leased assets. This enables a foundation to obtain the stock of a corporation, liquidate the corporation, and then lease the assets to a newly formed corporation for a five year period. The rent charged this new corporation is usually about 80% of its before-tax income, and thus the foundation is able to rake-off most of the income of the corporation without paying any tax. One side effect of this problem is that because foundations are able to get most of the income of a business operation through tax-exempt rent, they are able to pay a much higher price than a taxpaying business when they obtain new business property.

One obvious remedy, of course, would be to close the loopholes in the existing statute to insure that all unrelated business income is taxed. Such a remedy, however, is based on the assumption that the only problem is that of loopholes in the existing law, and such an assumption is not accurate. The fact is that even if foundation-owned businesses are subject to tax, the very fact the business is owned by a tax-exempt organization gives it an unfair advantage over its competitors, for reasons I mentioned earlier.

The basic problem, therefore, since taxing unrelated business income is insufficient, is how to prevent foundation-owned and operated businesses from holding an unfair competitive advantage over taxpaying business. The Treasury Department, in a 1965 study, recommended dealing with this problem by limiting participation by private foundations in active business. They recommended that foundations be prohibited from owning, either directly or through stock holdings, 20% or more of a business unrelated to the exempt functions for which the foundation received its tax-exempt status. The Treasury recommendation, however, is incomplete in at least two respects: it fails to deal with the foundational problem of defining "unrelated business", and fails to recognize that any business operated by a tax-exempt organization, unrelated or related, has a competitive advantage over taxpaying businesses. Officials of the Treasury Department and the Internal Revenue Service have testified before this Subcommittee about the difficulty of working with the present definition of "unrelated business."

A related problem is that involving tax-exempt organizations doing what is called "basic research." This type of activity is exempt from taxation, and yet it

is often in competition with taxpaying businesses. Tax-exempt organizations such as the Rand Corporation and the Institute for Defense Analysis, both of which execute research contracts for the U.S. Government and particularly the Department of Defense, are in direct competition with many taxpaying companies. Why should these firms be accorded special tax advantages if their private competitors do not receive similar advantages? I submit that the legislation providing for tax-exempt organizations was never intended to create unfair competition and I see no reason why it should be allowed today. If the objective is to foster basic research for the benefit of the general public, then I have no objection, but when that research is turned into a profit-making business it should not be allowed.

In your Subcommittee study dated December 31, 1962, there are a number of examples of business activities of these tax-exempt research organizations which are in direct competition with taxpaying businesses. I would like to mention one as an example of this problem. The Stanford Research Institute of Menlo Park, California, a tax-exempt research organization, made a study entitled "An Economic Study of the Ventura River Municipal Water District" for a combine of oil and development companies for a reported fee of \$60,000. This is work customarily performed by consulting engineers in private practice. Your report lists many similar cases, but the point is this: if our present law is so weak that these tax-exempt organizations are allowed to operate businesses in competition with taxpaying businesses, then our tax laws need drastic reform.

Such reform should be based on the following assumption: When a business is operated by a tax-exempt organization, regardless of whether it is related or unrelated to the organization's exempt purpose, or whether its income is taxed or untaxed, it holds an unfair advantage over its taxpaying competitors. The deciding factor, therefore, should not be whether a business is related to the organization's exempt purpose, but whether it is in competition with taxpaying businesses. My proposal would prohibit a tax-exempt organization from owning, either directly or through stock holdings, 20% or more of *any* business. This is similar to the 1965 Treasury Department proposal I mentioned earlier, but it is not limited to unrelated businesses. I would, however, agree to the exceptions recommended by the Treasury Department and to the time period given tax-exempt organizations to reduce their business holdings.

Mr. Chairman, my statement today covers only a small part of the total problem of reforming our tax laws, but it is a very important part. It is the taxpaying businessman, and eventually the average taxpaying American, who must pick up the tab for the tax-exempt foundations. It is argued, and I think with ample justification, that tax-exempt foundations do things that would otherwise have to be done by government, or that cannot be done by anyone else; I would not challenge this argument, and I would not abolish tax-exemption for such activities. But this same argument cannot be used to justify businesses owned and operated by tax-exempt organizations; it is this area of abuse that I would like to see eliminated.

EXHIBIT 1 (PART 1)

Americans Building Constitutionally

A TRUST (Not for Profit)

P.O. BOX 675, BARRINGTON, ILLINOIS 60010

TELEPHONE: BARRINGTON (312) 381-6600

CERTIFIED-REGISTERED MAIL
RETURN RECEIPT REQUESTED
DELIVERED TO ADDRESSEE ONLY

October 21, 1967

Mr. Sheldon S. Cohen
Commissioner of Internal Revenue
Washington, D. C. 20515

RE: Americans Building Constitutionally
(A Not-for-profit Trust)

Dear Mr. Cohen:

Enclosed are manuals distributed by ABC to members and their attorneys including the presentation material for prospective members.

Also enclosed is a certified true and correct copy of the ABC Not-for-profit Trust recorded in Waukegan, Lake County, Illinois.

We believe that careful analysis of this information will disclose that neither attorneys nor members are advised to operate outside the income tax law and the regulations and cases pertaining thereto.

We do not advise any member or his attorney to operate outside the scope of these laws.

Since your office has seen fit to publicly state that there is "doubt as to the legality" of the procedures we form, I respectfully request that the Internal Revenue Service issue a ruling as to the legality of the enclosed material.

Very truly yours,

R. D. Hayes, Trustee
Robert D. Hayes, Trustee

RDH/by

encl.

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EXEMPT ORGANIZATIONS

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

[Sec. 501(a)]

(a) **EXEMPTION FROM TAXATION.**—An organization described in subsection (c) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

Source: Sec. 101, 1939 Code.

[Sec. 501(b)]

(b) **TAX ON UNRELATED BUSINESS INCOME.**—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in part II of this subchapter (relating to tax on unrelated income), but, notwithstanding part II, shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

Source: New.

[Sec. 501(c)]

(c) **LIST OF EXEMPT ORGANIZATIONS.**—The following organizations are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, 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 (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—

(A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and

(B) 85 percent or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses.

(10) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if—

(A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and

(B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14) Credit unions without capital stock organized and operated for mutual purposes and without profit; and corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

(A) domestic building and loan associations,

(B) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

(C) mutual savings banks not having capital stock represented by shares.

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed \$150,000.

(16) Corporations organized by an association subject to part III of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(iii) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

[Sec. 501(d)]

(d) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

[Sec. 501(e)]

(e) CROSS REFERENCE.—

For nonexemption of Communist-controlled organizations, see section 11 (b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U. S. C. 790 (b)).

[Sec. 502]

SEC. 502. FEEDER ORGANIZATIONS.

An organization operated for the primary purpose of carrying on a trade or business (for profit) shall not be exempt under section 501 on the ground that all of its profits are payable to one or more organizations exempt under section 501 from taxation. For purposes of this section, the term "trade or business" shall not include the rental by an organization of its real property (including personal property leased with the real property).

[Sec. 503]

SEC. 503. REQUIREMENTS FOR EXEMPTION.

[Sec. 503(a)]

(a) DENIAL OF EXEMPTION TO ORGANIZATIONS ENGAGED IN PROHIBITED TRANSACTIONS.—

(1) GENERAL RULE.—

(A) An organization described in section 501(c)(3) which is subject to the provisions of this section shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after July 1, 1950.

(B) An organization described in section 501(c)(17) which is subject to the provisions of this section shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

(C) An organization described in section 401(a) which is subject to the provisions of this section shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

(2) TAXABLE YEARS AFFECTED.—An organization described in section 501(c)(3) or (17) or section 401(a) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

[Sec. 503(b)]

(b) ORGANIZATIONS TO WHICH SECTION APPLIES.—This section shall apply to any organization described in section 501(c)(3) or (17) or section 401(a) except—

(1) a religious organization (other than a trust);

(2) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

SAIF

★

503, doesn't apply

(3) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public;

(4) an organization which is operated, supervised, controlled, or principally supported by a religious organization (other than a trust) which is itself not subject to the provisions of this section; and

(5) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research or agricultural research. *Doct*

[Sec. 503(c)]

(c) PROHIBITED TRANSACTIONS.—For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

self dealing { the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267 (c) (4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

[Sec. 503(d)]

(d) FUTURE STATUS OF ORGANIZATIONS DENIED EXEMPTION.—Any organization described in section 501(c)(3) or (17) or section 401(a) which is denied exemption under section 501 (a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary or his delegate, file claim for exemption, and if the Secretary or his delegate, pursuant to such regulations, is satisfied that such organization will not knowingly again engage

in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

[Sec. 503(e)]

(e) DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS.—No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section 170, 642 (c), 545 (b) (2), 2055, 2106 (a) (2), or 2522, shall be allowed as a deduction if made to an organization described in section 501 (c) (3) which, in the taxable year of the organization in which the gift or bequest is made, is not exempt under section 501 (a) by reason of this section. With respect to any taxable year of the organization for which the organization is not exempt pursuant to subsec-

tion (a) by reason of having engaged in a prohibited transaction with the purpose of diverting the corpus or income of such organization from its exempt purposes and such transaction involved a substantial part of such corpus or income, and which taxable year is the same, or prior to the taxable year of the organization in which such transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 267 (c) (4)). was a party to such prohibited transaction.

[Sec. 503(f)]

(f) DEFINITION.—For purposes of this section, the term "gift or bequest" means any gift, contribution, bequest, devise, legacy, or transfer.

[Sec. 503(g)]

NA (g) SPECIAL RULE FOR LOANS.—For purposes of the application of subsection (e) (1), in the case of a loan by a trust described in section 401 (a), the following rules shall apply with respect to a loan made before March 1, 1954, which would constitute a prohibited transaction if made on or after March 1, 1954:

(1) If any part of the loan is repayable prior to December 31, 1955, the renewal of such part of the loan for a period not extending beyond December 31, 1955, on the same terms, shall not be considered a prohibited transaction.

(2) If the loan is repayable on demand, the continuation of the loan without the receipt of adequate security and a reasonable rate of interest beyond December 31, 1955, shall be considered a prohibited transaction.

NA [Sec. 503(h)]

(h) SPECIAL RULES RELATING TO LENDING BY SECTION 401(a) AND SECTION 501(c)(17) TRUSTS TO CERTAIN PERSONS.—For purposes of subsection (c)(1), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") acquired by a trust described in section 401(a) or section 501(c)(17), shall not be treated as a loan made without the receipt of adequate security if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not

traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the trust, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subsection (c).

[Sec. 503(i)]

N/A (i) **LOANS WITH RESPECT TO WHICH EMPLOYERS ARE PROHIBITED FROM PLEDGING CERTAIN ASSETS.**—Subsection (c)(1) shall not apply to a loan made by a trust described in section 401(a) to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) the employer is prohibited (at the time of such making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at such time) represents more than one-half of the value of all his assets;

(2) the making or renewal, as the case may be, is approved in writing as an investment which is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other such trustee had previously refused to give such written approval; and

(3) immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt

of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

For purposes of paragraph (2), the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of such independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subsection (h).

[Sec. 503(j)]

N/A (j) **TRUSTS BENEFITING CERTAIN OWNER-EMPLOYEES.**—

(1) **PROHIBITED TRANSACTIONS.**—In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) who control (within the meaning of section 401(d)(9)(B)) the trade or business with respect to which the plan is established, the term "prohibited transaction" also means any transaction in which such trust, directly or indirectly—

(A) lends any part of the corpus or income of the trust to;

(B) pays any compensation for personal services rendered to the trust to;

(C) makes any part of its services available on a preferential basis to; or

(D) acquires for the trust any property from, or sells any property to; any person described in subsection (c) or to any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(2) **SPECIAL RULE FOR LOANS.**—For purposes of the application of paragraph (1)(A), the following rules shall apply with respect to a loan made before the date of the enactment of this subsection which would be a prohibited transaction if made in a taxable year beginning after December 31, 1962:

(A) If any part of the loan is repayable prior to December 31, 1965, the renewal of such part of the loan for a period not extending beyond December 31, 1965, on the same terms, shall not be considered a prohibited transaction.

(B) If the loan is repayable on demand, the continuation of the loan beyond December 31, 1965, shall be considered a prohibited transaction.

[Sec. 504]

SEC. 504. DENIAL OF EXEMPTION.

[Sec. 504(a)]

(a) GENERAL RULE.—In the case of any organization described in section 501 (c) (3) to which section 503 is applicable, exemption under section 501 shall

be denied for the taxable year if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(1) are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for exemption under section 501 (a) of an organization described in section 501 (c) (3); or

(2) are used to a substantial degree for purposes or functions other than those constituting the basis for exemption under section 501 (a) of an organization described in section 501 (c) (3); or

(3) are invested in such a manner as to jeopardize the carrying out of the charitable, educational, or other purpose or function constituting the basis for exemption under section 501 (a) of an organization described in section 501 (c) (3).

NA Paragraph (1) shall not apply to income attributable to property of a decedent dying before January 1, 1951, which is transferred under his will to a trust created by such will. In the case of a trust created by the will of a decedent dying on or after January 1, 1951, if income is required to be accumulated pursuant to the mandatory terms of the will creating the trust, paragraph (1) shall apply only to income accumulated during a taxable year of the trust beginning more than 21 years after the date of death of the last life in being designated in the trust instrument.

[Sec. 504(b)]

(b) CROSS REFERENCES.—

For limitation on charitable contributions in case of unreasonable accumulations by certain trusts, see section 681 (c) (2).

SEC. 511. IMPOSITION OF TAX ON UNRELATED BUSINESS INCOME OF CHARITABLE, ETC., ORGANIZATIONS.

[Sec. 511(a)]

(a) CHARITABLE, ETC., ORGANIZATIONS TAXABLE AT CORPORATION RATES.—

(1) IMPOSITION OF TAX.—There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a normal tax and a surtax computed as

provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) ORGANIZATIONS SUBJECT TO TAX.—

(A) ORGANIZATIONS DESCRIBED IN SECTION 501(c)(2), (3), (5), (6), AND (17), AND SECTION 401(a).—The taxes imposed by paragraph (1) shall apply in the case of any organization (other than a church, a convention or association of churches, or a trust described in subsection (b)) which is exempt, except as provided in this part, from taxation under this subtitle by reason of section 401(a) or of paragraph (3), (5), (6), or (17) of section 501(c). Such taxes shall also apply in the case of a corporation described in section 501(c)(2) if the income is payable to an organization which, itself is subject to the taxes imposed by paragraph (1) or to a church or to a convention or association of churches.

(B) STATE COLLEGES AND UNIVERSITIES.—The taxes imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such taxes shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

[Sec. 511(b)]

(b) TAX ON CHARITABLE, ETC., TRUSTS.—

(1) IMPOSITION OF TAX.—There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1. In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

(2) CHARITABLE, ETC., TRUSTS SUBJECT TO TAX.—The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part, from taxation under this subtitle by reason of section 501(c)(3) or (17) or section 401(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

[Sec. 511(c)]

(c) EFFECTIVE DATE.—The tax imposed by this section shall apply, in the case of a trust described in section 401 (a), only for taxable years beginning after June 30, 1954:

[Sec. 512]

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

[Sec. 512(a)]

(a) DEFINITION.—The term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the exceptions, additions, and limitations provided in subsection (b). In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following, relating to tax based on income from sources within or without the United States).

Source: Secs. 421(d), 422(a), 1939 Code, substantially unchanged.

[Sec. 512(b)]

(b) EXCEPTIONS, ADDITIONS, AND LIMITATIONS.—The exceptions, additions, and limitations applicable in determining unrelated business taxable income are the following:

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) There shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(4) Notwithstanding paragraph (3), in the case of a business lease (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514 (a) (1), and there shall be allowed, as a deduction, the amount ascertained under section 514 (a) (2).

(5) There shall be excluded all gains or losses, from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any

State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511 (a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 5 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511 (b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170 (b) (1) (A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) There shall be allowed a specific deduction of \$1,000.

(13) In the case of a trust—

(A) created by virtue of the provisions of the will of an individual who died after August 16, 1954, and before January 1, 1957,

(B) which, by virtue of the provisions of such will, is a limited partner in a partnership created under the laws of a State (i) providing for the creation of limited partnerships, and (ii) under which a limited partner has no right to take part in the control of the business without becoming liable as a general partner,

(C) which, at no time before or during a taxable year of the partnership ending within, or with the taxable year of the trust, was (or was liable as) a general partner in such partnership, and

(D) which is required to distribute all of its income (within the meaning of section 643(b)) currently exclusively for religious, charitable, scientific, literary, or educational purposes, and which is required to distribute all of the corpus exclusively for such purposes,

there shall be excluded its share (determined under subsection (c) without regard to this paragraph and paragraph (11)) of gross income of the partnership as such limited partner and of the partnership deductions directly connected with such income, but, if such share of gross income exceeds such share of deductions, only to the extent that the partnership makes distributions during its taxable year which are attributable to such gross income. For purposes of the preceding sentence (i) any distribution made after the close of a partnership taxable year and on or before the 15th day of the fourth calendar month after the close of such taxable year shall be treated as made on the last day of such taxable year, and (ii) distributions shall be treated as attributable first to gross income other than gross income described in the preceding sentence, and shall be properly adjusted (under regulations prescribed by the Secretary or his delegate) to the extent necessary to reflect capital contributions to the partnership made by the trust, income of the partnership exempt from tax under this title, and other items.

(14) In the case of an organization which is described in section 501 (c)(5), there shall be excluded all income used to establish, maintain, or operate a retirement home, hospital, or other similar facility for the exclusive use and benefit of the aged and infirm members of such an organization, which is derived from agricultural pursuits conducted on ground contiguous to the retirement home, hospital, or similar facility and further provided that such income does not provide more than 75 percent of the cost of maintaining and operating the retirement home, hospital, or similar facility; and there shall be excluded all deductions directly connected with such income.

[Sec. 512(c)]

(c) SPECIAL RULES APPLICABLE TO PARTNERSHIPS.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

[Sec. 513]

SEC. 513. UNRELATED TRADE OR BUSINESS.

[Sec. 513(a)]

(a) GENERAL RULE.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511 (a) (2) (B), to the exercise or performance of any purpose or function described in section 501 (c) (3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501 (c) (3) or in the case of a college or university described in section 511 (a) (2) (B), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

[Sec. 513(b)]

(b) **SPECIAL RULE FOR TRUSTS.**—The term "unrelated trade or business" means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

[Sec. 513(c)]

(c) **SPECIAL RULE FOR CERTAIN PUBLISHING BUSINESSES.**—If a publishing business carried on by an organization during a taxable year beginning before January 1, 1953, is, without regard to this subsection, an unrelated trade or business, but before the beginning of the third succeeding taxable year the business is carried on by it (or by a successor who acquired such business in a liquidation which would have constituted a tax-free exchange under section 112 (b) (6) of the Internal Revenue Code of 1939) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in section 501 (c) (3), such publishing business shall not be considered, for the taxable year, as an unrelated trade or business.

[Sec. 514]

SEC. 514. BUSINESS LEASES.

[Sec. 514(a)]

(a) **BUSINESS LEASE RENTS AND DEDUCTIONS.**—In computing under section 512 the unrelated business taxable income for any taxable year—

(1) **PERCENTAGE OF RENTS TAKEN INTO ACCOUNT.**—There shall be included with respect to each business lease, as an item of gross income derived from an unrelated trade or business, an amount which is the same percentage (but not in excess of 100 percent) of the total rents derived during the taxable year under such lease as (A) the business lease indebtedness, at the close of the taxable year, with respect to the premises covered by such lease is of (B) the adjusted basis, at the close of the taxable year, of such premises.

(2) **PERCENTAGE OF DEDUCTIONS TAKEN INTO ACCOUNT.**—There shall be allowed with respect to each business lease, as a deduction to be taken into account in computing unrelated business taxable income, an amount determined by applying the percentage derived under paragraph (1) to the sum determined under paragraph (3).

(3) **DEDUCTIONS ALLOWABLE.**—The sum referred to in paragraph (2) is the sum of the following deductions allowable under this chapter:

(A) Taxes and other expenses paid or accrued during the taxable year on or with respect to the real property subject to the business lease.

(B) Interest paid or accrued during the taxable year on the business lease indebtedness.

(C) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the business lease, there shall be taken into account under subparagraphs (A), (B), and (C) only those amounts which are properly allocable to the premises covered by such lease.

[Sec. 514(b)]

(b) DEFINITION OF BUSINESS LEASE.—

(1) GENERAL RULE.—For purposes of this section, the term "business lease" means a lease for a term of more than 5 years of real property by an organi-

zation (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a business lease indebtedness (as defined in subsection (c)) with respect to such property.

(2) SPECIAL RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

(A) In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition.

(B) If the property has been occupied by the same lessee for a total period of more than 5 years commencing not earlier than the date of acquisition of the property by the organization or trust (whether such occupancy is under one or more leases, renewals, extensions, or continuations thereof), the occupancy of such lessee shall be considered to be under a lease for a term of more than 5 years within the meaning of paragraph (1). However, subsection (a) shall apply in the case of a tenancy described in this subparagraph (and not within subparagraph (A)) only with respect to the sixth and succeeding years of occupancy by the same lessee. For purposes of this subparagraph, the term "same lessee" shall include any lessee of the property whose relationship with a lessee of the same property is such that losses in respect of sales or exchanges of property between the 2 lessees would be disallowed under section 267 (a).

