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NOTES

IRS Denials of Charitable Status: A Social Welfare Organization Problem

INTRODUCTION

Both charitable and social welfare organizations are exempt from federal income taxation.1 Subsection 501(c)(3) of the Internal Revenue Code (Code) exempts enterprises organized and operated exclusively for charitable purposes,2 and subsection 501(c)(4) exempts enterprises operated for the "promotion of social welfare."3 While a

1. Despite being generally exempt from income taxation, see notes 2-3 infra and accompanying text, charitable and social welfare organizations are still subject to tax on certain "unrelated income." "[T]he unrelated business income tax only applies to active business income which arises from activities which are "unrelated" to the organization's exempt purposes. Of course, if a substantial portion of an organization's income is from unrelated sources, the organization will not qualify for exemption in the first instance." B. HOPKINS, THE LAW OF TAX-EXEMPT ORGANIZATIONS 554 (3d ed. 1979) (footnote omitted). See I.R.C. §§ 501(b), 511-14 (1982). See generally B. HOPKINS, supra, at 554-611.


(c) List of exempt organizations.—The following organizations are referred to in subsection (a) [I.R.C. § 501(a) (1982)]:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, . . . or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private holder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in, . . . any political campaign on behalf of any candidate for public office.

I.R.C. § 501(c)(3) (1982). While this provision lists a number of purposes other than charitable alone, the Supreme Court recently held that to qualify for tax-exempt status under subsection 501(c)(3) an institution must meet "certain common law standards of charity — namely, [the institution] must serve a public purpose and not be contrary to established public policy." Bob Jones Univ. v. United States, 103 S. Ct. 2017, 2026 (1983). Thus, this Note will refer to any organization qualifying for tax-exempt status under subsection 501(c)(3) as "charitable."

The term "exclusively" as used in subsection 501(c)(3) is interpreted to mean primarily. Treas. Reg. § 1.501(c)(3)-1(c)(1) (1959). See Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) (holding that a substantial non-exempt purpose will destroy exemption). See also B. HOPKINS, supra note 1, at 152-57.

3. I.R.C. § 501(c)(4) (1982). More specifically, "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare" are exempted from income tax by subsection 501(c)(4) pursuant to I.R.C. § 501(a) (1982). As with charitable organizations, see note 2 supra, the term "exclusively" in subsection 501(c)(4) is interpreted to mean primarily. See People's Educ. Camp Socy. v. Commissioner, 331 F.2d 923 (2d Cir. 1964).

The term "civic" does not impose a condition in addition to the requirement that an organization operate for the "promotion of social welfare" to qualify for tax-exempt status under subsection 501(c)(4). See People's Educ. Camp, 331 F.2d at 932-33; Eden Hall Farm v. United States, 389 F. Supp. 858 (W.D. Pa. 1975); Treas. Reg. § 1.501(c)(4)-(a)(2) (1959). But see Erie Endowment v. United States, 316 F.2d 151 (3d Cir. 1963) (denying social welfare status be-
group may qualify both as a charitable organization and a non-political social welfare organization, the Internal Revenue Service (Service) has denied charitable status to these social welfare organizations in some instances.

4. To qualify for tax-exempt status, neither charitable nor social welfare organizations may participate in political campaigns. Section 501(c)(3) forbids charitable organizations to "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." I.R.C. § 501(c)(3) (1982). Social welfare organizations are likewise precluded from "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) (1959). See also Rev. Rul. 67-368, 1967-2 C.B. 194 (group that rated candidates for public office on non-partisan basis denied status as a social welfare organization).

The law of trusts more readily accepts as charitable attempts to change existing laws than it does support of political parties. See Restatement (Second) of Trusts § 374 comments j, k (1959). Under the Code, however, charitable organizations are much more limited than social welfare organizations in their ability to influence legislation. To qualify as charitable, an organization must not be engaged in "carrying on propaganda, or otherwise attempting, to influence legislation" as a "substantial part" of its activities. I.R.C. § 501(c)(3) (1982); Treas. Reg. § 1.501(c)(3)-1(c)(3) (1959); see also Rev. Rul. 67-293, 1967-2 C.B. 185 (social welfare organization denied status as charitable because of its legislative activities); B. Hopkins, supra note 1, at 256-59. This proscription on legislative activities is subject to certain exceptions. See I.R.C. § 501(b)(1) (1982). A social welfare organization, on the other hand, may attempt to influence legislation. Treas. Reg. § 1.501(c)(3)-1(b)(ii), (iv), (v) (1959). Such social welfare organizations are known as "action organizations." See Treas. Reg. §§ 1.501(c)(3)-1(c)(3), 1.501(c)(4)-1(a)(2)(ii) (1959). Unless otherwise indicated, the term "social welfare organization" as used in this Note does not refer to an action organization. For a further discussion on politically active social welfare organizations, see notes 84-87 infra and accompanying text.

5. An organization may qualify both as charitable under subsection 501(c)(3) and as social welfare under subsection 501(c)(4). See Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (1959); Rev. Rul. 74-361, 1974-2 C.B. 159. In fact, the Treasury Regulations define the terms "charitable" and "social welfare" by reference to each other. "Charitable" is defined by the regulations as follows:

The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such terms include: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Treas. Reg. § 1.501(c)(3)-1(d)(2) (1959) (emphasis added). Treas. Reg. § 1.501(c)(4)-1(e)(2)(i) (1959) prescribes that a "social welfare organization will qualify for exemption if it falls within the [above] definition of 'charitable'."


Revenue rulings are cited throughout this Note as evidence of the Service's interpretation of the Code. According to Rev. Proc. 78-24, 1978-2 C.B. 503, reliance on rulings is proper. This revenue procedure defines a "revenue ruling" as "an official interpretation of the Internal
The distinction drawn by the Service between charitable and social welfare organizations is significant because the tax law grants benefits to charitable organizations that do not apply to other groups. The most valuable of these benefits is the deductibility for income tax purposes of donations to charitable organizations. The Service has refused to extend this deduction to donations made to social welfare organizations. This refusal seems inconsistent, however, with the position taken by some courts that social welfare organizations may be granted charitable status.

Revenue laws . . . and regulations, by the Internal Revenue Service . . . issued only by the National Office and . . . published for the information and guidance of taxpayers, Service officials and others concerned. Furthermore, this revenue procedure states: "Revenue rulings do not have the force and effect of Treasury Department Regulations . . . but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied on for that purpose." 1978-2 C.B. at 505.

In one of the revenue rulings cited above, the Service conferred social welfare status on an organization formed to "promote the health of the general public by encouraging all persons to improve their physical condition and of fostering by educational means public interest in a particular sport for amateurs" of all ages. Rev. Rul. 70-4, 1970-1 C.B. 126, 126. The Service, however, denied charitable status for the organization. In Rev. Rul. 66-179, 1966-1 C.B. 139, the Service ruled on the status of four garden clubs; two of the determinations are relevant for purposes of this Note. One garden club was formed to instruct the public about horticulture and to stimulate beautification of the area, and its activities were consistent with those purposes. Its membership was open to the public. A second garden club was identical to the first except that a "substantial part of the organization's activities, but not its primary activity, consist[ed] of social functions for the benefit, pleasure, and recreation of its members." 1966-1 C.B. at 140. The Service distinguished the two clubs on the basis of these social functions. The first was judged charitable; the second was limited to social welfare status.

Congress recognized that charitable organizations can qualify as social welfare organizations and passed I.R.C. § 504 (1982) to prevent abuses of that option by charitable organizations that become politically active. See S. REP. No. 938 (Pt. II), 94th Cong., 2d Sess. 83, reprinted in 1976 U.S. CODE CONG. & AD. NEWS 4030, 4107-08.

7. For example, I.R.C. §§ 3121(b)(8)(B) and 3306(c)(8) (1982) exempt charitable organizations from certain employment tax obligations.


Eligibility for deductible contributions is advantageous to an organization because (in theory) it enables the organization to attract both a greater number of contributions and larger contributions. The effective after-tax cost to the donor of deductible contributions is the gross dollar amount discounted by a coefficient equal to the difference between one and the donor's marginal tax rate. Non-deductible contributions of an equal dollar amount are not discounted and thus are more expensive to the donor. See Taxation with Rep. v. Regan, 676 F.2d 715, 718 (D.C. Cir. 1982), revd. on other grounds, 103 S. Ct. 1997 (1983); Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471, 475 (S.D.N.Y. 1982); M. CHIRELSTEIN, FEDERAL INCOME TAXATION § 7.01, at 142 (3d ed. 1982). The charitable organization stands to benefit in two ways. First, if a donor has decided to give to an organization that happens to be charitable, presumably he will give more to the organization than he would if it were not charitable because the effective after-tax cost of the contribution would be less than the nominal amount of the contribution. Second, where a donor is otherwise indifferent as to which of two organizations to contribute to, an organization's charitable status would sway the donor in its favor. See Bob Jones Univ. v. Simon, 416 U.S. 725, 729-30 (1974).

nizations serve the same purposes as charitable organizations and therefore should be treated similarly under the tax law.\(^{10}\)

This Note argues that the courts and the Service should recognize social welfare organizations as charitable and, consequently, contributions to such organizations should be tax deductible. Part I describes the Service's position and sets forth the statutory arguments supporting it. Part II raises two objections to the Service's position: (1) the distinction between social welfare organizations and charitable organizations lacks an adequate statutory justification, and (2) this distinction produces unpredictable and arbitrary results. Part III


In Monterey, a group of private businessmen formed a nonprofit corporation to build and operate a public parking lot because the local government could not afford to support the project. The Service contended that the corporation was neither a charitable nor a social welfare organization, advancing separate grounds for each contention. The Service asserted that charitable status was improper because more than an "insubstantial" part of the organization's acts was not in furtherance of an exempt purpose. The Service argued that social welfare status should be denied because the corporation carried on a business similar to that of an enterprise operated for profit. The court rejected these tests and held that the organization qualified under both the charitable and social welfare exemption provisions. In so holding, the court expressly disagreed with the Service's distinction between social welfare organizations and charitable organizations, observing that "the distinction between the two subsections of \$ 501 is more apparent than real." 321 F. Supp. at 975. The court further noted that both provisions and their accompanying regulations serve the same policy:

"In short, the Regulations aim at discovering whether asserted civic or charitable ends are but subterfuges for what is fundamentally a private enterprise. If they are not, the case law under both subsections has made it clear that they will not destroy the exemption claimed."

321 F. Supp. at 975 (citation omitted).

The Service issued a revenue ruling disagreeing with the result in Monterey in which it argued that the private interests of the businessmen precluded qualification under either subsection 501(c)(3) or (4). Rev. Rul. 78-86, 1978-1 C.B. 151. This ruling did not, however, respond to the court's claim regarding the absence of any distinction between charitable and social welfare organizations.

