DOWN PAYMENT ASSISTANCE ORGANIZATIONS FACE EXEMPTION ISSUES

Recent developments Indicate increasing scrutiny for a 'growth industry' of the nonprofit sector.

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Down payment assistance (DPA) programs have become one of the great growth industries of the nonprofit sector. Such programs hardly existed ten years ago as an activity of charitable, nonprofit organizations; today, hundreds of such organizations are in business for the principal purpose of making gifts to home buyers for use in making a down payment. The larger organizations—such as The Nehemiah Program, AmeriDream, and Buyers Fund-Neighborhood Gold—make tens of thousands of such gifts each year and collect tens of millions of dollars in fees annually. In 2004, approximately 30% of loans insured by the Federal Housing Administration (FHA) were closed with down payment gifts from nonprofit organizations—a five-fold percentage increase from 2000.[1]

The proliferation of DPA organizations has provoked rising concerns at the IRS about whether many of these organizations are operating in a manner consistent with the requirements for exemption under Section 501(0(3). High-profile enforcement activity, the issuance of a series of adverse determination letters, and an IRS pledge to publish formal guidance on DPA organizations testifies to the growing prominence of the issue. While the promised guidance has yet to appear, recent letter rulings provide considerable insight into the Service's key concerns.

Basics of seller-funded nonprofit down payment assistance

DPA organizations owe their existence to an obscure and liberally interpreted— regulation of the Department of Housing and Urban Development (HUD).[2] HUD generally requires that home buyers who finance the acquisition of a home with an FHA-insured loan make a 3% contribution toward the purchase. While the regulations generally prohibit sellers and other interested parties from contributing the down payment, they do permit gifts from nonprofits (and certain other sources, such as relatives) to be made for this purpose.

[1] GAO Report 06-04 (Nov. 2005).

[2] 2HUD Handbook 4155. 1, REV-5, 2.10.

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The critical moment for the DPA industry arrived in 1998 when Don Harris—a California clergyman, former real estate lawyer, and founder of one the nation's largest DPA organizations—persuaded HUD to interpret this regulation to allow gifts From "seller-funded" nonprofit organizations. Today, the vast majority of nonprofit DPA is provided by such organizations.

Virtually all seller-funded programs share basic characteristics. A nonprofit organization is organized for the purpose of providing gifts to home buyers to be used to make the down payment required by certain mortgage lenders. Because HUD regulations provide that DPA must originate from "charitable" organizations, the organization typically seeks exemption under Section 501 (c) (3). The organization markets its program to buyers, as well as to sellers, builders, realtors, and lenders. After locating a home for purchase, the buyer applies to the organization for a DPA gift. The gift to the buyer is typically conditioned, however, on the seller agreeing to make a "contribution" to the organization—which is equal to the amount of the grant applied for by the buyer—and paying a "service fee?" At closing, the nonprofit organization pays the gift into the escrow account. If the transaction successfully closes, the seller payment is made to the DPA organization, and the down payment funds are distributed as part of the seller's net proceeds.

Despite the obvious circularity of the transaction, HUD takes the view that this arrangement does not violate the prohibition against sellers or other interested parties providing down payments to buyers because the gift is made out of a "pool of preexisting funds" held by the charity.[3] In short, the current interpretation of the regulation permits sellers to do indirectly what they would otherwise be prohibited from doing directly.

While HUD continues to sanction these programs, DPA organizations are the subject of considerable controversy. A series of government audits have concluded that loans obtained in connection with DPA have substantially higher default rates than other FHA-insured loans, and that seller-funded gifts lead to inflated property sales prices and appraised values, lessen the underwriting quality of the mortgages, and increase the effective home ownership costs to the down payment gift recipients.[4] For its part, the industry alleges flaws in these studies and asserts that any additional risks associated with the loans are far outweighed by the benefit of enabling more individuals to attain the goal of home ownership.

Recent developments suggest that, in addition to prompting a debate over whether seller-funded programs make for good national housing policy, the proliferation of nonprofit DPA organizations has raised doubts among tax regulators about whether many of these organizations are operating consistent with the requirements for tax exemption. In testimony before the Senate Finance Committee in June 2004 hearings on charitable reform, an anonymous witness testified to widespread private inurement issues at one of the country's largest DPA organizations.[5] In November 2005, the

[3] A 1999 proposed rule change, which would have prohibited seller-funded nonprofit assistance was withdrawn after HUD received 1871 comments, only 21 of which favored the change. 66 Fed. Reg., 2851-52 (1/12/01).