(3) EXCEPTIONS.—

(A) No lease shall be considered a business lease if—

(i) such lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, or

(ii) the lease is of premises in a building primarily designed for occupancy, and occupied, by the organization.

(B) If a lease for more than 5 years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than 5 years to any other tenant of the organization, leases of the real property for more than 5 years shall be considered as business leases during the taxable year only if—

(i) the rents derived from the real property during the taxable year under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2) (B)) represent 50 percent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2) (B)) represents, at any time during the taxable year, 50 percent or more of the total area of the real property rented at such time; or

(ii) the rent derived from the real property during the taxable year from any tenant under a lease for more than 5 years (including as a lease for more than 5 years an occupancy which is considered

as such a lease by reason of paragraph (2) (B)), or from a group of tenants (under such leases) who are either members of an affiliated group (as defined in section 1504) or partners, represents more than 10 percent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 percent of the total area of the real property rented at such time.

In the application of clause (i), if during the last half of the term of a lease a new lease is made to take effect after the expiration of such lease, the unexpired portion of such lease on the date the second lease is made shall not be treated as a part of the term of the second lease.

[Sec. 514(c)]

(c) BUSINESS LEASE INDEBTEDNESS.—

(1) GENERAL RULE.—The term "business lease indebtedness" means, with respect to any real property leased for a term of more than 5 years, the unpaid amount of—

(A) the indebtedness incurred by the lessor in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) PROPERTY ACQUIRED SUBJECT TO MORTGAGE, ETC.—Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property.

(3) CERTAIN PROPERTY ACQUIRED BY GIFT, ETC.—Where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a lease requiring improvements in such property on the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection.

(4) CERTAIN CORPORATIONS DESCRIBED IN SECTION 501 (c) (2).—In the case of a corporation described in section 501 (c) (2), all of the stock of which was acquired before July 1, 1950, by an organization described in paragraph (3), (5), or (6) of section 501 (c) (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation before July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into before such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this subsection.

(5) CERTAIN TRUSTS DESCRIBED IN SECTION 401 (a).—In the case of a trust described in section 401 (a), or in the case of a corporation described in

section 501 (c) (2) all of the stock of which was acquired prior to March 1, 1954, by a trust described in section 401 (a), any indebtedness incurred by such trust or such corporation before March 1, 1954, in connection with real property which is leased before March 1, 1954, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(6) **BUSINESS LEASE ON PORTION OF PROPERTY.**—In determining the amount of the business lease indebtedness where only a portion of the real property is subject to a business lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(7) **SPECIAL RULE APPLICABLE TO TRUSTS DESCRIBED IN SECTION 401 (a).**—In the application of paragraph (1), if a trust described in section 401 (a) forming part of a stock bonus, pension, or profit-sharing plan of an employer lends any money to another trust described in section 401 (a) forming part of a stock bonus, pension, or profit-sharing plan of the same employer, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(A) incurs any indebtedness in order to make such loan;

(B) incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan; or

(C) incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

(8) **TRUSTS DESCRIBED IN SECTION 501(c)(17).**—

(A) In the case of a trust described in section 501(c)(17), or in the case of a corporation described in section 501(c)(2), all of the stock of which was acquired before January 1, 1960, by a trust described in section 501 (c)(17), any indebtedness incurred by such trust or such corporation before January 1, 1960, in connection with real property which is leased before January 1, 1960, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(B) In the application of paragraph (1), if a trust described in section 501(c)(17) forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in section 501(c)(17) forming part of the same plan, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(i) incurs any indebtedness in order to make such loan,

(ii) incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan, or

(iii) incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

[Sec. 514(d)]

(d) **PERSONAL PROPERTY LEASED WITH REAL PROPERTY.**—For purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

[Sec. 515]

**SEC. 515. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF
THE UNITED STATES.**

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 511 to the extent provided in section 901; and in the case of the tax imposed by section 511, the term "taxable income" as used in section 901 shall be read as "unrelated business taxable-income".

Illinois Not For-Profit Corporation Act

§ 4. Purposes. Not for profit corporations may be organized under this Act for any one or more of the following or similar purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; literary; athletic; scientific; research; agricultural; horticultural; soil, crop, livestock and poultry improvement; professional, commercial, industrial or trade association; electrification on a co-operative basis; telephone services on a mutual or co-operative basis; ownership and operation of water supply facilities for drinking and general domestic use on a mutual or co-operative basis; and ownership of residential property on a co-operative basis.

Any corporation may be organized hereunder for the purpose of promoting the development, establishment and expansion of industries and where such promotion is to be carried on in an area which adjoins or borders (except for any intervening natural watercourse) an area located in an adjoining state intended to be included in such promotion such corporation may join with any corporation created by the adjoining state, having an identical purpose and organized as a not for profit corporation. Whenever any corporation organized under this Act for the purpose of promoting the development, establishment and expansion of industries joins with a foreign corporation having an identical purpose, such corporations shall be permitted to do business in Illinois as one corporation; provided: (1) that the name, by-law provisions, officers and directors of each corporation are identical, (2) that the foreign corporation complies with the provisions of this Act relating to the admission of foreign corporations, and (3) that the Illinois corporation file a statement with the Secretary of State indicating that it has joined with a foreign corporation setting forth the name thereof and the state of its incorporation. (As amended by Act approved June 16, 1953; as amended by Act approved August 1 and August 8, 1961; as amended by Act approved August 23, 1963.)

§ 5. General Powers. Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use, and otherwise deal in and with any real or personal property, or any interest therein, situated in or out of this State.

(e) To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.

(f) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use or employ shares or other interests in or obligations of domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, and to sell, mortgage, loan, pledge, or otherwise dispose of, such shares, interests or obligations; *Provided* that corporations for agricultural purposes with members having voting rights, may acquire, by purchase or otherwise, stocks and evidences of indebtedness of other corporations,

whether for profit or not for profit, or associations whose activities will directly or indirectly promote agriculture or the interests of those engaged in agriculture, only upon consent of a majority of the members present or represented by proxy, in quorum, in any annual or special meeting of its members to which the question of such acquisition may be submitted.

(g) To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its corporate purposes at such rates of interest as the corporation may determine; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, franchises, and income.

(h) To invest its funds from time to time in any real or personal property; to lend money for its corporate purposes; and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(i) To conduct its affairs, carry on its operations, and have offices within and without this State, and to exercise in any other state, territory, district or possession of the United States, or in any foreign country, the powers granted by this Act.

(j) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensations.

(k) To make and alter by-laws not inconsistent with its articles of incorporation or with the laws of this State, for the administration and the regulation of the affairs of the corporation.

(l) To make donations in furtherance of any of its purposes and in time of war to make donations to the United States or to associations and organizations aiding the United States in war activities, and

to lend money to the State or Federal government for war purposes.

(m) To cease its corporate activities and surrender its corporate franchise.

(n) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

§ 8. Members. A corporation may have one or more classes of members. The designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the by-laws. A corporation may issue certificates evidencing membership therein.

§ 15. Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, unless the articles or the by-laws otherwise provide, by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of

votes equal to his vote multiplied by the number of directors to be elected, or to distribute such votes on the same principle among as many candidates as he shall think fit. [Amended by Act effective July 17, 1959.]

§ 17. Board of Directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless the articles of incorporation or by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

§ 18. Number and Election of Directors. The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. In the absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

§ 19. Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

§ 23. Officers. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be *ex officio* members of the board of directors.

The officers of a corporation may also be designated by such other titles as may be provided in the articles of incorporation or the by-laws.

§ 44. Voluntary Dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corpora-

tion be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

(b) Where there are no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the proper winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

§ 45. Distribution of Assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets held for a charitable, religious, eleemosynary, benevolent, education or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act;

(d) To the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions;

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.

§ 46. Plan of Distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may

be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Filing Fee \$10.00

FORM NP-29

ARTICLES OF INCORPORATION
UNDER THE
GENERAL NOT FOR PROFIT CORPORATION ACT

(These Articles Must Be Filed in Duplicate)

(Do Not Write in This Space)

Date Paid _____
Filing Fee \$ _____
Clerk _____

To PAUL POWELL, Secretary of State, Springfield, Illinois.

We, the undersigned,

(Not less than three)

Name	Number	Street	Address City	State

being natural persons of the age of twenty-one years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not For Profit Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

1. The name of the corporation is: _____

C-6

2. The period of duration of the corporation is: _____
(Please state "perpetual" or a definite number of years)
3. The address of its initial Registered Office in the State of Illinois is: _____
 Street in the _____ of _____ (_____) County of _____ d
(Zip Code)
 the name of its initial Registered Agent at said Address is: _____
4. The first Board of Directors shall be _____ in number, their names and addresses being as follows:
(Not less than three)

Name	Number	Street	Address City	State

5. The purpose or purposes for which the corporation is organized are:

(NOTE: Any special provision authorized or permitted by statute to be contained in the Articles of Incorporation, may be inserted above.)

(INCORPORATORS MUST SIGN BELOW)

Incorporators

ACKNOWLEDGMENT

STATE OF ILLINOIS:

County of _____

ss.

I, _____ a Notary Public do hereby certify that on the
 _____ day of _____, 19____

(Names of Incorporators)

personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

PLACE
 (NOTARIAL SEAL)
 HERE

Notary Public

FORM NP-29
ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT
CORPORATION ACT

62

(These Articles Must Be Executed and Filed in
Duplicate)

Filing Fee \$10.00

Wisconsin Non-Stock Act

181.03 Purposes. Corporations may be organized under this chapter for any lawful purpose whatever, except banking, insurance, and building or operating public railroads, but subject always to provisions elsewhere in the statutes relating to the organization of specified kinds or classes of corporations.

181.04 General powers. Each corporation, when no inconsistent provision is made by law or by its articles of incorporation, shall have power:

- (1) To exist perpetually.
- (2) To sue and be sued, complain and defend, in its corporate name.
- (3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations, however or wherever organized, and of associations, trusts, partnerships, or individuals, or of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (7) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine; to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (8) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.
- (9) To conduct its business and affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.
- (10) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.
- (11) To make and alter by-laws not inconsistent with its articles of incorporation or with the laws of this state, for the administration and the regulation of the affairs of the corporation.
- (12) To make donations for the public welfare or for charitable, scientific, educational or religious purposes.
- (13) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a member or creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of members, or otherwise.
- (14) To cease its corporate activities and surrender its corporate franchise.
- (15) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

181.17 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, and the qualifications, rights, and method of acceptance of members of each class shall be set forth in the articles of incorporation, or in the by-laws if the articles so provide. A corporation may issue certificates evidencing membership therein.

181.16 Voting. (1) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or in the by-laws if the articles so provide. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(2) A member may vote in person, or unless the articles of incorporation or by-laws provide otherwise, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

(3) A corporate member's vote may be cast by the president of the member corporation, or by any other officer or proxy appointed by the president of such corporation, in the absence of express notice of the designation of some other person by the board of directors or by-laws of the member corporation.

181.18 Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or by-laws so require. The by-laws may prescribe other qualifications for directors.

181.19 Directors' authority to establish compensation. Unless otherwise provided in the articles of incorporation or by-laws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, or to delegate such authority to an appropriate committee. The board of directors also shall have authority to provide for or to delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers and employees and to their estates, families, dependents or beneficiaries on account of prior services rendered by such directors, officers and employees to the corporation.

181.20 Number and election of directors. (1) The number of directors of a corporation shall not be less than 3. Subject to such limitation, the number of directors shall be fixed by the articles of incorporation, or, if the articles of incorporation so provide, by the by-laws.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(3) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(4) A director may be removed from office for cause, or for any reason provided in the articles of incorporation or by-laws. The articles of incorporation or by-laws may provide the procedure for any such removal.

181.25 Officers. (1) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the

articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the by-laws so provide, any 2 or more offices may be held by the same person, except the offices of president and secretary, and the offices of president and vice president.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the articles of incorporation or in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the articles of incorporation or the by-laws.

(3) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(4) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws; and in such case any document required or permitted by this chapter to be signed by the president, vice president, secretary or assistant secretary may be signed by such officer as may be stated in such document to correspond to the officer so required or permitted to sign.

181.51 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, education or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter, provided that assets received and held by corporations organized for charitable, religious, eleemosynary, benevolent, educational or similar purposes shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

181.52 Plan of distribution. Where the articles of incorporation do not provide for the distribution of assets on dissolution, a plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, any plan of distribution shall be submitted to a vote at a meeting of members having voting rights, which may be either a regular or a special meeting. Written notices setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

ARTICLES OF INCORPORATION

Executed by the undersigned for the purpose of forming a Wisconsin corporation under Chapter 181 of the Wisconsin statutes, Without STOCK AND NOT FOR PROFIT.

Article 1. The name of the corporation shall be

Article 2. The period of existence shall be

Article 3. The purposes shall be

Article 4. Location of the principal office

Article 5. Name of the initial registered agent

Article 6. Address of the initial registered agent

Article 7. The number of directors may be fixed by by-law but shall be not less than three.

Article 8. The number of directors constituting the initial board shall be

Article 9. Names and addresses of the initial directors:

Article 10. (Membership provisions)

Article 11. (Other provisions)

Article 12. The name and address of incorporator (or incorporators) are:

NAME

ADDRESS
(number, street and city)

.....	
.....	
.....	
.....	

Article 13. These articles may be amended in the manner authorized by law at the time of amendment.

Executed in duplicate on the day of, 19.....

.....
.....
.....
.....

STATE OF
County of

ss.

Personally came before me this day of A. D. 19.....
the above named

..... to me known to be the person.... who executed the foregoing instrument, and acknowledged
the same.

Notary Public.

(Notarial Seal)

My Commission expires

INSTRUCTIONS AND SUGGESTIONS

1. Article 1. The name MUST contain "Corporation," "Incorporated," or "Limited," or the abbreviation of c of those words.

2. Article 2. Insert "perpetual" or insert any limitation desired.

3. Article 3. Must show definite purposes.

(The statute expressly states that it is NOT necessary to enumerate the powers.)

4. Articles 5 and 6. The corporation MUST have a registered agent.

5. Article 7. This article may be stricken if desired. In that case, the number of directors will remain as shown in Article 8.

6. Article 10. This article must set out the method of accepting and discharging members, any denial or restriction of voting rights, any classification of members (including distinguishing features of each class), OR the article must authorize the by-laws to cover these matters.

If the corporation is to have no members, Article 10 must so state.

7. Article 11 provides space for inserting any other provisions which may be desired.

8. Articles must be executed and sent to the Secretary of State, Madison, Wisconsin 53702 in duplicate original — one to be filed in his office and one which will be certified and returned and which must be recorded in the office of the register of deeds of the county wherein the principal office is located. Corporate existence will commence when articles are left for record with the register of deeds.

9. Filing fee is \$20.00. Send with the articles.

Articles of Incorporation
Non-Stock

E-1

Indiana Application to Register Foreign Corporation

A-11

(Filing fee of \$16.00 must accompany application)



-2-

Application for Admission by Foreign Not for Profit Corporation

.....
City State
.....
(Date)

To the Secretary of State, of the State of Indiana,
Indianapolis, Indiana.

....., a foreign corporation incorporated
on the.....day of....., 19....., and existing under the laws of the State of
....., in compliance with the provisions of Section 28 of an Act of the General
Assembly of the State of Indiana entitled "An Act concerning domestic and foreign corporations not for
profit, providing for fees, providing penalties for the violation thereof, and repealing certain laws," ap-
proved March 7, 1935, hereby makes the following declaration:

- (1) The name of this corporation is.....
- (2) The location of its principal office or place of business outside the State of Indiana, is.....
.....Street.....City.....State.
- (3) It has been admitted or qualified to do business in the following states:.....
.....
- (4) The character of business under its articles of incorporation or association, which it intends to
carry on in Indiana, is as follows:
.....
- (5) The period during which it is to continue as a corporation is.....years.
- (6) a. The location of its proposed principal office in Indiana is.....
Street or Building, City of.....County of.....
Indiana.

E-2

b. The name of the person permanently residing in Indiana upon whom, as the resident agent of the corporation, until his successor shall have been appointed, service of legal process may be had is _____ whose post office address is _____
 _____ Street or Building, City of _____
 County of _____, Indiana.

(7) If the memberships are divided into classes the designations of the different classes, and a statement of the relative rights, preferences, limitations and restrictions of each class, together with a statement as to the voting rights of any such class.

(8) The number of directors of this corporation is _____

(9) The names and addresses of its board of directors are as follows:

Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State

(10) The name and post office addresses of its officers are as follows:

Name	Street	City	County	State
Name	Street	City	County	State

E-3

Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State
Name	Street	City	County	State

(11) A statement of property in Indiana and an estimate of the value thereof, to be taken over by this corporation upon its admittance to Indiana:

(12) Any other provisions, consistent with the laws of this state, for the regulation and conduct of the affairs of this corporation, and creating, defining, limiting or regulating the powers of this corporation, of the directors or of the members or any class or classes of members:

Signed.....as
 President or Vice-President
 (Strike out one)

.....as
 Secretary or Assistant Secretary
 (Strike out one)

STATE OF.....} ss:
 COUNTY OF.....}

Before me, a Notary Public in and for said County and State, personally appeared.....
, who is known to me to be President or Vice-President of
Corporation, and.....Secretary or Assistant
 Secretary, who is known to me to be Secretary or Assistant Secretary of said Corporation, who being
 duly sworn upon oath state that they are duly authorized by the Board of Directors of said Corporation to
 make this application for admission of said Corporation to do business as a foreign corporation in the
 State of Indiana, and that the facts and figures given above are true, except that where the blank form
 calls for estimates, such estimates represent their best judgment.

(Notarial Seal)

.....
 Notary Public

My commission expires.....

(Note: The above application shall be presented in triplicate to the Secretary of State together with
 a certified copy of the articles of incorporation or association and all amendments thereto.)

PURPOSES

F-1

To accomplish research and development exclusively in the fields of education, literature, science and religion. No part of the corporation's income or assets will inure to the benefit of any individual. The corporation will not support any candidate for public office nor attempt to influence legislation. All scientific research will be made available on a non-discriminatory basis.

In the event of voluntary dissolution of the corporation the remaining assets after corporate obligations have been satisfied, will be distributed only to qualified institutions under Section 501 (c)(3) of the Internal Revenue Code of 1954, as amended. All activities of the corporation will be governed by applicable state and federal laws governing non-profit tax-exempt organizations.

AGRICULTURE

Agricultural science, animal husbandry, horticulture, etc.

MEDICINE

Medical science, health, chiropractic, optometrics, dentistry, medical education, specific research projects, etc.

RELIGION

To promote through education and development a better understanding of (name a religion or specific philosophy: LSD, Black Muslim, Baptists, Methodist, Catholic, Islam, Latter Day Saints, etc.--the criteria is the philosophy and not the validity or content of the philosophy.)

FORD FOUNDATION

The purpose or purposes of this corporation are as follows:

To receive and administer funds for scientific, educational, and charitable purposes, all for the public welfare, and for no other purposes, and to that end to take and hold, by bequest, devise, gift, purchase, or lease, either absolutely or in trust for such objects and purposes or any of them, any property, real personal, or mixed, without limitation as to amount or value, except such limitations, if any, as may be imposed by law; to sell, convey, and dispose of any such property and to invest and re-invest the principal thereof, and to deal with and expend the income therefrom for any of the before mentioned purposes, without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received; to receive any property, real, person, or mixed, in trust, under the terms of any will, deed or trust, or other trust instrument for the foregoing purposes or any of them (but for no other purposes), and in administering the same to carry out the directions and exercise the powers contained in the trust instrument under which the property is received, including the expenditure of the principal, as well as the income, for one or more of such purposes, if authorized or directed in the trust instrument under which it is received; to receive, take title to, hold, and use the proceeds and income of stocks, bonds, obligations, or other securities of any corporation or corporations, domestic or foreign, but only for the foregoing purposes, or some of them; and, in general, to exercise any, all and every power for which a non-profit corporation known as a Foundation, organized under the provisions of the Michigan General Corporation Act for scientific, educational, and charitable purposes, all for the public welfare can be authorized to exercise, but not any other power. No part of the activities of this corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation.

Said corporation is organized on a non-stock basis. The amount of assets which said corporation possesses is: Real Property, None; Personal Property, twenty-five thousand dollars cash. Said corporation is to be financed under the following general plan: By contributions to it of funds and property absolutely or in trust for its purposes as herein stated and for no other purpose.

The number of Members of this corporation shall not be less than seven nor more than fifteen as may be fixed from time to time by the members. The members of this corporation shall also be the Trustees thereof, so that the number of members shall also be the number of Trustees. Members may be elected at any annual or special meeting of members held for that purpose, by vote of a majority of the remaining members, although less than a quorum, or by a sole remaining member, and the admission of a person either as a member or as a Trustee shall constitute his election as both a member and as a Trustee. When a person ceases to be a member or ceases to be a Trustee, he shall no longer be either a member or a Trustee.