In Peters, the Tax Court pointed to a broad definition of "charity" that "embraces any benevolent or philanthropic objective not prohibited by law or public policy which tends to advance the well-doing and well-being of man." 21 T.C. at 59. The court then held that the taxpayer could deduct contributions to a recognized social welfare organization because "the [donee], a nonprofit organization dedicated solely to the promotion of social welfare, should be classified as charitable as that term is used in the statute . . . ." 21 T.C. at 59. This statement suggests that all social welfare organizations are charitable. The organization was a foundation organized to furnish public swimming facilities for residents of a community who did not have and could not afford private facilities, "to create and promote better understanding and sympathy between the people of the community and to further the general welfare and health of all of the people . . . ." 21 T.C. at 55-56. The Service had recognized the foundation as a social welfare organization but denied it charitable status.

In response to Peters, the Service issued a revenue ruling concurring with the result but stating that it "[d]id not agree with the implication in that decision that every nonprofit organization dedicated solely 'to the promotion of social welfare' should be classified as charitable." Rev. Rul. 59-310, 1959-2 C.B. 146, 148.
proposes that all social welfare organizations be accorded charitable status under subsection 501(c)(3). This proposal would eliminate the arbitrary results now reached by the Service, increase the social benefits fostered by the income tax deduction for charitable contributions, and generally promote the policies underlying the favorable tax treatment of charitable organizations.

I. THE SERVICE’S APPROACH: DISTINGUISHING CHARITABLE ORGANIZATIONS FROM SOCIAL WELFARE ORGANIZATIONS

A. The Service’s Position

Although the Service has held that some social welfare organizations do not qualify as charitable organizations, it has failed to articulate any specific standard for differentiating between social welfare activities and charitable activities. In particular revenue rulings, the Service has apparently relied on factors, such as the income of the intended beneficiaries, that distinguish specific forms of similar activities. However, the Service’s reliance on such factors has not been universal; the Service has declared, for example, that

11. That is, all social welfare organizations that do not attempt to influence legislation. See note 4 supra.

12. See note 6 supra.

13. One article, which discusses the Service’s rulings on aid to business, suggests that the determination of whether or not an activity merits charitable or social welfare status might hinge on whether “[t]he immediate beneficiary [of assistance is] . . . in need of charity.” Rainey & Henshaw, Exempt Organizations: A Survey, 19 S. Tex. L.J. 205, 222 (1978). Where the direct beneficiaries, in these revenue rulings owners of a business, are in need of charity, assistance “confer[s] an immediate charitable benefit,” id. at 222, which is not the case where direct beneficiaries have no such need. The authors then point to a subsequent ruling, Rev. Rul. 76-419, 1976-2 C.B. 146, where charitable status was granted to an organization directly assisting business investment in a depressed area. Because the immediate beneficiaries were not “in need of charity,” the authors suggest that “a new type of charitable organization appears to be emerging,” which would be an exception to their theory. Id. at 223. As a general approach, this direct/indirect test, even if it were to remain valid, could at most be just one factor in determining charitable status, since the Service has ruled other organizations charitable where immediate beneficiaries were in no real “need of charity.” See, e.g., Rev. Rul. 76-147, 1976-1 C.B. 151 (community organization in higher income area); Rev. Rul. 69-257, 1969-1 C.B. 151 (organization awarding scholarship without regard to need); Rev. Rul. 66-146, 1966-1 C.B. 136 (organization organized and operated for public recognition of outstanding achievement).

14. Compare Rev. Rul. 65-299, 1965-2 C.B. 165, with Rev. Rul. 69-441, 1969-2 C.B. 115. In Rev. Rul. 65-299, the Service declared that a consumer credit counseling service was eligible for social welfare status because its activities “contribute to the betterment of the community as a whole.” 1965-2 C.B. at 166. Charitable status was denied, however, because those “eligible for assistance are not limited to those who are in need of such assistance as proper recipients of charity.” 1965-2 C.B. at 166. In subsequent Rev. Rul. 69-441, the Service granted charitable status to a similar organization that directly assisted only those with low incomes. The Tax Court rejected the Service’s determination in Rev. Rul. 65-299 that the credit counseling organization was not charitable. See Consumer Credit Counseling Serv., Inc. v. United States, 78-2 U.S. Tax Cas. (CCH) ¶ 9660 (D.D.C. 1978). Compare Rev. Rul. 67-294, 1967-2 C.B. 193 (social welfare status granted to organization that made business loans without regard to the wealth of the businesses or the income of the owners to induce businesses to locate in an
one form of the same general activity is charitable and another promotes social welfare, without explaining the basis for the distinction. Hence, one nonprofit organization providing bus service to the community may be granted charitable status, while another may only be accorded social welfare status. Moreover, even when the Service has described how it distinguishes two forms of a single general activity, it has not adequately explained why both forms are not charitable or how it determines appropriate treatment of dissimilar activities. This leaves one to speculate as to the Service's method for implementing the distinction that it recognizes between charitable and social welfare organizations.

A hypothesis consistent with the revenue rulings is that the Service makes two determinations when classifying a group as either a charitable organization or social welfare organization. The initial question seems to involve whether or not the organization's activity is conducted for private gain or benefit. To qualify for tax-exempt status as either a charitable or social welfare organization, an organization's activity must not be conducted for private gain or benefit.

Another way that the Service has distinguished similar activities as charitable or social welfare is to look at what sectors of the public the activities are aimed at. Compare Rev. Rul. 80-215, 1980-2 C.B. 174, with Rev. Rul. 70-4, 1970-1 C.B. 126 (quoted at note 6, supra). In Rev. Rul. 80-215, the Service declared that an organization formed to promote a sport throughout the state for competitors under 18 years of age was charitable. The Service noted that the organization combated juvenile delinquency and was educational. The Service explicitly distinguished Rev. Rul. 70-4, a case involving a similar activity, because the organization in that case "directed its activities to all members of the general public without regard to age. The subject organization limits its activities to individuals under 18 years of age." 1980-2 C.B. at 174. The Service had denied charitable status to the organization in the 1970 ruling and classified it as a social welfare organization.

15. Compare Rev. Rul. 78-68, 1978-1 C.B. 149, with Rev. Rul. 78-69, 1978-1 C.B. 156. In Rev. Rul. 78-68, the Service declared charitable an organization providing bus service to isolated members of a community not served by the existing bus system. In Rev. Rul. 78-69, the Service classified as social welfare an organization formed to provide bus service for a suburb during rush hours to supplement existing but inadequate service. Each ruling cited the result of the other ruling, but the Service did not explain the distinction that it made between the services provided by the two organizations.


17. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959) provides that an organization is not charitable "unless it serves a public rather than a private interest" and that the organization must...
Once it has determined that an organization's activity is not conducted for private enrichment, the Service's second step appears to be to categorize the organization as a charitable or social welfare one. This determination requires an examination of the benefits to the community that a particular organization generates.\textsuperscript{18} The Service seemingly recognizes two levels of benefits: a minimum level

"establish that it is not organized or operated for the benefit of private interests." With respect to social welfare organizations, Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) (1959) states in part:

Nor is any organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

The court in Monterey Pub. Parking Corp. v. United States, 321 F. Supp. 972 (N.D. Cal. 1970), \textit{aff'd}, 481 F.2d 175 (9th Cir. 1973), noted that "the Regulations aim at discovering whether asserted civic or charitable ends are but subterfuges for what is fundamentally a private enterprise." 321 F. Supp. at 975. For more complete discussion of \textit{Monterey}, see note 10 \textit{supra} and note 76 \textit{infra}.

Accordingly, the Service has denied exempt status on the basis of private benefit. \textit{See, e.g.}, Rev. Rul. 80-107, 1980-1 C.B. 117 (shareholder organization to promote industry interests is not social welfare organization); Rev. Rul. 78-132, 1978-1 C.B. 157 (community cooperative to facilitate the exchange of personal services among members is not social welfare organization because it operates for private benefit); Rev. Rul. 77-111, 1977-1 C.B. 144 (organization to stimulate business to remedy economic declines is not charitable, because major benefits accrue to the businesses); Rev. Rul. 74-533, 1974-2 C.B. 168 (medical association peer review board is not charitable, since it serves professional interests). \textit{Compare} Rev. Rul. 80-301, 1980-2 C.B. 181 (genealogical society with open membership is charitable), \textit{with} Rev. Rul. 80-302, 1980-2 C.B. 182 (genealogical society with membership and activities limited to a single family is not charitable).

In addition, the Service's non-acquiescence in one court decision was based on private benefit grounds. The court in Eden Hall Farm v. United States, 389 F. Supp. 858 (W.D. Pa. 1975), upheld social welfare status for a working girls' vacation home. Use of the home was available only to limited groups of women invited by the trustees of the Farm, and a corporation that had other close ties with the Farm employed most of the women who actually used the home. The Service, in Rev. Rul. 80-205, 1980-2 C.B. 184, objected to the decision, stating: "By restricting use of the facility to employees of selected corporations and their guests, the organization is primarily benefiting a private group rather than primarily benefiting the common good and general welfare of the community." 1980-2 C.B. at 185.

In one instance, however, the Service reached the wrong result using the private benefit prohibition. In Rev. Rul. 75-286, 1975-2 C.B. 210, the Service denied charitable status to an organization composed only of inhabitants of a city block and formed to beautify the block's public areas. The organization's restricted membership and the limited scope of its activities "indicate that the organization is . . . operated to serve the private interests of its members." 1975-2 C.B. at 210. The Service held that the organization did qualify for social welfare status, however, even though operation for private interests should preclude social welfare status as well.

For further discussion of the private benefit prohibition, see notes 68-73 \textit{infra} and accompanying text.

\textsuperscript{18} The Service's regulations and rulings suggest, implicitly if not explicitly, that community benefit is a significant criterion in determining if an organization qualifies as charitable. Treas. Reg. § 1.501(c)(3)-1(d)(2) (1959) defines "charitable" by referring to its "generally accepted legal sense," which would include "benefit to the community" whether one looks to tax law or other laws. \textit{See} notes 35-42 \textit{infra} and accompanying text.

Regulations concerning the specific purposes deemed charitable under I.R.C. § 501(c)(3) (1982), \textit{see note 2 \textit{supra}}, illustrate the importance of community benefit when determining an organization's charitable status. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b) (1959) defines "educational," as used in subsection 501(c)(3), as relating in part to "[t]he instruction of the public on subjects useful to the individual and beneficial to the community." Treas. Reg. § 1.501(c)(3)-1(d)(3) (1959) requires that scientific organizations be "organized and operated in the public
and a level beyond the minimum. Organizations that the Service places in the social welfare category generate only the minimum level of benefits, whereas organizations classified as charitable produce benefits beyond that minimum.\textsuperscript{19} Thus, the Service presumably requires a charitable organization to justify its eligibility to receive deductible contributions by showing that it delivers greater benefits to the community.

