

Eastern Division



Patrol Finances & Expenditures

A Common Sense Guideline
for Operating Under
Section 501(c)(3) of the US Tax Code

March 5, 2007

EASTERN DIVISION NATIONAL SKI PATROL

GUIDELINES FOR MANAGING MONEY AND PROPERTY OWNED BY SKI PATROLS AS "EXEMPT ORGANIZATIONS"

SECTION I. PRELIMINARY CONSIDERATIONS.

A. **Why This is Written.** A few exempt organizations use their status to evade taxes by ignoring their charitable mission and embarking on profit-making activity or personal enrichment. Usually the activity is inadvertent, sometimes – and worst of all – intentional. The IRS will sanction this conduct by suspending or revoking the exemption or by civil or even criminal penalties. Because the National Ski Patrol operates as an exempt organization it is careful to stay within the IRS guidelines. It expects its sub-units to follow suit. This is prepared to help patrols and Regions of the Eastern Division protect the exemption.

B. **Applicability** This policy statement applies only to individual ski patrols and Regions within the Division. All patrols and Regions derive a valid exemption under Section 501(c) (3) of the Internal Revenue Code from National and are exempt from taxation on their revenues and operating expenditures. Donors to a patrol or a Region may deduct such contributions from their tax returns. These patrols and Regions will sometimes be called "Exempt Organizations" in this policy statement.

C. **What organizations are exempt?** Every existing volunteer ski patrol organized under the Federal Charter of the National Ski Patrol is exempt as a derivative organization. Some patrols or Regions have separately incorporated and obtained their own exemption. This is redundant, and does not change the exempt status of units without a separate structure or exemption.

D. Does a patrol or a Region have to be a separate legal entity? If an individual patrol or Region is not separately organized with a board of directors and by-laws and the like, it is nevertheless derivatively organized through its Region or the Division and requires nothing further to be benefited and burdened by the requirements of Section 501.

D. Additional benefits. Many state laws and the federal statutes confer an exemption from ordinary negligence to persons who are on the boards of directors or workers of not-for-profit corporations. Furthermore, many homeowners insurance policies offer coverage for their policyholders who participate in volunteer, not-for-profit corporations if they are threatened with liability.

SECTION 2. UNIVERSAL RULES.

A. The bedrock principle. An exempt organization may not give money nor transfer nor give property to a non-exempt corporation or an individual. A transfer of property in exchange for a fair consideration does not violate this principle. An exempt organization may only give money or give or transfer property *without fair consideration* to another exempt organization. This is the most important concept in this memorandum. Please read it again.

B. Scope of advice. No memorandum of this sort can give a positive or negative answer to every conceivable question arising from the transfer of money or property to non-exempt entities. Most gross violations of the bedrock principle are clear without the need for advice. Examples of clear violations would be a transfer of all the property of a ski patrol to the profit-making ski area that is “home” for the patrol. Another case might occur when a patrol with a bonanza of contributed money decides to give all of the patrol members a pair of skis as their very own to be taken off the premises and used anywhere. These mostly happen through ignorance of the law and not as knowing, intentional violations.

The more frequent case is “close,” usually creating disagreements between even knowledgeable persons. For example, can we give Band-Aids to injured persons? How about crutches? If our non-exempt ski area owns our sleds, can we repair them? How about the snowmobile owned by the ski area: Can we repair it?

Hard and fast answers – so-called “bright lines”—are difficult to find because there is a nearly infinite number of situations with nothing in writing to help. Attempting to give examples of “close” case and some not-so-close, there is a list of examples attached. Notice: most are permitted, which is typical

C. Who decides? Law school training does not provide many answers to specific questions, but it does give a framework for getting or finding answers. One of the first startling bits of advice is “identify who decides.” Law students are tempted to leap to the answer, “The Judge, of course.” But the truth is, most legal decisions are not made by a judge. In our case, we have the Internal Revenue Service and a group of more-or-less knowledgeable individuals looking for answers. Even the Internal Revenue Service is not the element of final authority in this area. The courts can overrule the Service and Congress can and has changed the Code.

D. Some practical advice. The Internal Revenue Service is neither equipped nor inclined to investigate or decide every fact situation arising out of the strictures on the disposition of exempt money and property. The decision is usually made taking into consideration the circumstances and intent involved.

Anticipate possible IRS concerns.

- Keep the non-profit patrol separate from the profit-making ski area. Inventory patrol property.
- Mark large objects with the name of the patrol.
- Keep a separate bank account for patrol funds and do not mingle them with area funds however handy that may be.

In most close cases, it is prudent and safe to go forward with a proposed expenditure if there is a **plausible reason** for doing so even if there are countervailing arguments.

If a patrol wants to make tee-shirts for its 25th Anniversary for every patroller and their children to publicize the virtues of NSP or the Eastern Division, go ahead and do it. If you want to buy every patroller an automobile, forget about it.

If you want to build a patrol center on the land owned by the profit-making ski area, forget about it. If you want to build a patrol building on land leased from the ski area on a long-term basis with a method for determining the value of the building at the termination of the lease which the area would pay to the Region or the Eastern Division, go ahead and do it. But you better have a lawyer with a practical turn of mind help you with the structure and the details of so large and complicated a transaction.

C. **Finally.** The usual case is subtle and there are no final answers. Do not let it throw you. If there is no **plausible reason** you probably should not go ahead with an expenditure of funds or transfer of property. Even if there is a **plausible reason**, it will not count if there is a clear and large cash outlay or property transfer to a non-exempt entity. If you are unable to reach a conclusion in which you have confidence about any specific program, project or transaction, please contact the Eastern Division Finance Committee Chair¹. He or she will direct your inquiry to expert resources within your Region or Eastern Division who are able to offer helpful guidance.

¹ See ED Web Site for contact information.