

## **LGBT Community Centers Seeking Tax-Exempt 501(c)(3) Status: Proceed with Caution on Social or Recreational Activities**

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In recent years, the federal Internal Revenue Service (IRS) has refused to grant tax-exempt 501(c)(3) status to LGBT community centers with a more than insubstantial amount of activities that appear to be social or recreational in nature. LGBT community centers may therefore wish to exercise caution in the amount of such activities that they undertake. In addition, they may wish to avoid emphasizing such activities in the organization's mission statement, in written materials, and on its website, as the IRS may consider these in evaluating tax-exempt status. Where activities that may appear to be social or recreational are in fact undertaken for charitable purposes, LGBT community centers may wish to make those purposes clear.

### **Factual Background**

We are aware of two recent incidents in which the IRS recently declined to grant 501(c)(3) status, at least initially, to two LGBT organizations. First, in 2009, the IRS declined to grant 501(c)(3) status to an LGBT community center whose mission statement provided that it "is primarily a social organization where all may feel free to be themselves without fear of repression or repercussion and where all are encouraged to share their knowledge and support with others." The organization was instead granted 501(c)(4) status, which is typically given to civic leagues, social welfare organizations, and organizations involved in a significant amount of political activity, and which confers significantly less favorable tax treatment.

Second, in 2010, the IRS initially refused to grant 501(c)(3) status to an LGBT community center that had listed "social support" as part of its mission because the IRS did not consider social activities to be charitable. In addition, the IRS objected to the references to activities listed on the LGBT community center's website that the IRS deemed had a social purpose. In response, the LGBT community center revised its mission statement to eliminate a focus on social support and was subsequently granted 501(c)(3) status.

### **Legal Requirements for 501(c)(3) Status**

In order to qualify for 501(c)(3) status, organizations must be "organized and operated exclusively" for certain exempt purposes, such as those that are charitable, educational or religious. This has two components. First, to meet this test, an organization's purposes, as stated in its articles of incorporation, must be limited to serving those ends. Second, the organization must engage primarily in activities that accomplish exempt purposes. If more than an insubstantial part of an organization's activities further purposes that are not exempt, then the organization will not qualify for 501(c)(3) status.

The term "charitable" is used in its generally accepted sense. This can include for example, relief for the poor or underprivileged and the promotion of social welfare to lessen neighborhood tensions, eliminate prejudice and discrimination, or defend human and civil rights.

However, courts have found that activities that are social or recreational in nature often do not further exempt purposes. While that may not always be the case—because an event that might appear social may in fact serve a charitable purpose—the nature of an activity is relevant insofar as it offers insight into the underlying purpose of the activity. To the extent that an organization engages in social and recreational

activities that do not further an exempt purpose, the activities must be incidental and insubstantial. The dividing line between insubstantial and more than insubstantial depends on facts unique to each organization, including the amount of time and expenditures spent on social or recreational activities relative to other activities.

### **Practical Considerations**

LGBT community centers applying for 501(c)(3) status should be mindful of the amount of activities that might be considered social or recreational in which they are engaged and how those activities are characterized. The following considerations may be helpful to keep in mind when applying for 501(c)(3) status, although they cannot substitute for individualized legal advice from a legal and/or tax professional:

1. Mission statements, articles of incorporation, bylaws, and similar statements or documents that mention the terms “social” or “recreational” may trigger closer scrutiny from IRS staff.
2. LGBT community centers may wish to make clear where activities are undertaken for a charitable purpose—even if they may ostensibly appear social or recreational in nature.

For example, if an LGBT community center sponsors a neighborhood screening of an LGBT-themed film in order to eliminate prejudice and discrimination, it may wish to make that clear in written descriptions of the event (which the IRS may review in considering applications for 501(c)(3) status). While there is no guarantee that the IRS will accept that explanation, having a clear record of the purpose of the activity will likely be helpful in establishing a charitable purpose.

3. LGBT community centers are not prohibited for undertaking *all* activities with a social or recreational purpose; but such activities are permitted only if they constitute an insubstantial part of a center’s overall operations.

LGBT community centers would be wise to consult with legal and/or tax professionals to help guide them through the 501(c)(3) application process. This document is only meant as an introduction to some of the issues that LGBT community centers may face in seeking tax-exempt status and should not be construed as providing legal advice.

For more information, please visit us on the web at <http://www.lambdalegal.org/help>. You also can call us toll-free at 1-866-542-8336 and your call will be redirected to the appropriate regional office.

Pursuant to Internal Revenue Service Circular 230, only formal opinions satisfying specific requirements may be relied on for the purpose of avoiding certain penalties under the Internal Revenue Code. This communication does not constitute or contain a formal opinion satisfying such requirements. Accordingly, we must advise you that nothing contained herein was intended or written to be used, and nothing herein can be used by you or any other person as such an opinion for the purpose of avoiding penalties imposed under the Internal Revenue Code.