

charitable donations” which limits its services to a specific population and is thus not like a hotel or a gas station. *See* ROSE Brief at 1, 4.¹

As to ROSE’s size, there is, in fact, nothing in the record establishing ROSE’s size, budget, or resources. The only record evidence regarding resources reveals that ROSE makes agreements with and controls access to “leading hospitals and physicians nationwide,” such as Massachusetts Eye and Ear Infirmary, which, of course, have vast resources and services. *See* [REDACTED] Brief at 5, ¶¶ 5-6. Regardless, the size of a public accommodation is irrelevant. *See* M.G.L. c. 272, § 92A (using the language “any place”); *Nathanson v. Stropnický*, 19 MDLR 39, 41 (1997) (solo attorney practice). The legislature knows how to limit the application of the nondiscrimination law based on size, and it has not done so in §§ 92A and 98.² As to donor dependency, there is no relevance to this factor either, as nonprofit charitable organizations are indisputably covered by §§ 92A and 98. *See* [REDACTED] Brief at 11-12.

Turning to the notion that ROSE serves only a subset of the population, the decisions of this Commission and the Supreme Judicial Court soundly reject the assertion that the scope of § 92A is limited to services that will be needed by the entire general public.³ *Currier* sets

¹ *See also* ROSE Brief at 4 (the examples of public accommodations in the statute are “typically open to the patronage of the whole public rather than designed to serve only a portion of the community”); at 6 (ROSE’s “focused charitable and private services are in no way comparable to the services provided by the statutorily enumerated establishments or those establishments that courts have found to be public accommodations”).

² *See* M.G.L. c. 151B, § 1(5) (excluding employer with fewer than six employees); § 4(7) (exempting from housing nondiscrimination provision “a single apartment or flat in a two family dwelling, the other occupancy unit of which is occupied by the owner”).

³ ROSE’s assertion that the illustrative listing of public accommodations in the statute are not entities “designed to serve only a portion of the community” (ROSE Brief at 4) ignores the statutory phraseology “without limiting the generality of this definition,” as well as the Supreme Judicial Court’s directive that “the enumerated specific examples of places of public accommodation ‘do not restrict the preceding general statutory language.’” *See Currier v. Nat’l*

ROSE's baseless assertion to rest. Only a minute percentage of the general public meet the strict selection criteria to take the medical board licensing examination, or any professional test. *See Currier*, 462 Mass. at 1, 4 (National Board of Medical Examiners is a place of public accommodation). A divorce lawyer is only needed by people who have married and want a divorce, but the services of a divorce attorney are a place of public accommodation. *Nathanson v. Commonwealth*, 16 Mass. L. Rep. 761 (2003). Similarly, a long term disability plan offered by an insurer and only available to employees of a specific company is also a place of public accommodation. *See Samartin v. Metropolitan Life Insurance Company*, 27 MDLR 210 (2005). *See also Carparts Distrib. Ctr., Inc. v. Auto Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12 (1st Cir. 1994) (cited favorably in *Currier*, 462 Mass. at 19) (trade association that sponsored a health benefits plan is a place of public accommodation under the Americans with Disabilities Act even though it is offered only to limited eligible employees); *Concord Rod & Gun Club v. Massachusetts Comm'n Against Discrimination*, 402 Mass. 716, 721 (1988) (§ 92A not limited to "traditional places of public accommodation like hotels and restaurants").

The implications of ROSE's argument that it is not a public accommodation because its services are only of value to a limited segment of the public are huge and potentially devastating to marginalized communities. ROSE's view would leave innumerable organizations and businesses free to openly discriminate. A charitable organization providing services to people with sickle cell disease could exclude based on sexual orientation, a business selling prosthetic devices or an agency providing free coats to the homeless could have a racial exclusion, and

Bd. of Med. Examiners, 462 Mass. 1, 18 (2012) (quoting *Local Fin. Co. v. Massachusetts Comm'n Against Discrimination*, 353 Mass. 10, 13 (1968)).

organizations providing services to individuals with epilepsy or cerebral palsy could exclude women. All such entities serve a niche population and not the entire community.⁴

Moreover, the premise that the services of such organizations will not be needed by the general public is false. For example, while only certain people may need a prosthetic device today, virtually everyone in the general public could find themselves in need of one at some point. Similarly, anyone in the general public could be the victim of domestic violence, and thus be in need of services such as ROSE's. This point is underscored by the examples of public accommodations in § 92A, not all of which are needed by the entire population at all times. A "shelter", for example, is only needed by a person out of home, and a "gas station" is only needed by a car-owning person. There is no basis in Massachusetts public accommodation law to allow discrimination by any of these entities.