**B. Statutory Basis for the Service's Position**

Two arguments support the distinction drawn by the Service between charitable and social welfare organizations.\textsuperscript{20} First, such a distinction can be inferred from the fact that different subsections of section 501 exempt charitable organizations and social welfare organizations from income taxation.\textsuperscript{21} The Service originally took this interesting.\textsuperscript{19} It should be emphasized that no case, regulation, revenue ruling, or other source has been found where the Service explicitly stated that its decision to deny charitable status to a social welfare organization was due to the fact that the organization generated only a minimal level of benefits. The Service's decisions in this area are conclusory, and do not offer specific rationales for denying charitable status to certain social welfare organizations. However, as demonstrated by the cases discussed in the notes below, the results that the Service reaches are consistent with the hypothesis that the Service distinguishes between social welfare organizations and charitable organizations on the basis of the number of community benefits that each produces.

For an example of an activity failing to qualify for charitable status because of insufficient community benefit, see Rev. Rul. 78-384, 1978-2 C.B. 174. In that ruling, the Service denied charitable status to a nonprofit organization owning farmland that used the land only for ecologically suitable uses. The Service noted that the land was not ecologically significant and that the purpose, therefore, was not charitable. The public benefit was minimal because the purpose was so limited. \textbf{But see} Rev. Rul. 76-204, 1976-1 C.B. 152 (organization formed for environmental preservation purposes is charitable because its efforts serve a broad public purpose); Rev. Rul. 67-325, 1967-2 C.B. 113 (Service discusses the community benefit criterion as it relates to charitable organizations); Rev. Rul. 65-299, 1965-2 C.B. 165 (credit counseling organization is a social welfare organization because it promotes the general welfare of the community); Rev. Rul. 65-195, 1965-2 C.B. 164 (junior chamber of commerce is a social welfare organization because it promotes the common good and general welfare of the community).

\textsuperscript{19} See also Rev. Rul. 76-204, 1976-1 C.B. 152 (organization formed for environmental preservation purposes is charitable because its efforts serve a broad public purpose); Rev. Rul. 67-325, 1967-2 C.B. 113 (Service discusses the community benefit criterion as it relates to charitable organizations); Rev. Rul. 65-299, 1965-2 C.B. 165 (credit counseling organization is a social welfare organization because it promotes the general welfare of the community); Rev. Rul. 65-195, 1965-2 C.B. 164 (junior chamber of commerce is a social welfare organization because it promotes the common good and general welfare of the community).

\textsuperscript{20} The Service has not expressly attempted to support its position. Thus, the Service has never advanced the two arguments given here. However, these are the best arguments available in defense of the Service's position.

\textsuperscript{21} See I.R.C. § 501(c)(3)-(4) (1982). The text of these provisions is set out at notes 2 & 3 supra.

In construing statutes, related provisions and the structure of the act should be considered. See Kokoszka v. Belford, 417 U.S. 642, 650 (1974); United States v. Cooper Corp., 312 U.S. 600, 606 (1941). Courts attempt to avoid an interpretation of a statute that results in redundancy or fails to give effect to a section. See Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307-08 (1961); United States v. Menasche, 348 U.S. 528, 538-39 (1955). Thus, the existence of differ-
position while advocating a narrow reading of the term "charitable" that limited the scope of that term to organizations that help the poor. Even though the Service now favors a more expansive definition of the term "charitable," it presumably still rests its distinction between charitable and social welfare organizations on this separate enumeration argument.

A second argument supporting the Service's position derives from Congress' apparent recognition of the greater social desirability of charitable activities as opposed to social welfare activities. Congress has made contributions to charitable organizations tax deductible. It is generally accepted that Congress intended section 170, the Code provision granting the deduction, to apply only to charitable organizations. Further, since subsection 170(c) specifically

23. See note 46 infra and accompanying text.
25. I.R.C. § 170(a) (1982) provides that charitable contributions can be deducted. I.R.C. § 170(c)(2) defines what constitutes a "charitable contribution." This provision reads in pertinent part:
(c) Charitable contribution defined.—For the purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;
(B) organized and operated for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;
(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.
A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).
26. The language of the deduction provision closely tracks that of the exemption provision for charitable organizations. Compare I.R.C. § 170(c)(2) (1982), supra note 25, with I.R.C. § 501(c)(3) (1982), supra note 2. Because of the virtually identical language, the Supreme Court has concluded that it "is apparent that Congress intended that list [of organizations] to have the same meaning in both sections [170 and 501(c)(3)]." Bob Jones Univ. v. United States, 103 S. Ct. 2017, 2026 (1983). The Court also noted that both sections 170 and 501(c)(3) "seek to achieve the same basic goal of encouraging the development of certain organizations through the grant of tax benefits. The language of the two sections is in most respects identical, and the Commissioner and the courts consistently have applied many of the same standards in interpreting those sections." 103 S. Ct. at 2026 n.10 (citations omitted). Finally, the Court said that sections 501(c)(3) and 170 must be construed together. 103 S. Ct. at 2026 n.11.
makes contributions to other entities tax deductible. Congress arguably meant to deny tax-deductible treatment for contributions to other groups, such as social welfare organizations, not explicitly mentioned. Congress made contributions to certain organizations tax deductible because it recognized the benefits to the community that such organizations generate. Because Congress has not explicitly made contributions to social welfare organizations tax deductible as it has those to charitable organizations, the Service could assert that the distinction it draws between these organizations is consistent with a congressional preference for charitable organizations.

II. SHORTCOMINGS OF THE SERVICE’S APPROACH

Two flaws exist in the Service’s position that not all social welfare organizations are entitled to recognition as charitable organizations as well. First, the Service’s statutory justification for denying any social welfare organizations such recognition is untenable. Second, the absence of any workable standard for determining whether or not a social welfare organization qualifies as charitable produces arbitrary results that argue for elimination of the distinction.

A. Untenability of the Statutory Basis for the Service’s Position

An examination of the legislative history of subsections 501(c)(3) and (4) reveals that the existence of separate provisions for charitable and social welfare organizations does not require that any social welfare organizations be denied charitable status. The exemption for charitable organizations dates back to the Tariff Acts of 1894 and 1909. Although both tariff acts levied taxes only on corporations doing business for profit, they also explicitly exempted reli-

27. Entities that may receive tax-deductible donations include states, cities, and veterans organizations. See I.R.C. § 170(c) (1982).

28. See note 18 supra; note 92 infra.

29. I.R.C. § 501(c)(4) (1982) exempts both politically active and non-political social welfare organizations. See note 4 supra. This Note argues that denial of charitable status to politically active social welfare organizations is proper, see notes 84-87 infra and accompanying text, but that denial of charitable status to non-political social welfare organizations is not. As stated previously, this Note uses “social welfare organization” to include only non-political social welfare organizations unless otherwise indicated. See note 4 supra.

30. Tariff Act of 1894, ch. 349, § 32, 28 Stat. 509, 556. This act explicitly exempted from income taxation “corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes,” among other organizations. 28 Stat. at 556. The income tax imposed by the 1894 act was declared unconstitutional in Pollock v. Farmers’ Loan & Trust Co., 157 U.S. 429 (1895).

31. Tariff Act of 1909, ch. 6, § 38, 36 Stat. 11, 113. The pertinent language of this act exempted “any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.” 36 Stat. at 113.

gious, charitable, and educational organizations. Little direct evidence exists as to whether or not Congress intended in these acts to restrict “charitable” to its narrow meaning of “relief of the poor” or used it in the broad, common law sense of “purposes beneficial to the community.” However, the language of these statutes closely tracks that used in a well-known 1891 British tax case which gave a broad definition of “charity,” and the Supreme Court has recognized that Congress used the term “charitable” in its broad legal sense of “purposes beneficial to the community.” Thus, the legal meaning of “charitable” contained in the 1894 and 1909 acts included the purpose for which social welfare organizations operate, namely, “the promotion of social welfare.”

33. See notes 30-31 supra.
35. Commissioners for Special Purposes of Income Tax v. Pemsel, [1891] A.C. 531, 583; see also RESTATEMENT (SECOND) OF TRUSTS § 368 comment a (1959). As to the paucity of legislative evidence bearing on this issue, see Bittker & Rahdert, supra note 8, at 301 (“[N]either upon their initial enactment nor during the ensuing decades have these exemptions elicited more than cursory legislative explanation, save for matters of technical detail.”); Reiling, Federal Taxation: What Is a Charitable Organization?, 44 A.B.A. J. 525, 526 (1958).
36. Commissioners for Special Purposes of Income Tax v. Pemsel, [1891] A.C. 531. In this case before the House of Lords, Lord Macnaghten expressed himself as follows: “Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor . . . . [1891] A.C. at 583. The common law of trusts also recognizes similar purposes as “charitable.” See RESTATEMENT (SECOND) OF TRUSTS § 368 (1959).
37. In Bob Jones Univ. v. United States, 103 S. Ct. 2017 (1983), the Supreme Court quoted the broad definition of “charity” given in Commissioners for Special Purposes of Income Tax v. Pemsel, [1891] A.C. 531, 583, see note 36 supra, noting that this case “has long been recognized as a leading authority in this country.” 103 S. Ct. at 2027. The Court stated that this and other broad definitions of “charity” or “charitable” contained in still earlier Supreme Court cases “clearly reveal the legal background against which Congress enacted the first charitable exemption statute in 1894.” 103 S. Ct. at 2027 (footnote omitted). The Court also observed that the terms of the 1894 exemption “were in substance included” in the Tariff Act of 1909. 103 S. Ct. at 2027 n.14. Thus, the Court acknowledged that the broad legal meaning of “charity,” which includes “purposes beneficial to the community,” was used by Congress in the 1894 and 1909 acts.

In addition, Reiling states: “[I]f Congress to intend . . . that charity shall have its legal meaning is not a new concept. In adopting terms known to the law of charities, it adopted a pattern traditionally employed in the states.” Reiling, supra note 35, at 526. Reiling also notes that “if Congress used the term ‘charitable’ in its generally accepted legal sense — and there is no evidence that it intended any other meaning — the use of the word . . . is alone sufficient to bring the legal concept into operation.” Id. at 526. See also cases cited at note 45 infra.
38. I.R.C. § 501(c)(4) (1982). The law of trusts in the United States has always recognized purposes beneficial to the community or promoting the public or social welfare as charitable. See, e.g., RESTATEMENT OF TRUSTS § 368(4) (1935) (“Charitable purposes include . . . other purposes the accomplishment of which is beneficial to the community . . . .”); RESTATEMENT OF TRUSTS § 368 comment a (1935) (“The common element of all charitable purposes is that they are designed to accomplish objects which are beneficial to the community.”). The Restatement treats “other purposes beneficial to the community” as a residuary clause for charitable purposes: “The present Section [374] deals with the large and indefinite classes of purposes other than those which are dealt with in the preceding Sections which are neverthe-
In the Tariff Act of 1913, Congress added a new tax exemption specifically for social welfare organizations. The particular reason for the inclusion of this exemption in the 1913 act is unclear. How-

less held to promote the social interests of the community and are upheld as falling within the scope of charitable purposes.” Restatement of Trusts § 374 comment a (1935). The more recent Restatement adopts an identical position. See Restatement (Second) of Trusts §§ 368, 374 (1959); see also A. Scott, The Law of Trusts § 368, at 2853 (3d ed. 1967) (“There must be added a more general and indefinite category, a general catchall, to include the vast number of miscellaneous purposes which are properly held to be charitable. Perhaps these can best be included under the heading of other purposes the accomplishment of which is beneficial to the community.”); id. § 374.

