

INTERNAL REVENUE SERVICE

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NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Internal Revenue Service
Attn: EO Mandatory Review
MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242

Date: 9/23/2011

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification Number:

Years Involved:

Conference Held:

LEGEND:

<u>Foundation</u>	=
<u>State1</u>	=
<u>B</u>	=
<u>C</u>	=
<u>D</u>	=
<u>E</u>	=
<u>F</u>	=
<u>State2</u>	=
<u>Date 1</u>	=
<u>Date 2</u>	=
<u>Date 3</u>	=
<u>Date 4</u>	=
<u>Date 5</u>	=
<u>Date 6</u>	=
<u>Year 1</u>	=
<u>Year 2</u>	=
<u>Year 3</u>	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
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ISSUES:

1. Whether Foundation's tax-exempt status under section 501(c)(3) of the Internal Revenue Code ("Code") should be revoked.
2. Whether Foundation is entitled to relief pursuant to section 7805(b) of the Code.

FACTS:

Foundation was incorporated on Date 1 in State1. Foundation applied to the Internal Revenue Service (IRS) for exemption from federal income tax under section 501(c)(3) of the Code and was granted tax-exempt status in a letter dated Date 2. A field examination was conducted for Foundation's Year 1 Form 990-PF, and the IRS determined that Foundation continued to qualify for exemption in a "no change" letter dated Date 3. Foundation's Year 2 Form 990-PF was examined, after which the examining agent concluded that Foundation's tax-exempt status should be revoked. Thereafter, the area manager requested a technical advice memorandum.

According to Foundation's Certificate of Incorporation, Foundation was established "to promote and improve the health, safety, recreation, and well-being of the residents of B, by building and maintaining a public recreational path on B, to enhance and foster a sense of community by increasing access to and improving the awareness of portions of B that are undeveloped and inaccessible by automobile travel, and to improve and conserve the B environment by encouraging hiking and bicycling as an alternative means of transportation." In its Form 1023, Foundation stated that its funding sources were voluntary contributions and investment income.

Foundation cited several safety-related reasons for constructing the path. Foundation noted that B has only one principal road that is the exclusive road to many parts of B and that the road is used by automobiles, pedestrians, joggers, and bicyclists. Foundation explained that the narrowness of the road and lack of an adequate shoulder made it dangerous for pedestrians, joggers, and bicyclists to use the road next to automobiles, particularly when the automobiles exceed the speed limit. Foundation noted that, according to safety experts, widening the road was not feasible because it would likely increase speeding by motorists, thus making the road more dangerous. Foundation also cited as contributing safety concerns the limited line of sight of motorists on the road due to the road's numerous curves and the bushes and trees that line the road.

Foundation also stated that construction of the path would enhance and foster a sense of community by increasing access to and improving awareness of portions of B that were undeveloped and otherwise inaccessible by automobile travel. Foundation noted

that the path would help improve and conserve the environment of B by encouraging hiking and bicycling as alternative means of transportation, which would in turn reduce traffic on the road.

Foundation's Form 1023 originally stated that Foundation would admit residents of B and their guests to the path. After further development, however, Foundation stated that all residents of C, including residents of B, would have access to the path. Foundation also stated that users would be asked to pay a nominal fee to access the path.

During the Year 1 examination, Foundation stated that the path would be open to all residents and guests of residents of C including those of B, rather than limiting access only to residents of B, as first stated on Foundation's Form 1023. B is an island in State1 and is a part of the municipality of C. C comprises part of the island of D, as well as B and several other nearby islands. C, as a whole, has a population of more than h.

In addition to safety considerations, Foundation has cited infrastructure limitations that affect the capacity of B to accommodate visitors as a reason for restricting access to the path to residents of C and B and their guests. Foundation notes that there are approximately o homes on B, many of which are rented for periods of one week to one month. Otherwise, B has very few other public accommodations. B has one restaurant, one deli, and one grocery store. Toilet facilities are very limited, as the public facilities in public buildings are open only certain hours of the day, and there are no public toilets on large portions of B. B has no sidewalks in many parts, and all pedestrian and bicycle traffic must therefore share the public road for more than a mile from the most populous section of B to the private section. Relevant to both infrastructure and public safety considerations is the fact B has only two policemen.