[4] GAO Report 06-04 (Nov. 2005); Concentrance Consulting Group, "An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations" (3/1/05), a report to HUD.

[5] Hearings before the Senate Committee on Finance, "Charity Oversight and Reform: Keeping Bad Things from Happening to Charities," anonymous testimony of "Mr. House," 6/22/04.

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Department of Justice filed suit in federal district court against another major DPA provider, alleging that the organization made fraudulent claims regarding the deductibility of payments to the organization as charitable contributions.[6] The IRS simultaneously announced that it was conducting examinations of 11 other DPA organizations. At the end of 2005, the IRS National Office issued several adverse determination letters to DPA organizations.[7]

Facts of Ltr. Rul. 200540013

One of these rulings, Ltr. Rut. 200540013, nicely illustrates the exemption issues raised under Section 501(c)(3) by seller-funded DPA programs. In this ruling, the organization's stated purpose was to assist low and moderate-income individuals and families in purchasing homes. The organization conducted two principal activities: (1) providing gifts to home buyers who participated in its program in an amount up to 5% of the contract sales price, and (2) collecting fees from sellers and builders who wanted their homes included in the program. These two functions constituted 95% of the organization's total activities. The remainder consisted of soliciting and collecting charitable contributions from agents, lenders, builders, and other real estate professionals. The organization estimated, however, that such contributions would constitute only 3% of its total revenue, with the balance consisting of seller payments.

While the organization projected on Form 1023 that approximately 50% to 60% of the people participating in the program would be very low- or low-income home buyers, it did not structure its program to ensure that those targets would be met, and it offered the same level of assistance to all buyers regardless of their income level. No effort was made to target the benefits of the program toward a particular disadvantaged group or toward communities that suffered especially from deterioration or racial tensions.

In connection with its application for tax-exemption, the organization described a typical transaction involving its program. After helping a buyer locate a potential home for purchase, a realtor informs both the buyer and seller about the availability of a down payment gift from the organization. If both parties are willing to participate, the buyer applies for a loan from a lender that permits seller-funded gifts from nonprofit organizations. The buyer and seller both apply to the organization to participate in the program. The buyer submits a "Gift Fund Request" form to the organization, with basic information such as his or her annual income, the identity of the lender, the type of loan, and the property to be purchased. The buyer must acknowledge that the gift is not provided by any person with an interest in the sale of the property, and that the buyer is not obligated to repay the funds.

The seller agrees in writing to make, within two days of closing, a payment to organization of $1,000 plus an amount equal to the proposed gift to the buyer. The $1,000 service fee, which must always be paid, is used to defray marketing and administrative costs and to expand the activities of the organization. Although the seller must acknowledge that the payment will not be

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[6] U.S. v. Partners in Charity, Inc., Civ. No. 05C6374 (DC III., 2005). While the deductibility of seller payments is not, of course, directly related to the issue of exemption, it is a prime concern of the IRS and is often cited, somewhat extraneously, in the exemption rulings. It is the position of the IRS that these payments are not gifts proceeding from "detached and disinterested generosity," but quid pro quo payments made to facilitate the sale of a home. Therefore, such payments are not deductible as charitable contributions.

[7] Ltr. Rul. 200545046; Ltr. Rul. 200540013; Ltr. Rul. 200534022.

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used to provide financial assistance to the buyer, and the organization represents that all down payment assistance gifts come from a preexisting pool of funds, the seller's contribution must match exactly the amount of down payment gift made to the buyer. If, for any reason, the closing does not take place, the seller is relieved from the obligation of paying the service fee, and all payments are refunded.

The organization expected to incur expenses of approximately $280,000 in advertising and marketing. A Web site would be used to conduct a direct marketing campaign to real estate agents, lenders, home sellers, and builders who could help identify potential buyers. The IRS took note of the fact that, while the organization claimed that it operated to assist qualified buyers with the purchase of a home, the Web site listed a sample transaction demonstrating that the program "makes everybody a winner." This illustration showed that sellers who participated in the program realized a higher net selling price, and realtors earned a higher commission, than they would have without the assistance provided by the organization.