39. Tariff Act of 1913, ch. 16, § II(G)(a), 38 Stat. 114, 172. The last clause of the general exemption provision exempts “any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare.” 38 Stat. at 172.

40. If “charitable” in the 1913 act was to be construed in the same broad sense that it was used in the 1909 act, then a separate exemption provision for social welfare organizations would seem unnecessary: the charitable exemption would already have included such organizations. This raises the argument that the addition of the social welfare organization exemption in the 1913 act was meant to restrict “charitable” to its narrow definition of “relief of the poor.” See note 34 supra and accompanying text. However, no evidence exists to support this argument. See notes 52-54 infra and accompanying text.

The role of the social welfare exemption puzzled one member of the 1921 Senate. Prior to 1939, revenue acts were normally passed every other year, often carrying over verbatim language from the previous act. See W. Andrews, Basic Federal Income Taxation 12 (2d ed. 1979). During debate over the Revenue Act of 1921, 42 Stat. 227, Senator Wadsworth questioned the language of the social welfare exemption, which was unchanged from the Revenue Act of 1918, 40 Stat. 1057. He noted that “‘civic leagues or organizations’... is a rather vague term.” 61 Cong. Rec. 5824 (1921). Further, he observed that “‘social welfare’... is equally vague and there will always be a good deal of dispute as to what ‘social welfare’ may be.” Id. at 5824. Senator Wadsworth then suggested that “social welfare” be stricken from the provision. Id. at 5825. In response to this suggestion, two senators pointed out that the provision had merely been carried over. One stated: “It is the same as the old law, which has been in force for a number of years.” Id. at 5825 (statement of Sen. McCumber). The other senator added: “As I understand it, it has been administered by the department without any trouble.” Id. at 5825 (statement of Sen. Walsh). In response, Senator Wadsworth said: “Then I withdraw my proposed amendment, but I am still hungry for a definition of ‘social welfare.’” Id. at 5825.

Initially, the social welfare provision was virtually ignored by the Service. The first regulation that cited the social welfare provision offered only an example of an organization that was not within its scope because it was organized for profit. See Treas. Reg. 62, art. 519 (1922), reprinted in 11 Internal Revenue Regulations 174 (Carlton Fox Collection of the University of Michigan Law Library). A 1919 regulation had seemed to recognize that the promotion of social welfare came within the scope of charitable purposes when it cited an example of a charitable organization as aiding the general body of litigants by improving the efficient administration of justice.” Treas. Reg. 62, art. 517 (1922), reprinted in 11 Internal Revenue Regulations 172, 173 (Carlton Fox Collection of the University of Michigan Law Library); see also S-992, 1 C.B. 145 (1919) (“The word ‘charitable’ has a broad significance.”); A.R.R. 477, 4 C.B. 264, 265 (1921) (appeals committee notes with approval a solicitor’s opinion citing the legal definition of “charitable” as being “a gift, act, or service for the benefit of an indefinite number of persons”). Nonetheless, in a 1923 ruling the Service first asserted that the social welfare provision limited the scope of “charitable” to its popular sense, which excluded the promotion of social welfare. See L.T. 1800, II-2 C.B. 152 (1923); note 43 infra.

The Service subsequently amended the regulations to reflect this narrower interpretation of “charitable.” Article 517 was amended to read as follows: “Corporations organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor.” Treas. Reg. 65, art. 517, T.D. 3735, IV-2 C.B. 76, 77 (1925), reprinted in 11 Internal Revenue Regulations 152, 152 (Carlton Fox Collection of the University of Michigan Law Library). The regulations defined the social welfare provision broadly: “Civic leagues...
ever, no clear evidence suggests that Congress intended to restrict the broad meaning of “charitable” so as to exclude social welfare organizations from the category of charitable organizations established by the Tariff Acts of 1894 and 1909.41

It is now generally accepted that the broad, common law notion of charity, which includes the promotion of social welfare,42 expresses the original and continuing meaning of “charitable” under tax law. The Service asserted in 1923 that “charitable” was to be construed in its narrow, popular sense,43 and thus required that orga-

41. No legislative history suggests that the use of “charitable” in 1913 was intended to be different from its 1909 usage, which included within its purview the purposes of social welfare organizations. See notes 37-38 supra and accompanying text. Moreover, the language of the 1913 exemption for charitable organizations was identical to that of the 1909 provision with the exception of the addition of the term “scientific” to the listing of specific exempt purposes. Compare Tariff Act of 1913, ch. 16, § II(G)(a), 38 Stat. 114, 172, with Tariff Act of 1909, ch. 6, § 38, 36 Stat. 11, 112.

At least one scholar writing after passage of the 1913 act expressed the view that “charitable” was to be broadly construed:

The rules with reference to the exemption of such associations from the burdens of ordinary taxation have been well worked out by the courts, and will generally be found applicable in the case of the special tax here under consideration. . . . [I]t is a general rule, in the construction of exemptions from taxation that the word “charity” is not to be restricted to the relief of the sick or poor, but extends to any form of philanthropic endeavor or public beneficence.

H. BLACK, 1919 TREATISE, supra note 40, § 123 (footnotes omitted).

42. See note 38 supra and accompanying text.

43. This position was set out in a 1923 ruling:

It will be seen that “charitable” in its broad sense includes, among other things, education, religion, relief of the poor, social service, and civic or public benefactions. On the other hand, “charitable” in its popular and ordinary sense pertains to the relief of the poor. . . .

In section 231(6) of the Revenue Act of 1918 and 1921 the organizations enumerated are religious, charitable, scientific, literary, and educational, while in section 231(8) Congress specifically mentions civic leagues and organizations operated exclusively for the promotion of social welfare. It seems obvious that the intent must have been to use the word “charitable” in section 231(6) in its more restricted and common meaning and not to include either religious, scientific, literary, educational, civic, or social welfare organizations. Otherwise, the word “charitable” would have been used by itself as an all-inclusive term. . . .

Considering subdivisions (6) and (8) of section 231 together, it is seen that a distinction is made between religious, charitable (in its ordinary sense), scientific, literary, and educa-
nizations provide relief for the poor to be considered charitable.\footnote{See, e.g., Treas. Reg. 65, art. 517, T.D. 3735, IV-2 C.B. 76 (1925), reprinted in 11 INTERNAL REVENUE REGULATIONS 152 (Carlton Fox Collection of the University of Michigan Law Library); Treas. Reg. 118, § 39.101(c)-1(b) (1953).} Over the years courts resisted this restrictive interpretation,\footnote{I.T. 1800, II-2 C.B. 152, 153 (1923).} however, and the Service finally acquiesced in 1959 by changing its regulations to recognize the broader meaning of “charitable.”\footnote{See Arthur Jordan Found. v. Commissioner, 210 F.2d 885, 888 (7th Cir. 1954) (citing and applying broad definition of “charitable,” noting that “the use of funds for social advancement . . . would tend ‘to promote the well doing and well being of social man’”) (quoting Ould v. Washington Hosp. for Foundlings, 95 U.S. 303, 311 (1877)); St. Louis Union Trust Co. v. Barnet, 59 F.2d 922, 926 (8th Cir. 1932) (citing and applying broad “definition of a legal charity”); Bok v. McLaughlin, 42 F.2d 616, 618-19 (3d Cir. 1930) (pointing to several broad definitions of “charitable”); United States v. Proprietors of Social Law Library, 102 F.2d 481, 483 (1st Cir. 1939) (looking at legal meaning of charitable); Koehler v. Lowell, 44 F.2d 654, 655-56 (W.D. Pa. 1930) (applying legal definition of charity) (“We do not believe that we have the power to read into the act of Congress the restriction [requirement of relief of the poor] which the . . . [Service] asks us to.”); DeForest v. Commissioner, 19 B.T.A. 595, 599 (1930) (aid to needy is not exclusive meaning of “charity”); Turnure v. Commissioner, 9 B.T.A. 871 (1927) (arguing that broad definition of charitable allows contributions to social welfare organization to be deductible); see also Slee v. Commissioner, 42 F.2d 184, 185 (2d Cir. 1930); Peters v. Commissioner, 21 T.C. 55, 59 (1953) (discussed at note 10 supra).} In doing so, the Service brought its interpretation back into line with that in

national organizations, on the one hand, and civic and social welfare organizations on the other hand.


45. See Arthur Jordan Found. v. Commissioner, 210 F.2d 885, 888 (7th Cir. 1954) (citing and applying broad definition of “charitable,” noting that “the use of funds for social advancement . . . would tend ‘to promote the well doing and well being of social man’”) (quoting Ould v. Washington Hosp. for Foundlings, 95 U.S. 303, 311 (1877)); St. Louis Union Trust Co. v. Barnet, 59 F.2d 922, 926 (8th Cir. 1932) (citing and applying broad “definition of a legal charity”); Bok v. McLaughlin, 42 F.2d 616, 618-19 (3d Cir. 1930) (pointing to several broad definitions of “charitable”); United States v. Proprietors of Social Law Library, 102 F.2d 481, 483 (1st Cir. 1939) (looking at legal meaning of charitable); Koehler v. Lowell, 44 F.2d 654, 655-56 (W.D. Pa. 1930) (applying legal definition of charity) (“We do not believe that we have the power to read into the act of Congress the restriction [requirement of relief of the poor] which the . . . [Service] asks us to.”); DeForest v. Commissioner, 19 B.T.A. 595, 599 (1930) (aid to needy is not exclusive meaning of “charity”); Turnure v. Commissioner, 9 B.T.A. 871 (1927) (arguing that broad definition of charitable allows contributions to social welfare organization to be deductible); see also Slee v. Commissioner, 42 F.2d 184, 185 (2d Cir. 1930); Peters v. Commissioner, 21 T.C. 55, 59 (1953) (discussed at note 10 supra).


Although the Service’s reasons for abandoning its narrow view of charity in 1959 are not clear, a 1958 article written by the Assistant Chief Counsel to the Internal Revenue Service is revealing. The author points to the use of charity in its legal sense and quotes from a British tax case which notes that trusts for purposes beneficial to the community “are not the less charitable . . . because incidentally they benefit the rich as well as the poor, as indeed every charity must do either directly or indirectly.” Reiling, supra note 35, at 527 (footnote omitted). Reiling rejected the narrow view — the view of the regulations at the time of his writing — as impracticable. Id. at 527.