Members shall be elected for the same term as Trustees, i.e. three years, or until the expiration of their respective terms if elected to fill a vacancy, and until their respective successors are elected. The members and Trustees will accordingly always be the same persons but will, because of distinctions drawn by the Michigan statutes, act in different capacities. A person shall cease to be both a member and a Trustee upon his death, or upon his resignation or removal from either office as provided in the by-law. No membership, trusteeship or interest in this corporation shall be assignable intervivos, nor shall any membership, trusteeship or interest in this corporation pass to any personal representative, heir or devisee.

F-4

This being a benevolent corporation, its term is unlimited and in perpetuity.

All of the property of this corporation and accumulations thereof shall be held and administered to effectuate its purposes and to serve the general welfare of the people.

* * * * *

BY-LAWS
OF
PRIVATE FOUNDATION
ARTICLE I - DEFINITIONS

The following words and terms, as used in the By-laws of . . .

a California corporation not-for-profit, shall, unless the context shall otherwise require, mean and be defined as:

- (a) "Foundation": the aforesaid corporation.
- (b) "Member": the persons who are qualified and elected to membership as hereinafter provided.
- (c) "Directors": the duly constituted members of the Board of Directors.
- (d) "Certificate of Membership": a written instrument signed by the designated officers evidencing that the person named therein is a duly elected member.
- (e) "Registered Office": that office maintained by the foundation in this state, and the address which is on file with the Secretary of State.

ARTICLE II - OFFICES AND REGISTERED AGENT

Sec. 1. Principal Office: the principal office of the foundation shall be located in , California, and there may be such other offices as the Board of Directors shall designate.

Sec. 2. The Registered Office of the foundation and the registered agent may, from time to time, be changed by the Directors.

ARTICLE III - MEMBERS

Sec. 1. Election of members: Application for membership may be presented by members, and shall be elected by a vote not less than a majority of the Board of Directors.

Sec. 2. Classes of Members: The Board of Directors may establish more than one class of members and determine the designation and their qualifications.

(a) Sustaining members: Sustaining members shall be those members who enter the foundation upon payment of a membership fee and approval by the Executive Director.

(b) Family Members: Family members shall be non-dues paying members of the foundation upon election by the Board of Directors.

Sec. 3. No class of membership, however created, is entitled to vote on any matter.

Sec. 4. Termination of Membership:

(a) Upon charges preferred against any member, in writing, and filed with the Secretary, and upon consideration by the Directors, and the affirmative vote of not less than three-fourths of the Directors constituting a quorum at any regular meeting or a meeting called for such purpose, a member may be expelled or suspended for good cause shown. Any member so expelled or suspended may have a rehearing before the Board of Directors at its next meeting, and the Board may then reconsider its prior action.

(b) Resignation: The written resignation of any member shall be filed with the Secretary, and when accepted by the Board of Directors, shall become effective.

(c) Any member who has resigned, been suspended or expelled, may be reinstated by the affirmative vote of three-fourths of the Directors present at any regular or special meeting called for such purpose, and upon such terms as the Directors may designate.

Sec. 5. Transfer of Membership: Memberships may be transferred only upon the consent of, and upon such terms as shall be fixed by the Board of Directors.

(a) Transfer of sustaining membership may be permitted upon the approval of the Board of Directors.

(b) Family membership may not be transferred under any conditions.

ARTICLE IV - MEETING OF MEMBERS

Sec. 1. Place of Meetings: All meetings of the membership shall be held at the registered office of the foundation or at such other place as the Directors or President shall, from time to time, designate.

Sec. 2. Meetings: The annual meeting of the membership will be held at a place designated by the Board of Directors on the day of of each calendar year. Failure to hold such a meeting will not cause forfeiture, failure or penalty on any rights, duties, power or obligation of the foundation, officers, directors or members.

Sec. 3. Notice of Meetings: Notice of meetings shall be written or printed and which shall be mailed to each member at the address shown on the foundation's books, except that if all members be present at any meeting and consent to such meeting, call and notice shall not be required. The notice shall state the place, day and hour of such meeting, and shall be delivered not less than five nor more than forty days before the date of the meeting, personally or by mail or notice may be waived by all the members in writing.

Sec. 4. Quorum: No quorum is necessary for any meeting of the membership.

ARTICLE V - THE DIRECTORS

Sec. 1. Powers: The Board of Directors shall:

(a) Manage the affairs of the foundation, except as otherwise provided in the Articles of Incorporation or By-laws.

(b) Adopt a corporate seal as the seal of the foundation.

(c) Designate a banking institution or institutions as depository for the foundation's funds; and the officers authorized to make withdrawals therefrom, and to execute obligations on behalf of the foundation.

Sec. 2. Number of Directors: The number of Directors shall be _____ in number.

Sec. 3. Election and term: Directors subsequent to the initial Board of Directors named in the Articles of Incorporation shall be elected or appointed by the existing members of the Board of Directors at the time such election or appointment is necessary. Directors shall serve for a term of _____ years and may be reelected.

Sec. 4. Qualifications: A Director subsequent to the initial Board, shall be a family member of the foundation, shall be aged twenty-one or over and a citizen of the United States.

Sec. 5. Meetings: All meetings of the Directors shall be held upon call of the Executive Director, who shall act as the presiding officer, or of a majority of the Board of Directors, and shall be held at the Registered Office of the foundation, or the place designated in the call. Notice of such meetings may be given orally or in writing at least twenty-four hours prior to the meeting, or notice may be waived by the Directors in writing.

Sec. 6. Quorum: A majority of the Directors shall constitute a quorum to transact business of the foundation.

ARTICLE VI - THE OFFICERS

Sec. 1. The officers of the foundation shall be: A President, Vice-President, Treasurer and Secretary and Executive Director, and such other officers as the Directors shall designate. As hereafter determined by the Directors, any one or more officers may be made ex-officio members of the Board of Directors.

Sec. 2. Election and term: The officers shall be elected at the meeting of the Directors held immediately after the annual meeting of the members or at such other meeting of the Directors as shall be called for such purpose, and officers elected shall hold office for the ensuing year and until their successors shall be elected.

Sec. 3. Duties of Officers:

(a) The President shall manage the affairs of the foundation, except as shall be reserved by the By-laws or action of the Directors. He shall preside at the meetings of membership, and shall be vested with the powers and duties incident to the office of President.

(b) The Vice-President: In the absence of the President, or of his inability or refusal to act, the Vice-President is empowered to act in lieu of and in the stead of the President, and shall thereupon be vested with all the powers and duties of the President.

(c) The Secretary shall keep the minutes and a record of other matters transacted by the Members and the Directors; mail or cause to be mailed all notices required by the By-laws; have custody of the corporate seal and records; maintain and have custody of names and addresses of the membership; and perform such other duties as are incident to the office of Secretary.

(d) The Treasurer: The Treasurer shall have custody of the funds of the foundation, collect dues and other monies owed the foundation, and perform such other duties as are incident to the office of Treasurer. In the discretion of the Directors, the Treasurer may be required to furnish bond for such amount and under such conditions as the Directors may see fit to impose.

Sec. 4. Executive Director: The Executive Director shall serve under an employment contract executed between himself and the foundation and shall serve for a term to be agreed upon by the parties. The Executive Director shall be an ex-officio member of the Board of Directors and shall preside at all meetings of the Board of Directors. In his absence the President shall preside.

The duties of the Executive Director shall be to conduct all foundation affairs and his power shall supercede that of the President of the foundation in the normal day to day activities, financial affairs, employment practices, and all other business activities.

Sec. 5. Removal of Officers: Any officer may be removed by the Directors whenever in their judgment the best interests of the foundation will be served thereby. The removal of any officer shall be without prejudice to contract rights, if any, of such officer so removed.

ARTICLE VII - CERTIFICATES OF MEMBERSHIP

Sec. 1. Certificates of membership: The Board of Directors may, as it sees fit, provide for certificates of membership to be issued to duly elected members in good standing, and in such form as they shall determine. Such certificates shall be signed by the President and Secretary and shall bear the seal of the foundation.

Sec. 2. Lost or destroyed Certificates: Upon receipt of an affidavit setting forth the loss or destruction of a Membership certificate, the Board of Directors may order the Secretary to restore said lost or destroyed certificate.

Sec. 3. Distinction of Different Classes of Membership: The Board of Directors shall issue certificates of membership in distinctive colors or forms, so as to clearly distinguish the class of each member.

ARTICLE VIII - THE FISCAL PERIOD

The fiscal year of the foundation shall begin on the _____ day of _____ and end on the _____ day of _____.

ARTICLE IX - AMENDMENTS

The By-laws of the foundation may be amended, repealed or new By-laws adopted by the Directors.

* * * * *

THE R. O. A. B. FOUNDATION

THE BOARD OF DIRECTORS AND THE OFFICERS OF THE R. O. A. B. FOUNDATION, DULY ORGANIZED UNDER THE LAWS OF THE STATE OF ILLINOIS, DO HEREBY DECLARE THAT

_____ HAS BEEN ELECTED A FAMILY MEMBER OF THE FOUNDATION, AND IS ENTITLED TO ALL OF THE RIGHTS, POWERS AND PRIVILEGES APPERTAINING THERETO.

THE PURPOSE OF THE ROAB FOUNDATION IS TO PROMOTE THE WELL BEING OF MANKIND WHEREVER LOCATED THROUGH CONTRIBUTIONS TO, AND PARTICIPATION IN A VARIETY OF ACTIVITIES BENEFICIAL TO MANKIND, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO EDUCATION, ART, MUSIC, LITERATURE, RESEARCH AND DEVELOPMENT OF EFFICIENCY IN BUSINESS AND INDUSTRIAL COMMUNICATIONS, WELFARE AND RELIGIOUS, CIVIC AND CULTURAL ACTIVITIES, WITH INITIAL EMPHASIS ON CHARACTER DEVELOPMENT OF YOUTH AND RELATED PROJECTS.

AND THE MEMBER PLEDGED HIS ENERGIES TO AID THE FOUNDATION IN SUCH ENDEAVOR.

Effective this _____ day of _____, 19____.

MEMBERSHIP CERTIFICATE NO. _____

Secretary

President

EXHIBIT 4 - 112

EXHIBIT 5 *I 2*

By-laws of a Civic Club.

1. Name: The name of this club is _____ incorporated under the State of _____ under the _____ law on the _____ day of _____, 1967.
2. Objects: Objects of this club shall be to protect and promote the best interests of the citizens of the nation, the state and this area, hereinafter set forth: to promote and strive for the improvement and betterment of all public facilities and services; to promote and encourage a better community and civic spirit and to foster good will and friendship between and among all the residents of said area, to cooperate with county, town, village, state and federal officials and with other civic and public organizations for the general welfare of the entire community.
3. Membership: Membership may be of several classes as provided by the Board of Directors and shall be initially of one class.
 - (a) the initial class of members shall be those persons elected by the Board of Directors.
4. Dues: Annual dues may be assessed from each member equally by the Board of Directors.
5. Fiscal Year: The fiscal year of the club shall commence on the _____ day of _____ and end on the _____ day of _____.
6. Meetings:
 - (a) The annual meeting of the members shall be held on the _____ day of _____, of each calendar year for the express purpose of electing directors and officers and for conducting such other business as may come before the members at that time.
 - (b) Regular meetings of the members shall be held as per agreement and Resolution of the members.
 - (c) Special meetings of the membership may be called by the President, whenever he shall deem the same necessary or whenever he shall be called upon to do so by two members of the Board of Directors or four members of the club.
 - (d) Notices of all such annual and special meetings shall be in writing given or mailed to each member not less than 5 nor more than 10 days before the date set for any such meetings, but such notice may be waived in writing by agreement of 2/3 of the members at any such meeting. No notice is required for a regular meeting of the membership. 2/3 of the members shall constitute a quorum of the membership. Voting shall be by a majority vote cast in person or by proxy. Proxies shall be in writing subscribed by the member and shall be presented by the presiding official of the meeting, to be qualified.

(over)

7. Directors: The affairs and business of this club shall be managed by a Board of _____ Directors elected by a plurality vote of the members present, at the annual meeting or such special meeting as may be called. Such Directors shall serve for the ensuing year or until their successors have been elected and qualified.

Special or regular meetings of the Board of Directors shall be called by the President whenever he deems them necessary or whenever he is called upon to do so by two of the Directors.

8. Officers: The officers of this club shall be four in number, a President, Vice President, Secretary and a Treasurer. No one person may hold more than one office. All officers must be members of the club.

(a) The President shall be the chief executive of the club, charged with the duty of supervising all of its functions subject to the orders of its Board of Directors. He shall be an ex-officio member of all committees.

(b) In the President's absence or in the event of his inability to act, the Vice President shall perform the duties of the President. He shall also perform such other functions as the Board of Directors may from time to time assign.

(c) The Secretary shall conduct the correspondence of the club, issue notices and keep minutes of all meetings of the club, be custodian of the records, keep the roll of members and discharge such other duties as may be assigned to him by the Board of Directors or the President.

(d) The Treasurer shall collect all dues and shall have the care and custody of all funds and property of this club, which shall be disbursed by him only upon the order of the Board of Directors or of the President. He shall submit a report for the preceding year at the annual meeting of the members and shall render special reports whenever requested to do so by the Board of Directors. He shall deposit all funds in the name of the club in such bank or banks as may be designated by the Board of Directors.

(e) Should any vacancy occur by death, resignation or otherwise, the same shall be filled without undo delay by the Board of Directors.

9. Committees: Committees shall be designated and appointed by the President or the Board of Directors as may be required.
10. Seal: The Board of Directors is empowered to design and accept a seal for the club and an impression thereof must be made at the margin of this page.
11. Amendments: By-laws of this club may be amended or revised by the Board of Directors, by 2/3 vote of all Directors and approval by the affirmative vote of a majority of the members present at the annual meeting or at any regular or special meeting, provided that notice of any such meeting contains a summary of the proposed amendment or amendments.

* * * * *

J-1

Board of Directors
 ROAB Foundation
 Address

Dear Sirs:

I hereby offer all my services to the ROAB Foundation in exchange for an employment (management) contract, the terms of which will be set out at a later date.

I understand that I would serve as Executive Director of the foundation. I further understand that as Executive Director I would conduct all foundation affairs.

I promise to serve to the best of my ability. I understand that the contract will provide for a salary and executive fringe benefits.

Yours truly,

J. B. Taxpayer

(Corporate Resolution Form Accepting Services of Executive Director)

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

A meeting of the Board of the Directors of the _____ Foundation, Corporation Not-For-Profit, duly authorized under the laws of the State of _____, said Directors properly holding office under the By-laws, was held on _____ (date), at the hour of _____ at _____ (place) pursuant to waiver of notice executed by all members of the Board of Directors.

The following members of the Board of Directors were present in person:

Upon motion duly made and seconded, the following Resolution was unanimously adopted:

"RESOLVED: That the offer (name of Executive Director) to serve as Executive Director of the Foundation, communicated by letter dated , is hereby accepted. The Executive Director shall serve until further notice is given by either the Board of Directors or the Executive Director to terminate their relationship.

It is further RESOLVED that the Executive Director shall be authorized and empowered to conduct all Foundation affairs, including, but not limited to, financial, charitable, beneficial and other related activities of the Foundation. The Executive Director shall expressly have the power to employ other persons to assist in conducting Foundation affairs and to set the duties and compensations of these persons.

The compensation included in the employment contract with the Executive Director, may include such executive fringe benefits as may be agreed upon by the parties, and the Executive Director shall be reimbursed by the Treasurer for all expenses reasonably incurred in conducting Foundation affairs.

It is further RESOLVED that the contract of employment and all terms therein may be revised or renewed periodically upon the agreement of the parties. The President or the Secretary of

the Foundation is authorized to execute the employment contract with the Executive Director.

Be it further RESOLVED that the Board of Directors is not barred from creating offices or appointing persons to fill these offices, in addition to those who may be employed to assist the Executive Director.

It is further RESOLVED that the Executive Director shall be an ex-officio member of the Board of Directors."

The Secretary is ordered to place a copy of these minutes in the By-law section of the corporation.

There being no further business to come before the meeting, a motion duly made and seconded and carried, the meeting was declared adjourned.

_____(SEAL)

Secretary

CONTRACT OF EMPLOYMENT FOR THE

FOUNDATION

This contract of employment between the _____
Foundation, (henceforth called the Foundation) and
_____, for and in consideration

of the mutual promises and conditions below:

1. Term of Office. The Foundation hereby agrees to employ _____ for a term of one (1) year from the above date. _____ agrees to serve in the capacity of Executive Director for the same term.
2. Duties. The Foundation authorized and delegates all authority to the Executive Director to help to perform all Foundation activities and manage, direct and perform all Foundation affairs. The Executive Director is expressly authorized to employ any persons to assist in the performance of Foundation affairs and to fix their duties and compensations. The Executive Director, in return, agrees to perform said activities and affairs to the best of his ability.
3. Compensation. The Foundation agrees to reimburse the Executive Director for any expenses incurred in the performance of

Foundation affairs, including, but not limited to, transportation, food, lodging, stationery, and postage, which may be incurred personally by the Executive Director. The Foundation further agrees to pay the salary of \$_____ per year, to the Executive Director, as reasonable compensation for his services. In addition, the Foundation agrees to provide the following benefits in return for the services of the Executive Director:

4. Renewal and Revision. This contract may be renewed or revised at any time prior to the completion of the stated terms, or subsequent to the completion of the stated term, at the agreement of the parties. If the contract is renewed or revised, subsequent to the completion of the stated term, such renewed or revised contract shall relate back to the end of the completed term. In no case shall the

lapse of the term of this contract be construed as the termination of employment of the Executive Director. Said termination may only be by express notice by either the Board of Directors or the express resignation or death of the Executive Director. This Contract of employment shall, however, be reviewed by the parties periodically, to make the proper adjustments.

This contract contains all of the terms of employment.

_____(SEAL)
Executive Director

_____(SEAL)
President or Secretary
of the Foundation

SEAL

"FRINGE BENEFITS"

There are benefits to being an employee of a foundation that are not stated in the employment contract. Among these are:

1. Educational opportunities
2. Research projects
3. Research grants
4. Use of foundation facilities and equipment

Other benefits are specifically stated in the employment contract and are usually governed by the Internal Revenue Code. Among these are:

1. Insurance (disability, life, professional liability, health, accident, medical)
2. Vacations
3. Adequate housing
4. Reimbursement for business expenses
5. Time for educational activities
6. Professional membership fees
7. Retirement

* * * * *

EXHIBIT 8 - K 1WHAT TO PREPARE FOR THE FIRST BOARD MEETING

The first Board of Directors meeting constitutes a real or hypothetical meeting of the persons who will begin the activities of the foundation. The 3 to 5 members of the initial Board of Directors should meet personally, although it has been corporate practice merely to distribute papers for signatures after they have been prepared. The meeting of the initial Board of Directors in person, is important so that all parties may become familiar with foundation-corporate procedures and with the initial aims and projects of the foundation. The Board of Directors should be prepared to meet regularly, even frequently, and any initial members who would not be able to devote this time or concern for foundation activities ought to be replaced. The following steps should be taken prior to the first Board of Directors meeting to save time, prevent confusion, and eliminate any possible conflicts:

- (a) A complete proposed draft of the By-Laws should be prepared.
- (b) The papers required for filing a Resolution with a Bank and opening a checking account should be fully prepared, minus the proper signatures.
- (c) A corporate seal should be obtained.
- (d) A corporate record book should be obtained.
- (e) The names and titles of the officers of the foundation should be determined.
- (f) If there is to be a change in the membership of the Board of Directors from the initial Board, the names and addresses of the new members should be prepared.
- (g) All procedures under State law concerning the foundation Charter and Articles of Incorporation should be completed prior to the first meeting of the Board.
- (h) The names of proposed family members other than the Board of Directors should be determined.
- (i) A letter signed by the Proposed Executive Director offering his services in exchange for an employment contract should have been received prior to the meeting.
- (j) If there is to be an assistant Executive Director, a similar letter should have been received prior to the meeting, from this person.

-1-

- (k) If there are any proposed sustained members, a list of the names, addresses and qualifications should be prepared.
- (l) It is highly recommended although not necessary that the president or proposed Executive Director prepare a possible grant program empowering the Executive Director to begin work on a general basis. This would enable the foundation to start activities immediately or at least to begin investigatory work and would not require a subsequent meeting within an unreasonable time.
- (m) Prepare for signature, undated letters of resignation of members of the Board where it is necessary. Undated letters of resignation are recommended to be used where there are members of the Board serving as nominees or merely as place holders to fill out the State requirements. These persons generally are unrelated to the foundation creators and disinterested as to foundation activities and purposes and should have no real voice in the operation of the foundation. To prevent and discourage any attempt in the future for such outsiders to gain control of the foundation an undated letter of resignation might be signed effective as of the date placed at the top of the letter. The controlling individuals of the foundation could then date that letter whenever they wished the third party or nominee to resign.
- (n) Most of this material should be included in previously drafted minutes of the first meeting of the Board of Directors and these minutes should merely be read for the information of the members present at the meeting. Few changes should be accepted and the proper signatures are all that is required. Items that should be included are:
 - (1) Ratification of Officers.
 - (2) Ratification of the Seal.
 - (3) Ratification of the bank Resolution.
 - (4) Ratification of the filing of the charter and Articles of Incorporation.
 - (5) Election of family members.
 - (6) Election of sustaining members.
 - (7) Approval of any proposed grant program.
 - (8) Acceptance of the offer of the Executive Director and Assistant Executive Director.
 - (9) Ratification of any other actions by the promoters of the foundation.
 - (10) Ratification and approval of proposed draft of By-Laws.

