

# Ireland

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## I. Summary

### A. Types of Organizations

Ireland has a rich diversity of types of nongovernmental organizations (NGOs). While the customary broad division between mutual benefit and public benefit organizations applies, these categories encompass a range of NGOs, including cooperatives, religious organizations, trade unions, residents' associations, foundations, and self-help groups.

Most public benefit organizations are established as one of the following legal forms:

- An unincorporated association;
- A trust; or
- A company limited by guarantee.

An organization in any of these forms, in turn, can qualify for charitable tax exemption if it meets particular requirements.

Two other NGO forms are beyond the scope of this Note because they rarely interact with U.S. grantmakers: friendly societies, and industrial and provident societies. The majority of these societies pursue mutual benefit objectives, though a few do pursue public benefit objectives and qualify for charitable tax exemption.

## **B. Tax Laws**

The Irish charitable tax exemption extends to income tax, corporation tax (in the case of companies), capital gains tax, Deposit Interest Retention Tax (DIRT), capital acquisitions tax, stamp duty and dividend withholding tax. Although charities themselves are not exempt from VAT, many items that may relate to charitable activities are exempt.

Corporate donations of cash and/or designated securities to certain “eligible charities” qualify for tax relief in Ireland, which may be relevant to an American corporation doing business in Ireland in deciding whether to engage in direct corporate grantmaking there. The relevant tax provisions are contained in s.848A of the Taxes Consolidation Act 1997, as amended by s.45 of the Finance Act 2001 and s.17 of the Finance Act, 2006.

## **II. Applicable Laws**

- [Constitution of Ireland, Bunreacht na hÉireann, \(1937\)](#)
- [Charities Acts 1961](#)
- [Charities Acts 1973](#)
- Charities Act 2009
- [Companies Act 1963](#)
- [Companies Act 1990](#)
- [Companies \(Amendment\) Act - 1983](#)
- [Companies \(Amendment\) Act - 1986](#)
- [Companies \(Amendment\) Act – 1990](#)
- [Companies \(Amendment\) Act - 1999](#)
- Trustee Act 1893
- [Friendly Societies Act 1875](#)
- [Friendly Societies Act 1896 \(as amended\)](#)
- [Friendly Societies \(Amendment\) Act 1953](#)
- [Friendly Societies \(Amendment\) Act 1977](#)
- [Industrial and Provident Society Acts 1893-1978](#)
- [The Taxes Consolidation Act 1997](#) (as amended)
- Finance Act 2010

- [VAT Act 1972](#) (as amended)
- [Equal Status Act 2000](#)
- [Equality Act 2004](#)

Note: The Charities Act 2009 became law on February 28, 2009. To date, just three sections of the Act have been commenced including s. 4 (allowing the Minister to make regulations under the Act) and s.90 (granting powers in any proceedings to the courts to grant relief to charity trustees from personal liability for breach of trust in certain defined circumstances). [1] The other sections of the 2009 Act are expected to be commenced in installments over the coming 18 months. Company law is also undergoing reform in Ireland. A new Companies Bill that will consolidate into a single piece of legislation 13 existing Companies Acts and numerous statutory instruments that span a 43-year period is currently being drafted. The overall drafting of a Companies Consolidation and Reform Bill is expected to be completed in 2012. Updates on the progress of this Bill can be followed on the website of the Company Law Review Group (<http://www.clrg.org>).

## **III. Relevant Legal Forms**

### **A. Unincorporated Associations**

Unincorporated associations are popular because of the ease of creating them. An unincorporated association is a membership-based organization. The association does not ordinarily have legal personality and so cannot enter into legal relations in its own right. Members are jointly and severally liable for the association's debts. An association is created by the oral or written agreement of its members. Its governing instrument, usually termed its constitution or rules, is normally interpreted according to contract law.

### **B. Trusts**

In this arrangement, one or more persons operating under the authority of a "deed of trust" hold funds or property on behalf of other persons; the governing instrument is a trust deed or will, and executive power rests with the trustees appointed under the terms of the trust.