While the Service now interprets “charitable” in its broad legal sense, it has not explicitly applied the legal concept of charity to social welfare organizations. Rather, the Service has treated “charitable” and "social welfare" as distinct concepts. See, e.g., Rev. Rul. 75-384, 1975-2 C.B. 204 (war protest organization was not charitable under the law of trusts and did not provide social welfare, since its purpose was contrary to the common good and general welfare); Rev. Rul. 74-361, 1974-2 C.B. 159 (volunteer fire department was charitable under the law of trusts and also qualified as a social welfare organization because it promoted the common good and general welfare); see also Monterey Pub. Parking Corp. v. United States, 321 F. Supp. 972, 975 (N.D. Cal. 1970), aff'd, 481 F.2d 175 (9th Cir. 1973) (Service cited trust
tended by Congress in the Tariff Act of 1913 and its predecessor statutes. 47

Since the term “charitable” as used in the 1913 act was intended to be construed in its broad sense, modern social welfare organizations should also fall within the category of charitable organizations. The purpose of social welfare organizations, namely, the “promotion of social welfare,” 49 was “charitable” under the 1913 act. 50 Current section 501(c)(3) retains the same meaning of “charitable” used in the 1913 act. 51 Therefore, a group that qualifies as a charitable organization for tax purposes has met the legal requirement.

47. See notes 29-41 supra and accompanying text. The Service's earlier construction of “charitable” had received some attention from Congress in 1924. Senator Willis noted the Service's narrow interpretation of the charitable deduction provision and proposed an amendment to override the Commissioner's determination by defining "charitable" to include certain forms of "preventive and constructive service." See 65 Cong. Rec. 8171 (1924). Other senators objected on the grounds that Senator Willis' suggestion was vague and overly broad. See id. at 8172 (statements of Sens. Smoot and Walsh). Neither the narrow nor the broad definitions of "charitable" were discussed, however, and Senator Willis eventually withdrew his amendment. See id. at 8173.

In 1932, Rep. Wolcott expressed a similar concern that "charitable" was vulnerable to narrow interpretation, and proposed to add the term "character-building" to the deduction provision. See 75 Cong. Rec. 6487 (1932) (statement of Rep. Wolcott). Another congressman objected that such an amendment would “delimit the construction of the word 'charitable.'” Id. at 6488 (statement of Rep. Stafford) (emphasis added). Rep. Wolcott was subsequently satisfied that the provision was construed broadly enough to relieve his concern, and his amendment was rejected. See id. at 6488.

48. Treas. Reg. § 1.501(c)(4)-1(a)(3)(i) (1959) states: “An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.” The first regulations defining social welfare organizations similarly stated: “Civic leagues . . . comprise those not organized for profit but operated exclusively for purposes beneficial to the community as a whole. In general, organizations engaged in promoting the welfare of mankind, other than organizations comprehended within . . . [the charitable exemption,] are included . . . .” Treas. Reg. 65, art. 519 (1924), reprinted in 11 Internal Revenue Regulations 153 (Carlton Fox Collection of the University of Michigan Law Library).

Courts generally agree with this characterization of the social welfare exemption. See People's Educ. Camp Socy. v. Commissioner, 331 F.2d 923 (2d Cir. 1964). Moreover, the legislative history does not suggest any other intended meaning. See note 40 supra.

49. I.R.C. § 501(c)(4) (1982); see also note 48 supra.

50. See notes 29-41 supra and accompanying text.

51. The language of I.R.C. § 501(c)(3) (1982) does not reveal a congressional intent to narrow the meaning of "charitable." While subsection 501(c)(3) lists several purposes in addition to a charitable purpose that qualify an organization for tax-exempt status, this does not mean that these additional purposes fall outside the meaning of "charitable." Rather, all the purposes listed in subsection 501(c)(3) are charitable. See Bob Jones Univ. v. United States, 103 S. Ct. 2017, 2026 (1983). Moreover, although the term "charitable" includes the specified purposes, it is not limited to them. See Restatement (Second) of Trusts § 368 comment b...
social welfare organization under present law should qualify as a charitable organization as well.

Yet the argument remains that Congress must have had some purpose in creating a separate class of social welfare organizations, and that this purpose may have been to exclude them from the charitable organization classification. However, no clear evidence in the legislative history of section 501 indicates a congressional intent to exclude social welfare organizations from the charitable classification. On the contrary, as detailed above, ample evidence suggests

(1959). Treas. Reg. § 1.501(c)(3)-1(d)(2) (1959) includes purposes other than relief of poverty in its definition of charitable. See note 5 supra. Likewise, the courts have recognized that "charitable" as used in subsection 501(c)(3) is not limited to relief of the poor. See Bob Jones Univ. v. United States, 639 F.2d 147, 150-51 (4th Cir. 1980), aff'd, 103 S. Ct. 2017 (1983); see also Reiling, supra note 35, at 527-28.

52. See notes 21-23 supra and accompanying text.

53. The legislative history of the social welfare exemption is inconclusive on the meaning of the term. See notes 39-41 supra and accompanying text. Some, however, have gleaned what they regard as the impetus for the exemption from portions of 1913 Senate hearings on the legislation that introduced the social welfare provision. See People's Educ. Camp Socy. v. Commissioner, 331 F.2d 923 (2d Cir. 1964); McGovern, The Exemption Provisions of Subchapter F, 29 A.B.A. TAX LAW. 523, 530 (1976). In the hearings, the United States Chamber of Commerce requested a specific exemption of "civic and commercial organizations." Briefs and Statements: Hearings on Tariff Schedules of the Revenue Act of 1913 (H.R. 3321) Before the Subcomm. of the Senate Comm. on Finance, 63d Cong., 1st Sess. 2001 (statement of E. Goodwin, General Secretary, Chamber of Commerce of the United States) [hereinafter cited as Briefs and Statements]. This statement noted that the then-proposed 1913 tariff made no specific exemption of civic and commercial organizations. Such an exemption would have been unnecessary previously, because the 1909 tariff had taxed only corporations organized for profit. The statement also noted the Chamber's belief that the charitable exemption did not cover civic and commercial organizations. In addition, the American Warehousemen's Association requested a provision similar to the Chamber's. See Briefs and Statements, supra, at 2040.

These beliefs as to the scope of "charitable," based perhaps on the interpretation of "charitable" in its popular sense, imply that the Chamber of Commerce and the American Warehousemen's Association did not consider social welfare organizations ("civic organizations") charitable. One could thus argue that in adopting the social welfare exemption, Congress accepted the narrow meaning of charitable held by these groups. The Senate Finance Committee passed the following 1913 amendment to the provision:

[The corporate income tax shall not apply (1) to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor [(2)] to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare . . . .

J. Seidman, Seidman's Legislative History of Federal Income Tax Laws: 1938-1861, at 1002 (1938). The Supreme Court has recognized these groups' statements as the impetus for the 1913 exemption of business leagues, which originated in the Senate Finance Committee and appears above as the first clause of the committee's amendment. See National Muffler Dealers Assn. v. United States, 440 U.S. 472, 478-79 (1979). Thus, that the Chamber of Commerce and the American Warehousemen's Association had referred to "civic" and "business" organizations is significant considering the language of the Committee's amendment.

Nonetheless, the possibility that these groups spurred the addition of the social welfare exemption does not necessarily mean that Congress adopted a narrow view of "charity," because the statements of the groups did not clearly adopt that narrow view. It is more likely that the groups were referring to charity in its broad legal sense. Their statements focused on the "commercial advancement," "trade and commerce," and business "membership" attributes of business organizations. See Briefs and Statements, supra, at 2002. These statements
that Congress meant to include groups whose aim is the “promotion of social welfare” within the category of tax-exempt charitable organizations.54

Furthermore, given that Congress intended all along that social welfare organizations be included within the class of charitable organizations, no need exists for a separate provision to make contributions to social welfare organizations tax deductible because such contributions should be deductible under the provision pertaining to charitable organizations.55 Hence, the absence of a specific provision granting a tax deduction for contributions to social welfare organizations does not imply that Congress sought to distinguish these organizations from charitable ones or felt them less beneficial to the public.56 They are charitable organizations.

displayed a concern for an exemption for business organizations, understandable given the business nature of both the Chamber of Commerce and the American Warehousemen’s Association. The business groups were correct in their view that these organizations were not charitable and thus did not qualify under the already-existing charitable exemption; business leagues and chambers of commerce generally are not charitable in the law of trusts because they operate for the benefit of their members. See 4 A. Scott, supra note 38, § 375.2, at 2957-58 (3d ed. 1967); see also Rev. Rul. 78-132, 1978-1 C.B. 157; Rev. Rul. 74-553, 1974-2 C.B. 168. However, the groups were incorrect in assuming that social welfare organizations (“civic organizations”) were also not charitable for the same reason. Although no organization operating for private benefit may be charitable, see notes 68-77 infra and accompanying text, social welfare organizations must operate for public, as opposed to private, benefit. See note 17 supra. Thus, the statements by the Chamber of Commerce and the American Warehousemen’s Association could have confused Congress by incorrectly associating civic organizations, operated for public benefit, with business organizations, operated for private benefit. This would explain the existence of a separate exemption provision for social welfare organizations, despite their charitable nature. In any event, no clear statement that Congress meant to exclude social welfare organizations from the category of charitable organizations can be gleaned from the legislative record.

54. See notes 29-51 supra and accompanying text.
55. See I.R.C. § 170 (1982); see also note 34 supra.
56. An examination of earlier legislation that granted charitable deductions does not reveal a congressional intent to exclude social welfare organizations from receiving this benefit. The War Revenue Act of 1917, ch. 63, § 1201(2), 40 Stat. 300, 330, enabled individuals to deduct contributions to charitable organizations as a war measure. The language of the provision closely paralleled that of the charitable exemption, which this Note argues included social welfare organizations, see notes 29-41 supra and accompanying text, and it was construed accordingly. See Treas. Reg. 45, Art. 251, T.D. 3146 (1920 ed.), reprinted in 8 INTERNAL REVENUE REGULATIONS 100 (Carlton Fox Collection of the University of Michigan Law Library). Corporations became eligible for charitable deductions in 1935. See Revenue Act of 1935, Ch. 29, § 102(c), 49 Stat. 1014, 1016. No explicit reference to social welfare organizations accompanied either the War Revenue Act of 1917 or the Revenue Act of 1935. Thus, Congress did not attempt explicitly to exclude them from the group of charitable organizations benefited by these later acts. Moreover, the argument that Congress implicitly denied eligibility for deductible contributions to social welfare organizations in the 1917 and 1935 acts is not supportable. The social welfare exemption had no defined meaning when the 1917 act was passed. See notes 39-41 supra and accompanying text. Given this, Congress could not have implicitly denied social welfare organizations the benefit of the 1917 act because what type of organizations were social welfare ones was not clear at the time. Further, Congress merely used the language in the individual deduction provision in adopting the corporate deduction provision contained in the 1935 act. In doing so, it does not appear that Congress intended that this new provision be interpreted under the Service’s then-existing regulations, which included a narrow interpreta-
B. The Arbitrary Results Produced by the Service’s Distinction

As noted earlier, the Service apparently distinguishes between charitable organizations and social welfare organizations based on the number of community benefits that each type of organization generates.\(^{57}\) Such a distinction leads to arbitrary results for two reasons. First, Congress has not set out any guidelines for distinguishing the two organizations\(^{58}\) and no characteristics of the organizations themselves suggest a workable basis for such a distinction.\(^{59}\) Second, attempts to quantify community benefits are doomed to fail because such benefits are inherently unquantifiable.\(^{60}\)

\(^{57}\) See notes 43-44 supra. The position of many courts on the meaning of “charitable” in 1935 was opposed to that of the Service. See note 45 supra. It is not possible to determine which of the two views, if either, Congress implicitly adopted in the 1935 act.