The organization's application indicated that it took only limited steps to ensure that the purchased property was safe and affordable. The educational services of the organization were limited to providing buyers with access to Web-based home buyer education materials, pamphlets, and other resource materials prepared by third parties.

Finally, the ruling noted that the organization reported that it expected to pay compensation of $345,000 to two of its officers and "other salaries" of $567,000 during its first three years of operation. The procedure for approving compensation was "a vote by the board of directors," although the organization conceded that it had held no formal board meetings since the adoption of its bylaws.

Bases for denial of exemption

The IRS developed multiple rationales for denying exemption to the organization in Ltr. Rul. 200540013.

Failure to further an exempt purpose. The IRS contended first that the organization failed to serve a charitable, educational, or other exempt purpose listed in Section 501(0(3). An organization will qualify for exemption under Section 501(c) (3) only if it engages primarily in activities that accomplish such purposes.[8] The IRS observed that nonprofit housing organizations qualifying for exemption typically serve one or more of the following charitable or social welfare goals: relief of the poor and distressed, combating of community deterioration, and lessening of racial tensions. Here, the organization's primary activity was to make down payment gifts to low- and moderate-income homeowners. Thus, it needed to demonstrate that its gift program could be reasonably expected to advance at least one of these purposes.

The IRS cited three examples in a 1970 revenue ruling that illustrated the characteristics of housing organizations qualifying for exemption under Section 501(0(3).[9] One organization relieved the poor and distressed by renovating and selling homes on below-market terms to low-income families who could not otherwise obtain financing through conventional sources. Another lessened prejudice and neighborhood tensions by providing housing to low-and moderate-income members of minority groups that had suffered discrimination. A third

[8] Reg. 1.501(c)(3)-1(c)(1).

[9] Rev. Rul. 70-585, 1970.2 CB 115.

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organization combated community deterioration by targeting housing assistance to areas of a community where the housing stock was old and badly deteriorated. In contrast, a fourth organization described in the ruling, one that helped moderate-income families find homes in an area with a shortage of affordable housing, did not qualify for tax exemption because it failed to serve an exempt purpose.

The IRS concluded in Ltr. Rul. 200540013 that the DPA organization was distinguishable from the first three organizations illustrated in the revenue ruling because it neither limited its services to low-income individuals nor focused its assistance in a manner that reasonably could be expected to combat community deterioration or lessen racial tensions. Like the entity in the fourth example, the organization offered benefits to moderate income people. Because the DPA organization's activities did not benefit a charitable class or promote the social welfare within the meaning of Section 501 (c) (3), it did not qualify for exemption.

Substantial commercial purpose. In addition, the IRS concluded that the organization's activities revealed the presence of a substantial commercial purpose. The presence of a nonexempt purpose, if substantial in nature, will destroy the organization's exemption, regardless of the number of truly exempt purposes.[10] Only an insubstantial amount of activity in support of a nonexempt purpose is permissible.

The IRS concluded that the conduct of an unrelated trade or business for profit—here, the facilitation of the sale of homes for a fee—was indeed a primary purpose of the organization. Among the factors the IRS found to be telling in this regard were (1) the organization's near total reliance on fees collected from home sellers and builders for the great bulk of its revenues, (2) the corresponding lack of support in the form of charitable contributions from the general public, governments, and foundations, (3) the organization's representation that it had fixed its fee structure and the amount it was willing to give to buyers in order to maximize the number of potential home sellers participating in its program, and (4) the amount of resources it spent on marketing and advertising efforts. These factors, taken together, led the IRS to the conclusion that the organization conducted its "operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable organization seeking to serve a charitable class or the public at large." As a result of the presence of a substantial non-exempt purpose, the organization failed to qualify for exemption.

Private benefit and inurement. The IRS also concluded that the organization's activities conferred more than incidental benefit on private parties. An organization cannot qualify for exemption unless it serves a public rather than a private interest.[11] Unlike private inurement, private benefit can be conferred on persons other than organizational insiders and may include both financial and nonfinancial benefits. The private benefit doctrine is closely related to the substantial nonexempt purpose theory, and in many cases the government relies on the same facts to support both claims.

Here, the IRS contended that the organization's operations resulted in more than incidental benefit to sellers, builders, and other parties who were not part of a

[10] Better Business Bureau of Washington, D.C., 326 U.S. 279, 34 AFIR 5 (1945).