B is made up of a public and a private portion. The public portion comprises approximately a of the land of B. The year-round population of B is approximately b, but the summer population increases approximately ten-fold to about c. Because many of the homes are rented or shared by extended families, the total number of visitors to the island is likely much larger. The majority of the summer population resides in the private portion of B, though approximately p of the o homes are located in the private portion of B. The majority of the year-round population resides in the public portion of B. The public portion has a public school, post office, museum, and church. The private portion is mostly owned and maintained by E, a private corporation. E owns the roads and some vacant lots, a golf course and yacht club. E maintains the roads and rents the land to the golf course, and yacht club. Of Foundation's r directors, s (i.e., fewer than 25 percent) are also directors of E. E and Foundation do not share expenses with regard to the path. Foundation alone is responsible for the expenses associated with constructing, maintaining, operating and insuring the path.

The path begins by the road, at the point where the public section of B meets the private section of B. The path heads east crossing the road at various points, and ends at the golf course, where it meets less-heavily used local roads that extend beyond the golf course. Potential users of the path are required to stop at a guard house to verify that they are residents of C or B (or guests thereof) prior to using the path. Foundation stated that it does not charge a fee for use of the path, contrary to Foundation's earlier

intention to charge a nominal fee for use of the path. Bicyclists are issued stickers for their bicycles to indicate that they are residents of C or B.

The path meets nature trails that run through woods, around streams and lakes, and onto beaches. Thus, the path allows users from C and B to access areas of B, including beaches and nature trails to which no safe access or no access at all, was previously available.

Access to B by residents of that part of C which is located on D is provided by a ferry. A ferry can be taken from D to F, in State2. A second ferry can then be taken from F to B. The ferries brought g passengers to B during Year 3. Because traveling from D to F requires only one ferry, access by ferry to B and to the path is more convenient for residents of F than for residents of C on D. Residents of State2, and thus residents of F, are not allowed to use the path for the various reasons cited by Foundation. Because of these safety considerations and infrastructure limitations, Foundation says that it can not open the path to everyone and Foundation has therefore limited use of the path to residents of C and their guests, including residents of B.

Alternative access to B by residents of C on D is also possible via small aircraft or various types of boats. There are approximately d "water taxi" services that serve B, approximately e of which are available for trips between D and B. The trip between D and B is approximately f miles. Such a trip takes approximately the same amount of time as does a ferry trip from F to B, which is about g miles. Government officials from C regularly make the trip from D to B, and many use the water taxi services. The trip from D to B can also be made in an outboard motorboat, weather permitting.

Residents of B benefit from the path through increased safety on the road and through recreational use of the path. It is in dispute as to whether property values of parcels abutting the path will be enhanced. Foundation notes, however that Foundation met significant opposition regarding the path from owners of properties adjacent to the path who thought the values of their properties would be negatively affected.

Foundation counted the traffic on the path at the gate house near the beginning of the path from Date 5 through Date 6. Only traffic headed toward the golf course from the public section through the private section was counted. Traffic originating and ending within the private section was not counted. During this period of time, a total of j path users were counted, including k bicyclists, and m walkers and joggers. Stickers were issued for n different bicycles.

Foundation's Year 2 Form 990-PF reflects that it was exclusively financed by contributions and investment income. In soliciting funds, Foundation sent out letters and newsletters to residents of B to solicit contributions for the path. Foundation did not request funds from residents of C outside of B. Foundation notified those residents of C who live outside of B of the availability of the path for use once the path was completed and opened on Date 4. There is no suggestion in the file, however, that Foundation has an active program to remind residents of C, outside of B, of the existence or availability of the path, nor any suggestion that such a program is anticipated for the future. Accordingly, for purposes of the following analysis, the residents of C that do not reside on B will be disregarded and only the residents of B will be considered.

Issue One: *Whether Foundation's tax-exempt status under section 501(c)(3) should be revoked.*

LAW:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") states that to be described in section 501(c)(3) of the Code an organization must be both organized and operated exclusively for purposes specified in the regulations. If an organization fails to meet either test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations states that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the erection or maintenance of public works, promotion of social welfare by organizations designed to erect or maintain public works, combating community deterioration, and "charitable" in its generally accepted legal sense.