In short, the issue whether or not a distinction exists between charitable and social welfare organizations arises only because of the existence of separate exemption provisions for each type of organization in the Code. See I.R.C. § 501(c)(3)-(4) (1982). No other plausible reason can be found in the legislative history of the exemption and deduction provisions pertaining to these two types of organizations to exclude social welfare organizations from the general category of charitable organizations. See notes 52-54 supra and accompanying text.

\(^{58}\) Congress has not expressed any judgment on the degree, if any, to which charitable activities are more beneficial than social welfare activities. See I.R.C. § 501(c)(3)-(4) (1982); notes 29-51 supra and accompanying text. The argument made by this Note, of course, is that social welfare activities are a form of charitable activities.

\(^{59}\) One commentator states: “[T]he specific criteria to be utilized in distinguishing . . . [a] social welfare organization from . . . [a] charitable organization that promotes social welfare are unclear.” 2 S. WEITHORN, TAX TECHNIQUES FOR FOUNDATIONS AND OTHER EXEMPT ORGANIZATIONS § 5.06, at 5-129 (1980). See also Treas. Reg. §§ 1.501(c)(3)-1(d)(2); 1.501(c)(4)-1(a)(2)(i) (1959) (“charitable” and “social welfare” defined by reference to one another); Rev. Rul. 74-361, 1974-2 C.B. 159 (same organization may simultaneously qualify under both I.R.C. 501(c)(3) and 501(c)(4) (1982)); B. HOPKINS, supra note 1, at 255-56 (“[T]he concepts of what is ‘charitable’ and what constitutes ‘social welfare’ can be very much alike.”); Bittker & Rahlert, supra note 8, at 346-48; Chester, The Charitable Foundation in Wisconsin, 43 MARQ. L. REV. 301, 305 (1960).

\(^{60}\) In Treas. Reg. § 1.501(c)(3)-1(d)(2) (1959), quoted at note 5 supra, the Service set out a list of categories that constitute charitable purposes. If an activity falls into one of these categories, it presumably generates the greater number of benefits that the Service apparently requires for charitable organizations. See notes 18-19 supra and accompanying text. Such a quantification approach to distinguishing between charitable and social welfare organizations, however, is made impracticable by the amorphous character of charitable purposes:

A purpose is charitable if its accomplishment is of such social interest to the community as to justify permitting the property to be devoted to the purpose in perpetuity. There is no fixed standard to determine what purposes are of such social interest to the community; the interests of the community vary with time and place.

RESTATEMENT (SECOND) OF TRUSTS § 368, comment b (1959). Given that “no fixed standard” exists whereby to determine that a purpose rises to the level of charitable, attempts by the Service to distinguish between charitable and social welfare organizations based on the amount of community benefits generated by each inevitably lead to arbitrary and unpredictable results.

In apparent recognition of the difficulty of arriving at a precise definition of charitable purposes, Treas. Reg. § 1.501(c)(3)-1(d)(2) (1959) states that the list of charitable purposes it contains is not exclusive. See note 5 supra; cf. Rev. Rul. 80-200, 1980-2 C.B. 173 (charitable includes care of orphans); Rev. Rul. 76-204, 1976-1 C.B. 152 (preservation of the environment is charitable).
The Service's treatment of specific charitable organizations under subsection 501(c)(3) contrasts with the quantification approach presumably used to distinguish social welfare organizations under subsection 501(c)(4). When deciding whether or not an organization promotes a purpose explicitly recognized as "charitable" under subsection 501(c)(3), such as education or the prevention of cruelty to children, the Service does not try to quantify the benefit to the community. Instead, it simply examines the characteristics and functions of the organization to make this determination. How much knowledge the organization's activities convey or how many children they protect is irrelevant. Attempts to quantify such benefits would be administratively unfeasible.

Indeed, the Service's apparent attempts to quantify such benefits in determining whether or not a social welfare organization qualifies as charitable illustrate the weakness of such an approach. As outlined earlier, no consistent pattern appears in the Service's decisions. This state of affairs leaves one to speculate as to the criteria that the Service uses, makes the Service's decisions appear arbitrary, and does not give the predictability that the tax law should provide.

III. A SUPERIOR APPROACH: RECOGNIZING SOCIAL WELFARE ORGANIZATIONS AS CHARITABLE UNDER § 501(c)(3)

A. A Proposed Method of Classification

The Service and courts should abandon any attempt to distinguish social welfare organizations from charitable organizations by quantifying the community benefits produced by each type of organization. Rather, they should recognize social welfare organizations as charitable under subsection 501(c)(3), which would make such organizations eligible to receive deductible contributions. To achieve

61. I.R.C. § 501(c)(3) (1982) explicitly recognizes the following purposes as charitable: religious; scientific; testing for public safety; literary; educational; national or international amateur sports competition; prevention of cruelty to children or animals. See note 2 supra.

62. See I.R.C. § 501(c)(3) (1982); see also Rev. Rul. 67-291, 1967-2 C.B. 184 (organization that subsidized a training table for coaches and athletes of a university's athletic teams is charitable under § 501(c)(3) because it thereby furthers the school's educational program); Rev. Rul. 66-178, 1966-1 C.B. 138 (organization sponsoring an art exhibit falls within subsection 501(c)(3) as a charitable or educational organization).

63. See I.R.C. § 501(c)(3) (1982); see also Rev. Rul. 67-151, 1967-1 C.B. 134 (organization to protect working children comes within subsection 501(c)(3)).

64. Even if an organization operates for one of the charitable purposes specified in I.R.C. § 501(c)(3) (1982), see note 61 supra, to qualify as charitable it must not be conducted for private gain. See note 17 supra and accompanying text.

65. See notes 13-16 supra and accompanying text.

66. See notes 18-19 supra and accompanying text.

67. That is, except for "political" social welfare organizations, or "action organizations," which would not qualify for charitable status. See note 4 supra; notes 84-87 infra and accompanying text.
recognition as a social welfare and thus charitable organization under the approach this Note suggests, however, an organization (1) must not operate for private gain, and (2) must benefit the community in some way.

The prohibition on operation for private gain\textsuperscript{68} has been consistently enforced by the Service\textsuperscript{69} and courts.\textsuperscript{70} One commentator has

\begin{itemize}
  \item \textbf{B. Hopkins, supra note 1, at 159 (footnote omitted).} \textit{See generally id.} at 158-76.
  \item \textit{While the focus of the private-inurement restriction is thus transactional, that of the private-gain prohibition is more general: it concerns whether or not the motive for conducting the activity in question is to serve the private interests of the organizers. \textit{See id.} at 49. An activity is conducted for private interests when its benefits — monetary or otherwise — are intended to accrue primarily to the organizers rather than the public-at-large. \textit{See 4 A. Scott, supra note 38, § 376, at 2971-72.}
  \item The differing aims of the private-inurement restriction and the private-gain prohibition are significant with respect to organizations exempted under a provision other than subsection 501(c)(6). For example, although business leagues and chambers of commerce will be denied exemption under subsection 501(c)(6) when private inurement exists, see I.R.C. § 501(c)(6) (1982), organization for private gain does not generally preclude exemption under this provision. \textit{See Rev. Rul. 74-553, 1974-2 C.B. 168; Bittker & Rahdert, supra note 8, at 302 ("[O]ther exempt organizations (such as chambers of commerce, consumer cooperative societies, and labor unions) are operated primarily for the economic benefit of their members."). But see National Muffler Dealers Assn. v. United States, 440 U.S. 472 (1978) (muffler dealers association not exempt as a business league because it served dealers of only one manufacturer in an industry). However, because such organizations do operate for the private gain of their members, they are not eligible for charitable status. \textit{See, e.g., Rev. Rul. 74-553, 1974-2 C.B. 168 (medical peer review board exempt under § 501(c)(6) but not under § 501(c)(3)); see also 4 A. Scott, supra note 38, § 375.2, at 2957-61.}
  \item \textbf{68. See Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959).} This regulation provides that an organization is not charitable "unless it serves a public rather than a private interest" and that the organization must "establish that it is not organized or operated for the benefit of private interests." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959); \textit{see also} note 17 supra and accompanying text. The private-gain prohibition is also clearly established in the law of charitable trusts, \textit{see} \textit{Restatement (Second) of Trusts} § 376 (1959); 4 A. Scott, supra note 38, § 376, which is often applied in tax cases. \textit{See, e.g.,} Green v. Connally, 330 F. Supp. 1150, 1158 (D.D.C. 1971), \textit{affd. sub nom.} Coit v. Green, 404 U.S. 997 (1971); Northern Cal. Cent. Serv. v. United States, 591 F.2d 620, 626 (Ct. Cl. 1979); Rev. Rul. 76-204, 1976-1 C.B. 152; Rev. Rul. 67-325, 1967-2 C.B. 113. Reference to trust law to construe "charitable" is proper where this term is used in its legal sense. \textit{See notes 35-38 supra and accompanying text.}
  \item \textbf{69. See} \textit{Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959). This regulation provides that an organization is not charitable "unless it serves a public rather than a private interest" and that the organization must "establish that it is not organized or operated for the benefit of private interests." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959); \textit{see also} note 17 supra and accompanying text. The private-gain prohibition is also clearly established in the law of charitable trusts, \textit{see} \textit{Restatement (Second) of Trusts} § 376 (1959); 4 A. Scott, supra note 38, § 376, which is often applied in tax cases. \textit{See, e.g.,} Green v. Connally, 330 F. Supp. 1150, 1158 (D.D.C. 1971), \textit{affd. sub nom.} Coit v. Green, 404 U.S. 997 (1971); Northern Cal. Cent. Serv. v. United States, 591 F.2d 620, 626 (Ct. Cl. 1979); Rev. Rul. 76-204, 1976-1 C.B. 152; Rev. Rul. 67-325, 1967-2 C.B. 113. Reference to trust law to construe "charitable" is proper where this term is used in its legal sense. \textit{See notes 35-38 supra and accompanying text.}
  \item \textbf{70. See, e.g.,} Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924); Industrial Addition Assn. v. Commissioner, 149 F.2d 294 (6th Cir. 1945); Virginia Professional Standards Review Found. v. Blumenthal, 466 F. Supp. 1164, 1173 (D.D.C. 1979) (benefits to participants in organization for self-regulation are incidental to broad charitable purpose and,
succinctly summarized this prohibition as follows: "If an undertaking is conducted for private profit, it is not charitable. This is true although the purposes are such that, if it were not conducted for private profit, it would be charitable." 71 The rationale for the private-gain prohibition follows from the tax policies underlying deductibility of contributions and tax-exempt status. The right to receive deductible contributions and the grant of tax-exempt status provide incentives for organizations to engage in beneficial activities for which insufficient market incentives exist. 72 Where the private gain from an activity is great enough, such additional incentives provided by the tax law are not necessary to induce people to engage in it. Private entities will still conduct the activity for private gain, and the activity will still generate community benefits without public subsidization through the tax law. 73

Nonetheless, some benefit to persons who operate a charitable organization is inevitable, since, as members of the community, they will enjoy the community benefits produced by the organization's activities along with everyone else. 74 However, the private-gain prohibition is still administratively feasible. The fact-finder need not delve into the minds of the organizers to determine whether these persons are acting philanthropically or selfishly. 75 Instead, the

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71. 4 A. Scarr, supra note 38, § 376, at 2965.
72. See notes 92-94 infra and accompanying text.
73. Compare Rev. Rul. 80-301, 1980-2 C.B. 181, with Rev. Rul. 80-302, 1980-2 C.B. 182. Rev. Rul. 80-301 declared that a genealogical society with open membership is charitable because it educates the public. In Rev. Rul. 80-302, a similar organization that limited its scope to a particular family was denied charitable status, because the primary benefit was to private interests. People are educated in both cases, which is a recognized charitable purpose. In the latter ruling, however, the family would be likely to pursue the activity for its own education without public support through the tax law.