[11] Reg. 1.501(c)(3)-1(d)(1)(ii).

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charitable class. To support this conclusion, the IRS cited several facets of the organization's operations. Perhaps most persuasive to the IRS was the requirement that all gifts be matched by payment to the organization of an identical amount by the seller from whom the home was being purchased. Other problematic aspects of the organization's activities included the targeting of promotional efforts to sellers and other parties with a financial interest in the transaction and its reliance on seller-paid fees. The organization's case also was not helped by its Web site claims "to make everyone a winner" and its admission that participation in its programs enabled sellers to minimize the discount that they might otherwise negotiate with buyers on the price of the homes.

Finally, the IRS held that the organization had not convincingly demonstrated that its operations would not result in private inurement. An organization will not be deemed to operate exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.[12] Fatal to the organization's application for exemption was its failure to satisfactorily explain what services would be provided by two officers to whom the organization proposed paying $345,500 in compensation, how those services would further the organization's charitable purposes, and what procedures the organization would follow to establish that the proposed compensation was reasonable.

Analysis

Existing tax-exempt DPA organizations, many with operations that in many ways resemble those described in Ltr. Rul. 200540013, may understandably be troubled by this ruling and other recent rulings like it. To the extent that the standards set out in the ruling are applied in the context of examinations, some organizations could find their exemptions in jeopardy.

Because the primary activity—indeed often the only activity—of many organizations is the operation of a down payment gift program, these organizations must first and foremost be prepared to demonstrate that their gift programs are operated to further a proper exempt purpose. Unfortunately, Ltr. Rul. 200540013 suggests that many organizations may have difficulty convincing the IRS that their programs provide relief of the poor and distressed. In the view of the IRS, the "poor and distressed" are those who are unable to afford the necessities of life.[13] Example 1 of Rev. Rul. 70-585, 1970- 2 CB 115, as well as a number of subsequent IRS pronouncements,[14] confirm both that low income is a key (if not the only) factor in determining whether a person is unable to afford the necessities of life, and that the limitation of housing services to such people generally will further a proper exempt purpose. In contrast, as illustrated in the fourth example of Rev. Rul. 70-585, an organization that provides housing to moderate income families does not relieve poverty and distress and fails to qualify.

Very few DPA organizations limit participation in their programs to low-income buyers, and many programs impose no income restrictions at all. Thus, DPA organizations may want to consider imposing more stringent income limitations on their programs, or otherwise targeting their assistance to ensure that a substantial number of gifts are made to low-income people. Alternatively, they may consider

[12] Reg. 1.501(c)(3)-1(c)(2).

[13] E.g., GCM 36293, 5/30/75.

[14] E.g., Rev. Rul. 76-408, 1976-2 CB 145; GCM 35007, 8/28/72.

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focusing a substantial part of their programs in a particular geographic area characterized by blight or a history of racial discrimination. Rev. Rul. 70-585 makes clear that a housing organization focusing its activities in this manner, thereby serving one or more social welfare purposes described in Reg. 1.501(c) (3)-1(d)(2), will qualify for exemption despite the fact that some moderate-income people are eligible to participate in its programs.

Noticeably absent from Ltr. Rul. 200540013 and other recent rulings is any discussion of whether a DPA organization may qualify for exemption by lessening the burdens of government, though it appears that some organizations may have obtained exemption on this basis in the past. To qualify on this ground, the IRS requires the organization to satisfy a two-part test: (1) the government must consider the activities of the organization to be its burden and (2) the activities must actually lessen that burden.[15] The first prong requires an objective manifestation by government that it considers the activities to be a governmental responsibility. Compliance with the second prong is determined in accordance with all of the facts and circumstances, with evidence of a favorable relationship between government and the organization being a particularly persuasive factor.

Many of the factors that the IRS has held to be especially relevant to a "lessening the burdens" analysis are not likely to be present in most DPA programs. These factors include statutory creation of the organization or approval of its activities, government funding or control of the organization, a strong relationship between the organization and a unit of government, and an established history of the government conducting the activity itself.[16]

DPA organizations that operate gift programs without income limitations may have particular difficulty qualifying for exemption solely on the basis that they lessen governmental burdens. A compelling argument may be made that the federal government considers the provision of affordable housing to low-income persons an important government function.[17] However, it is a more difficult case to make that, for purposes of the "lessening the burdens" test, government considers the promotion of home ownership more generally to be its burden. Most government activity in this respect has been more attenuated, carried out mainly through the programs of now-private entities such as Fannie Mae and the inclusion of various income tax incentives in the Code. Moreover, the mere fact that a governmental agency has a policy or program to promote certain objectives does not mean that it has assumed the burden of engaging in the activity.