Most of this information in the proper language is usually included in standard forms for the first minutes of the Board of Directors that are available from many form book companies. The language and form of other Resolutions that would have to be passed may be obtained from counsel or may be drafted with guides of other material.

- (o) Prepare a waiver of notice of the first meeting of the Board of Directors prior to the meeting and before any other business is attempted have all of the members of the Board of Directors sign the waiver. This should be regular practice prior to all meetings of the Board of Directors. When the minutes have been read and all of the business discussed and enacted, have the Secretary sign the prepared minutes and close the meeting.

* * * * *

RATIFICATION OF MEMBERSHIP

STANDARD LANGUAGE ON RATIFICATION OF ACTS OF
INCORPORATORS IN MINUTES OF THE FIRST MEETING
OF THE FOUNDATION.

Upon motion duly made, seconded and carried, the following Resolution was unanimously adopted:

"RESOLVED: that the acts of the Incorporators, Officers and Directors of the foundation as set forth in the minutes of _____ 19____, be and the same hereby are ratified, approved and confirmed in all respects and that the Treasurer is ordered to reimburse the Incorporators, Officers and Directors for any expenses so incurred in these activities.

Be it further Resolved that the application for membership and the membership in the not-for-profit trust fund known as Americans Building Constitutionally be specifically ratified, approved and confirmed and that the foundation approves and accepts the conditions of that membership and all costs incurred with the membership paid by the Incorporators, Officers and Directors be and the same hereby are ratified, approved and confirmed.

It is further Resolved that the Treasurer reimburse these persons for said costs incurred with the membership."

* * * * *

M-1

LETTER OF RESOLUTION ^{IGNATION} ~~RESOLUTION~~

(DATE)

To the Board of Directors of
Foundation

Address

City, State

To Whom it May Concern:

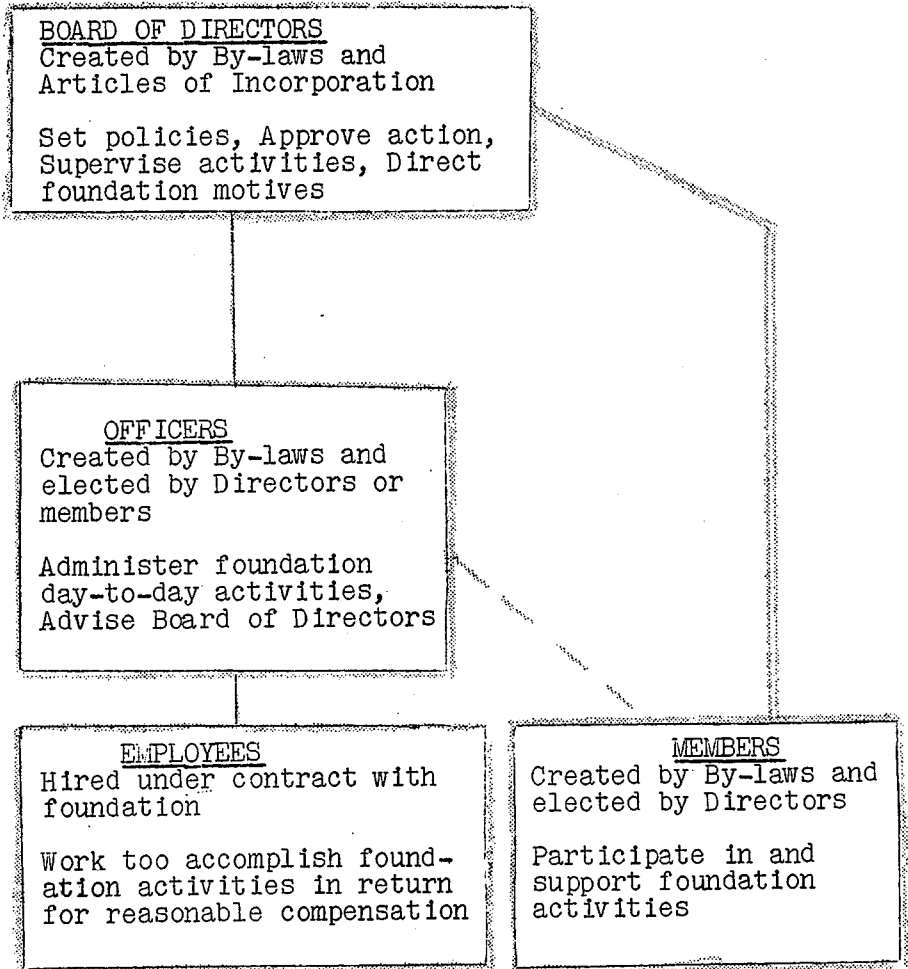
Due to circumstances beyond my control, I am
unable to continue to serve as a Director of the
Foundation.

I regretfully submit this letter of resignation, which shall be effective upon acceptance by the Board of Directors as of the date above.

(Name of Director)

✻ ✻ ✻ ✻ ✻

FOUNDATION MANAGEMENT CHART
NFP CORPORATE FOUNDATION



* * * * *

FOUNDATION ECONOMIC FLOW CHART

1-0

TAX FREE INCOME

1. Related Fees
2. Rents
3. Royalties
4. Capital Gains *
5. Dividends
6. Interest
7. Contributions *

Capital----

TAXABLE INCOME

1. Unrelated business income
2. business lease

NFP FOUNDATION PROPERTIES COMMONLY HELD BY FOUNDATIONS

1. Real Estate
2. Leases
3. Securities
4. Mortgages
5. Office equipment
6. Research equipment
7. Insurance policies on employees and property
8. Cash
9. Motor Vehicles
10. (valuable educational or historical property)

NORMAL OUTGO

1. Rents
2. Salaries (employees)
3. Fringe Benefitss (employees)
4. Mortgage payments
5. Brokerage fees
6. Managment fees
7. Equipment and property depreciation
8. Travel Expenses
9. Insurance premiums
10. Taxes, licenses, legal fees and accountant's fees
11. Maintenance
12. Educational projects
13. Scientific projects
14. Charitable projects
15. Religious projects
16. Literary projects
17. Testing for public safety projects
18. Office supplies
19. Utilities
20. Miscellaneous

* * * * *

THE RECORDS WHICH THE TREASURY REQUIRES OF GRANTORS

- (a) Name and address of recipient
- (b) Amount of grant
- (c) Purpose of this disbursement
- (d) Relation, if any, to persons who created or controlled foundation.

In addition to these skeletal records, good practice would suggest a procedure for processing grants by the foundation. Such procedures will both serve to assure the Treasury that you are operating a bona fide program (and this may be prudent since the initial recipients of your philanthropy may tend to be children and relations, if not you yourself) and to make things easier in your relations with strangers whom you might want to consider helping (i.e., it can make it more impersonal and easier to say no).

Mr. Harvey B. Matthews, Jr. of the Ford Foundation, speaking at New York University's Conference on Charitable Foundations, suggested these steps for processing grants:

- (1) A stated program containing some sort of guidelines for determining what sort of grants will be considered (e.g., tuition scholarship for college students).
- (2) Application - require some written application which makes clear that the person is applying for a grant and not just making an inquiry. The application should make clear what the money is wanted for so that the foundation can tell whether it falls within the foundation's program and corporate purposes.
- (3) Action Control - Mr. Mathews suggests that a piece of paper be attached to the application to record everything that is done regarding the application.
- (4) Preliminary screening and review. At this stage the foundation compares the request with its program to see whether or not the request falls within the grant program.

- (5) Final consideration. The merits of a proposed grant are compared against the availability of funds and a judgment made whether it is really worthwhile or desirable on the part of the foundation.

As a matter of form, the initial screening should be done by one officer who then refers those he considers worthwhile to the directors or some committee of directors who make the final decision on the grant and its terms.

- (6) The person in charge of the grant program notifies the recipient of the acceptance or rejection of his application by letter.
- (7) There should be in addition a follow up on the grant, a formal closing out of the terms of the grant, and an evaluation of the benefits derived from the foundation's use of its money in this particular instance.

As it was alluded before, the test of the propriety of a grant is whether it is in furtherance of the foundation's exempt purpose. A child, spouse, or relative of a donor or Foundation officer may properly receive such a grant (and of course in those cases, adherence to form is more important). With proper planning, the grant may be made in such a way as to result in no taxable income to the recipient. Cf. § 117 Revenue Code. Of course, since this is a grant rather than an expense account, the complicated rules relative to expense accounts have no application.

* * * * *

Internal Revenue Code

Sec. 117(b)

Income Tax—Scholarships

2951

[Sec. 117]

SEC. 117. SCHOLARSHIPS AND FELLOWSHIP GRANTS.

(a) GENERAL RULE.—In the case of an individual, gross income does not include—

(1) any amount received—

(A) as a scholarship at an educational institution (as defined in section 151 (c) (4)), or

(B) as a fellowship grant, including the value of contributed services and accommodations; and

(2) any amount received to cover expenses for—

(A) travel,

(B) research,

(C) clerical help, or

(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient.

Source: New.

[Sec. 117(b)]

(b) LIMITATIONS.—

(1) INDIVIDUALS WHO ARE CANDIDATES FOR DEGREES.—In the case of an individual who is a candidate for a degree at an educational institution (as defined in section 151 (c) (4)), subsection (a) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services in the nature of part-time employment required as a condition to receiving the scholarship or the fellowship grant. If teaching, research, or other services are required of all candidates (whether or not recipients of scholarships or fellowship grants) for a particular degree as a condition to receiving such degree, such teaching, research, or other services shall not be regarded as part-time employment within the meaning of this paragraph.

(2) INDIVIDUALS WHO ARE NOT CANDIDATES FOR DEGREES.—In the case of an individual who is not a candidate for a degree at an educational institution (as defined in section 151 (c) (4)), subsection (a) shall apply only if the condition in subparagraph (A) is satisfied and then only within the limitations provided in subparagraph (B).

(A) CONDITIONS FOR EXCLUSION.—The grantor of the scholarship or fellowship grant is—

(i) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) a foreign government,

(iii) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(iv) the United States, or an instrumentality or agency thereof, or a State, a territory, or a possession of the United States, or any political subdivision thereof, or the District of Columbia.

(B) EXTENT OF EXCLUSION.—The amount of the scholarship or fellowship grant excluded under subsection (a) (1) in any taxable year shall be limited to an amount equal to \$500 times the number of months for which the recipient received amounts under the scholarship or fellowship grant during such taxable year, except that no exclusion shall be allowed under subsection (a) after the recipient has been entitled to exclude under this section for a period of 36 months (whether or not consecutive) amounts received as a scholarship or fellowship grant while not a candidate for a degree at an educational institution (as defined in section 151 (c) (4)).

Source as originally enacted in the 1954 Code: New.

Amendments: P. L. 87-253, § 110(a)... P. L. 87-253, § 110(a): Amended Code Sec. 117(b)(2)(A) to read as above. Prior to amendment, it read as follows: "(A) Conditions for exclusion.—The grantor of the scholarship or fellowship	Sec. as amended effective: 1-1-62 grant is an organization described in section 501(c)(3) which is exempt from tax under section 501(c), the United States of the United States, or the District of Columbia." Effective for taxable years beginning after 1961.
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EXHIBIT 10A

THE R O A B FOUNDATION

SAMPLE APPLICATION FOR GRANT TO STUDENTS
FOR SPECIAL TRAINING

APPLICANT'S NAME _____

ADDRESS _____

AGE _____ OCCUPATION _____ U. S. CITIZEN _____

GRANT FOR THE STUDY OF _____

INSTITUTION WHERE STUDY IS TO BE MADE _____

PREVIOUS GRANTS, AWARDS _____

If Student, complete the following:

PRESENT SCHOOL _____

MAJORING IN _____

OTHER COURSES OF STUDY IN RELATED FIELD _____

Complete in own words, reason for request for grant and why you are qualified to receive special training.

THIS FORM IS ONLY TO BE USED FOR ILLUSTRATIVE PURPOSES. INDIVIDUAL FORMS FOR INDIVIDUAL GRANT PROGRAMS SHOULD BE DRAFTED.

Recommendation of Present Teacher (If student) _____

"Be it RESOLVED: that to further the purposes of the Foundation that a program of grants, gifts, and endowments be instituted by the Foundation.

That said grants and endowments be awarded only for such projects as serve to advance the stated purposes of the Foundation which are research, development and education in agriculture.

That preference be given students in agriculture or related fields but in no case shall such grants be for purposes other than scientific education, religious or literary.

That such grants may be received by any citizen, person or governmental unit of the United States

That the Vice President be appointed as Chairman of the Committee on Grants, with the recommendation that other members be chosen from business or the professions, to serve at the Chairman's discretion. Said committee shall prepare forms and information for prospective applicants and screen all such applicants and recommend prospective applicants to the Board of Directors such applicants as the committee feels will best serve to further the purposes for which the Foundation was created.

That upon approval of such application, by the Board of Directors, the Chairman of the committee on Grants may proceed to administer such grant on such terms as are calculated to maximize the benefits of the Foundation's expenditure.

That the Board of Directors or the Committee on Grants reserve at all times the right to modify, withdraw or cancel any part of any grant not paid out.

That the Chairman of the Committee on Grants shall require an accounting from each recipient on terms he thinks appropriate regarding the

expenditure of all grant monies and evidence of the results accomplished.

That in the case of grants, gifts, or endowments not amounting to more than \$50 apiece, nor aggregating more than \$1,000 per fiscal year, such disbursements may be made solely on the authority of the Chairman of the Committee."

THE _____ FOUNDATION

A Non-Profit Institution for Agricultural
Research and Education

APPLICATION FOR SCHOLARSHIP

To the Applicant: Please answer the following questions as fully as possible, using the reverse side if necessary. Type or print legibly.

Hoover Scholarships are available to any serious student, with preference being given to students working in the field of agriculture.

1. Name _____ Age _____
2. Purpose of Scholarship _____
3. Amount needed to supplement applicant's own funds _____ (Note: - scholarships may be available only for fixed sum).
4. Applicant's qualifications and past educational experience _____

5. Has applicant ever worked in agriculture? _____
If so, explain.

6. Give names of two persons, not relatives, who
can testify to applicant's character and
ability.

_____	_____
(name)	(address)
_____	_____
(name)	(address)

Applicant understand that any grant made may be
subject to such terms as the Foundation may provide
to insure the ~~maximum~~ usefulness of the funds awarded
and that any funds awarded but not actually paid
out are subject to cancellation or reduction by
the Foundation in its sole discretion.

Signed _____
(Applicant)

Date _____

A PROGRAM OF GRANTS AND SCHOLARSHIPS

The _____ Foundation was established to
further research, development, and education in

agriculture, and in furtherance of that goal has instituted a program of grants and scholarships.

Grants and scholarships are intended primarily to assist students working in the field of agriculture but will also be available to students in the other sciences and the humanities where qualified applicants are not found in agricultural studies.

Who May Apply:

Grants and scholarships may be awarded to any person evincing a serious interest in education. It is not necessary that the applicant be in financial need although this factor will be considered.

Criteria for Awards:

Grants and scholarships are to be awarded to those students or for those projects which, in the opinion of the Foundation, most satisfactorily serve the purposes for which this Foundation was created.

Terms of Awards:

Grants and scholarships shall be awarded on such terms as the Chairman of the Committee on Grants determines to be most likely to maximize the usefulness and benefit of the Foundation's expenditures. Such terms may include among other things, periodic payments of grants, accounting for expenditures and evidence of work accomplished. All grants and scholarships are subject to revision or cancellation with respect to any monies not as yet paid out to the recipient.

Amount of Awards:

Grants and scholarships may be made either in fixed sums allocated by the Committee on Grants or may be adjusted to the individual financial need.

When and Where to Apply:

Applications may be made at any time although a

sixty-day delay for processing should be expected.
Applications should be addressed to:

Chairman, Committee on Grants
The Foundation

(address)

THE _____ FOUNDATION

A non-Profit Institution for Agricultural
Research and Education

REFERENCE FORM

To the Applicant: Fill in items 1 - 3. Then give
a copy of this form to each of
the persons whom you have listed
on your application.

1. Name of Applicant _____
2. Home Address _____
3. School now attending _____ Class _____

To person filling out this form:

The above named student has applied for a scholarship from the _____ Foundation. We will appreciate your assistance in assessing this student's character and qualifications. All information will be held in confidence.

4. How long have you known the applicant?
5. In what capacity have you known applicant?

6. What comments can you make regarding applicant's character and qualifications?

7. Any additional statement regarding applicant's suitability for a Foundation scholarship would be appreciated.

(signature)

(address)

(position)

FOLLOW-UP GRANT PROGRAM

Dear

We of the Foundation hope you have been successful in your chosen project or studies. To judge the effectiveness of our program of grants and scholarships, we would appreciate your completing your obligation under this award and giving us your comments on the value of your grant.

1. What did you accomplish through your grant?

2. Were you satisfied with the handling of this grant and have you any suggestions for improvement?

Please include with this report any additional material required under the terms of your grant.

Yours very truly,
The Foundation

Chairman, Committee on Grant

* * * * *

EXHIBIT 11 - Q1WHAT FOUNDATIONS CAN AND CAN'T DO

Being a corporation, the foundation normally will have all the rights and powers enjoyed by similar corporate organizations under State law and there is no need to enumerate them other than to say that they are almost invariably wide enough to allow any act desired by the directors. For example, the Illinois General Not-For-Profit Corporation Act provides "Each corporation shall have power:...to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized." IGNFPCA, § 5(n).

For our purposes here, a more relevant question is: what acts should not be performed in order to preserve the foundation favorable tax status.

1. A foundation is prohibited from entering into the following transactions with a substantial donor or his family.
 - (a) lending any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest;
 - (b) paying any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered;
 - (c) making any part of its services available on a preferential basis;
 - (d) making any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth;
 - (e) selling any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth;
 - (f) engaging in any other transaction which results in a substantial diversion of its income or corpus to such person.
2. The foundation is further prohibited from performing any of the following acts:
 - (a) accumulating an unreasonable amount of income;
 - (b) using its income to a substantial degree for purposes unrelated to its exemption.

- (c) investing its income in such a way as to jeopardize its ability to carry out its purposes. (Note: these last three prohibitions apply only to income and not to corpus (c.g. gifts or donations received) and in practice present no particular problem with good counseling.

3. A foundation may not endorse a particular political candidate or advocate passage of a particular piece of legislation. It may, however, advocate a particular point of view. E.G., a conservation group could advocate the desirability of conservation but could not advocate approval of a particular law to achieve conservation.

These are general descriptions of the activities which will imperil a foundation's tax exempt status and are found in section 501 to 504 of the Internal Revenue Code.

Unrelated Business Income

There is a situation in which a foundation may be subject to income tax on certain of its earning without affecting its exempt status. This is called a tax on unrelated business income. Although there are a good many limitations on this tax, the general rule is that an exempt organization is taxable at corporate rates on the income from a trade or business regularly carried on by the organization, the conduct of which is not substantially related to the performance of the organization's exempt purpose.

For example, a tax-exempt clinic would pay no tax on its fees from patients but might be taxable on the income of a restaurant operated by the clinic in its building which served the public. Of course, since income from investments is generally untaxed, the clinic could incorporate the restaurant, own all the stock, and pay no tax on the dividends received from the restaurant corporation.

This tax on unrelated income does not apply to income from interest, dividends, royalties, most rents, and passive investments generally. The only problem with rents may arise under certain types of leases on property which is subject to a debt incurred in purchasing it.

The unrelated business tax is apparently not a major item in the tax treatment of exempt organizations. During the year 1962, for example, only 1,648 report forms (990-T) were filed with the Internal Revenue Service.

* * * * *

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

TREATMENT OF INCOME FROM UN-RELATED TRADE OR BUSINESS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC: LR: T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the Federal Register. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

In order to clarify the meaning of the terms "unrelated business taxable income" and "unrelated trade or business" as they relate to certain exempt organizations, the Income Tax Regulations (26 CFR Part 1) under sections 513 and 512 of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Paragraphs (b) and (c) of § 1.513-1 are respectively redesignated as paragraphs (e) and (f), and § 1.513-1 is otherwise amended to read as follows:

§ 1.513-1 Definition of unrelated trade or business.