Second, ROSE asserts that although it is a service provider and has no members, the Commission should treat it as a private membership club for purposes of §§ 92A and 98. *See* ROSE Brief at 6-8. The Commission should reject this argument which has no basis in law and would, like ROSE's first policy argument, undermine the intended scope of the statutory protections.

⁴ This disturbing consequence of ROSE's argument is not hypothetical. The Greater Boston Sickle Cell Disease Association is a 501(c)(3) nonprofit organization that provides medical resources, support services, and programming for individuals and families living with sickle cell disease in the greater Boston area (www.gbscda.org/about/services). The Tyler Foundation, Inc. is a 501(c)(3) nonprofit organization that provides families who have a child living with epilepsy with financial support to defray the costs associated with frequent hospital visits including therapy equipment, personal care items, meals, and transportation (www.tylerfoundation.org/#!mentoring-programs/cee5), and Cerebral Palsy of Massachusetts, Inc. is a 501(c)(3) nonprofit organization that provides persons living with cerebral palsy in southeastern Massachusetts with case managers to coordinate daily activities and the hiring, management, and supervision of personal care attendants (www.masscp.org/supported/support_frameset.htm).

ROSE does not have members nor does it look or operate anything like a membership club. The “selectivity of membership” framework has been used solely in the context of membership clubs⁵ and there is no basis for this Commission to undertake a radical departure from current precedent.

The lengths to which ROSE goes in pressing its strained analogy is demonstrated by its misstatement that its “process for awarding scholarship funds for free or low cost facial reconstructive surgery is analogous to the membership process for private clubs.” ROSE Brief at 7. To the contrary, ROSE makes clear in the record that its medical referral services are distinct and separate from its scholarship program. *See* Joint Stipulation, ¶ 12; Ex. 5, p. 1 (“Although the economic climate has been challenging and most of our 2009 scholarship dollars have dried up, The ROSE Medical Network and Reconstructive Surgery Program has expanded dramatically in 2009.”); Ex. 2, p. 3 (requesting that applicants provide “Reconstructive Surgery Information (to be answered only by surgery program applicants)”); p. 4 (requesting that applicants provide “Scholarship information (to be answered only by scholarship program applicants)”).

The legal standard for “genuine selectivity” in membership clubs is wholly inapplicable to a service organization. That standard has been used exclusively in the context of membership clubs because such clubs do not operate to provide services to the public. Rather, they exist to give members the opportunity to socialize and engage with like-minded people. *See, e.g., Soltys v. Wellesley Country Club*, 15 Mass. L. Rep. 650, 654 (2002) (finding selectivity where membership application was not available to the public, must be obtained from a member, and applicant must be known to or proposed by three members). ROSE’s medical services program

⁵ *See Concord Rod & Gun Club* at 721 (assessing whether the club had “genuine selectivity in membership”); *Murray v. Framingham Country Club*, 19 Mass. L. Rep. 592, 594 (2005) (“It is clear that selectivity of membership is critical to the determination of whether a private club is a place of public accommodation.”).

is not choosing members with whom others can associate. In fact, there is no indication that ROSE or anyone affiliated with ROSE has any further contact with candidates after it makes the referral for healthcare services.

The fact that ROSE has criteria to verify that its clients are survivors of domestic violence and in financial need of free care does not transform it into a private membership club any more than a legal aid organization requiring proof of financial eligibility or an AIDS service organization requiring proof of HIV status are private membership clubs. Many public accommodations have eligibility criteria, including to take a professional exam, enroll in an employment-based, long-term disability plan, or even to join a club. That does not remove them from the scope of §§ 92A and 98. And contrary to ROSE’s characterization that its criteria are “stringent and exclusive” (ROSE Brief at 7), ROSE’s outreach materials in the record state that there are “only a few eligibility criteria”. *See* [REDACTED] Brief at 7, ¶ 17.

In the end, ROSE simply disagrees with the scope of the public accommodations statute. Policy arguments to change the law are the province of the legislature. This Commission should not drastically constrict the well-established meaning of §§ 92A and 98.

