

Argument

§ 501(c)(3) status is not sufficient in itself to guarantee property tax exemption in the State of Idaho. In 1981, Faith Ministries Inc., (dba Logos School) filed Articles of Amendment with the Idaho Secretary of State. Representative of Faith Ministries pledged that the organization would “not carry on any other activities not permitted to be carried on by an organization exempt from Federal Income Tax under § 501(c)(3) of the Internal Revenue Code.” This declaration established a connection between the interests of the State of Idaho and federal regulations governing § 501(c)(3) operations. Logos School predicates its claim to property tax exemption on its § 501(c)(3) status. Significant discrepancies exist between federal § 501(c)(3) standards and operational aspects of Logos School.

Logos School Materials [hereafter LSM] is the in-house publishing operation of Logos School. According 2005 BOE testimony, the items selected for publication are chosen by the Superintendent of Logos School, Mr. Tom Garfield and two other men who work for Mr. Garfield. LSM provides a generous 20% royalty payment, of gross sales, to authors. The online catalog and print catalog contain approximately 123 items for sale.

Exhibit 5, “Table of Board Members and Administrators Marketing Their Work Though LSM” shows that 42% of the material in the LSM catalog is the product of three men (or members of their immediate family).

Table of Board Members and Administrators Marketing Their Work through Logos School Materials (on-line and print catalog)				
Trustee/ Administrator	Title	# of items	Spouse or Family Member	# of items
Tom Garfield	Superintendent, Logos School	4	Julie (wife)	15
Matt Whitling	Elementary Principal and teacher	19		
Doug Wilson	Founder of Logos; Life-time School Board Member	11	Nancy (wife) Evan Wilson (brother)	1 2

IRS regulations are clear on this matter: "The organization must 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. No part of the net earnings of a 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization." [

[IRS publication 557 "Tax Exempt Status For Your Organization"]

Mr. Garfield, Mr. Whitling and Mr. Doug Wilson are, by virtue of their positions in Logos School, disqualified from selecting and profiting from the publication of their own materials. IRS code defines a disqualified person as "any person, with respect to any transaction, in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during a five year period ending on the date of the transaction." In particular, "Persons who hold certain powers,

responsibilities, or interests are among those who are in a position, to exercise substantial influence over the affairs of the organization. This includes, for example, voting members of the governing body, and persons holding the power of: Presidents, chief executives, or chief operating officers, treasurers and chief financial officers, and also includes certain family members of a disqualified person.”

IRS publication 557 pg. 28

Exhibit 7 offers further information on this topic.

Logos School was founded in 1981 to provide local children the opportunity to receive a particular kind of educational experience. The school flourished for many years prior to the establishment of LSM. Yesterday, Mr. Blakey, Director of ACCS, an organization which rents space in the Christ Church office building, Anselm House, described how the 1991 publication of Mr. Doug Wilson’s book, *“Recovering the Lost Tools of Learning”* fueled interest in Logos School. In the 2005 Latah County BOE hearings Mr. Garfield similarly also described the save events. The public desire to acquire material used by Logos School increased even more after the formation of the Association of Classical Christian Schools which you heard testimony about yesterday. The ACCS has a website link to Logos School and thus to the LSM catalog on line.

Mr. Dickison argues that Logos School’s § 501(c)(3) status extends to the publishing activities of LSM. The IRS offers guidelines which address the complex issue of 501(c)(3) publishing rules. The IRS uses these guides lines to distinguish between a non-profit and a commercial press.

- 1) Does an organization conduct its publishing activities using standard commercial techniques which generate ongoing profits?
- 2) Does an organization price its materials “competitively with other commercial publications or to return a profit?
- 3) Does an organization conduct its enterprise in a manner in which all participants expect to receive a monetary return?
- 4) Does an organization publish its materials almost exclusively for sale, with only a de minimis amount of material donated to charity?
- 5) Does an organization create or accumulate large profits which are greatly in excess of the amounts expended?

Rev. Rul. 67-4, 1967-1 C.B. 121.

LSM operates in a manner indistinguishable from a commercial press. LSM generates profits using standard commercial techniques, it prices its materials competitively, all participants receive a monetary return, it offers no free products, and it creates large profits. Exhibit 11 provides corroborative examples of commercial marketing.

LSM provides significant revenue for Logos School. The 990 2003 tax form [Exhibit 13] indicates that LSM contributed \$327,973, or 27% of the gross revenue of Logos School. The net revenue from LSM is \$205,303, or 16.6% of the total income of Logos School. LSM generates a 37% return on investment (after expenses) to

Logos School. This return can be placed in context by considering that the retail giant Walmart most recently reported a 3.5% return on investment.

In his exhibits, Mr. Dickison attempts to persuade us that academic presses holding 501(c)(3) status are analogous to LSM. They are not.