(a) *In general.* As used in section 512 the term "unrelated business taxable in-

come" means the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the deductions and subject to the exceptions, additions and limitations provided in section 512. Section 513 specifies with certain exceptions that the phrase "unrelated trade or business" means, in the case of an organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related

(aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in sec. 511(a) (2) (B), to the exercise or performance of any purpose or function described in sec. 501 (c) (3)). (For certain exceptions from this definition, and a special rule for certain publishing businesses, see paragraphs (e) and (f) of this section. For a special definition of "unrelated trade or business" applicable to certain trusts, see sec. 513(b).) Therefore, unless one of the specific exceptions of section 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if (1) it is income from trade or business, (2) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions and (3) such trade or business is regularly carried on by the organization.

(b) *Trade or business.* For the purposes of section 513 the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. The term "trade or business" thus is not limited to integrated aggregates of assets, activities and good-will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or

business merely because they are carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Thus, for example, the regular sale of pharmaceutical supplies to the general public by a hospital pharmacy does not lose identity as trade or business merely because the pharmacy also furnishes supplies to the hospital in accordance with its exempt purposes. Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization.

(c) *Regularly carried on.*—(1) *General principles.* In determining whether trade or business from which a particular amount of gross income derives is

"regularly carried on," within the meaning of section 512, regard must be had to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued. This requirement must be applied in light of the fundamental purpose of the unrelated business income tax to place the business activities of exempt organizations upon the same tax basis as commercial endeavors with which they compete. Hence, for example, specific business activities of an exempt organization will ordinarily be deemed to be "regularly carried on" if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations.

(2) *Application of principles.*—(i) *Normal time span of activities.* Where income producing activities are of a kind normally conducted by nonexempt commercial organizations on a year-round basis, the conduct of such activities by an exempt organization over a period of only a few weeks does not constitute the regular carrying on of trade or business. For example, the operation of a sandwich stand by a hospital auxiliary for the 2-week period of an annual state fair would not be the regular conduct of trade or business. However, the conduct of year-round business activities for one day each week would constitute the regular carrying on of trade or business. Thus, the operation of a commercial parking lot on Saturday of each week would be the regular conduct of trade or business. Where income producing activities are of a kind normally undertaken by nonexempt

commercial organizations only on a seasonal basis, the conduct of such activities by an exempt organization during a significant portion of the season ordinarily constitutes the regular conduct of trade or business. For example, the operation of a track for horse racing for several weeks each year would be considered the regular conduct of trade or business because it is usual to carry on such trade or business only during a particular season.

(ii) *Commercial attributes of intermittent activities.* In determining whether or not intermittently conducted activities are regularly carried on, the manner of conduct of the activities must be compared with the manner in which commercial activities are normally pursued by nonexempt organizations. In general, exempt organization business activities which are engaged in only discontinuously or periodically will not be considered regularly carried on if they are conducted without the competitive and promotional efforts typical of commercial endeavors. For example, the sale of advertising in programs for

sports events or music or drama performances would not ordinarily be deemed to be the regular carrying on of business where no systematic endeavors are made to develop and promote this class of business in the manner of a commercial publication. Similarly, where the exempt function of an organization involves the sale of certain types of goods or services to a particular class of persons (as, for example, sales of books by a college bookstore to students), casual sales in the course of such activity, which are not related to the exempt function involved, do not generally constitute the regular conduct of unrelated trade or business. On the other hand, where the organization systematically and consistently caters to a customer class unrelated to its exempt functions or sells products unrelated to the performance of such functions, the unrelated selling activities meet the section 512 requirement of regularity.

(iii) *Occasional or sporadic activities.* Income producing activities undertaken only occasionally or sporadically generally will not be regarded as trade or business regularly carried on. For this purpose, an income producing or fund raising event lasting only a short period of time will not be regarded as regularly carried on merely because it is conducted on an annually recurrent basis. Accordingly, income derived from the conduct of an annual dance or similar fund raising event for charity would not be income from trade or business regularly carried on.

(d) *Substantially related.*—(1) *In general.* Gross income derives from "un-

related trade or business," within the meaning of section 513(a), if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities which generate the particular income in question—the activities, that is, of producing or distributing the goods or performing the services involved—and the accomplishment of the organization's exempt purposes.

(2) *Type of relationship required.* Trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income); and it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. For the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income from the sale of the goods or the performance of the services does not derive from the conduct of related trade or business. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

(3) *Size and extent of activities.* In determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business. Such income is not derived from the production or distribution of goods or the performance of services which contribute importantly to the ac-

complishment of any exempt purpose of the organization.

(4) *Application of principles—(1) Income stemming directly from performance of exempt functions.* Gross income derived directly from the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business. The following examples illustrate the application of this principle:

Example (1). M, an organization described in section 501(c)(3), operates a school for training children in the performing arts, such as acting, singing, and dancing. It presents performances by its students and derives gross income from admission charges for the performances. The students' participation in performances before audiences is an essential part of their training. Since the income realized from the performances derives from activities which contribute importantly to the accomplishment of M's exempt purposes, it does not constitute gross income from unrelated trade or business. (For specific exclusion applicable in certain cases of contributed services, see section 513(a)(1) and paragraph (e)(1) of this section.)

Example (2). N is a trade union qualified for exemption under section 501(c)(5). To improve the trade skills of its members, N conducts refresher training courses and supplies handbooks and technical manuals. N receives payments from its members for these services and materials. However, the development and improvement of the skills of its members is one of the purposes for which exemption is granted N; and the activities described contribute importantly to that purpose. Therefore, the income derived from these activities does not constitute gross income from unrelated trade or business.

Example (3). O is an industry trade association qualified for exemption under section 501(c)(6). It presents a trade show in which members of its industry join in an exhibition of industry products. O derives income from charges made to exhibitors for exhibit space and admission fees charged patrons or viewers of the show. The show is not a sales facility for individual exhibitors; its purpose is the promotion and stimulation of interest in, and demand for, the industry's products in general, and it is conducted in a manner reasonably calculated to achieve that purpose. The stimulation of demand for the industry's products in general is one of the purposes for which exemption is granted O. Consequently, the activities productive of O's gross income from the show—that is, the promotion, organization and conduct of the exhibition—contribute importantly to the achievement of an exempt purpose, and the income does not constitute gross income from unrelated trade or business.

(ii) *Disposition of product of exempt functions.* Ordinarily, gross income from the sale of products which are a direct result of the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business if the product is sold

with its program of public education in the arts and sciences. The theater is a principal feature of the museum and is in continuous operation during the hours the museum is open to the public. If the organization were to operate the theater as an ordinary motion picture theater for public entertainment during the evening hours when the museum was closed, gross income from such operation would be gross income from conduct of unrelated trade or business.

(iv) *Exploitation of exempt functions.* In certain cases, activities carried on by an organization in the performance of exempt functions may generate good will or other intangibles which are capable of being exploited in commercial endeavors. Where an organization exploits such an intangible in commercial activities, the mere fact that the resultant income depends in part upon an exempt function of the organization does not make it gross income from related trade or business. In such cases, unless the commercial activities themselves contribute importantly to the accomplishment of an exempt purpose, the income which they produce is gross income from the conduct of unrelated trade or business. The application of this subdivision is illustrated in the following examples:

Example (1). U, an exempt scientific organization, enjoys an excellent reputation in the field of biological research. It exploits this reputation regularly by selling endorsements of various items of laboratory equipment to manufacturers. The endorsing of laboratory equipment does not contribute importantly to the accomplishment of any purpose for which exemption is granted U. Accordingly, the income derived from the sale of endorsements is gross income from unrelated trade or business.

Example (2). V, an exempt university, has a large regularly enrolled student body. During the school year, V sponsors the appearance of professional theater companies and symphony orchestras which present drama and musical performances to the students. V advertises these performances to its students, provides a university theater building for their presentation, and supervises advance ticket sales at various university facilities, including the cafeteria and the university bookstore. V derives gross income from the conduct of the performances. However, the presentation of drama and music events contributes importantly to the overall educational function of the university. Therefore, the income which V receives does not constitute gross income from the conduct of unrelated trade or business.

Example (3). W is an exempt business league with a large membership. Under an arrangement with an advertising agency, W regularly mails brochures, pamphlets, and other commercial advertising materials to its members, for which service W charges the agency an agreed amount per enclosure. The distribution of the advertising materials does not contribute importantly to the accomplishment of any purpose for which W is granted exemption. Accordingly, the payments made to W by the advertising agency

constitute gross income from unrelated trade or business.

Example (4). X, an exempt organization for the advancement of public interest in classical music, owns a radio station and operates it in a manner which contributes importantly to the accomplishment of the purposes for which the organization is granted exemption. However, in the course

of the operation of the station the organization derives gross income from the regular sale of advertising time and services to commercial advertisers in the manner of an ordinary commercial station. Neither the sale of such time nor the performance of such services contributes importantly to the accomplishment of any purpose for which the organization is granted exemption. Notwithstanding the fact that the production of the advertising income depends upon the existence of the listening audience resulting from performance of exempt functions, such income is gross income from unrelated trade or business.

Example (5). Y, an exempt university, provides facilities, instruction and faculty supervision for a campus newspaper operated by its students. In addition to news items and editorial commentary, the newspaper publishes paid advertising. The solicitation, sale, and publication of the advertising are conducted by students, under the supervision and instruction of the university. Although the services rendered to advertisers are of a commercial character, the advertising business contributes importantly to the university's educational program through the training of the students involved. Hence, none of the income derived from publication of the newspaper constitutes gross income from unrelated trade or business.

Example (6). Z, an exempt trade association, publishes a monthly journal. The publication of the articles and other editorial content of the journal contributes importantly to the accomplishment of purposes for which exemption is granted the organization. Income from the sale of subscriptions to members and others in accordance with the organization's exempt purposes, therefore, does not constitute gross income from unrelated trade or business. In connection with the publication of the journal, Z also derives income from the regular sale of advertising space and services to commercial advertisers. Neither the publication of advertisements nor the performance of services for commercial advertisers contributes importantly to the accomplishment of any purpose for which exemption is granted. Therefore, notwithstanding the fact that the production of income from advertising utilizes the circulation developed and maintained in the performance of exempt functions, such income is gross income from unrelated trade or business. That result follows even though the advertising is of products and services within the general area of professional or business interest of the members and other readers.

(e) . . .
(f) . . .

PAR. 2. Section 1.512(a)-1 is amended to read as follows:

§ 1.512(a)-1 Definition.

(a) *In general.* Section 512 defines "unrelated business taxable income" as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Code which are directly connected with the carrying on of such trade or business, subject to certain exceptions, additions and limitations referred to in § 1.512(b)-1. To be deductible in computing unrelated business taxable income, therefore, expenses, depreciation, and similar items not only must qualify as deductions allowed by chapter 1 of the Code, but also must be directly connected with the carrying on

of unrelated trade or business. Except as provided in subparagraph (2) of paragraph (d) of this section, to be "directly connected with" the conduct of unrelated business, for purposes of section 512, an item of deduction must have proximate and primary relationship to the carrying on of that business. In the case of an organization which derives gross income from the regular conduct of two or more unrelated business activities, unrelated business taxable income is the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

(b) *Expenses attributable solely to unrelated business.* Expenses, depreciation and similar items attributable solely to the conduct of unrelated business are proximately and primarily related to that business and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167, or other relevant provisions of the Internal Revenue Code. Thus, for example, salaries of personnel employed full-time in carrying on unrelated business are directly connected with the conduct of the unrelated business and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162. Similarly, depreciation of a building used entirely in the conduct of unrelated business would be an allowable deduction to the extent otherwise permitted by section 167.

(c) *Dual use of facilities or personnel.* Where facilities or personnel are used both to carry on exempt functions and to conduct unrelated trade or business, expenses, depreciation, and similar items attributable to such facilities or personnel (as, for example, items of overhead) shall be allocated between the two uses on a reasonable basis. The portion of any such item so allocated to the unrelated trade or business is proximately and primarily related to that business,

and shall be allowable as a deduction in computing unrelated business taxable income in the manner and to the extent permitted by section 162, section 167, or other relevant sections of the Internal Revenue Code. Thus, for example, assume that X, an exempt organization subject to the provisions of section 511, pays its president a salary of \$20,000 a year. X derives gross income from the conduct of unrelated trade or business. The president devotes approximately 10 percent of his time during the year to the unrelated business. For purposes of computing X's unrelated business taxable income, a deduction of \$2,000 (\$20,000 times 10 percent) would be allowable for the salary paid to its president.

(d) *Exploitation of exempt functions.*—(1) *In general.* In certain cases, gross income may be derived from unrelated trade or business which exploits an exempt function. Except as specified in subparagraph (2) of this paragraph, in such cases expenses, depreciation and similar items attributable to the conduct of the exempt function are not

deductible in computing unrelated business taxable income. Since such items are incident to a function of the type which it is the chief purpose of the organization to conduct, they do not possess proximate and primary relationship to the unrelated trade or business. Therefore, they do not qualify as directly connected with that business.

(2) *Allowable deductions.* Where unrelated trade or business is of a kind carried on for profit by taxable organizations and where the exempt activity exploited by the business is a type of activity normally conducted by taxable organizations in pursuance of such business, the expenses, depreciation, and similar items which are attributable to the exempt activity qualify as directly connected with the carrying on of the unrelated trade or business to the extent that:

(i) The aggregate of such items exceeds the income (if any) derived from or attributable to the related activities; and

(ii) The allocation of such excess to the unrelated activities does not result in a loss from such unrelated trade or business.

Under the rule of the preceding sentence, expenses, depreciation and similar items paid or incurred in the performance of an exempt function must be allocated first to the exempt function to the extent of the income derived from or attributable to the performance of that function. Furthermore, such items are in no event allocable to the unrelated business

activities to the extent that their deduction would result in a loss carryover or carryback with respect to the particular conduct of trade or business involved. Similarly, they may not be taken into account in computing unrelated business taxable income attributable to the conduct of unrelated trade or business not exploiting the same exempt activities.

(3) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). W is an exempt business league with a large membership. Under an arrangement with an advertising agency W regularly mails brochures, pamphlets and other commercial advertising materials to its members, charging the agency an agreed amount per enclosure. The distribution of the advertising materials does not contribute importantly to the accomplishment of the purpose for which W is granted exemption. Accordingly, the payments made to W by the advertising agency constitute gross income from unrelated trade or business. In computing W's unrelated business taxable income, the expenses attributable solely to the conduct of the business are allowable as deductions in accordance with the provisions of section 162. Such deductions include the costs of handling and mailing, the salaries of personnel used full-time in the unrelated business and an allocable portion of the salaries of personnel used both to carry on exempt functions and to conduct the unrelated business. However, costs of developing W's membership and carrying on its exempt activities are not deductible. Those costs are necessary to the maintenance of the intangible asset exploited in the unrelated business—W's membership—but are incurred primarily in connection with W's fundamental status and functioning as an exempt organization. As a consequence, they do not have proximate and primary relationship to the conduct of the unrelated business, and do not qualify as directly connected with it.

Example (2). Z, an exempt business league, publishes a monthly journal which it sells by subscription to members and others. The articles and other editorial content of the journal contribute importantly to the accomplishment of Z's exempt purposes. Therefore, the subscription income does not constitute gross income from unrelated trade or business. In connection with the publication of the journal, Z derives income from the sale of advertising space to commercial advertisers. Since the provision of commercial advertising space does not contribute importantly to the accomplishment of Z's exempt purposes, Z's income from advertising constitutes gross income from unrelated trade or business.

In computing Z's unrelated business taxable income, allowable deductions would (subject to the rules provided in section 162 and other relevant sections of the Internal Revenue Code) include the specific costs of the advertising activity, such as advertising copy and mechanical costs, advertising sales commissions and similar expenses. Also allowable would be items of deduction (such as general overhead expenses and depreciation) allocable to the advertising activity in accordance with the rule of paragraph (c) of this section. In addition, since expenses,

depreciation, and similar items related to the production and distribution of the editorial content of the journal are costs generally incurred by taxable organizations publishing journals with advertising, such items will be treated as directly connected with the conduct of the unrelated trade or business. Thus, subject to the limitations of subdivisions (1) and (II) of subparagraph (2) of this paragraph, they would be allowable as deductions in computing Z's unrelated business taxable income to the extent provided in section 162, section 167, and other relevant sections of the Internal Revenue Code.

[P.R. Doc. 67-4206; Filed, Apr. 13, 1967; 11:16 a.m.]

Federal Exemption Requirements

FORM 2848
(Rev. Aug. 1964)

U.S. Treasury Department—Internal Revenue Service

GENERAL POWER OF ATTORNEY

(IMPORTANT—Please read instructions on reverse before completing this form)

Name and address of principal(s)

hereby appoint(s) (Name and address of appointee(s))

as attorney(s)-in-fact to represent the principal(s) before any office of the Internal Revenue Service with respect to (specify Internal Revenue tax matter(s) and year(s) or period(s))

Said attorney(s)-in-fact shall, subject to revocation, have full power to perform any and all acts that the principal(s) can perform, including the power to receive (but not to endorse and collect) checks in payment of any refund of Internal Revenue taxes, penalties, or interest; to delegate authority or to substitute another attorney or agent; to execute waivers of restrictions on assessment or collection of deficiencies in tax; to execute consents extending the statutory period for assessment or collection of taxes; to execute a closing agreement (under section 7121 of the Internal Revenue Code) in respect of a tax liability or a specific matter; and to execute a protest to a determination of taxes by a district director.

Copies of correspondence addressed to the taxpayer in proceedings involving the above matter(s) should be sent to:

Any prior powers of attorney filed with this office by the principal(s) relating to the matter(s) and the year(s) or period(s) specified above are hereby revoked.

SIGNATURE IF PRINCIPAL IS INDIVIDUAL OR HUSBAND AND WIFE

Signature of Principal	Date	Signature of Principal	Date
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SIGNATURE IF PRINCIPAL IS PARTNERSHIP, ESTATE, CORPORATION, ETC.

Under penalties of perjury, I declare that I have the authority to execute this power of attorney on behalf of one principal.

Signature for Principal	Title	Date	CORPORATE SEAL (if applicable)
Signature for Principal	Title	Date	

NOTARIZATION

OR

WITNESSING

The above-named person(s), signing as or for the principal(s) appeared this day before me and acknowledged this power of attorney as his/her/their voluntary act and deed.

This power of attorney was signed by or for the principal(s) by a person or persons known to, and in the presence of, the two disinterested witnesses whose signatures appear below:

NOTARIAL SEAL
(if required)

Signature of Notary	Signature of Witness	Date
Date	Signature of Witness	Date

CERTIFICATION BY ENROLLED ATTORNEY OR AGENT IN LIEU OF WITNESSING OR NOTARIZATION

I certify that I am in good standing and enrolled to practice before the Internal Revenue Service (the following is applicable only if the principal is other than an individual or husband and wife) and that to the best of my knowledge and belief, the person(s) signing above has/have the authority to execute this power of attorney on behalf of the principal.

Signature of Attorney-in-Fact	Enrollment Card Number (if any)	Expiration Date on Card
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FORM 2848 (Rev. 8-64)

If a Limited Power of Attorney Is Desired, Use Form 2848-A

INSTRUCTIONS
GENERAL

No formal rules govern the preparation of a power of attorney other than that the instrument should clearly express the scope of the authority granted the attorney or agent, the tax matters and taxable years or periods to which it relates, and that it should follow the instructions set forth in Subpart E, Conference and Practice Requirements of the Statement of Procedural Rules (Part 601, Title 26 of the Code of Federal Regulations). This form is made available simply as a convenience. Its use, therefore, is not mandatory.

This form may be used with respect to any matters affecting any tax imposed by the Internal Revenue Code, except alcohol or tobacco taxes. If alcohol or tobacco taxes are involved, Form 1534 should be used.

If a prior power of attorney was filed, this form may be used to constitute a new authorization of all attorneys or agents to represent the principal with respect to specified matters and years or periods before the office of the Internal Revenue Service where this power is filed. This will serve to automatically revoke all prior powers of attorney with respect to the same matters and years or periods filed in that office of the Internal Revenue Service.

A true copy of the power of attorney must be filed with each office of the Service in which the attorney or agent is to represent the principal, together with one additional copy for each taxable year or period in excess of one. However, when a copy of the power is filed with the office of a district director who has the matter under consideration, it shall not be necessary to file another copy of the power with the office of a regional commissioner or regional counsel who subsequently has the matter under consideration, unless an additional copy is specifically requested. Copies reproduced by photographic processes need not be certified as true and correct. Copies reproduced by other methods must be certified either by the attorney or agent (if enrolled), or by a notary public who shall state that he has personally compared the copy with the original and found it to be a true and correct copy.

SPECIFIC INSTRUCTIONS

Name and address of principal(s).—If a joint return is involved, enter the name and address (if different) of both husband and wife.

Example: "John I. Smith, 831 First Ave., Atlanta, Georgia; and Mary M. Smith, 1200 Pine St., Miami, Florida."

If a corporation, partnership, or association is the principal, enter the name and business address.

Example: "The A B C Corporation, (address)"; "A-B Partnership, (address)"; etc.

If an estate or trust is the principal, enter the name, title, and address of the executor, administrator, trustee, etc., and the name of the principal.

Example: "Joseph Jones, (address), Executor of the Estate of Ruth Green."