II. AN EXEMPTION FROM FEDERAL INCOME TAXATION DOES NOT “AUTHORIZE” A MASSACHUSETTS CORPORATION TO PURSUE ITS CORPORATE ACTIVITIES.

The record in this case demonstrates that ROSE was formed as a Massachusetts corporation. The sole legal authority for ROSE to act as a corporate entity and conduct the activities of its mission comes from Massachusetts law creating corporations and authorizing them to act. *See* M.G.L. c. 180, § 6.

ROSE does not -- and cannot -- point to any specific language in § 501(c)(3) of the Internal Revenue Code to support the notion that a statute providing an exemption from income

taxation is “authorization” to undertake its corporate acts. Section 501(c)(3) simply requires the IRS to determine that a corporation is “organized and operated exclusively for” a “charitable” purpose. *See* 26 U.S.C. § 501(c)(3). As ROSE acknowledges, “the IRS does not take a position on whether it explicitly supports an entity’s purpose” (ROSE Brief at 10); in fact, it does not matter to the IRS at all *what* the corporate purpose is as long as it is some “charitable” purpose. ROSE, however, makes a huge leap -- without any logic or support in the statutory language -- to assert that “[o]nce an entity or corporation meets the qualifications in § 501(c)(3) it is authorized as a tax-exempt charitable organization under federal law to pursue that exempt purpose.” ROSE Brief at 10 (emphasis in original). This is simply incorrect. The statutory language only creates an exemption from taxation.

The clearest way to understand the distinction between tax exemption and the authorization to perform its mission is to consider the consequences of the revocation of ROSE’s Massachusetts corporate status as compared to the revocation of ROSE’s 501(c)(3) status. If ROSE’s Massachusetts corporate status were revoked, it would no longer be authorized to conduct its activities on behalf of domestic violence survivors. If, however, ROSE’s 501(c)(3) status were revoked, there would be no impact at all on its authority to conduct its activities for domestic violence survivors. It would simply be required to pay income taxes, and contributions to it would no longer be tax-deductible -- nothing more and nothing less. Put another way, the rejection of tax-exempt status does not negate ROSE’s authority to pursue its organizational purposes and, likewise, the granting of tax-exempt status cannot affirmatively authorize the performance of ROSE’s organizational purposes.⁶

⁶ The IRS application for tax exemption, IRS Form 1023, supports the premise that in order to apply for an exemption, an entity has to be authorized to conduct its corporate activities through another source. The application requires the organization’s name “exactly as it appears in your

Insofar as ROSE asserts that the word “authorized” in the exemption language of § 92A must have some meaning and cannot be rendered superfluous, *see* ROSE Brief at 9-10, this Commission need not discern the precise meaning of the term “authorized” in this case, as it is clear that there is nothing in the granting of a tax exemption that constitutes such an authorization.

ROSE misapprehends the gaping hole in the public accommodations law that would exist if its view of the exemption language is adopted by the Commission. Under ROSE’s argument, any 501(c)(3) organization that has in its mission health, social, educational vocational and character development could decide to serve only a single sex. The implications of this are profound. For example, the website of Massachusetts General Hospital (MGH) indicates that it is a 501(c)(3) charitable corporation that provides healthcare and has a Social Services Department that helps people “strengthen their coping skills and recover from painful experiences,” as well as address “job-related or school concerns,” and “relationships, parenting and family concerns,” among many other areas. MGH, Social Services, <http://www.massgeneral.org/socialwork/> (last visited October 2, 2013). Since the services of MGH cover all of the subject areas of the exemption, it could, under ROSE’s argument, become a single-sex institution, free to exclude all men or all women. The same would be true for countless hospitals, community health centers, and social service organizations throughout Massachusetts. Regardless of what ROSE thinks of this as a policy matter, it is clearly not the intended scope of the exemption.

organizing document.” *See* Form 1023, p. 1 (Part I), attached as Exhibit A. A corporation must file a copy of its articles of incorporation showing certification of filing with the appropriate state agency. Exhibit A, p. 2 (Part II). Further, the instructions require that “your articles show evidence that on a specific date they were filed with and *approved by* an appropriate state authority.” Exhibit A, Instructions, p. 7 (emphasis added). The complete IRS Form 1023 and Instructions are available at <http://apps.irs.gov/app/picklist/list/formsPublications.html>.