An organization operating for the mutual benefit of its members that is denied charitable status may still be eligible for tax exemption under another Code provision. For a discussion of mutual benefit organizations, see note 105 infra.

74. See, e.g., Ottawa Silica Co. v. United States, 82-1 U.S. Tax Cas. (CCH) ¶ 9308, at 83780 (Ct. Cl. 1982) ("Those benefits that inure to the general public from charitable contributions are incidental to the contribution, and the donor, as a member of the general public, may receive them."); Dumaine Farms v. Commissioner, 73 T.C. 650, 670-71 (1980) (benefits to settlor of scientific and educational trust same as those available to the general public).
75. See Bittker & Rahdert, supra note 8, at 305 n.15.
factfinder should compare the benefits that the organizers receive with those that the community-at-large receives. If the organizers receive benefits substantially greater than, or significantly different from, the benefits accruing to the community-at-large, strong evidence exists that the activity violates the private-gain prohibition. 76

The second criterion that must be met before an entity can be considered a social welfare and thus charitable organization, namely, that the entity’s activities benefit the community in some

76. Some courts and the Service have disagreed over exactly what extrinsic evidence indicates that those responsible for the operation of an organization have received substantially greater or different benefits from the public-at-large. In Eden Hall Farm v. United States, 389 F. Supp. 858 (W.D. Pa. 1975), the Service contended that a trust fund created under the will of a former employee of the H.J. Heinz Company, for the purpose of operating a recreational facility, was not a social welfare organization. The Service pointed to Heinz corporation involvement in trust administration and to statistics showing that 80% of those who used the facility were Heinz employees, factors the Service said suggested that the trust operated for private purposes. See Rev. Rul. 80-205, 1980-2 C.B. 184, 185 (Service non-acquiescence in Eden Hall). The court rejected the Service’s contentions and approved social welfare status. It noted that “there is no evidence of domination, control or management by the Heinz Company,” 389 F. Supp. at 863, and that the limited invitational procedure to select beneficiaries of the facility had a valid purpose. 389 F. Supp. at 866.

In Monterey Public Parking Corp. v. United States, 321 F.Supp. 972 (N.D. Cal. 1970), aff’d., 481 F.2d 175 (9th Cir. 1973), the court upheld charitable and social welfare status for a corporation operating a parking facility that served a commercial area of the community. The government argued against charitable status, claiming that the activity was conducted for private purposes. 321 F. Supp. at 975. The government also objected to social welfare status, claiming that “‘carrying on a business with the general public in a manner similar to organizations organized for profit’” precluded exemption. 321 F. Supp. at 974 (quoting Treas. Reg. §1.501(c)(4)-1 (1959)). The government pointed to special privileges granted to businesses that supported the activity as evidence of private purposes. 321 F. Supp. at 974. The court acknowledged that the same concern underlies both I.R.C. §501(c)(3) and (4) (1982). It stated: [If] this Court were convinced that plaintiff’s organizers, by giving themselves special advertising rights, or by restricting the validation stamp system to certain businesses, were in fact primarily interested in their own ends rather than in those of the public, exemption under neither (c)(4) nor (c)(3) would be possible.
389 F. Supp. at 975. Thus, the court rejected the evidence of private motive offered by the government, noting that the privileges were available to nonorganizers of the corporation as well as the organization that had arranged and financed the corporation. The court found: Plaintiff’s organizers were also undeniably benefited. But this benefit is indistinguishable from that which inhered to the community as a whole. . . .

Plaintiff has none of the indicia by which Courts have exposed bad faith attempts to take advantage of § 501: no dividends for private persons, no under the table distributions of assets, no advertising advantages or special prices for a privileged few. The business activity itself is similar to that which others engage in for private profit, but it is not carried on in the same manner; it is carried on only because it is necessary for the attainment of an undeniably public end.

For examples of cases where an examination of the objective evidence revealed self-interest, see Ottawa Silica Co. v. United States, 82-1 U.S. Tax Cas. (CCH) § 9308, at 83780 (Ct. Cl. 1982) (court found that benefits from a taxpayer’s contribution of land “were substantial enough to provide [taxpayer] with a quid pro quo for the transfer and thus effectively destroyed the charitable nature of the transfer.”); Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 793, 805 (1982) (copyright servicing center denied charitable status since “there is little persuasive evidence that petitioner’s founders had interests of any substance beyond the creation of a device to protect their copyright ownership and collect license fees”).
way,\textsuperscript{77} derives from the legal meaning of "charity."\textsuperscript{78} Current law conditions classification as a social welfare or charitable organization on some showing of benefit to the community.\textsuperscript{79} Under the approach proposed here, however, no attempt would be made to classify an entity as either a social welfare or charitable organization based on the amount of community benefits that it produced.\textsuperscript{80} The community-benefit requirement suggested by this Note recognizes that benefits to the community cannot be quantified.\textsuperscript{81} Therefore, it simply requires some showing that the activity in question generates net social benefits as opposed to net social costs and, relatedly, does not operate for a purpose contrary to public policy.\textsuperscript{82} Groups that operated "for the promotion of social welfare"\textsuperscript{83} and satisfied this community-benefit requirement as well as the private-gain prohibition would qualify as social welfare organizations, and hence charitable organizations as well.

The abolition of the distinction between charitable and social welfare organizations proposed here would not render subsection

\textsuperscript{77} Note that the community-benefit requirement is entirely distinct from the private-gain prohibition. See Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037, 1042 (1978) (rejecting contention that private purpose must be weighed against the public benefits derived therefrom; substantial private purpose alone disqualifies). \textit{Cf.} Rev. Rul. 81-116, 1981-1 C.B. 333 (parking facility that granted "participating merchants" special benefits was not operated exclusively for public purposes; it served participating merchants' private interests).

The courts' treatment of charitable contributions also illustrates that the requirement of community benefit is not a factor in the private purpose determination. \textit{See, e.g.}, Ottawa Silica Co v. United States, 82-1 U.S. Tax Cas. (CCH) ¶ 9308, at 83780 (Ct. Cl. 1982) (taxpayer denied charitable deduction for donation of land for a public high school where court found donation was made in anticipation of benefits to taxpayer from construction of school; "a contribution made to a charity is not made for public purposes if the donor receives, or anticipates receiving, a substantial benefit in return").

\textsuperscript{78} See notes 35-38 supra and accompanying text.

\textsuperscript{79} See note 18 supra.

\textsuperscript{80} See notes 18-19 supra and accompanying text. Under the approach suggested here, the organization denied charitable status in Rev. Rul. 78-384, 1978-2 C.B. 174, discussed at note 19 supra, would not be denied such status on the ground that it generated 	extit{insufficient} benefits to the community, so long as it did produce community benefits. The possibility exists, however, that this organization could still be denied charitable status through operation of the private-gain prohibition.

\textsuperscript{81} See notes 57-65 supra and accompanying text.

\textsuperscript{82} A corollary to the public benefit principle is the requirement, long recognized in the law of trusts, that the purpose of a charitable trust may not be illegal or violate established public policy. \ldots \ [A]n institution must fall within a category specified \ldots and must demonstrably serve and be in harmony with the public interest." Bob Jones Univ. v. United States, 103 S. Ct. 2017, 2028, 2029 (1983) (holding that universities with racially discriminatory admissions policies may be denied charitable status). Where an organization is organized or operated for purposes contrary to public policy, the organization generates net social costs rather than net social benefits and should be denied charitable status. \textit{See, e.g.}, Rev. Rul. 75-384, 1975-2 C.B. 204 (peace organization that advocated civil disobedience to protest war denied charitable and social welfare status); Rev. Rul. 67-325, 1967-2 C.B. 113 (organization providing free recreational facilities but with race restriction denied charitable and social welfare status).

\textsuperscript{83} I.R.C. § 501(c)(4) (1982).
501(c)(4) meaningless, however. Even if social welfare organizations were recognized as charitable under subsection 501(c)(3), subsection 501(c)(4) would continue to exempt "action organizations" from tax taxing. "Action organizations" are social welfare organizations that attempt to influence legislation, and therefore do not qualify for the tax exemption for charitable organizations provided by subsection 501(c)(3). Thus, subsection 501(c)(4) would continue to exempt some organizations not covered under 501(c)(3), which may be its only congressionally recognized function. In any event, the Service should not deny charitable status to social welfare organizations in light of the ample evidence that Congress intended that they be included within the charitable category.

B. Advantages of the Proposal

1. Elimination of Arbitrary Results

Under the proposed approach, the Service and courts would employ two concepts, the private-gain prohibition and the community-benefit requirement, that they already use in classifying social welfare and charitable organizations. The proposed approach recognizes, however, that all social welfare organizations should come under the category of charitable organizations as well. The distinction between the two types of organizations that the Service presum-


87. Although it is unclear why Congress originally added the exemption for social welfare organizations contained in subsection 501(c)(4), see notes 39-41 supra and accompanying text, Congress has since clearly recognized the role of this provision in providing a tax exemption for action organizations, which cannot qualify for charitable status. See note 4 supra. This congressional recognition is apparent in the enactment of other Code provisions that limit the circumstances where action organizations may claim exemption under subsection 501(c)(4). I.R.C. § 501(h) (1982) denies charitable status to organizations that make expenditures on political lobbying in excess of a certain amount. Further, I.R.C. § 504 (1982) prevents an organization that has lost its charitable exemption under subsection 501(c)(3) due to substantial lobbying from thereafter claiming an exemption as a social welfare organization under subsection 501(c)(4). A 1976 Senate report discussing the addition of these provisions refers twice to the current regulations under subsection 501(c)(4), which are discussed at note 4 supra. See S. REP. No. 938 (Pt. II), 94th Cong., 2d Sess. 80 n.1, 83, reprinted in 1976 U.S. CODE CONG. & AD. NEWS 4030, 4105, 4107-08. According to the report, Congress passed section 504 to prevent a charitable organization from building up an endowment financed out of deductible contributions before operating as a lobbying organization under subsection 501(c)(4) (1976), an abuse that the prior regulations had allowed. See id. at 83, 1976 U.S. CODE CONG. & AD. NEWS at 4107-08.