Specify Internal Revenue tax matter(s) and year(s) or period(s).—The year(s) or period(s) to which the power relates must be clearly identified. Any number of specified years or periods and types of taxes may be listed in the same power, but a mere reference to "all years", "all periods", or "all taxes" will not be acceptable. If the matter relates to estate tax, enter the date of decedent's death instead of the year(s) or period(s).

Authority delegated.—If this form is used, none of the delegations of authority printed on the face of the form may be deleted. If a limited delegation of authority is desired, Form 2848-A may be used.

Signature of principal(s).—If a joint return is involved, both husband and wife must sign unless one spouse duly authorizes the other in writing to sign for both. In such a case, the authorization should accompany the power.

If the principal is a partnership, all partners must sign unless one partner is duly authorized to act in the name of the partnership. In such a case, unless the authorization is provided under local law, the authorization should accompany the power.

If the principal is a corporation or an association, an officer having authority to bind the entity must sign. The Internal Revenue Service does not require the affixing of the corporate seal. Space for affixing the corporate seal is provided as a convenience for corporations required by charter, or by the law of the jurisdiction in which they are incorporated, to affix their corporate seals in the execution of instruments.

Acknowledgment, witnessing, or certification.—A power of attorney must be either acknowledged before a notary public or witnessed by two disinterested individuals, unless it is granted to an attorney or agent enrolled to practice before the Internal Revenue Service who completes the certification at the bottom of the form. If the certification is completed by an attorney or agent whose enrollment card does not have a number (as is the case with those cards renewed in district offices), enter "none" for the enrollment card number.

Special cases.—If the principal is deceased, insolvent, or dissolved; or if a trustee, guardian, or other fiduciary is acting for the principal, see section 601.505 of Subpart E of the Conference and Practice Requirements for further instructions regarding the execution of a power of attorney.

R-4

FORM 1023 (Rev. April 1965)	U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE EXEMPTION APPLICATION <i>(To be made only by a principal officer of the organization claiming exemption)</i>	To be filed in duplicate with the District Dir. for your District.
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For use of organizations applying for exemption under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, which are organized and operated (or will operate) exclusively for one or more of the following purposes (check purpose(s)):

☐ Religious	☐ Charitable	☐ Scientific	☐ Testing for Public Safety
☐ Educational	☐ For the prevention of cruelty to children or animals	☐ Literary	

Every organization that claims to be exempt must furnish the information and data specified in duplicate. If any organization fails to submit the information and data required, this application will not be considered on its merits and the organization will be notified accordingly.

This application shall be open to public inspection in accordance with section 6104(a)(1) of the Internal Revenue Code. See separate instructions for Form 1023 to properly answer the questions below.

1a. Full name of organization	b. Employer identification number
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2. Complete address (number, street, city or town, State and Postal ZIP code)

3a. Is the organization incorporated? ☐ Yes ☐ No	b. If "Yes," in which State and under which law (General corporation, not for profit, membership, educational, eleemosynary, etc.)? Cite statutory provisions.
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4a. If not incorporated, what is form of organization?	b. Date incorporated or organized	c. Month and day on which the annual accounting period ends
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5a. Has organization filed Federal income tax return(s)? ☐ Yes ☐ No	b. If "Yes," form number of return filed and Internal Revenue District where filed.	c. Year(s) filed
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6. After July 1, 1950, did the creator of your organization (if a trust), or a contributor to your organization, or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor, or a corporation controlled directly or indirectly by such creator or contributor, enter into any of the transactions (or activities) enumerated below? NOTE: If you have any knowledge or contemplate that you will be a party to any of the transactions (or activities) enumerated in 6a through 6f, check "planned" in applicable block(s) and see instructions.

	Yes	No	Planned		Yes	No	Planned
a. Borrow any part of your income or corpus?				d. Purchase any securities or other property from you?			
b. Receive any compensation from you?				e. Sell any securities or other property to you?			
c. Have any part of your services made available to him?				f. Receive any of your income or corpus in any other transaction?			

7. Have you issued or do you plan to issue membership, stock, or other certificates evidencing voting power in the organization?	Yes	No
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8a. Are you the outgrowth or continuation of any form of predecessor(s)?	Yes	No
b. Do you have capital stock issued and outstanding?	Yes	No
c. Have you made or do you plan to make any distribution of your property to shareholders or members?	Yes	No
d. Did you receive or do you expect to receive 10 percent or more of your assets from any organization, group of affiliated organizations (affiliated through stockholding, common ownership, or otherwise), any individual, or members of a family group (brother or sister whether whole or half blood, spouse, ancestor, or lineal descendant)?	Yes	No
e. Does any part or will any part of your receipts represent payment for services of any character rendered or to be rendered by you?	Yes	No

f. Are you now, have you ever been, or do you plan to be engaged in carrying on propaganda, or otherwise advocating or opposing pending or proposed legislation?	
g. Do you participate or plan to participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office?	
h. Have you made or do you plan to make any payments to members or shareholders for services rendered or to be rendered?	
i. Does any part or do you plan to have any part of your net income inure to the benefit of any private shareholder or individual?	
j. Are you now or are you planning to be affiliated in any manner with any organization(s)?	
k. Do you hold or plan to hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation?	

Page 2

9. Has any State or any court (including a Court of Probate, Surrogate's Court, etc.) ever declared whether you were or were not organized and operated for charitable, etc., purposes? ☐ Yes ☐ No. If "Yes," attach copies in duplicate of pertinent administrative or judicial decisions.

10. You must attach copies in duplicate of the following:

a. If incorporated, a copy of your articles of incorporation, or if not incorporated, a copy of your constitution, articles of association, declaration of trust, or other document whereby you were created setting forth your aims and purposes, a copy of all amendments thereto, and any changes presently proposed.

b. A copy of your bylaws or other similar code of regulations, all amendments thereto, and any changes presently proposed.

c. A complete statement of assets and liabilities as of the end of each annual accounting period (or as of the date of the filing of this application, if you were in existence for less than a year).

d. A statement of receipts and expenditures for each annual accounting period of operation (or for the period for which you were in existence, if less than a year).

e. A statement which clearly indicates what State statutes or court decisions govern the distribution of assets upon dissolution. (This statement may be omitted if your charter, certificate, or other instrument of organization makes provision for such distribution.)

f. A brief statement of the specific purposes for which you were formed. (Do not quote from or make reference to your articles of incorporation, constitution, articles of association, declaration of trust, or other document whereby you were created for this question.)

g. A statement explaining in detail each fund-raising activity and each business enterprise you have engaged in or plan to engage in, accompanied by copies of all agreements, if any, with other parties for the conduct of each fund-raising activity or business enterprise.

h. A statement which describes in detail the nature of each of your activities which you have checked on page 1, activities which you sponsor, and proposed activities.

i. A statement which explains fully any specific activities that you have engaged in or sponsored and which have been discontinued. Give dates of commencement and termination and the reasons for discontinuance.

j. A statement which describes the purposes, other than in payment for services rendered or supplies furnished, for which your funds are expended or will be expended.

k. A schedule indicating the name and position of each officer, director, trustee, etc., of the organization and the relationship, if by blood, marriage, adoption, or employment, of each such person to the creator of the organization (if a trust), to any person who has made a substantial contribution to the organization, or to a corporation controlled (by ownership of 50 percent or more of voting stock or 50 percent or more of value of all stock), directly or indirectly, by such creator or contributor. The schedule shall also indicate the time devoted to position and compensation (including salary and expense account allowance), if any, of each officer, director, trustee, etc., of the organization.

l. A copy of each lease, if any, in which you are the lessee or lessor of property (real, personal, gas, oil, or mineral) or in which you own an interest under such lease, together with copies of all agreements with other parties for development of the property.

SIGNATURE AND VERIFICATION

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date

Signature of officer

Title

U.S. GOVERNMENT PRINTING OFFICE: 1953-O-764-147

FORM 1023 (REV. 4-55)

INSTRUCTIONS FOR FORM 1023, EXEMPTION APPLICATION

GENERAL INSTRUCTIONS

(References are to the Internal Revenue Code unless otherwise indicated)

A.—Who Must File.—An organization desiring to establish exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, must file this application form unless it has already obtained a ruling or determination letter holding it exempt from Federal income tax under such section of the law. Be certain, however, before filing that you have not already been ruled tax exempt through the efforts of some former officer or member. You should be equally certain that any such prior exemption was obtained by you as an entity and not by some predecessor organization of a similar name. If you are subordinate to a parent organization, make sure that you are not already exempt under a group ruling issued to your parent. Many fraternities, church groups, and functions of educational institutions are exempt under such group rulings. All subordinate units or activities of exempt parents may not themselves be exempt, however, and you should not assume that you are exempt without a careful examination of the ruling by which your parent received its exemption.

Section 501(c)(3) of the Code provides for the exemption of organizations which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals. In order to be exempt as an organization described in section 501(c)(3), an organization must meet two tests: (1) it must be organized exclusively for one or more of the purposes in the statute stated above, and (2) it must be operated exclusively for one or more of such purposes. If either of these tests is not met, the organization will not qualify for exemption. Thus, even though an organization engages exclusively in exempt activities, if it is not organized exclusively for exempt purposes it will not qualify for exemption.

In order to meet the organizational test, the purposes of an organization, as set forth in its creating instrument, can be no broader than the purposes set forth in section 501(c)(3). The "creating instrument" is the document whereby the organization was created. For example, in the case of a corporation the creating instrument would be its charter or articles of incorporation, rather

than its bylaws. In addition, the powers given an organization to carry out its stated purposes may not expressly authorize it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. This applies even though the purposes are no broader than those set forth in section 501(c)(3).

A further requirement of the organizational test is that an organization's assets must be irrevocably dedicated to an exempt purpose so that in the event of its dissolution, the assets will be distributed only for an exempt purpose. This requirement may be met by a specific provision in the organization's creating document for the distribution of assets in the event of dissolution, or by evidence showing that by operation of law, i.e., by state statute or judicial proceedings, the assets will be properly distributed.

The second part of the dual test for exemption, the operational requirement, makes it essential that an organization's activities be in furtherance of one or more of the purposes set forth in the statute. It is necessary, therefore, that an organization claiming exemption clearly establish that its operations or proposed operations meet the requirements of the statute.

B.—Signature and Verification.—The application must be signed by either the president, vice president, or other principal officer who is authorized to sign. If the application is filed on behalf of a trust, it must be signed by the authorized trustee or trustees.

C.—Time and Place for Filing.—If you believe you are organized so as to qualify for exemption and can show, either by your record of past operations or by your proposed method of future operations, that you meet the operational requirements for exemption, to obtain a ruling or determination you must complete and file in duplicate an exemption application with the District Director of Internal Revenue for the district in which you maintain your headquarters or principal place of business. All the information requested in the application must be furnished, and the supporting documents and statements must be submitted in duplicate, or the application will not be considered on its merits and you will be notified accordingly.

D.—Attachments.—All attachments and enclosures, including articles of incorporation, constitution, articles of association, declaration of trust, bylaws, financial statements, and other statements, must be filed in duplicate. Every attachment and enclosure should show the name and address of the organization, the date, an identifiable heading showing the question number or subject matter to which it relates, and that it is an attachment to Form 1023. Do not submit original documents since all documents filed must be retained by the Service.

In addition to the documents and statements listed which must be filed, any additional information citing court decisions, rulings, opinions, etc., should be filed for purposes of expediting the processing of your application.

E.—Power of Attorney.—If you expect to be represented in person or by correspondence by an agent or an attorney, a power of attorney authorizing the agent or attorney to represent you must be filed in duplicate.

F.—Returns.—A mere claim or contention by an organization that it is exempt from income tax under section 501(a) will not relieve the organization from filing income tax returns and paying the tax.

G.—Requests for Withholding of Information.—Any information which is submitted in the application or in support of it and which is determined by the Commissioner to relate to any trade

secret, patent, process, style of work, or apparatus, may upon request be withheld from public inspection if the Commissioner determines that the disclosure of such information would adversely affect the organization. Such request must (1) clearly identify the material to be withheld (the document, page, paragraph, and line), (2) include the reasons for the organization's position that the information is of the type which may be withheld from public inspection, and (3) be filed with the documents in which the material to be withheld is contained.

H.—Employer Identification Number.—Enter your employer identification number on line 1b. If you do not have an identification number, submit a completed Form SS-4, Application for Employer Identification Number, with this exemption application.

SPECIFIC INSTRUCTIONS (References are to lines on form)

1a.—List the name shown in your articles of incorporation, articles of association, constitution, declaration of trust, or other document whereby you were created. If you operate or plan to operate under a name other than that shown in your creating document, furnish an explanation. If your name has been officially changed by an amendment to your creating document, two copies of such amendment must be attached to this application.

6.—If the answer to any part of this question is "Yes," attach a detailed statement of each transaction showing: (a) names of the parties and their relationship or interest in your organization; (b) date of the transaction; (c) amount and nature of the property

or services involved; (d) in the case of loans, amount, interest, security received, terms of repayment, and attach copies of the note or other evidence of the debt; (e) in the case of purchases, property purchased, value at date of purchase and how determined, purchase price, amount and nature of any encumbrances and to whom owing, and attach copies of purchase contract or agreement and any appraisals made; and (f) in the case of sales, property sold, date acquired, from whom, manner of acquisition, cost or other basis at date of acquisition, date of sale, gross sales price, terms of sale, and attach copies of contract of sale.

Instructions—Form 1023 (4-65)

If the answer to any part of this question is "Planned," attach a statement explaining the planned transaction and to the extent known include therein the same information required with respect to a completed transaction.

7.—If the answer is "Yes," attach specimen copy thereof, state to whom issued and whether transferable for money or other consideration.

8a.—If the answer is "Yes," attach a statement including: (a) name of predecessor; (b) whether it ever received a ruling or determination that it was exempt from Federal income tax, and, if so, the date; (c) its nature, i.e., sole proprietorship, partnership, unincorporated association, corporation, or trust; (d) period of its existence; and (e) reason for its termination. If your predecessor was a sole proprietorship, partnership, or other type of profit-making organization, include in your statement the following additional information: (a) a complete explanation of your formation and the

manner in which you acquired any assets of your predecessor; (b) a list of all assets acquired showing those purchased and those donated. With respect to purchased assets, furnish the purchase price and how determined (fair market value, basis in hands of donor, etc.), the terms of payment, interest and any security given if purchased on an installment basis. With respect to donated assets, furnish the basis of such assets in the hands of the donor at the time of the gift; (c) if any property is being leased from your predecessor, the amount of the rent, how determined, and any options or renewal privileges; (d) names of officers, directors or trustees of your predecessor, whether any are presently employed by you and, if so, their capacity, compensation (including salary and expense account allowance), services performed, and time devoted to position. Also attach copies of all documents pertinent to the acquisition of your predecessor's assets, appraisals of property, leases, and a financial statement of your predecessor for its last full year of operation, including its last balance sheet.

8b.—If the answer is "Yes," attach a statement indicating: (a) class or classes of such stock; (b) number and par value of shares; (c) consideration for which issued; (d) number of shareholders (if less than 10, names and number of shares held by each); and (e) whether any dividends have been paid or whether your certificate of organization authorizes such payment on any class of stock.

8c.—If the answer is "Yes," attach a statement containing full details, including: (a) nature of property; (b) amounts or value; (c) source of funds or property distributed or to be distributed; and (d) basis of and authority for distribution or planned distribution.

8d.—If the answer is "Yes," and you have actually received such property, attach a statement showing: (a) nature of the property and from whom acquired; (b) date and manner of acquisition; (c) value at date of acquisition and how determined; (d) any encumbrances on the property and to whom owing; and (e) if stock, the name of the corporation, class of stock, whether voting or nonvoting, the number of shares owned of each class at beginning and end of your last full year of operation, and total number of shares outstanding of each class. Also attach copies of all pertinent documents.

The statement should include information with respect to all such property acquired even if not presently held by you. Where such property has been disposed of, in addition to the information requested above regarding its acquisition, include: (a) date of disposition; (b) manner of disposition; (c) to whom conveyed; (d) consideration received; and (e) copies of any written documents evidencing the conveyance.

If the answer is "Yes," and you expect to receive such property, attach a statement explaining in detail.

8e.—If the answer is "Yes," attach a statement explaining in detail.

8f.—An organization which as a substantial part of its activities attempts to influence legislation by propaganda or otherwise is considered an "action" organization and will not qualify for exemp-

tion under section 501(c)(3). For this purpose, an organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if it advocates the adoption or rejection of legislation. The

term "legislation" as used here includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

Even though an organization does not engage in direct attempts to influence legislation, if its main or primary objective may be attained only by legislation or a defeat of legislation, and it advocates or campaigns for the attainment of such main or primary objective, as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public, it will be considered an "action" organization and accordingly not exempt as an organization described in section 501(c)(3).

If the answer to this question is "Yes," attach a statement describing fully all activities or planned activities in this connection, their frequency, the approximate amount of time devoted or to be devoted thereto by your officers and members, and furnish copies of any literature distributed or to be distributed, and any other pertinent material.

8g.—An organization will be considered an "action" organization and will not qualify for exemption if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. "Candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Such participation includes, but is not limited to, the publication or distribution of written or printed statements or the making of oral statements for or against a candidate.

If the answer to this question is "Yes," attach a statement describing fully all such activities or planned activities and furnish copies of any literature distributed or to be distributed in this connection.

8h.—If the answer is "Yes," attach a statement showing the names of the recipients, the amount paid or to be paid, the character of the services rendered or to be rendered, and the time devoted or to be devoted thereto. If amounts are paid or will be paid on other than a fixed compensation basis, for example, in payment of travel, living, automobile, or other expenses, explain fully the nature of the expense, the amount (if paid), how accounted for by the recipient, and by whom payment is or will be approved.

8i.—A private shareholder or individual is one who has a personal or private interest in an organization. If the answer is "Yes," and part of your net income inures to the benefit of a private shareholder or individual, attach a statement giving the name or names of the recipients, the amount received by each, and the reason for the payment. If the answer is "Yes," and you plan to have any part of your net income inure to the benefit of a private shareholder or individual, attach a statement explaining in detail.

8j.—If the answer is "Yes," attach a statement showing the name of the organization(s) and the manner or nature of your actual or planned affiliation or relationship.

8k.—If the answer is "Yes," and you actually hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation, attach a statement showing: (1) name of corporation, class of stock and whether voting or nonvoting; (2) number of shares owned of each class at beginning and end of your latest annual accounting period; (3) total

number of shares outstanding of each class; (4) value of stock as recorded on your books and included in your statement of assets and liabilities; (5) date acquired and from whom; and (6) manner of acquisition.

If any stock is subject to voting restrictions, attach copy of agreement. If no written agreement exists, explain fully.

If the answer is "Yes," and you plan to hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation, attach a statement explaining in detail.

10 a. and b.—The copies required must conform in all respects as to text, date of adoption, signature, etc.

10d.—A classified statement of receipts and disbursements must be furnished clearly reflecting the nature or source of each receipt, the gross amount received from each source, the expenditures made, purpose, and the total amount expended for each purpose. Neither bank statements nor ledger sheets will be acceptable for this purpose since they are not classified. Profit and loss or other similar operating statements also are not acceptable since they do not show all receipts and expenditures.

(1) Where funds have been loaned or borrowed, if not disclosed in answer to question 6, attach a statement showing: (a) names of the parties; (b) whether the lender or borrower is an officer, director, trustee, member, shareholder, or employee; (c) reason for the loan; (d) period of the loan; (e) interest payable; and (f) security given, if any.

(2) Where income is derived from ticket sales or facilities furnished to nonmembers, explain fully and state the amount which represents such nonmember income.

(3) Where rental income or expense is involved, if not disclosed in the copy of the lease required to be filed with this application, or if there is no written lease, attach a statement showing: (a) names of the parties to the lease; (b) whether leased to or by an officer, director, trustee, member, shareholder, employee, or contributor to you; (c) rental and how determined; (d) date tenancy began, and any extensions, renewals or options; and (e) amount of any indebtedness on the property, to whom owing, interest payable and term.

(4) Where funds are distributed to other organizations, attach a statement showing the official name of each donee, its complete address, and the amount given to each.

10e.—In the event a dissolution clause is not included in your creating document (such a provision must be in the document whereby you were created rather than your bylaws or other code of regulations) and you are relying on operation of law, you must attach a brief which outlines the State statutes and judicial decisions, if any, on which you rely. You must show that the State statutes clearly insure that your assets will be distributed only to a recipient that would qualify for exemption as an organization described in section 501(c)(3) or would escheat to the State for a public purpose.

If reliance is placed on judicial decisions, the brief must show, with citation of case holdings, (1) that the doctrine of *cy pres* has been adopted by the State and consistently applied in similar situations; (2) that your creating instrument clearly manifests the general charitable intent required to insure application of *cy pres* by the appropriate judicial authority to your assets, and (3) that the particular application of *cy pres* insures distribution of your assets for exempt purposes within the meaning of section 501(c)(3).

10h.—The statement must be sufficiently detailed to show that each activity is clearly within the intent of the statute. A restatement of your purposes or a statement that your activities or proposed activities are or will be in furtherance thereof is not sufficient. If you have not operated and are filing this application on the basis of proposed activities, the description of your proposed activities must not only describe the activities in which you expect to engage, but also how you expect to raise your funds, and the nature of your principal contemplated expenditures.