The language and history of the exemption indicate that it was a very narrow exception meant to address the view of legislators in 1978 that certain traditional organizations with long histories and nationwide significance in this country, like the Boys' Clubs of America and Boy Scouts, be allowed to maintain their single-sex status. That the statute's original purpose may now be obsolete or limited is hardly unusual and cannot transform it into an exception to the Massachusetts public accommodation law as startlingly broad as ROSE suggests.

III. THE DOCTRINE OF *EJUSDEM GENERIS* DOES NOT APPLY TO THE INTERPRETATION OF THE PHRASE "CREDIT OR SERVICES" IN C. 151B, §4(14) BECAUSE THAT DOCTRINE ONLY APPLIES TO LISTS OF SEVERAL TERMS, NOT TWO-WORD PHRASES.

To assert that the word "services" is limited by the term "credit" in M.G.L. c. 151, §4(14), ROSE improperly invokes the principle of *ejusdem generis*. See ROSE Brief at 15 (citing *Mammoet USA, Inc. v. Energy Nuclear Generation Co.*, 64 Mass. App. Ct. 37, 41 (2005)). The fundamental flaw here is that this principle does not apply to a two-word phrase, but only where there is a list or series of several terms. *Mammoet USA, Inc.*, Mass. App. Ct. at 41 ("we treat[] a general, all-encompassing word at the end of a *list of specific items* as taking on the character of those specific items"; "[t]he doctrine is most appropriate when a series of *several items is listed* that concludes with the disputed language.") (emphasis added) (quotations omitted).⁷ This doctrine, by its very definition, cannot apply to two-word phrases, such as "credit or services"; if it did, the second word in a two-word phrase could never have independent meaning in any statute.

⁷ In *Mammoet*, the Court construed the term "improvement" in the phrase "a lien upon such real property, land, building, structure, or improvement" to mean improvements through construction and not improvements contributed by the furnishing of labor or materials. *Mammoet*, 64 Mass. App. Ct. at n. 11 & 40-41.

IV. ROSE DOES NOT COME CLOSE TO MEETING THE LEGAL STANDARD FOR AN INFRINGEMENT OF ASSOCIATIONAL RIGHTS.

ROSE relies upon inapposite cases, conclusory statements, and unfounded speculation to claim that providing a referral to medical care for a man would violate rights to expressive association. ROSE Brief at 17-19. As set forth in ██████'s opening brief, *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) involved completely different facts and legal principles. Having an openly gay activist take on a leadership position in a membership organization that disapproves of homosexuality in no way compares to a service provider that makes referrals to medical care for individuals who are not members and who have no ongoing relationship or association with the organization. See ██████ Brief at 26-27 (discussing multiple ways that *Dale* is inapplicable).

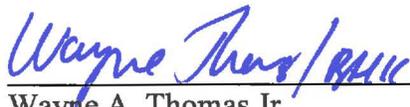
Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010) (ROSE Brief at 18) is also wholly irrelevant. That case held that political spending is a form of protected speech and that while corporations may not give money directly to campaigns, the government may not prohibit them from spending money to support or denounce individual candidates in elections. *Id.* ROSE seems to be claiming that the Constitution protects it from the application of state nondiscrimination law simply because it receives donations, an assertion that is plainly wrong and would bring within its sweep all nonprofits. Here, neither c. 272, §§ 92A or 98 nor c. 151B, §4(14) imposes any restrictions on donations.

In addition, ROSE has not remotely established that providing medical referrals to injured male domestic violence survivors would “significantly affect” its expression of viewpoints about women. *Dale*, 530 U.S. at 650. It offers only conclusory statements and rank speculation about any impact on the operation of its program. No record evidence supports those statements. This is far from the detailed, record-based findings made by the Court in *Dale* where the Supreme Court cautioned that “an expressive association can[not] erect a shield against

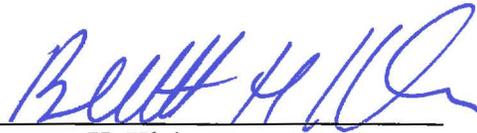
antidiscrimination laws simply by asserting that mere acceptance of a member from a particular group would impair its message.” *Id.* at 653.