Press Name	Autonomous 501(c)(3)	Member of the Association of American University Presses[AAUP
Columbia University Press	Yes	Yes
Princeton University Press	Yes	Yes
Syracuse University Press	Yes	Yes
University of North Carolina Press	Yes	Yes
University of Pennsylvania Press	No	Yes
University Press of Mississippi	Yes	Yes
University Presses of Colorado	Yes	Yes

[NOTE: Mr. Dickison also included: Cambridge University Press and the Oxford University Press both of which are governed by British law, and therefore, not relevant in this matter.]

The presses in the table above are authentic academic presses whose chief focus is the publication of scholarly works. Submissions are read and critiqued by anonymous outside scholars distinguished in the field that the work addresses. Only after achieving favorable outside evaluations is the work reviewed and selected (or rejected) for publication by an independent editorial board. With the single exception of the University of Pennsylvania Press these presses are autonomous entities, separate and distinct from the university (or universities) whose name they share.

“Academic presses typically publish FEW TEXTBOOKS.. The distinguishing characteristics of works published by academic

presses include: "[the work] is directed towards scholars, experts and others knowledgeable about the subject; [the work] written by an acknowledged or recognized expert in the field, such as an academic scholar or prominent professional; [the work] consists of research reports, comprehensive and detailed treatments of a specific area of study, or critical reviews... [the work] is published by a scholarly or academic press for a limited interest market such as libraries and specialists in the field"

http://web.utk.edu/~wrobinso/561_lec_univ.html

The operation of LSM is, however, analogous to the operation of the for-profit greenhouse described in Appeal No. 99-A-7519, *Idaho Board of Tax Appeals in the Matter of the Appeal of Palouse Hills Adventist School* wherein, the IBTA found against the appellant because appellant's business directly competed with commercial enterprises, and therefore was taxable. In 75 Idaho 162; *Malad Second Ward of the Church of Jesus Christ of Latter-Day Saints v. State Tax Commission*, the Idaho Supreme Court concluded that although the church was organized as a charitable institution or society, it was not entitled to exemption from ad valorem taxes on church owned agricultural land, even though such funds or produce derived from the land were devoted exclusively to charitable purposes.

While it is beyond the authority of the IBTA to determine the legitimacy of the tax exempt status of Logos School, and I make no such request, the issues I raised go

to the operational heart of Logos School and are fundamental to its property tax exempt status.

In Matters Related to IC § 63-602 E

Logos School does not meet the statutory limitations imposed by IC 63-602 E which expressly requires that “property [must] be used exclusively for nonprofit school or educational purposes.”

Undisputed prior testimony and exhibits have established that Logos School leases property to at least three organizations; Christ Church of Moscow, Idaho, the Moscow Driving School and a martial arts organization.

I.C. § 63-602E requires the use tax exempt property must be restricted to nonprofit school or educational purposes. The decision of the Latah County Board of Equalization relies on an expansive reading of the statute which is counter to established case law and IBTA decisions. Traditionally, the Court and the IBTA have relied on narrow interpretations of tax exempt statutes including:

Sunset Memorial Gardens v. Idaho State Tax Commission, 80 Idaho 206,
327P.2d 766 (1968):

“Statutes granting exemptions, which exist as a matter of legislative grace, are strictly construed against the taxpayer and in favor of the state.”

Bistline v. Bassett, 47 Idaho 66, 272P 696 (1928)

“The burden is on the clamant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt.”

Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P 2.d 813 (1984)

“An exemption cannot be sustained unless it is within the spirit as well as the letter of the law. The courts are bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized.”

The IBTA and the Court apply a common sense standard in determining the meaning of a statute. That is; “The language of the statute is to be given its plain, obvious, and rational meaning.” [State v. Ambro 123 P.3d 710, *713 (Idaho App.,2005)].

IC-§ 63-602 E(1) exempts property that is used exclusively for nonprofit school or educational purposes....and all property from which no profit is derived.” The Latah County BOE’s assertion that the word “non-profit” applies to schools but not to the phrase “educational purposes” is unfounded. The plain, obvious, and rational meaning of the statute prohibits the use of tax exempt properties by for-profit commercial businesses.

The revenue received from rental contracts (even if it arises from an entity that falls within the category of statutorily recognized “non-profit” organizations, for example Christ Church), is a broadening of the exclusive use clause of IC-63-602E. (The prorated use of property by charter schools in (2) of the statute is not relevant to this appeal.)

Converting Logos School into a commercial cash cow by entering into leasing contracts and routinely and regularly renting out portions of its facility to commercial and/or private organizations disregards the intention and exceeds the scope of the Logos School mission and purpose, which is to educate children. Despite the arguments of Latah County BOE, the rental of Logos facilities is not comparable to fundraising activities wherein students occasionally conduct candy bar or magazine subscriptions sales. While these activities bear a similarity in the ends they achieve, that is raising money, the means by which the revenue is produced are markedly different.

Thank you, gentlemen for your attention and courtesy.