If your proposed activities will encompass more than merely turning over funds to other exempt organizations, the standards, criteria, procedures, or other means adopted or planned by you for carrying them out must be stated.

As to expected sources of funds, state whether support will be from public or private sources, i.e., from the public at large or governmental units or from your creator, members of a family group, or a few interested individuals; and the nature of the support, i.e., contributions, gifts, grants, or other. If income from fund raising events, ticket sales, rentals, or other business or investment sources is anticipated, state the nature of the proposed venture and furnish any pertinent details.

The statement of principal contemplated expenditures should reflect administrative and operating expenses as well as expenditures made directly in furtherance of exempt purposes. If grants, gifts, awards, etc., to individuals are planned, the selection criteria to be followed must be stated.

If you are organized to operate a home for the aged, school, hospital, clinic, or bookstore; or to award scholarships, make loans, engage in or sponsor research, conduct educational activities other than a school; or to expend any part of your funds in foreign countries, the information called for below must be furnished.

Home for aged.—If you are organized to operate a home for the aged, submit: (a) a description of the facilities and services provided or to be provided the residents, including the residential capacity of the home; (b) the criteria for admission to the home; (c) charges for admission (entrance fee and/or monthly charge) and whether payable in a lump sum or on an installment basis; (d) whether all residents are or will be required to pay fees; (e) how charges are or will be determined, i.e., on a profit basis, to recover costs, or at less than cost; (f) whether any residents are or will be accepted without pay and, if so, how many; (g) whether residents are or will be discharged if unable to pay; (h) whether Federal mortgage financing has been applied for and, if so, the type; and (i) copies in duplicate of admission applications and/or any other literature or brochures descriptive of the home, its facilities, and admission requirements.

Scholarships.—If you award or plan to award scholarships, submit: (a) criteria used or to be used for selection, including the rules of eligibility; (b) how and by whom the recipients are or will be selected; (c) if awards are or will be made directly to individuals, whether information is required assuring that the student remains in school; (d) if awards are or will be made to recipients of a particular class, for example, children of employees of a particular employer, whether any preference is or will be accorded an applicant by reason of the parent's position, length of employment, or salary; whether as a condition of the award the recipient must upon graduation accept employment with the company, and whether the award will be continued irrespective of termination of the parent's employment; and (e) copies in duplicate of the scholarship application form and any brochures or literature describing the scholarship program.

Loans.—If you make or plan to make loans for charitable and educational purposes, submit: (a) circumstances under which such loans

are or will be made; (b) criteria for selection, including the rules of eligibility; (c) how and by whom the recipient is or will be selected; (d) manner of repayment of the loan; (e) security required, if any; (f) interest charged, if any, and when payable; and (g) copies in duplicate of loan application and any brochures or literature describing the loan program.

Research.—If you engage or plan to engage in research, submit: (a) nature of research engaged in or contemplated; (b) a brief description of research projects completed or presently being engaged in; (c) how and by whom research projects are determined and selected; (d) whether you have or contemplate having contract or sponsored research and, if so, names of past sponsors or grantors, terms of contract or grant, together with copies in duplicate of any executed contracts or grants; (e) disposition made or to be made of the results of your research, including whether preference has or will be given to any organization or individual, either as to results or time of release; (f) who will retain ownership or control of any patents, copyrights, processes, or formulae resulting from your research; and (g) copies in duplicate of publications or other media showing reports of your research activities. Only reports of your research activities or those conducted in your behalf as distinguished from those of your creators or members conducted in their individual capacities should be submitted.

School.—If you are organized to conduct a school, submit full information regarding your tuition charges, number of faculty members, number of full-time students enrolled, number of part-time students enrolled, courses of study, and degrees conferred, together with a copy of your school catalog.

Education (other than school).—If you claim exemption as an educational organization other than a school, submit complete information as to the manner in which you carry on or plan to carry on your educational activities, i.e., by panels, discussions, lectures, forums, radio or television programs, or through various cultural media such as museums, symphony orchestras, art exhibits, etc. In each instance, explain by whom and where conducted, admission fees, if any, and submit, in duplicate, copies of pertinent contracts, agreements, publications, leaflets, pamphlets, programs, etc.

Hospital.—If you are organized to operate a hospital, attach a statement including: (a) requirements for admission to practice on the staff; (b) your policy and practice with regard to charity patients; and (c) if you have operated, the number of patient days during your latest annual accounting period of full pay, part pay, and no pay patients. In case of part pay and no pay patients, state whether they were admitted regardless of their ability to pay or whether they were patients whose accounts were charged off as bad debts or uncollectible. If any part of your facilities are or will be used by or rented to others, for example, doctors, X-ray laboratories, drugstore, or office space, describe fully the arrangements for use, the space and what percentage of your building it represents, terms of occupancy, occupants and their relation to or connection with your hospital and any services performed by them for you, and attach copies in duplicate of pertinent leases and contracts.

Clinic.—If you are organized to operate a clinic, attach a statement including: (a) description of the facilities and services; (b) to

whom the services are or will be offered, i.e., the public at large or a specific group; (c) how charges are or will be determined, i.e., on a profit basis, to recover costs, or at less than cost; (d) by whom administered and controlled; (e) whether any of the professional staff, that is, those who perform or will perform the clinical services, also serve or will serve in an administrative capacity; and (f) how compensation paid the professional staff is or will be determined.

If any part of your facilities are or will be used by or rented to others, for example, doctors, X-ray laboratories, drugstore, or office space, describe fully the arrangements for use, the space and what percentage of your building it represents, terms of occupancy, occupants and their relation to or connection with your clinic and any services performed by them for you, and attach copies in duplicate of pertinent leases and contracts.

Foreign distributions.—If any of your funds are or will be expended in foreign countries, attach a statement including: (a) manner in which and by whom recipients are or will be selected; (b) names of recipient organizations and/or purposes for which the funds are or will be expended; (c) extent to which, if any, you control or will control expenditure of funds donated by you to foreign organizations, and whether there is or will be any required reporting of such expenditures to you; and (d) whether contributions are or will be solicited by you and earmarked for specific foreign distributees.

Bookstore and publishing.—If you are organized to operate a bookstore or engage in publishing activities of any nature (printing, publication, or distribution of your own material or that printed or published by others and distributed by you), explain fully the nature of the operations, including whether sales are or will be made to the general public, the type of literature involved, and how such activities are related to your stated purposes.

R-15

990-A
FORM
 U.S. Treasury Department
 Internal Revenue Service

Return of Organization Exempt From Income Tax

Section 501(c)(3) of the Code

For the year January 1-December 31, 1966, or other taxable year beginning

, 1966, and ending 19

PLEASE TYPE OR PRINT

1966

Name	Employer Identification Number
Number and street	
City or town, State, and ZIP code	

Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason.

PART I

Part I (pages 1 and 2) information required pursuant to sections 6001, 6033, and other applicable sections of the Internal Revenue Code. NOTE: One copy of Part I and two copies of Part II must be filed.

1	Gross sales or receipts from business activities	
2	Less: Cost of goods sold and/or of operations (attach schedule)	
3	Gross profit from business activities	
4	Interest	
5	Dividends	
6	Rents	
7	Royalties	
8	Gain (or loss) from sale of assets, excluding inventory items (See Instruction 8)	
9	Other income (attach schedule—Do not include contributions, gifts, grants, etc. (See line 17))	
10	Total gross income (lines 3 to 9, inclusive)	
11	Expenses of earning gross income from column 3, Schedule A	
DISBURSEMENTS MADE WITHIN THE YEAR OUT OF CURRENT OR ACCUMULATED INCOME FOR PURPOSES FOR WHICH EXEMPT, AND ACCUMULATION OF INCOME		
12	Expenses of distributing current or accumulated income from column 4, Schedule A	
13	Contributions, gifts, grants, scholarships, etc. (See Instruction 13)	
14	Accumulation of income within the year (line 10 less the sum of lines 11, 12, and 13)	
15	Aggregate accumulation of income at beginning of the year (.....)	
16	Aggregate accumulation of income at end of the year (.....)	
RECEIPTS NOT REPORTED ELSEWHERE		
17	Contributions, gifts, grants, etc., received (See Instruction 17)	
18	Less: Expenses of raising and collecting amount on line 17, from column 5, Schedule A	
19	Net contributions, gifts, grants, etc., received	
DISBURSEMENTS MADE OUT OF PRINCIPAL FOR PURPOSES FOR WHICH EXEMPT		
20	Expenses of distributing principal from column 6, Schedule A	
21	Contributions, gifts, grants, scholarships, etc.: (a) Paid out in prior years (.....)	
	(b) Paid out within the year (See Instruction 21)	

Schedule A.—Allocation of Expenses (See Instructions for Attachments Required)

1. Item	2. Total	3. Expenses of earning gross income	4. Expenses of distributing income	5. Expenses of raising and collecting principal	6. Expenses of distributing principal
(a) Compensation of officers, etc.					
(b) Other salaries and wages					
(c) Interest					
(d) Taxes					
(e) Rent					
(f) Depreciation (and depletion)					
(g) Miscellaneous expenses (attach schedule)					
(h) Totals		Enter on line 11	Enter on line 12	Enter on line 18	Enter on line 20

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

Address

10-1

Form 990-A-1966

Schedule B.—BALANCE SHEETS (See instructions)

Page 2

	Beginning of Taxable Year		End of Taxable Year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
ASSETS				
1 Cash				
2 Accounts receivable (see instructions)				
(a) Less allowance for bad debts				
3 Notes receivable (see instructions)				
(a) Less allowance for bad debts				
4 Inventories				
5 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
6 Investments in nongovernmental bonds, etc.				
7 Investments in corporate stocks (see instructions)				
8 Mortgage loans (number of loans _____)				
9 Other investments (attach schedule)				
10 Depreciable (and depletable) assets (attach schedule)				
(a) Less accumulated depreciation (and depletion)				
11 Land				
12 Other assets (attach schedule)				
13 Total assets				
LIABILITIES AND NET WORTH				
14 Accounts payable (see instructions)				
15 Contributions, gifts, grants, etc., payable				
16 (a) Bonds and notes payable (see instructions)				
(b) Mortgages payable				
17 Other liabilities (attach schedule)				
18 Capital stock: (a) Preferred stock				
(b) Common stock				
19 Membership certificates				
20 Paid-in or capital surplus				
21 Retained earnings—Appropriated (attach schedule)				
22 Retained earnings—Unappropriated:				
(a) Attributable to ordinary income				
(b) Attributable to gains from sale of assets				
23 Less cost of treasury stock		()		()
24 Total liabilities and net worth				

- 1 Date of current exemption letter
- 2 Attach a detailed statement of the nature of your charitable, business, and all other activities.
- 3 Have you attached the information required by:
 - (a) Instruction I? ☐ Yes ☐ No
 - (b) Instruction J? ☐ Yes ☐ No
- 4 Have you filed a tax return on Form 990-T for this year? ☐ Yes ☐ No
If "Yes," where filed?
- 5 In what year was your organization formed?
- In what State or country?
- 6 If successor to previously existing organization(s), give name(s) and address(es) of the predecessor organization(s)
- 7 If you have capital stock issued and outstanding, state with respect to each class of stock:
 - (a) The number of shares outstanding
 - (b) The number of shares held by individuals
 - (c) The number of shares held by organizations
 - (d) The number of shareholders at end of year
 - (e) Whether any dividends may be paid ☐ Yes ☐ No
- 8 If you acquired capital assets out of income, attach itemized list and amount thereof.
- 9 Have any changes not previously reported to the Internal Revenue Service been made in your articles of incorporation or bylaws or other instruments of similar import? ☐ Yes ☐ No
If "Yes," attach a copy of the amendments.
- 10 Have you had any sources of income or engaged in any activities not previously reported to the Internal Revenue Service? ☐ Yes ☐ No
If "Yes," attach detailed statement.

☆☆☆☆ U.S. GOVERNMENT PRINTING OFFICE: 1962-O-229-044

- 11 Did you hold any real property for rental purposes with respect to which there is an indebtedness incurred in acquiring the property or in making improvements thereto or which was acquired subject to a mortgage or similar lien? ☐ Yes ☐ No
If "Yes," attach detailed statement.
- 12 Have you during the year advocated or opposed (including the publishing or distributing of statements) any national, State, or local legislation? ☐ Yes ☐ No
If "Yes," attach a detailed description of such activities and copies of any such statements.
- 13 Have you during the year participated in, or intervened in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office? ☐ Yes ☐ No
If "Yes," attach a detailed description of such activities and copies of any such statements.
- 14 After July 1, 1950, did: the creator of your organization; or a contributor to your organization; or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor; or a corporation owned (50 percent or more of voting stock or 50 percent or more of value of all stock) directly or indirectly by such creator or contributor—
 - (a) Borrow any part of your income or corpus? ☐ Yes ☐ No
 - (b) Receive any compensation for personal services from you? ☐ Yes ☐ No
 - (c) Have any part of your services or assets made available to him? ☐ Yes ☐ No
 - (d) Purchase any securities or other property from you? ☐ Yes ☐ No
 - (e) Sell any securities or other property to you? ☐ Yes ☐ No
 - (f) Receive any of your income or corpus in any other transaction? ☐ Yes ☐ No
- If answer to any question is "Yes," attach detailed statement unless previously reported. If previously reported, give year(s).
- 15 Do you hold 5 percent or more of any class of stock in any corporation? ☐ Yes ☐ No
If "Yes," you must submit the information required by the instructions for Schedule B.

16-1 GPO

FORM 55-4 (1-65)

PART 1
U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE
APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER

PLEASE LEAVE BLANK

1. NAME (TRUE name as distinguished from TRADE name.)

2. TRADE NAME, IF ANY (Enter name under which business is operated, if different from item 1.)

3. ADDRESS OF PRINCIPAL PLACE OF BUSINESS (No. and Street, City, State, Zip Code)

4. COUNTY

5. CHECK (X) TYPE OF ORGANIZATION (If "other" specify, such as "Estate," etc.)

☐ Individual ☐ Corporation ☐ Partnership ☐ Other (Specify)

5a. Ending month of accounting year

6. If individual, enter your social security account number

7. REASON FOR APPLYING (If "other" specify such as "Corporate structure change," "Acquired by gift or trust," etc.)

☐ Started new business ☐ Purchased going business ☐ Other

8. Date you acquired or started business (Mo., day, year)

9. First date you paid or will pay wages (Mo., day, year)

10. NATURE OF BUSINESS (See Instructions)

11. NUMBER OF EMPLOYEES

Agricultural

Non-agricultural

12. If nature of business is MANUFACTURING, list in order of their importance the principal products manufactured and the estimated percentage of the total value of all products which each represents.

1

%

PLEASE LEAVE BLANK

R

DO

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2

3

%

FR

FRC

13. Do you operate more than one place of business?

☐ Yes ☐ NoIf "Yes," attach a list showing for each separate establishment:
a. Name and address. b. Nature of business. c. Number of employees.

14. To whom do you sell most of your products or services?

☐ Business establishments ☐ General public ☐ Other (Specify)

PLEASE LEAVE BLANK → Geo. Ind. Class Size Reas. for Appl. Bus. Dir. Date

FORM 55-4 (1-65)

PART 2

DO NOT DETACH ANY PART
OF THIS FORM. SEND ALL COPIES TO
THE DISTRICT DIRECTOR OF INTERNAL REVENUE

PLEASE LEAVE BLANK

1. NAME (TRUE name as distinguished from TRADE name.)

2. TRADE NAME, IF ANY (Enter name under which business is operated, if different from item 1.)

3. ADDRESS OF PRINCIPAL PLACE OF BUSINESS (No. and Street)

NAME AND COMPLETE ADDRESS

(City, State, Zip Code)

4. COUNTY

5. CHECK (X) TYPE OF ORGANIZATION (If "other" specify, such as "Estate," etc.)

☐ Individual ☐ Corporation ☐ Partnership ☐ Other (Specify)

5a. Ending month of accounting year

6. If individual, enter your social security account number

7. REASON FOR APPLYING (If "other" specify such as "Corporate structure change," "Acquired by gift or trust," etc.)

☐ Started new business ☐ Purchased going business ☐ Other

8. Date you acquired or started business (Mo., day, year)

9. First date you paid or will pay wages (Mo., day, year)

10. NATURE OF BUSINESS (See Instructions)

11. NUMBER OF EMPLOYEES

Agricultural

Non-agricultural

12. Have you ever applied for an identification number for this or any other business? ☐ No ☐ Yes

If "Yes," enter name and trade name (if any). Also enter the approximate date, city, and state where you first applied and previous number (if known).

DATE

SIGNATURE

TITLE

INSTRUCTIONS

WHO MUST FILE THIS APPLICATION? Every person who has not previously secured an identification number and who (a) pays wages to one or more employees, or (b) is required to have an identification number for inclusion in any return, statement or other document.

Only one application for an identification number should be filed, regardless of the number of establishments operated. This is true even though the business is conducted under one or more business or trade names. Each corporation of an affiliated group must be treated separately, and each must file a separate application. If a business is sold or transferred and the new owner does not have an identification number, he should not use the identification number assigned to the previous owner, but must file an application on Form 58-4 for a new identification number.

WHERE MUST THIS APPLICATION BE FILED? With the U.S. District Director of Internal Revenue with whom the Federal tax returns are filed.

WHEN MUST THIS APPLICATION BE FILED? (a) By those who pay wages, on or before the seventh day after the date on which business begins. (b) By others in sufficient time for the identification number to be included in return, statement, or other document.

HOW THIS APPLICATION SHOULD BE FILLED IN. All answers should be typewritten or printed plainly with ballpoint pen in black or dark blue ink.

Items 1 and 2. Enter in Item 1 the true name of the applicant and enter in Item 2 the trade name, if any, adopted for business purposes. For example, if John W. Jones, an individual owner, operates a restaurant under the trade name of "Busy Bee Restaurant," "John W. Jones" should be entered in Item 1 and "Busy Bee Restaurant" in Item 2.

NOTE - If created by statute, court order or decree, charter, oral or written agreement, will, declaration of trust, or other legal instrument, enter in Item 1 the full name recognized thereunder. If a corporation, enter in Item 1 the corporate name as set forth in its charter or other legal document issued by the Government creating it. In the case of a trust, the name of the trust estate should be entered in Item 1, and the name of the trustee in Item 2. In the case of an estate of a decedent, insolvent, etc., the name of the estate should be entered in Item 1 and the name of the administrator or other fiduciary in Item 2. If the true name is unusually long, it should be shown in a statement attached to this form. In such case, a short version of the name should be adopted for purposes of this form and entered in Item 1.

DO NOT DETACH

Item 10. Describe the kind of business carried on by applicant in Item 1.

The following examples illustrate the type of information needed.

- (a) **MINING AND QUARRYING:** State the process and the principal product; i.e., mining bituminous coal, mining bauxite, contract drilling for oil, quarrying dimension stone, etc.
- (b) **CONTRACT CONSTRUCTION:** State whether general contractor or special trade contractor and show type of work normally performed; i.e., general contractor for residential buildings, general contractor on streets and highways, electrical subcontractor, plumbing subcontractor, etc.
- (c) **TRADE:** State the type of sale and the principal line of goods sold; i.e., wholesale dairy products, manufacturer's representative for mining machinery, wholesale petroleum-bulk station, retail hardware, retail men's clothing, etc.
- (d) **MANUFACTURING:** State type of establishment operated; i.e., sawmill, vegetable cannery, by-product coke oven, steel cold-rolling mill, etc. In Item 12, Part 1, list the principal products manufactured.
- (e) **GOVERNMENTAL:** State type of governmental organization, whether a State, County, School District, Municipality, etc., or relationship to such entities, i.e., County Hospital, City Library, etc.
- (f) **NONPROFIT (OTHER THAN GOVERNMENTAL):** State whether organized for religious, charitable, scientific, literary, educational, or humane purposes and state the principal activity; i.e., religious organization - hospital; charitable organization - home for the aged, etc.
- (g) **OTHER ACTIVITIES:** State exact type of business operated; i.e., advertising agency, dry cleaning plant, farm, labor union, motion picture theater, real estate agent, steam laundry, rental of coin-operated vending machines, etc.

RETURN ALL FOUR PARTS OF THIS FORM TO THE DISTRICT DIRECTOR OF INTERNAL REVENUE.