Finally, even if there were a burden on ROSE’s expressive association, it makes no argument that the burden on its ability to advocate its views is so great that it outweighs the state’s compelling interest in eradicating discrimination. This Commission should not cast aside Massachusetts’ compelling interest in eradicating sex discrimination on such flimsy assertions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Reply Brief of Complainant [REDACTED] was served upon counsel of record for each party by first class mail, postage-prepaid on October 4, 2013:

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DATED: October 4, 2013



Bennett H. Klein

EXHIBIT A

**Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Note: If exempt status is approved, this application will be open for public inspection.

Use the instructions to complete this application and for a definition of all bold items. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500. Visit our website at www.irs.gov for forms and publications. If the required information and documents are not submitted with payment of the appropriate user fee, the application may be returned to you.

Attach additional sheets to this application if you need more space to answer fully. Put your name and EIN on each sheet and identify each answer by Part and line number. Complete Parts I - XI of Form 1023 and submit only those Schedules (A through H) that apply to you.

Part I Identification of Applicant

1 Full name of organization (exactly as it appears in your organizing document)		2 c/o Name (if applicable)	
3 Mailing address (Number and street) (see instructions)		Room/Suite	4 Employer Identification Number (EIN)
City or town, state or country, and ZIP + 4		5 Month the annual accounting period ends (01 - 12)	
6 Primary contact (officer, director, trustee, or authorized representative) a Name:		b Phone:	
		c Fax: (optional)	
7 Are you represented by an authorized representative, such as an attorney or accountant? If "Yes," provide the authorized representative's name, and the name and address of the authorized representative's firm. Include a completed Form 2848, <i>Power of Attorney and Declaration of Representative</i> , with your application if you would like us to communicate with your representative.		<input type="checkbox"/> Yes	<input type="checkbox"/> No
8 Was a person who is not one of your officers, directors, trustees, employees, or an authorized representative listed in line 7, paid, or promised payment, to help plan, manage, or advise you about the structure or activities of your organization, or about your financial or tax matters? If "Yes," provide the person's name, the name and address of the person's firm, the amounts paid or promised to be paid, and describe that person's role.		<input type="checkbox"/> Yes	<input type="checkbox"/> No
9a Organization's website:			
b Organization's email: (optional)			
10 Certain organizations are not required to file an information return (Form 990 or Form 990-EZ). If you are granted tax-exemption, are you claiming to be excused from filing Form 990 or Form 990-EZ? If "Yes," explain. See the instructions for a description of organizations not required to file Form 990 or Form 990-EZ.		<input type="checkbox"/> Yes	<input type="checkbox"/> No
11 Date incorporated if a corporation, or formed, if other than a corporation. (MM/DD/YYYY)		/	/
12 Were you formed under the laws of a foreign country? If "Yes," state the country.		<input type="checkbox"/> Yes	<input type="checkbox"/> No

Part II Organizational Structure

You must be a corporation (including a limited liability company), an unincorporated association, or a trust to be tax exempt. (See instructions.) **DO NOT file this form unless you can check "Yes" on lines 1, 2, 3, or 4.**

- 1 Are you a corporation? If "Yes," attach a copy of your articles of incorporation showing certification of filing with the appropriate state agency. Include copies of any amendments to your articles and be sure they also show state filing certification. Yes No
- 2 Are you a limited liability company (LLC)? If "Yes," attach a copy of your articles of organization showing certification of filing with the appropriate state agency. Also, if you adopted an operating agreement, attach a copy. Include copies of any amendments to your articles and be sure they show state filing certification. Refer to the instructions for circumstances when an LLC should not file its own exemption application. Yes No
- 3 Are you an unincorporated association? If "Yes," attach a copy of your articles of association, constitution, or other similar organizing document that is dated and includes at least two signatures. Include signed and dated copies of any amendments. Yes No
- 4a Are you a trust? If "Yes," attach a signed and dated copy of your trust agreement. Include signed and dated copies of any amendments. Yes No
- b Have you been funded? If "No," explain how you are formed without anything of value placed in trust. Yes No
- 5 Have you adopted bylaws? If "Yes," attach a current copy showing date of adoption. If "No," explain how your officers, directors, or trustees are selected. Yes No

Part III Required Provisions in Your Organizing Document

The following questions are designed to ensure that when you file this application, your organizing document contains the required provisions to meet the organizational test under section 501(c)(3). Unless you can check the boxes in both lines 1 and 2, your organizing document does not meet the organizational test. **DO NOT file this application until you have amended your organizing document.** Submit your original and amended organizing documents (showing state filing certification if you are a corporation or an LLC) with your application.