Legislation has been introduced in Congress that would effectively resolve this particular exemption issue by expressly defining the circumstances in which DPA will advance an exempt purpose. H.R. 4430, introduced in the current Congress, would amend Section 501(c) to provide expressly that charitable purposes shall include

[15] Rev. Rul. 85-2, 1985-1 CB 178.

[16] Louthian and Henchey, "Lessening the Burdens of Government," Exempt Organizations Continuing Professional Educational Technical Instruction Program for FY 1993 (1992), Topic B, page 17.

[17] The federal government has instituted its own down payment assistance program. However, the "American Dream Downpayment Initiative" (PL 108-186, 12/16/03) restricts participation to persons who are first-time home buyers and whose income does not exceed 80% of median income—a more stringent and definite limitation than

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"qualified homeowner down payment assistance." That phrase is defined as a gift of cash made for the purpose of assisting a qualified taxpayer in acquiring a principal residence if the gift does not exceed the lesser of $60,000 or 20% of the value of the property. A "qualified taxpayer" refers to a taxpayer whose modified adjusted gross income does not exceed $110,000 ($220,000 in the case of a joint return). Under S. 1918, a similar bill introduced in the previous session of this Congress, the provision of DPA would be declared a charitable activity if the mortgage obtained in connection with the gift did not exceed the limits for a HUD-insured loan. This bill would impose no income or other eligibility limitations on the buyers who receive such assistance.

Even if legislation of this sort is enacted, DPA organizations still will have to establish that they do not operate for a substantial non-exempt purpose. In particular, they will have to avoid the uncertain reach of the commerciality doctrine. While a detailed discussion of the doctrine is beyond the scope of this article, and its infirmities have been analyzed elsewhere[18] it is important to note that the doctrine remains vital. It continues to be asserted by the IRS in a variety of contexts, and has been reaffirmed in a relatively recent court case.[19]

Simply stated, the commerciality doctrine holds that an organization carrying on activities of a type, and in a manner, similar to those of for-profit enterprises as too large a part of its total activities does not meet the requirements for exemption under Section 501(c)(3) because it has a substantial nonexempt (i.e., commercial) purpose. Implicit in the doctrine is the assumption that the presence of a substantial commercial purpose can reasonably be inferred from the existence of certain facts about and circumstances surrounding the organization's activities. A set of "commerciality factors" has emerged from the cases which the courts and the IRS regularly rely upon to determine the presence of a substantial nonexempt purpose. These include (1) market rate pricing (and in particular, whether the organization offers its services for free or below cost), (2) the accumulation of profits, (3) the extent of public support and public control, and (4) the employment of business and marketing practices that are characteristic of the for-profit sector,

Consequently, one can safely assume that the IRS is more likely to look favorably on DPA organizations that solicit and receive charitable contributions and do not rely entirely on fee income from sellers. Other indicia of charitable purposes by a DPA organization would include the fixing of service fees in an amount that does not exceed the organization's actual costs, avoiding accumulation of large surpluses, and contributing or using any profits for charitable purposes. Public control, by virtue of an independent, voluntary board of directors, would also likely weigh in favor of exemption. In contrast, an organization that expends relatively large sums on advertising and engages in aggressive marketing practices, but fails to finance or undertake any meaningful counseling or other educational activities, likely will be viewed in a negative light.

The IRS can be counted on to scrutinize DPA organizations closely for evidence that their operations give rise to excessive private benefit or inure to the advantage of insiders. As long as there is at least one private party on each side of a real estate transaction (and as long as there are

[18] Sanders, "The Commerciality Doctrine is Alive and Well." 16 Exempts 209 (Mar/Apr 2005).

[19] Airlie Foundation, 283 F. Supp. 2d. 58, 92 AFTR2d 2003-6206 (DC D.C., 2003).