Isabel Peters v. Commissioner, 21 T.C. 55 (1953), acq. 1959-2 C.B. 146, held that an organization whose purpose was to furnish public swimming facilities for residents of Cold Spring Harbor School District Number 8 furthered charitable purposes. The boundaries of the district defining eligible residents who could use the pool were approximately coterminous with those of Cold Spring Harbor School District Number 8 and a portion of District 11 in the same county. The boundaries of the school district were chosen solely for convenience in drawing a line to determine who would be eligible for admission to the beach. The population of the Village of Cold Spring Harbor was approximately 1,000. The bulk of the population of Cold Spring Harbor lived in the school district. The organization was funded by public contributions, and its facilities were open to contributors and non-contributors alike. There was no restriction or discrimination in the use of facilities other than the restriction to the residents of the district. The organization was held to be charitable on the basis that it promoted social welfare.

Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), held that an organization that paid to dredge waterways was organized and operated primarily for the benefit of persons owning property adjacent to the waterways, such that charitable contributions to the organization were not deductible. A membership agreement was signed by 14 of 22 owners of property bordering the waterways to be dredged. Payments expected of each property owner were based on a formula imposing the burden proportionally according to the benefit that a property owner would receive. The Tax Court concluded that the purpose of the organization was to dredge the waterways for the benefit of persons owning property on the shores and that any objective benefit to the general public was secondary.

Columbia Park and Recreation Ass'n, Inc. v. Commissioner, 88 T.C. 1 (1987), held that an organization incorporated to develop and operate utilities, systems, services, and facilities for the good of the people of Columbia, a large private development, was not exempt under section 501(c)(3) of the Code. Though the development had a population of more than 100,000 residents, the Tax Court held that the organization "lacked a sufficient public element" because it was essentially an aggregation of homeowners and tenants bound together in a structural unit formed as an integral part of a real estate development plan. The organization did not solicit voluntary public contributions, but relied on liens and assessments on real property owned by the members it served. The Tax Court noted that the people financing the operation of the organization had rights based on property ownership, to receive the benefits offered by the organization. The Court stated that such quid pro quo does not exist in an organization operating primarily for a public purpose, and concluded that the organization was operated in furtherance of a substantial non-exempt purpose because it served private interests.

Redlands Surgical Services v. Commissioner, 113 T.C. 47 (1999), held that a nonprofit corporation's ceding of control over the operation of a hospital to private parties conferred an impermissible private benefit. Therefore, the corporation was not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 59-310, 1959-2 C.B. 6, held that an organization organized to establish, maintain, and operate a public swimming pool and recreational facilities for children and other residents of a particular community was exempt under section 501(c)(3) of the Code. The organization raised funds by soliciting public contributions and charging a nominal admission fee at the pool. Because the organization's property and its uses were dedicated to members of the general public of the community, it was held to be exempt. The ruling discussed Peters v. Commissioner, 21 T.C. 55 (1953) and noted that the IRS acquiesced in Peters, recognizing that it was a charitable purpose to "establish, equip, maintain and operate a public beach, playground and bathing facilities."

Rev. Rul. 66-358, 1966-2 C.B. 218, held that establishing and maintaining a public park may qualify as a charitable activity. Specifically, the ruling held that a corporation's contribution of funds and real property to a section 501(c)(3) of the Code organization would not jeopardize the tax-exempt status of the exempt organization, where the organization used the funds and realty to establish a public park for the use of the general public. The ruling noted that the benefits flowed principally to the general public through access to and use of the park, even though the donor corporation retained the

right to continue using a picture of a certain symbol that was a picture of a scenic view in the park. The ruling distinguished the organization's situation with that of the organization in Ginsberg v. Commissioner, 46 T.C. 47 (1966), in which the organization used its funds primarily to foster private interests and the benefit to the general public was only incidental.

Rev. Rul. 67-6, 1967-1 C.B. 135, held that in order for an organization to be exempt on the basis that it combats community deterioration, there must be a benefit to the general public and not merely to a community for the benefit solely of the residents of the community. Rev. Rul. 67-6 was modified by Rev. Rul. 76-147, 1976-1 C.B. 151, on this issue.