FORM 990-T
U.S. Treasury Department
Internal Revenue Service

Exempt Organization Business Income Tax Return

(Under Section 511 of the Internal Revenue Code)
For the year January 1–December 31, 1966, or other taxable year beginning

1966

1966, and ending 19	
PLEASE TYPE OR PRINT	
NAME OF ORGANIZATION	Employer Identification Number (In case of employees' trust described in section 401(a) and exempt under section 501(c), give the trust's identification number.)
ADDRESS (Number and street)	
(City or town, State, and ZIP code)	Nature of unrelated trade or business activity
NAME OF TRUST'S FIDUCIARY	Date of current exemption or determination letter and code section under which you are exempt.
ADDRESS OF TRUST'S FIDUCIARY	

TAX COMPUTATION

ORGANIZATIONS TAXABLE AS CORPORATIONS (See General Instruction A(1))

1	Taxable income (line 31, page 2)	
2	Surplus exemption (line 1, \$25,000, or amount apportioned under section 1561, whichever is lesser)	
3	Line 1 less line 2	
4	(a) 22 percent of line 1	
	(b) 26 percent of line 3	
	(c) If multiple surplus exemption is elected under section 1562, enter 6 percent of line 2	
5	If alternative tax computation is made in separate statement, enter such tax here	
6	Total income tax (line 4 or 5, whichever is lesser)	
7	Less: (a) Foreign tax credit (attach Form 1118)	
	(b) Investment credit (attach Form 3468)	
8	Balance of income tax	
9	Tax from recomputing prior year investment credit (attach statement)	
10	Total income tax (line 8 plus line 9. Enter here and on line 18)	

TRUSTS TAXABLE AT INDIVIDUAL RATES (See General Instruction A(2))

11	Tax on line 31, page 2 (from Tax Rate Schedule, page 4)	
12	If alternative tax computation is made in separate statement, enter such tax here	
13	Total income tax (line 11 or 12, whichever is lesser)	
14	Less: (a) Foreign tax credit (attach Form 1118)	
	(b) Investment credit (attach Form 3468)	
15	Balance of income tax	
16	Tax from recomputing prior year investment credit (attach statement)	
17	Total income tax (line 15 plus line 16. Enter here and on line 18)	

TOTAL INCOME TAX

18	Total income tax (from line 10 or 17, whichever is applicable)	
19	Credits: (a) Credit from regulated investment companies (attach Form 2439)	
	(b) Tax paid with Form 7004 application for extension (attach copy)	
	(c) Credit for U.S. tax on nonhighway gas, and lub. oil (attach Form 4136)	
20	If tax (line 18) is larger than credits (line 19), the balance is TAX DUE. Enter balance here	
21	If tax (line 18) is less than credits (line 19). Enter the OVERPAYMENT here	

R-21

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

Address

Form 990-T (1966)

Page 2

UNRELATED BUSINESS TAXABLE INCOME COMPUTATION

UNRELATED TRADE OR BUSINESS GROSS INCOME

1	Gross sales (where inventories are an income-determining factor)	Less: Returns and allowances	
2	Less: Cost of goods sold (Schedule A)		
3	Gross profit from sales		
4	Gross receipts (where inventories are not an income-determining factor)		
5	Less: Cost of operations (Schedule B)		
6	Gross profit where inventories are not an income-determining factor		
7	(a) Net capital gain from cutting timber (attach statement)		
	(b) Net ordinary loss from cutting timber (attach statement)		
	(c) Gain from disposition of depreciable property under sections 1245 and 1250 (attach statement)		
8	Income (or loss) from partnerships (attach statement)		
9	Business lease rents (Schedule C)		
10	Total unrelated trade or business income on lines 3, and 6 to 9, inclusive		

DEDUCTIONS

(Except contributions, deductions must be directly connected with the unrelated business)

11	Compensation of officers or trustees (Schedule E)	
12	Salaries and wages (not deducted elsewhere)	
13	Rents	
14	Repairs (do not include cost of improvements or capital expenditures)	
15	Bad debts (Schedule F if reserve method is used)	
16	Interest (Schedule H)	
17	Taxes (Schedule I)	
18	Contributions (attach schedule—see instructions for limitation)	
19	Losses by fire, storm, shipwreck, other casualty, or theft (attach schedule)	
20	Depreciation (Schedule G)	
21	Amortization (attach schedule)	
22	Depletion (attach schedule)	
23	Advertising	
24	(a) Pension, profit-sharing, stock bonus, annuity plans	
	(b) Other employee benefit plans	
25	Other deductions (Schedule J)	
26	Total deductions on lines 11 to 25, inclusive	
27	Unrelated business taxable income before net operating loss deduction (line 10 less line 26)	
28	Less: Net operating loss deduction (attach statement)	
29	Unrelated business taxable income before specific deduction	
30	Less: Specific deduction	1,000.00
31	Unrelated business taxable income	

Schedule G—DEPRECIATION (See Instruction 20)

Taxpayers using Revenue Procedure 62-21: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below) →						
Buildings						
Furniture and fixtures						
Transportation equipment . . .						
Machinery and other equipment .						
Other (specify)						
.....						
.....						
.....						
.....						
.....						
.....						
.....						
2 Totals						
3 Less amount of depreciation claimed in Schedule C and elsewhere on return.						
Balance—Enter here and on line 20, page 2						

Form 990-T (1966)

Page 4

Schedule H—INTEREST ON INDEBTEDNESS (See Instruction 16)[illegible]**Schedule I—TAXES (See Instruction 17)**[illegible]**Schedule J—OTHER DEDUCTIONS (See instruction 25)**

EXHIBIT 12 . 57WHAT REPORTS A FOUNDATION MUST MAKE ---
UNDER WHAT CONDITIONS

1. Federal reports.

- (a) Form 1023 application for recognition of exempt status. This report which is filed only once is not strictly necessary, but it makes things easier and gives the foundation an assurance of its status.
- (b) Form SS-4 Employer Identification Number. Must be shown on 1023 or applied for at the same time.
- (c) Form 990-A an annual information return for an organization exempt under Section 501 (C) (3). It is a two page simple information return. It is due on the 15 day of the 5th month after the end of the foundation's annual accounting period.
- (d) Form 990T - annual report of unrelated business income (or form 990-T-FY). This report should be filed even if no unrelated income is received since filing will start the 3 year statute of limitations, thereby providing you protection against errors made prior to that period.
- (e) Form 1099 and 1096. Exempt organization like all tax payers are required to report payments of rents, salaries, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, and income aggregating over \$600/year. This is to be filed on or before February 28 in the year following the year of payment. Revenue Code IRC, Section 6041.
- (f) Foundation will also make withholding tax returns normally required under IRC Section 6051.

2. State Reports.

- (a) There is usually an annual report relative to your State charter. It is a simple report and self-explanatory, asking only the names of your officers and directors and a statement of the sort of activity you have been engaged in.
- (b) There may be in addition, one or two information requests from various State agencies. These are generally to determine if your activity brings you within their area of concern. A private foundation is usually not subject to these State regulatory agencies.

YOU SHOULD CHECK WITH A LOCAL ATTORNEY FOR LOCAL LAW.

1. Benefits of N-F-P Foundation Procedures. EXHIBIT 1 - 71

A. Personal and Family Benefits

"What can be accomplished by creating a foundation?

1. Keep control of wealth.
2. Can keep for the donor many attributes of wealth by many means:
 - a) Designating the administrative management of the foundation.
 - b) Control over its investments.
 - c) Appointing relatives as directors of the foundation.
 - d) Foundation's assets can be used to borrow money to buy other property that does not jeopardize its purposes. Thus, foundation funds can be enhanced from the capitalization of its tax exemption.
3. The foundation can keep income in the family.
4. Family foundations can aid employees of the donor's business.
5. Foundations may be the method of insuring that funds will be available for use in new ventures in business.
6. We can avoid income from property while it is slowly being given to a foundation by a combination of a trust and the charitable foundation.
7. We can get the 20% charity deduction in other ways:
 - a) By giving away appreciated property to the foundation, we escape a tax on the realization of a gain.
 - b) We can give funds to a foundation to get charitable deduction currently in our most advantageous tax year.
 - c) Very often local personal and real property taxes can be avoided.
 - d) We can avoid speculative profits.
 - e) We can give away valuable "frozen assets," white elephant estates, residences, valuable works of art, and collections of all arts." ---

Chairman's Report to the Select Committee on Small Business (Patman Report) House of Representatives, 87th Congress (1962) Page 17. This is a quote from Cleveland Marshall Law Review.

A-1 Retention of control within family.

"Present law imposes no limit upon the period of time during which a donor or his family may exercise substantial influence upon the affairs of a private foundation." Treasury Report on Private Foundations, Senate Finance Committee, Feb. 1965, Page 9.

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"In slightly over two-thirds of all foundations by number, the donor or persons related in some way to the donor made up 50% of those trustees who take some voice in investment policy, including the decision of how much of the currently available funds will be re-invested and how much will be applied to charitable purposes." -- Treasury Report, Page 84

"The foundation may aggregate the donations received, paying out merely the income which these aggregations earn and holding capital for some special purpose, perhaps to buy assets from the donor's estate at his death." (i.e., where in the case of a closely held corporation, reasonable value of the stock might be much more than the actual market price in a forced sale to pay estate costs.) -- House Report No. 2681, 83rd Congress, Second Session, Page 5.

A-2. Perpetuate family control

"Perhaps the most frequent motivation in the creation of large foundations today is that the proprietor of a substantial enterprise who wishes to have it continue after his death in the hands of his family has insufficient liquid means available to satisfy his estate obligations at his death." House Report 2681 - 83rd Congress, Second Session, 1954. Page 6.

(Refer to Ford Foundation).

"There is nothing illegal about such a plan. It is entirely proper as the law now stands and is a mechanism to reach just the results which the Ford Family anticipated." House Report 2681 - Page 7. Supra.

The use of a foundation to permit a family to control a business after the death of a proprietor is widely promoted. For example, the August 15, 1954 issue of the J. K. Lasser tax reports contained this statement: "Note there is nothing wrong - morally or legally - in using a foundation to effectuate tax savings. A family can legitimately establish a foundation where charitable motives are closely tied to reduced costs of charitable giving because of income tax deductions allowed. Also, the owner of a business may create a foundation so as to cut his estate and leave his family in control of the business after death ... "House Report 2681, 83rd Congress, Page 11.

"So substantial parts of the great fortunes of those who have profited by the enormous expansion of American industry have found their way into tax-exempt foundations. These foundations have already passed and will continue to pass -

by right of inheritance - to the control of heirs or their trustees. This enables a few individuals to control ever increasing tax exempt wealth." Patman Report, Page 18 (1962)

"The Ford Foundation offords a good example of the use to solve the death tax problem and at the same time the problem of how to retain control of a great enterprise in the hands of the family. 90% of the ownership of Ford Motor Company was transferred to the Ford Foundation created for the purpose. Had it not been, it is almost certain that the family would have lost control." -- House Report No. 2681, 83rd Congress, Second Session, 1954. Page 6.

"Closed Corporations. Perhaps the greatest advantage is afforded closed corporations. Through the use of a foundation the operator of a closed corporation may be able to keep voting control of the corporation in the family after the death of the principal stockholder. Estate and gift taxes are frequently so high that sale of the stock is necessary in order to pay them, the result being that the family loses control of the corporation. However, the principal stockholder can avoid this result by granting or bequeathing nonvoting stock in the corporation to the foundation. Since such a gift or bequest is deductible for estate or gift tax purposes, the result may be that the taxes will then be small enough so that they can be satisfied out of the other estate assets without selling the voting stock." - Patman Report, Page IX (1963)

A-3 Pay Salaries to Family

The following answers are by former Commissioner Mortimer Caplin. Quoted in Patman. I. Page 73 (1962)

"Q. Will the IRS deny exemption to a foundation solely on the ground that it is controlled by one family?

A. No. The internal Revenue Service Code provides no basis upon which the Service may deny exemption to a foundation solely on the ground that it is controlled by one family."

"Q. In what way, if any, does the code prohibit a donor or testator from transferring the controlling stock of a business to a foundation and have it (the foundation) hold the stock in perpetuity with self-perpetuating directors or trustees voting the stock as they please?

A. The code does not in any way prohibit an arrangement of this sort."

"Q. Does the code permit a board of trustees and officers of a foundation to be staffed by the founder, his family and associates?

A. Yes."

Only judicial decision on "control" Barber v. Edwards, 130 F. Supp. 83 (M.D.Ga 1955) Exemption upheld.

"Remote relatives may be employed in the business; friends may be assisted; business acquaintances may be accommodated." Treasury Report, Page 34.

"Representative Patman questioned the compensation granted to trustees of the Ford Foundation who sometimes received \$5,000 for attending a single meeting." Patman Report, 1964 Page 136.

Former Commissioner of Internal Revenue, Mortimer Caplin, was asked about salaries paid to a creator of a foundation or his family:

"Q. Is a foundation generally required to pay out all net income within a specified period of time after the close of the taxable year?

A. No. Generally speaking, a foundation is required to pay out its income in furtherance of its exempt purposes and to meet expenses, without being limited to a specified period of time within which to accomplish the same, and providing any accumulation is not unreasonable in amount or duration."

"Q. May trustees and officers of foundations receive compensation?

A. They may receive compensation commensurate with services rendered."

(Patman Report, Page 73, Page 74. (1962)

"Employment of donor's sister for life at \$15,000 per year was reasonable.

(Home Oil Mill v. Willingham, 68 F. Supp. 525 (1946)

A-4 Make grants not constituting income to family.

"An exemption was upheld of a scholarship fund which was supposed to give preference to the relatives of the donor named "Gulentz." 57 F. Supp. 502 (1944).

Section 117 of the IR Code allows any person to receive tax-free incidental expenses in a grant to cover travel, research, clerical help or equipment.

In another case an exemption was upheld where the persons receiving the benefits were all old and deserving family retainers.

William B. Chase T.C.M. 234 (1960) scholarships could be awarded to anyone but were in fact awarded only to employees of related corporations and their children.

A-5 Look after family's pet charities or worthy causes.

A-6 Income splitting through salaries to family members.

A-7 Use of Foundation to improve your family's cash position.

You can actually improve your family's current cash position while building up the foundation. Let us say you give \$12,000/year to your foundation. Instead of cash you give \$12,000 worth of stock each year. Let us say you give stock worth \$670 per share on which you have the basis of \$50. Your deduction is figured on the value of the property given rather than on its cost to you. Figuring a taxable income of \$80,000/year, this donation cuts your income tax and increases your family's after tax cash income by \$7,960. Compare this with the \$12,000 worth of stock to an outsider, you will lose the stock entirely and improve the family cash position by \$9,275 per year. With the foundation it costs you \$1,625 out of pocket to keep the stock and its income for future use in your foundation." ---- Encyclopedia of Tax Shelter Practices - Prentice-Hall Inc. 1963.

"Tax exemption is a costly thing. It explains in part why only one-third of the income of the Nation is actually taxed." Patman Report, Page 133 (1962)

A-8 Reduce Estate Tax

"The gift to the foundation lifts a future estate State tax lien at 32% estate State tax rate. This charge will be some \$2,900 (remember the gift of \$12,000 value), so the foundation not only gives you liquidity, retains control over the stocks, preserves assets and income for future use, but it actually does more for your family's ultimate asset position than any other disposition of the stock." -- Encyclopedia of Tax Shelter Practices - Prentice-Hall, Inc. 1963

"The usual procedure then is to transfer (or arrange to transfer at death) to a foundation created for the purpose, enough of the ownership of a corporation to reduce the estate tax impact to a point where the liquid assets of the proprietor (and other means he may have devised to solve the problem) are sufficient to meet the death taxes. Such donations are usually in the form of preferred or non-voting stock. Combinations of these advantages result:

1. The family may remain in full voting control.
2. The family has a pleasant partner, managed by gentle hands.
3. The family may reap the benefit of any increase in the value of the equity.
4. If further inflation should come, it is the family which can become entitled to receive the benefit of the increase in monetary value of the company.
5. No working capital is lost by the venture; and
6. The foundation may even be used as a vehicle for the employment of associates and relatives." House Report No. 2681 - 83rd Congress, Second Session, 1954, Page 6.

"Moreover, it is not only the enormously rich who create foundations today. Countless owners of substantial business enterprises are today planning to solve their estate problems through the use of foundations, and there is reason to believe that this tendency will continue and perhaps even increase. Ingenious experts in estate and tax planning have devised many interesting ways to use a foundation in an estate or business plan." -- House Report No. 2681 - 83rd Congress, 2nd Session, Page 11.

A-9 Most useful, provide non-income corporation fringe benefits to family-employees which reduces need for drawing taxable salary.

"Nonetheless, the modes of human satisfaction have almost infinite diversity; and the ways in which wealth can be employed for personal advantage are; consequently; multiple and highly varied. Many donors, too, have manifested a common and deep-seated tendency to regard a foundation which they have created as their own, to be availed of for their own ends where a contemplated use does not involve obvious and direct deflection of assets from charity and where no specific statutory prohibition lies in the way." Treasury Report, Page 54.

Foundations may provide health insurance for an employee-family member. IRC 105

A foundation employee may live rent free.

The Treasury department has this to say:

"The value of lodging furnished to an employee by an employer shall be excluded from the employee's gross income if three tests are met:

- 1) the lodging is furnished on the business premises of the employer.
- 2) the lodging is furnished for the convenience of the employer.
- 3) the employee is required to accept such lodging as a condition of employment." Regs. § 1.119-1(b)

"Not only may a creator draw benefits from his controlled foundation, but he may also draw benefits from a foundation owned or controlled business corporation. The corporation may be used to satisfy dominant individual's desires, ranging from furnishing his home to allowing excessive executive compensation." -- U.C.L.A. Law Review, May, 1966. Page 951

A-10 "Business corporations can accumulate income since former Shareholders may be employed at adequate salaries."

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A-11 Properly done you may even arrange for an annuity to a family member of foundation.

"Apparently, private individuals may even receive annuities from a foundation's income. The position of the Internal Revenue Service is that private individuals may not receive annuities from a foundation's income, but there are, however, court decisions which hold under the "pre-dominant purpose" doctrine that the payment of annuities from a foundation's income does not preclude exemption (Francis Edward McGillick Foundation v. Commissioner, 278F (2d) 643 affirming 30 T.C. 1130; Commissioner of Internal Revenue v. Orton, 173F. (2d) 483, affirming 9 T.C. 533)."-Patman Report, Page 16. 1962.

In a 1960 case, a Federal Circuit Court held that an exemption was not affected even though the trust was charged with paying gifts, annuities, administration expenses, taxes, debts and salaries to or for the benefit of the donor's estate or family. 278 F. 2d-643.

Lewis v. U.S. 189 F. Supp. 950 (1961) Trust held exempt despite provision to pay monthly annuity to decedent's grandniece. Generally, Lederer v. Stockton - 1922 Supreme Court.

A-12 Use it to take advantage of high appreciation of assets

For a long time the Manufacturer's Hanover bank held property with a basis of \$2 1/2 million. Suddenly it donated to a Foundation it controlled - gaining a \$5 1/2 million tax deduction. Immediately the Foundation sold it for \$5 1/2 million. Result: Bank received a \$5 1/2 million tax deduction; Foundation paid no tax on a \$3 million (short term) capital gain; and the \$5 1/2 million remained in the Bank's control through the Foundation which, since it was capital gains, need never be distributed. Patman Report p. 6 (1966).

"At present, when a contribution to a foundation is made in property as distinguished from cash, the donor's deduction is figured at value of the property on the date of the donation instead of at donor's cost."!- - Patman Report, Page 83 (1963).

A-13 Use Foundation funds for investment to increase wealth under your control

Let us take an example of a person with annual income from salary, dividends and investments of \$80,000 per year. Suppose you create a foundation and give it \$12,000

per year. Your annual income tax bill is cut from \$39,480 to \$31,520. Of the \$12,000 gift, \$7,800 is tax money, \$4,200 comes out of your personal pocketbook. This \$4,200 kept in your personal portfolio earning 4% compounded, but taxed in the 66% bracket would accumulate to \$47,400 in 10 years. The \$12,000 in the foundation earning 4% compounded, tax free would accumulate to \$148,300. So your comparison would be whether you would be prepared to exchange \$47,400 free for personal use for \$148,300 that you and your family can have to do the work that interests you. (Figures from Encyclopedia of Tax Shelter Practices, Prentice-Hall, Inc. 1963.)

"Trustee Sturgis an attorney, interrogated concerning the advantage of the use of a trust, testified that if Mr. Little had made the investment himself without the use of the trust (i.e. foundation), the government would take about two-thirds of the profits in taxes." -- Senate Report #101, 81st Congress, 1st Session, Page 13. (1949).

"How the principal trusts (i.e. foundations) under discussion in this report were able to increase their original contributions to \$1,100 to their present net worth of over \$6,000,000 is an intriguing story. This can be understood by a few examples of the methods followed by trustees showing a plan obviously formulated in advance, whereby assets of the corporation would be converted into cash, the cash in turn being distributed in benefits to the trust. This cash received tax free by the trustees was then available to Textron for the purchase of Textron securities or physical assets." -- Senate Report #101, 81st Congress, 1st Session, Page 20.

"One of the most apparent loopholes in the foundation business involves the abuse of capital gains. According to the present laws that supposedly regulate foundations, capital gains not only escape taxation, but they also do not have to be given away to charity if they are reinvested within a reasonable period of time. To put this in prospective, it is just as though the typical wage earner was given an exemption from income tax so long as he doubles his payments on his home, or bought more U. S. Savings Bonds, or splurged in some certified diamonds for his wife: in other words so long as he invested a surplus from his salary he could escape taxes." -- Patman Report, 4th installment, 1966, Page 1.

"The ways and means committee hearings of 1948-49 revealed that educational institutions and private charitable foundations had moved into commercial and industrial fields.