88. See notes 29-41 supra and accompanying text.

89. See notes 17-19, 69-70, & 77 supra and accompanying text.

90. That is, except for "political" social welfare organizations, i.e., "action organizations." See notes 4 & 84-87 supra and accompanying text.
ably now makes on the basis of the amount of community benefits produced by each leads to arbitrary and unpredictable results in classification. 91 Replacement of the Service's apparent quantification approach with a simple requirement that an organization's activities benefit the community would eliminate these arbitrary and unpredictable results.

2. Increase in the Social Advantages That Justify Deductible Contributions

This Note's proposal would further the policies that led Congress to encourage the formation and conduct of charitable organizations. The existence of such organizations is considered desirable for two reasons. First, activities of charitable organizations generate benefits for the community. In the absence of these organizations, either the government would have to conduct these activities to generate such benefits or the community would go without them. Second, the existence of numerous private charitable organizations fosters pluralism, widespread voluntary participation, and decentralized decisionmaking.

Congress supports charitable organizations and helps realize these goals by exempting such organizations from taxation and allowing donors to deduct contributions to such organizations. This government backing encourages the private sector to form additional charitable organizations or expand those already in existence. In either event, the result is that more charitable activities are conducted by private organizations. To the extent that such activities had not been previously conducted, government support of charitable organizations generates greater benefits for the community. 92 Moreover, charitable activities conducted by private organizations may displace a governmental agency that had provided similar serv-

91. See notes 57-65 supra and accompanying text.

92. In a recent case, the Supreme Court noted that through making contributions to charitable organizations deductible, "Congress sought...to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind." Bob Jones Univ. v. United States, 103 S. Ct. 2017, 2026 (1983); see also M. CHIRELSTEIN, supra note 8, ¶ 7.01, at 142 ("[I]t might be expected that, unless deductible, charitable gifts would shrink to offset a portion of the donor's tax liabilities, and the scope of philanthropic activities would necessarily contract."). With respect to tax exemptions for charitable organizations, the Court observed: "Charitable exemptions are justified on the basis that the exempt entity confers a public benefit—a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues." 103 S. Ct. at 2028.

In addition, a congressional report discussing the deduction provision noted that "the Government is compensated for the loss of [tax] revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the promotion of the general welfare." H.R. REP. No. 1860, 75th Cong., 3d Sess. 19 (1938).

See also Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924); St. Louis Union Trust Co. v. United States, 374 F.2d 427, 432 (8th Cir. 1967).
ices. In these ways, government support of charitable organizations through the tax law fosters pluralism, voluntarism, and decentralized decisionmaking.

Any organization that satisfies the two criteria for charitable status proposed by this Note would further these policies. First, the private-gain prohibition ensures that charitable organizations conduct activities that the private sector might not otherwise provide. If an activity is sufficiently profitable to induce persons to engage in it without government support, the private-gain prohibition should prevent an organization conducting that activity from attaining charitable status. The private-gain prohibition thus focuses the government support provided by the tax law on those organizations that might not exist without it, and in this way encourages diversity and voluntary participation. Second, the community-benefit requirement motivates organizations to respond to the particular needs of a community. This criterion thereby inspires innovative, decentral-

93. See note 92 supra. In addition, Hopkins notes:

Clearly then, the exemption for charitable organizations is a derivative of the concept that they perform functions which, in the organizations' absence, government would have to perform; therefore, government is willing to forego the otherwise tax revenues in return for the public services rendered.

B. Hopkins, supra note 1, at 5. Recently, Congress expressed a similar sentiment when it explained its passage of the charitable deduction for non-itemizers contained in I.R.C. § 170(i) (1982):

The Congress believed that allowing a charitable deduction to non-itemizers stimulates charitable giving, thereby providing more funds for worthwhile nonprofit organizations, many of which provide services that otherwise might have to be provided by the Federal Government.


94. In his concurring opinion in Bob Jones Univ. v. United States, 103 S. Ct. 2017 (1983), Justice Powell alluded to "the important role played by tax exemptions in encouraging diverse, indeed often sharply conflicting, activities and viewpoints." 103 S. Ct. at 2038 (Powell, J., concurring). "[T]he provision of tax exemptions to nonprofit groups is one indispensable means of limiting the influence of governmental orthodoxy on important areas of community life." 103 S. Ct. at 2038 (Powell, J., concurring) (footnote omitted). See also B. Hopkins, supra note 1, at 6-8; Rainey & Henshaw, supra note 13, at 240 (Private decisionmaking provides 'innovative, creative, involvement in areas as yet too sensitive for government exploration.'). Specifically, Hopkins observes:

Charitable organizations are regarded as fostering voluntarism and pluralism in the American social order. That is, society is regarded as benefiting not only from the application of private wealth to specific purposes in the public interest but also from the variety of choices made by individual philanthropists as to which activities to further. This decentralized choice-making is arguably more efficient and responsive to public needs than the cumbersome and less flexible allocation process of government administration.

B. Hopkins, supra note 1, at 7 (citations omitted).

95. See notes 68-73 supra and accompanying text.

96. See notes 92-94 supra and accompanying text.

97. For example, the tax breaks afforded by charitable status may encourage the formation of a credit counseling service that, among other activities, provides aid to the non-poor. See Consumer Credit Counseling Serv., Inc. v. United States, 78-2 U.S. Tax Cas. (CCH) ¶ 9660 (D.D.C. 1978). The court here held that a credit counseling service was charitable. The Service had considered this activity worthy only of social welfare status. See Rev. Rul. 65-299,
ized decisionmaking, and enhances the prospects for pluralistic input in addressing a community's problems.

Because the approach advocated by this Note recognizes social welfare organizations as charitable, greater community benefits would flow from activities encouraged by the deductibility of charitable contributions.\textsuperscript{98} Since social welfare organizations satisfy the private-gain prohibition\textsuperscript{99} and meet the community-benefit test even under the current approach apparently followed by the Service,\textsuperscript{100} their existence serves the goals of pluralism, voluntarism, and decentralized decisionmaking like that of any charitable organization.\textsuperscript{101} By denying social welfare organizations charitable status, the Service causes the public to forego the additional benefits that social welfare organizations as a whole would produce if they, like charitable organizations, could receive deductible contributions. Extension of the deduction provision to social welfare organizations would result in the expansion of these organizations' current activities or lead to the formation of new social welfare organizations. This Note's proposal seeks to provide communities with the additional benefits that greater social welfare organization activity would generate by granting such organizations charitable status and thus making them eligible to receive deductible contributions.

Finally, the proposal set forth here should guarantee that only those organizations for which deductibility is appropriate would qualify as charitable. The private-gain prohibition would continue to exclude from charitable status those organizations that conduct activities for private benefit. Among the organizations disqualified from charitable status by the private-gain prohibition are many that subsection 501(c) already exempts from taxation, such as business leagues,\textsuperscript{102} labor organizations,\textsuperscript{103} and social clubs.\textsuperscript{104} Although Congress has granted tax exemptions to these organizations, such exemptions rest on policies different from the reasons underlying tax exemption and deductible contributions for charitable organizations.\textsuperscript{105} Making contributions to non-charitable organizations de-

\textsuperscript{98} See notes 92-93 supra and accompanying text.
\textsuperscript{99} See note 17 supra and accompanying text.
\textsuperscript{100} See notes 18-19 supra and accompanying text.
\textsuperscript{101} See note 94 supra and accompanying text.
\textsuperscript{102} See I.R.C. § 501(c)(6) (1982).
\textsuperscript{103} See I.R.C. § 501(c)(5) (1982).
\textsuperscript{104} See I.R.C. § 501(c)(7) (1982).
\textsuperscript{105} Charitable and social welfare organizations, exempt from taxation under subsections 501(c)(3) and (4), are both "public service" organizations. See Bittker & Rahdert, supra note
ductible is not necessary to encourage the operation of such organizations, even though their activities may be beneficial to the community. Sufficient private incentive already exists to encourage the operation of such organizations, and further government support through the tax law would be a windfall.

CONCLUSION

Despite opposition from the courts, the Service continues to distinguish between charitable and social welfare organizations under subsections 501(c)(3) and (4) of the Code. An examination of the legislative history of the statutory predecessors of these current provisions, however, reveals that the separate enumeration of the two organizations was not intended to exclude social welfare organizations from the charitable category. Moreover, the Service’s attempts to draw such a distinction have failed, leading to arbitrary and unpredictable outcomes in classification. Therefore, the Service should recognize social welfare organizations as charitable, since such organizations, like charitable organizations, by definition do not operate for private gain and do benefit the community in some way. This approach would eliminate the unhappy results now produced by the Service’s attempts to distinguish between social welfare and charitable organizations, and would further the policies of pluralism, volun-

8, at 305. These public service organizations are distinct from other organizations exempted from taxation under subsection 501(c), such as business leagues, labor organizations, and social clubs, which are termed “mutual benefit” organizations. See Bittker & Rahdert, supra note 8, at 306; see also Rev. Rul. 75-199, 1975-1 C.B. 160 (social welfare organizations distinguished from mutual benefit organizations).

Public service organizations “serve the interests of society in a broad sense, ordinarily without economic benefit to their organizers or benefactors.” Bittker & Rahdert, supra note 8, at 302. They are exempt from income taxation because they “do not realize ‘income’ in the ordinary sense of that term[,] so there is no satisfactory way to fit the tax rate to the ability of the beneficiaries to pay.” Id. at 305. The category of public service organizations includes only subsection 501(c)(3) charitable organizations and subsection 501(c)(4) social welfare organizations and political parties. See id. at 305.

Mutual benefit organizations, unlike public service organizations, operate primarily for the economic benefit of their members. These organizations “are ‘nonprofit’ only in the limited sense that they do not engage in business with the general public for the benefit of investors” in the organization. Bittker & Rahdert, supra note 8, at 302 (footnote omitted). Thus, the private-gain prohibition does not apply to mutual benefit organizations. See note 68 supra. As a result, mutual benefit organizations, unlike public service organizations, do not further the tax policies underlying deductible contributions. See notes 95-96 supra and accompanying text. The benefits provided to the members of such an organization provide sufficient incentive for the operation of the organization, so deductible contributions are not necessary to the organization’s continued existence. Thus, this Note recognizes that mutual benefit organizations should not be eligible for deductible contributions. In addition, tax exemption for these organizations is grounded on considerations different from those underlying exemption of public service organizations. For an explanation of these considerations, see Bittker & Rahdert, supra note 8, at 348-55; B. Hopkins, supra note 1, at 14-15.

For some examples of mutual benefit organizations, see Rev. Rul. 74-553, 1974-2 C.B. 168 (medical association peer review board qualifies as subsection 501(c)(6) business league); Rev. Rul. 69-632, 1969-2 C.B. 120 (industry research association qualifies as subsection 501(c)(6) business league).
tarism, and decentralized decisionmaking encouraged by the special tax advantages accorded charitable organizations.