Rev. Rul. 67-325, 1967-2 C.B. 113, held that an organization providing recreational facilities of a township was not organized and operated for charitable purposes because it restricted access to the facilities based on race. The ruling observed that Peters v. Commissioner, 21 T.C. 55 (1953) and Rev. Rul. 59-310 are consistent with the general law of charity, supporting the idea that community recreational facilities may be classified as charitable if they are provided for the use of the general public of the community. The ruling further stated that no sound basis has been found for concluding that there would be an adequate charitable purpose if some part of the whole community is excluded from benefiting except where the exclusion is required by the nature or size of the facility.

Rev. Rul. 68-14, 1968-1 C.B. 243, held that an organization organized and operated to preserve and develop the beauty of a city may be exempt under section 501(c)(3) of the Code. The ruling determined that the activities of the organization lessened the burdens of government, through providing educational activities and combating community deterioration.

Rev. Rul. 70-186, 1970-1 C.B. 129, held that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features was exempt under section 501(c)(3) of the Code. The organization was financed by contributions from lakefront property owners, members of the community adjacent to the lake, and municipalities that bordered the lake. The ruling held that the benefits derived from the organization's activities flowed principally to the general public, and that any private benefits derived by the lakefront property owners do not lessen such public benefits. Furthermore, the ruling stated, it would be impossible for the organization to accomplish its purposes without providing benefits to the lakefront property owners.

Rev. Rul. 75-196, 1975-1 C.B. 155, held that a law library that limited access and use to members of a local bar association qualified for exemption under section 501(c)(3) of the Code. Important to the conclusion of the ruling were the library's reasons for the restrictions, which included the size of the library and the library's interest in maintaining order and preserving its books. Also important was the fact that the library was open to a significant number of people. The fact that the members derived personal benefit was incidental to, and a logical by-product of, the educational purpose of the library.

Rev. Rul. 75-286, 1975-2 C.B. 210, held that an organization formed to preserve and beautify the public areas within a city block, with membership limited to residents and business operators within that block, was not exempt under section 501(c)(3) of the Code. The organization enhanced the value of the roadway sections abutted by property of its members, thereby enhancing the value of its members' property rights. The ruling noted the restricted membership and the limited area of improvements indicated that the organization was organized and operated to serve the private interests of its members. The ruling distinguished Rev. Rul. 68-14 on the basis that the organization in that ruling had a broad program to beautify the city rather than one restricted to improving the area adjacent to the residences of its own members.

Rev. Rul. 76-147, 1976-1 C.B. 151, held that an organization formed to improve conditions in an area of a city where the income level was higher and housing better than in other areas of the city was exempt under section 501(c)(3). The ruling modified Rev. Rul. 67-6 to remove any implication that preserving or improving a community does not benefit a sufficiently broad segment of the public to be charitable. So long as the community interests served are truly public in scope and not merely the private interests of a class of persons not themselves comprising a charitable class, then such activities may be deemed to confer a public benefit that the law regards as charitable.

Rev. Rul. 78-85, 1978-1 C.B. 150, held that an organization with open membership that was formed to preserve, beautify, and maintain a public park, and was supported by membership dues and contributions from the general public, was exempt under section 501(c)(3) of the Code. The park and its facilities were open to the general public and were commonly used by citizens of the entire city.

ANALYSIS:

Section 1.501(c)(3)-1(d)(2) of the regulations includes in the definition of "charitable" erecting or maintaining public works, promoting social welfare through various purposes, combating community deterioration, and being "charitable" in its generally accepted legal sense. A number of cases and revenue rulings have recognized the provision of recreational facilities as a charitable purpose where it promotes the social welfare of a community and the facilities are made readily available to the community. Peters v. Commissioner, 21 T.C. 55 (1953) held that an organization that operated public swimming facilities open to those residing in a particular school district was charitable as an organization that promoted social welfare. The operation of a swimming pool and other recreational facilities was also recognized as a charitable purpose in Rev. Rul. 59-310. Numerous other rulings have held the operation of recreational facilities available to the public to be a charitable purpose within the meaning of section 501(c)(3) of the Code where it promotes the social welfare of a community and the facilities are made readily available to the community. See Rev. Ruls. 66-358, 67-325, 70-186, and 78-85.

Foundation was organized, and is operated, to build and maintain a recreational path, which is a kind of recreational facility. The operation of recreational facilities should be recognized as a charitable purpose if it promotes the social welfare of a community and the facilities are made readily available to that community.