- 1 Section 501(c)(3) requires that your organizing document state your exempt purpose(s), such as charitable, religious, educational, and/or scientific purposes. Check the box to confirm that your organizing document meets this requirement. Describe specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document. Refer to the instructions for exempt purpose language. Location of Purpose Clause (Page, Article, and Paragraph): _____
- 2a Section 501(c)(3) requires that upon dissolution of your organization, your remaining assets must be used exclusively for exempt purposes, such as charitable, religious, educational, and/or scientific purposes. Check the box on line 2a to confirm that your organizing document meets this requirement by express provision for the distribution of assets upon dissolution. If you rely on state law for your dissolution provision, do not check the box on line 2a and go to line 2c.
- 2b If you checked the box on line 2a, specify the location of your dissolution clause (Page, Article, and Paragraph). Do not complete line 2c if you checked box 2a. _____
- 2c See the instructions for information about the operation of state law in your particular state. Check this box if you rely on operation of state law for your dissolution provision and indicate the state: _____

Part IV Narrative Description of Your Activities

Using an attachment, describe your past, present, and planned activities in a narrative. If you believe that you have already provided some of this information in response to other parts of this application, you may summarize that information here and refer to the specific parts of the application for supporting details. You may also attach representative copies of newsletters, brochures, or similar documents for supporting details to this narrative. Remember that if this application is approved, it will be open for public inspection. Therefore, your narrative description of activities should be thorough and accurate. Refer to the instructions for information that must be included in your description.

Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors

- 1a List the names, titles, and mailing addresses of all of your officers, directors, and trustees. For each person listed, state their total annual compensation, or proposed compensation, for all services to the organization, whether as an officer, employee, or other position. Use actual figures, if available. Enter "none" if no compensation is or will be paid. If additional space is needed, attach a separate sheet. Refer to the instructions for information on what to include as compensation.

Name	Title	Mailing address	Compensation amount (annual actual or estimated)

Instructions for Form 1023

(Rev. June 2006)



Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Section references are to the Internal Revenue Code unless otherwise noted.

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What's New

The user fee for the initial application for recognition of exemption under IRC Section 501(c)(3) has been increased. Part XI of Form 1023 has been revised to reflect the new fee. See Rev. Proc. 2006-8, 2006-1 I.R.B. 245 for more information about user fees that may be applicable to tax-exempt organizations.

How To Get Forms and Publications

Personal Computer

You can access the IRS website 24 hours a day, 7 days a week at www.irs.gov:

- Order IRS products online.
- Download forms, instructions, and publications.
- Get answers to frequently asked tax questions.
- Search publications online by topic or keyword.
- Send us comments or request help by email.
- Sign up to receive local and national tax news by email.

CD-ROM

You can order Publication 1796, IRS Tax Products CD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Bonus: Historical Tax Products DVD — Ships with the final release.

- Tax Map: an electronic research tool and finding aid.
- Tax Law frequently asked questions (FAQs).
- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- The CD is released twice during the year.

- o The first release will ship the beginning of January 2007.
- o The final release will ship the beginning of March 2007.

Purchase the CD from National Technical Information Service at www.irs.gov/cdorders \$25 (no handling fee) or call 1-877-CDFORMS (1-877-233-8767) toll-free to buy the CD for \$25 (plus a \$5 handling fee). Price is subject to change.

By Phone and In Person

You can order forms and publications by calling **1-800-TAX-FORM** (1-800-829-3876). You can also get most forms and publications at your local IRS office.

Overview of Section 501(c)(3) Organizations

Who Is Eligible for Section 501(c)(3) Status?

Organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals are eligible to file Form 1023 to obtain recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Form 1023 not necessary. The following types of organizations may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023.

- Churches, including synagogues, temples, and mosques.
- Integrated auxiliaries of churches and conventions or associations of churches.
- Any organization that has gross receipts in each taxable year of normally not more than \$5,000.

4 and submit a copy of your organizing document.

Line 1. A "corporation" is an entity organized under a Federal or state statute, or a statute of a federally recognized Indian tribal or Alaskan native government. A corporation's organizing document is its "articles of incorporation."