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third parties, such as real estate agents, who facilitate and benefit from those transactions), there will invariably be some element of benefit conferred in connection with any exempt organization's providing down payment funds.

That does not mean, however, that a seller-funded DPA program must necessarily fail to qualify under a private benefit analysis. A private benefit that is both quantitatively and qualitatively incidental will not jeopardize an organization's exempt status.[20] In cases where the private benefit is a necessary byproduct of the creation of the public benefit, and the benefit is spread out among many individuals or entities, as may be true in the case of many DPA programs, the benefit is often deemed qualitatively incidenta1.[21] Moreover, in determining whether a public benefit is quantitatively incidental, one looks to whether the overall public good resulting from the organization's effort outweighs the benefits to private persons. Organizations concerned about excessive private benefit might consider augmenting their gift programs by implementing other charitable programs (e.g., grant making to public charities in the communities within which they operate), making some gifts without requiring a corresponding payment by the seller, or taking other steps to enhance the level public benefits they provide.

Finally, Ltr. Rul. 200540013 should remind DPA organizations of the need to be especially attuned to potential inurement problems. A witness giving testimony before the Senate Finance Committee in 2004 alleged what amounted to the pillaging of a major DPA organization's assets by its insiders. While there is no evidence that this sort of activity is a widespread problem among DPA providers, organizations would be wise to stay vigilant in avoiding even the appearance of improper use of charitable assets by its insiders. A number of developments—such as the addition of more compensation-oriented questions to Form 1023 and the Service's recent compensation examination initiative—reinforce the fact that inurement issues are a paramount concern for the IRS.

In Ltr. Rul. 200540013, the most common form of inurement—excessive compensation—was potentially present. A number of other transactions can run afoul of the private inurement prohibition, however. It has been reported, for example, that a number of larger DPA organizations may have arrangements with for-profit marketing companies in which directors, officers, or other insiders of the DPAs have an interest.[22] Transactions with related entities are a fertile source of potential inurement problems.

Of course, the payment of compensation to insiders for services rendered will not jeopardize exemption under Section 501(c)(3) if it is reasonable. While a number of factors may be important in evaluating any particular transaction, reasonableness generally is established by reference to compensation paid by similar organizations to people with like qualifications and responsibilities. In Ltr. Rul. 200540013, the organization reported salary information for certain of its officers and employees, but when the IRS followed up with an inquiry as to the procedures followed by the organization for assuring itself these

[20] Megosh et al., "Private Benefit under IRC 501(c)(3)." *Exempt Organizations Continuing Professional Educational Technical Instruction Program for FY 2001* (2000), Topic H, page 135.

[21] AmericanCampaign Academy, 92 TC 1053 119891; Rev. Rul. 70-186, 1970-1 CB 128.

[22] DeZube, The Gift Business," 63 Mortgage Banking 58 (8/1/03).

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payments were reasonable, it represented only that the payments were approved by a vote of the board of directors (which evidently had not formally met in some time). Unsurprisingly, this response was deemed inadequate, and the IRS concluded that the organization was not exempt because it failed to demonstrate that the compensation paid to these individuals was anything other than a distribution of its net earnings.

DPA organizations need to be able to support and document the reasonableness of payments to insiders at all times during the life cycle of the charity, including in connection with the initial application for exemption. Organizations should strongly consider satisfying the requirements in the regulations under Section 4958 for creating a rebuttable legal presumption of reasonableness. The core elements of the procedures are reliance on sound comparability data, consideration of the data, approval of the transaction by independent board or committee members, and proper documentation of compliance with the procedures. Adherence to these procedures can not only provide protection against the imposition of excess benefit penalties, but can help the organization head off claims of violations of the inurement prohibition.

Conclusion

Recent developments suggest that DPA organizations should expect more intensive scrutiny by the IRS in the future, and may signal a toughening of the government's position on qualification for exemption by DPA organizations.[23] The promulgation of official guidance clarifying the Service's position will be welcome. In the meantime, DPA organizations should take heed of Ltr. Rul. 200540013 and other recent rulings for the important clues they may offer about the evolving thinking of the IRS on these issues.

[23] Ltr. Rul. 200540013, with its elaboration of multiple bases for denial or revocation of exempt status to DPA organizations, tracks many of the legal rationales that have been developed by the IRS in its legal assault on credit counseling agencies, most notably in CCA 200431023.

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