In addition to having a charitable purpose, section 1.501(c)(3)-1(d)(1)(ii) of the regulations requires that an organization serve a public rather than private interest in order to be organized and operated exclusively for one or more exempt purposes. For example, the benefits derived from a corporation's gift to an organization exempt under section 501(c)(3) of the Code, used for the establishment of a park, flowed principally to the general public, even though the donor retained the right to use the picture of a scenic view in the park as its brand symbol. Rev. Rul. 66-358. Therefore, maintaining the public park served a public rather than a private interest. Revenue Ruling 78-85 held that an organization that maintained and improved a public park conferred benefits principally to the public, and that any private benefits did not lessen the public benefits. Such private benefits were only incidental to the achievement of the organization's exempt purposes.

When an organization operates for the benefit of private interests, the organization, by definition, does not operate exclusively for exempt purposes. Prohibited private benefits may include an advantage, profit, fruit, privilege, gain, or interest. Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. Thus, should an organization be shown to benefit private interests, it will be deemed to further a nonexempt purpose under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Redlands Surgical Services v. Commissioner, 113 T.C. at 74 (1999).

For example, in Ginsberg v. Commissioner, 46 T.C. 47 (1966), the Tax Court held that an organization that paid to have waterways dredged was organized and operated for the benefit of persons owning property adjacent to the waterways dredged. The organization raised funds according to a formula from its members who had signed a subscription agreement, and the payment expected from each member was based on the benefit to be received by the donor. The Tax Court found that such a fixed formula showed that the principal purpose of the organization was to dredge the waterways for the benefit of the property owners, and that any objective benefit to the general public was secondary. The organization in Columbia Park, 88 T.C. 1 (1987) similarly had a quid pro quo arrangement whereby residents had rights to benefits from the organization based on their ownership of property. Ginsberg and Columbia Park exemplify the kind of exchange between an organization and its beneficiaries that indicates the organization serves a private interest.

Two revenue rulings regarding organizations with similar purposes illustrate the difference between serving a public, as opposed to a private, interest. The organizations in both rulings are dedicated to beautification of a city or particular area thereof. The scope of the focus of each, however, results in disparate outcomes for each organization. In Rev. Rul. 68-14, an organization organized and operated to preserve and develop the beauty of a city, whose income was derived from contributions, was allowed exemption under section 501(c)(3) of the Code. To the contrary, Rev. Rul. 75-286 held that an organization that had membership limited to residents and businesses within a city block and was formed to preserve and beautify that block did not qualify for exemption under section 501(c)(3) of the Code. Because the organization was enhancing its members' property rights, and because its membership and the area it improved was so limited, the ruling held that it was organized and operated to serve the

private interests of its members within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

The benefits of Foundation's recreational path run to the actual and potential users of its path: residents of C, including residents of B. However, even if only the residents of B are considered, these residents receive a benefit in the form of a recreational opportunity and enhanced safety. It is disputed as to whether the residents of the private portion of B whose properties abut the path will receive any economic benefit. The opposition of some such property owners based on concerns about decreased property values would refute the assertion that owners of adjacent properties stood to benefit from the creation of the path. Even if there were some economic benefit in the form of increased property value, however, such a benefit would be an incidental consequence of Foundation's furtherance of charitable purposes. See Redlands, 113 T.C. 47 and Rev. Rul. 70-186.

Foundation is not a membership organization, and is supported solely by voluntary contributions and investment income. As discussed above, there does not appear to be an economic benefit to residents of B. Furthermore, there is no evidence of any payment by any donor of contributions based on the benefit(s) such a donor receives, economic or otherwise. The absence of such an arrangement weighs against finding that Foundation furthers a private interest. See Redlands, 113 T.C. at 74 and Columbia Park, 88 T.C. 1 (1987). In Rev. Rul. 75-286, the organization had membership limited to a city block and its benefits ran to the small group of members. Foundation, as noted earlier, is not a membership organization. B is further distinguishable from the area served by the organization in Rev. Rul. 75-286, a city block, as B is geographically larger and, particularly during the summer season, much more populous than a city block.