Certification of filing. If formed under state statute, your articles of incorporation must show certification of filing. This means your articles show evidence that on a specific date they were filed with and approved by an appropriate state authority. The document must be an exact copy of what is on file with your state.

If you do not have a copy of your articles of incorporation showing evidence of having been filed and approved by an appropriate state official, you may submit a substitute copy of your articles of incorporation. This substitute copy may be handwritten, typed, printed, or otherwise reproduced. It must be accompanied by a declaration, signed by an officer authorized to sign for you, that it is a complete and correct copy of the articles of incorporation and that it contains all the powers, principles, purposes, functions, and other provisions by which you currently govern yourself.

Line 2. A "limited liability company (LLC)" that files its own exemption application is treated as a corporation rather than a partnership. Instead of articles of incorporation, an LLC's organizing document is its state-approved "articles of organization." If it has adopted an "operating agreement," then this document is also part of its organizing document.

An LLC may only have 501(c)(3) member(s) to qualify for an exemption. An LLC should not file an exemption application if it wants to be treated as a disregarded entity by its tax-exempt member.

Line 3. An "unincorporated association" formed under state law must have at least two members who have signed a written document for a specifically defined purpose.

The articles of organization of an unincorporated association must include the name of your organization, your purpose, the date the document was adopted, and the signatures of at least two individuals. If your copy does not contain the proper signatures and date of adoption, you may submit a written declaration that states your copy is a complete and accurate copy of the signed and dated original. Your declaration should clearly indicate the original date of adoption.

TIP *Bylaws may be considered an organizing document only if they are properly structured (includes name, purpose, signatures, and intent to form an organization).*

Line 4a. A trust may be formed by a trust agreement or declaration of trust. A trust may also be formed through a will.

If your trust agreement copy does not contain the proper signatures, you may submit a written declaration that states your copy is a complete and accurate copy of the signed and dated original. Your declaration should clearly indicate the original date that it was signed.

Trust created by a will. For trusts created by a will, include a copy of the death certificate or a statement indicating the date of death, and a copy of the relevant portions of the will.

Trust agreement and non-charitable interests. If your trust agreement provided for distributions for non-charitable interests, indicate the date on which these interests expired. If your trust agreement continues to provide for these interests, you will not qualify for tax-exempt status.

Line 4b. Generally, a trust must be funded with property, such as money, real estate, or personal property to be legally created.

Line 5. "Bylaws" are generally the internal rules and regulations of an organization. If you have bylaws, you should submit a current copy.

Bylaws do not need to be signed unless they are the organizing document as described in line 3 above.

Part III. Required Provisions in Your Organizing Document

Line 1. Purpose clause. Your organizing document must limit your purposes to those described in section 501(c)(3). Those purposes are: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.

The generally accepted legal definition of "charitable" includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. Therefore, the phrase "relief of the poor" in your organizing document properly limits your purposes.

If your purposes are limited in some way by referring to section 501(c)(3), your organizing document also properly limits your purposes. For example, the phrase "relief of the elderly within the meaning of section 501(c)(3)" in your organizing document also properly limits your purposes.

However, if the purposes listed in your organizing document are broader than those listed in section 501(c)(3), you should amend your organizing document before applying. A reference to section 501(c)(3) will not ensure that your purposes are limited to those described in section 501(c)(3). All of the language in your organizing document must be considered. The following is an example of an acceptable purpose clause:

The organization is organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

See Publication 557 for further information and examples of how to limit your purposes.

Any amendment to your articles of organization you submit should show evidence that it was signed, dated, and certified as described in Part II.

Line 2a. Dissolution clause. Your organizing document must permanently dedicate your assets for a section 501(c)(3) purpose. This means that if you dissolve your organization in the future, your assets must be distributed for an exempt purpose described in section 501(c)(3), or to the federal government, or to a state or local government for a public purpose.

If your organizing document states that your assets would be distributed to members or private individuals or for any purpose other than those provided in section 501(c)(3), you must amend your organizing document to remove such statements.

If multiple amendments are required, they may be done at the same time. For example, if you are a corporation and are required to amend both your purpose and dissolution clauses, you may file a single amending document with your appropriate government authority.

The following is an example of an acceptable dissolution clause:

Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Naming a specific organization to receive your assets upon dissolution will only be acceptable if your articles state that the specific organization must be exempt under section 501(c)(3) at the time your dissolution takes place and your articles provide for an acceptable alternative if the specific organization is