



National Funeral Directors Association
*Informs *Educates *Advocates

2011 POLICY

NON-PROFIT ORGANIZATIONS OPERATING FUNERAL HOMES, CEMETERIES AND/OR CREMATORIES

NFDA Position

It is recommended that NFDA continue to monitor and research the issue of whether and the extent to which any 501(c) (3) organization may participate in the funeral service business on either a tax-exempt or for-profit basis. If the facts and circumstances warrant, NFDA will raise the appropriate legal, ethical, tax and public policy concerns with Congress, the Federal Trade Commission, the Treasury Department and either directly or through our state funeral service associations with appropriate state and local officials.

Background

Section 501 (c) (3) of the Internal Revenue Code (IRC) provides a tax exemption for non-profit groups that are organized for a specific tax-exempt purpose. In order for an organization to qualify for the exemption, it must meet three requirements: (1) The organization is organized exclusively for, and will be operated exclusively for, one or more of the purposes (charitable, religious, etc.) specified in the law and regulations; (2) No part of the organization's net earnings will inure to the benefit of private shareholders or individuals. An organization will not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests; and, (3) The organization will not, as a substantial part of its activities, attempt to influence legislation (unless it elects to come under the provisions allowing certain lobbying expenditures) or participate to any extent in a political campaign for or against any candidate for public office.

Generally, the IRS has prohibited 501 (c) (3) organizations from owning or operating a business which is not incidental to its limited purpose or the benefit of ownership has inured to an individual or shareholder. The Archdiocese of Denver's ownership of a funeral home may be an exception. However, the Service has permitted tax-exempt organizations to indirectly own, manage or be affiliated with a for-profit entity so long as it was done through a for-profit subsidiary and the rental rates and other fees were negotiated at arms-length and represent a fair market rate. In addition, the IRS has permitted tax-exempt organizations to sell certain merchandise related to the non-profit business so long as it is closely related to the purpose of the non-profit organization.

Discussion

With justification, many funeral directors are concerned with the potential for misuse of these types of relationships and ventures to unfairly compete in a highly competitive and price sensitive marketplace. Any advantage gained through tax-based cost reductions could be significant and lead to an inequitable and unlevel playing field. As meritorious as these arguments may be, the political reality of seeking to amend the tax code to prohibit these

practices without any evidence of actual abuse would be impossible. Any such attempt would be opposed by some of the most powerful and influential religious, educational and charitable groups and organizations in the country. Moreover, the Internal Revenue Service has sanctioned many of these practices.

The better approach would be to take a specific fact situation to the Federal Trade Commission and/or Treasury Department or appropriate state regulatory officials to determine if there is any actual abuse occurring with that specific activity or partnership such as promoting or fostering unfair or anti-competitive activities, improperly or illegally avoiding taxes, being detrimental to consumers or is just bad public policy. Any favorable action by a regulatory agency would certainly have a chilling effect on any further abuses and would be precedent for future actions by NFDA or state funeral service organizations.

In addition, if it became clear that this situation has become pervasive, we could ask Congress to look into the matter either through oversight and investigation hearings or by asking the General Accounting Office to conduct an investigation and report its findings back to Congress on a date certain. In either case, the findings can be used as a basis for specific changes in the tax code or anti-trust law or to direct a more rigorous enforcement of existing laws, rules and regulations.

In 2008, NFDA's General Counsel filed a Freedom of Information (FOIA) request to the Internal Revenue Service asking them to identify all those non-profit individuals, companies or organizations that are providing funeral service goods or services to the public. When the first IRS response to NFDA's FOIA request was not helpful, NFDA revised and resubmitted another FOIA request. Unfortunately, the IRS response to our second request also was of little value. The IRS claims to be unable to segment the information NFDA is seeking. As a result, NFDA began researching other sources to obtain this information.

After the FOIA requests to the IRS were unsuccessful, NFDA subscribed to GuideStar, an internet firm which compiles and analyzes financial information and tax returns filed by non-profit organizations. By conducting cross-searches of the GuideStar database, NFDA determined that there were very few religious organizations and no hospices that were involved in selling funeral services. NFDA reported these findings to the Policy Board in the summer of 2010.

Finally, in 2009, Rep. Rush (D-ILL) introduced a bill, H.R. 3655, which among other things would require the FTC to initiate a rule to regulate cemeteries....including all non-profit cemeteries, as well as religious cemeteries operated by a for-profit funeral service company, as well as other sellers of funeral goods or services. Since the Rush bill failed to pass last year, NFDA will again work with Rep. Rush and other members of the House and Senate to have it re-introduced in the 112th Congress and work to see it passed. In addition, NFDA will encourage the FTC to initiate such a rule on its own initiative irrespective of any Congressional action.

NFDA Governance History:

2007: Committee Action 1/16/07; Policy Board Action 3/26/07

2008: Committee Action 1/14/08; Policy Board Action 3/10/08

2009: Committee Action 1/29/09; Policy Board Action 3/30/09

2010: Committee Action 1/20/10; Policy Board Action 3/08/10

2011: Committee Action 1/27/11; Policy Board Action 3/09/11

Attest: NFDA Policy Board (original resolution) Date: March 26, 2007 File Code: RES084/policyboard

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