If the benefits of an organization's activities flow to an entire community, such benefits are sufficient to meet the public benefit standard, and the benefits therefore need not run beyond the scope of the community. Revenue Ruling 76-147 clarified that an organization whose purpose is to preserve or improve a community benefits a sufficiently broad segment of the public to be charitable. So long as the community interests are truly public in scope and not merely the private interests of a class of persons not themselves comprising a charitable class, then such activities may be deemed to confer a public benefit that the law regards as charitable. The ruling modified Rev. Rul. 67-6, which held that benefiting a community, as opposed to the general public, was not sufficient for the organization in question to be charitable. The subsequent ruling specifically clarified that a community was in fact a sufficiently broad segment of the public to be charitable. Therefore, the proper inquiry is not necessarily whether the benefit of an organization runs to the general public. Rather, the question need only be whether an organization benefits a community (so long as the interests of the community are truly public in scope). B is an island. All of the residents of B are permitted to use the recreational path, regardless of whether they have contributed to Foundation.

Foundation operates recreational facilities primarily for the benefit of the residents of B and their guests. Foundation is therefore similar to the organization in Rev. Rul. 59-310, as it provides a benefit for the residents of a particular community, the entire island, B. Foundation does not exclude any part of the community, as did the organization in Rev.

Rul. 67-325. Foundation excludes people only on the basis of their not being a resident of B (or C, of which B is a part), or a guest of such a resident. Foundation has used the lines of the municipality of C (which includes all of B) as a way to determine who may be admitted or excluded, based on their status as residents or non-residents, as did the organization in Peters, 21 T.C. 55 (1953). Foundation's provision of benefits to all residents of B is similar to the use of the school district lines in Peters, and therefore, Foundation's use of residency status for determining who it excludes from the path should not prevent Foundation from qualifying as an organization described in section 501(c)(3) of the Code.

Even if the entire population of B is not large enough to constitute a "community," technically, Foundation's activities benefit all residents of C, by virtue of such residents' privilege of free use of the path, although residents of B have quicker and easier access to the path. Also, given the number of path users counted by Foundation and the number of stickers issued for bicycles, a significant portion of the residents of C or their guests, other than residents of B or their guests, may be using the path. Even though the j path users in the four-month period from Date 5 to Date 6 would include repeat users, the number of users is nonetheless significantly large. Furthermore, the fact that n stickers were issued for n unique bicycles also indicates that a significant number of the residents of C or guests thereof, other than residents of B or their guests, may be using the path. All of the residents of C benefit as potential users of the path based on their eligibility as residents. The facts also indicate that a significant number of such residents may, in fact, be using the path. Foundation, therefore, benefits the entire community of C, provided that C, a municipality, constitutes a "community" for the purpose of defining charitable purposes. See Rev. Rul. 76-147.

Several cases and rulings have addressed what may qualify as a "community," as it pertains to the interests served by charitable organizations. In Peters, 21 T.C. 55 (1953), an organization's operation of public swimming facilities for residents of a school district with a population of approximately 1,000 (which is more than the number of full-time residents of B, but many fewer than the number of seasonal residents of B, during which time the path is most heavily used) was found to provide a sufficiently broad benefit such that the organization qualified as exempt under section 501(c)(3) of the Code. The Tax Court held the organization to be exempt despite the fact that it excluded from its facilities any non-residents. Thus, the school district in Peters can be said to constitute a community for purposes of section 501(c)(3) of the Code. In Rev. Rul. 76-147, a city qualified as a "community" in a case in which the organization served the entire city and, the organization was held to be exempt under section 501(c)(3) of the Code. Segments of the population that have been held to be insufficient to constitute a community include a membership group of residents and business owners within a city block, and a group of 22 lakefront property owners. See Rev. Rul. 75-286 and Ginsberg, 46 T.C. 47 (1966).

Whether a purported "community" is a sufficiently broad segment of the population is not determined solely based on size. Size was not determinative for the organization in Columbia Park, 88 T.C. 1 (1987), which was organized to develop and operate utilities, systems, services, and facilities for the good of the people of Columbia, a large private development. The Tax Court found the organization not to be exempt because, even

though the development had more than 100,000 residents, it "lacked a sufficient public element." Columbia was essentially an aggregation of homeowners and tenants bound together in a structural unit formed as an integral part of a real estate development plan. The nature of the segment of the population was determinative, despite the significant size of the development in Columbia Park. Therefore, in determining whether a particular segment of the general public is sufficiently broad to constitute a "community," the most important consideration is whether the purported community is "public" in nature.

Because of the physical location of B, the fact that it is an island, and its limited accessibility, especially to the non-B residents of C, it may be considered, at least for purposes of analysis, that a large part, more than a majority, of the use of the path will be by residents of B or their guests. Thus, if B constitutes a "community," then Foundation is serving a community even if one were to assume that all of the benefits provided by the availability of the path were to be enjoyed only by the residents of the island and their guests. B, especially during the summer months, is larger than many municipalities, and may be considered to be a community in its own right, without regard to the larger community of the municipality of C, of which B is a part.

Moreover, even if one were to conclude that the population of the entire island of B is not sufficient to constitute a community, Foundation asserts that C constitutes a community that is a sufficiently broad segment of the population to allow Foundation to qualify as an organization exempt under section 501(c)(3) of the Code. C, with a population of h, is significantly larger than the school district in Peters, 21 T.C. 55. The school district in Peters nonetheless was a sufficiently broad segment of the general population for the organization in question to qualify as charitable. C is also much larger, geographically and, presumably, in population, than the city block discussed in Rev. Rul. 75-286. Also, C is much larger than the group of homeowners in Ginsberg, 46 T.C. 47 (1966). Furthermore, C is a municipality, as was the community in question in Rev. Rul. 76-147.

C is a municipality, and Foundation serves the residents of C. As a municipality, C possesses the "sufficient public element" that was lacking in the private development in Columbia Park, 88 T.C. 1 (1987). Few, if any, entities could be considered more "public" than a municipality. The organization in Columbia Park and the development itself were each found by the Tax Court to be an integral part of a real estate development plan. C, as a municipality, is clearly not an integral part of a real estate development plan, and neither is Foundation. E is a private developer and E was involved in the formation of Foundation. E owns much of the land on the private portion of B. Control of Foundation, however, is in the hands of the board of directors of Foundation, and Foundation's board is not controlled by E. Foundation provides benefits to residents of C, especially those who also are residents of B, based on residency in the municipality and not on the ownership of property or payment of assessments or the like, as did the organization in Columbia Park. In fact, Foundation is funded solely by voluntary contributions and investment income. Foundation is solely responsible for the costs associated with the path, and there are no related expenses shared between Foundation and E. Foundation serves a municipality, receives its funding from voluntary contributions, and is independent from E, all of which weigh against finding that Foundation is in integral part

of a development plan or that it serves a private interest. Foundation is therefore distinguishable from the organization in Columbia Park.

Exclusion of some part of the community by an organization exempt under section 501(c)(3) of the Code may be permissible in some instances. A recreational facility may qualify as furthering charitable purposes under section 501(c)(3) even if it excludes some members of the community, provided that the exclusion is required by the nature or size of the facility. Rev. Rul. 59-310. A law library that admitted only members of a local bar association, whose membership constituted substantially all of the members of the legal profession in the municipality, may qualify for exemption under section 501(c)(3) even though it excludes non-members. Rev. Rul. 75-196. The exclusion was permissible because of the practical limitation based on the law library's limited size book collection, the library's interest in maintaining order, and its interest preserving its valuable books. Also, notwithstanding the exclusion of much of the public, the library benefited a broad enough class to serve a public interest.

Foundation serves the entire community of B, and their guests. Therefore, Foundation does not exclude any part of the community it serves, so long as the community is defined by reference to B. Foundation also makes the path available to the residents of other islands who live within the municipality of C. For the reasons discussed above, B is a sufficiently broad segment of the population to constitute a "community" such that Foundation's exemption under section 501(c)(3) of the Code should not be revoked on the basis that Foundation does not provide a public benefit. Further, even if one were to conclude that the residents of B are too small a group to constitute a "community," the residents of the municipality of C, of which B is a part, must certainly constitute a "community" large enough to support Foundation's tax exemption.

Issue 2: Whether Foundation is entitled to relief pursuant to section 7805(b) of the Code.

Because Foundation continues to be exempt, section 7805(b) of the Code is inapplicable and it is therefore unnecessary to analyze whether Foundation is entitled to relief under section 7805(b).

CONCLUSIONS:

Based on the foregoing facts, we find that:

1. Foundation's tax-exempt status under section 501(c)(3) should not be revoked.
2. It is unnecessary to analyze whether Foundation is entitled to relief pursuant to section 7805(b) of the Code because Foundation continues to be exempt.

A copy of this technical advice memorandum is to be given to Foundation. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.