A trust (like an unincorporated association) ordinarily has no legal personality; the trustees themselves must enter into legal relations and accept personal liability. Under section 2 of the Charities Act 1973, however, a qualifying trust may become a body corporate, with the property vested in that body. To seek such a conversion, the trustees will apply to the new Charities Regulatory Authority, which upon establishment will replace the Commissioners of Charitable Donations and Bequests. A body corporate established in this manner has a common seal and power to do any act or thing (including

hold land) necessary to administer the trust as a charity. Moreover, the charity may sue or be sued in its corporate name.

## **C. Corporations Limited by Guarantee**

A company limited by guarantee is an alternative type of corporation, used primarily for non-profit organizations that require legal personality. A guarantee company does not have share capital. Its members are guarantors instead of shareholders. The guarantors commit to contribute a nominal amount (typically €1) toward winding up the company in the event of a shortfall upon cessation of business. A company limited by guarantee cannot distribute profits to its members, so it is eligible to apply for charitable tax exemption. A company limited by guarantee's governing instruments consists of its memorandum and its articles of association.

## **IV. Public Benefit Status**

Nongovernmental organizations in Ireland need not be established for the public benefit. Most NGOs, in fact, are established for the benefit of their members, including sporting and recreation clubs, professional bodies, political parties, trade unions, cooperatives and credit unions.

To be eligible for charitable status an NGO must be established for the public benefit. All NGO forms discussed here – unincorporated associations, trusts, and companies limited by guarantee – are eligible for charitable status. The [Charities Act 2009](#) establishes a new statutory governance regime for charities operating in Ireland and a new regulatory authority, the Charities Regulatory Authority, to supervise the running of charities. The Act has a number of important features that affect a) the definition of charity in Ireland; b) the meaning of public benefit; and c) the determination of tax liability.

### **a) The Definition of 'Charitable Purpose' in Ireland**

The 2009 Act provides for the first time statutory guidance as to what now constitutes a 'charitable purpose' in Ireland. According to the Act, the following purposes *shall* be considered to be charitable:

- (a) the prevention or relief of poverty or economic hardship;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) any other purpose that is of benefit to the community.

(Charities Act 2009 s. 3(1))

The final category 'any other purpose that is of benefit to the community' is further broken down into 12 additional sub-categories:

- the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,
- the advancement of community development, including rural or urban regeneration,
- the promotion of civic responsibility or voluntary work,
- the promotion of health, including the prevention or relief of sickness, disease or human suffering,
- the advancement of conflict resolution or reconciliation,
- the promotion of religious or racial harmony and harmonious community relations,
- the protection of the natural environment,
- the advancement of environmental sustainability,
- the advancement of the efficient and effective use of the property of charitable organizations,
- the prevention or relief of suffering of animals,
- the advancement of the arts, culture, heritage or sciences, and
- the integration of those who are disadvantaged, and the promotion of their full participation, in society.

(Charities Act 2009 s. [3\(11\)](#))

The statutory list was drafted in consultation with the Revenue Commissioners and includes only those purposes for which the Revenue Commissioners currently grant charitable tax-exempt status. In light of this policy approach, the government excluded from the statutory definition the following purposes, which prior to the enactment of the 2009 Act were not eligible for charitable tax-exempt status: the advancement of human rights and the advancement of amateur sport.

## **b) The Meaning of Public Benefit**

To qualify as charitable, a purpose must appear on the list of purposes in section 3 of the Act and must also be of public benefit ([Charities Act 2009 s. 3\(2\)](#)). The Charities Act 2009 provides some guidance as to what constitutes ‘public benefit’ under Irish law. The Act also defines a gift of “public benefit” by considering both the ‘public’ nature of and the ‘benefit’ provided by that gift. From the ‘public’ perspective, a gift does not qualify as charitable unless -- (a) it is intended to benefit the public or a section of the public; and (b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary for, the furtherance of the public benefit ([s. 3\(3\)](#)). From the ‘benefit’ perspective, account is taken of -- (a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift; and (b) the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift ([s. 3\(7\)](#)). The only exception to the public benefit requirement relates to gifts for the

advancement of religion. Such gifts enjoy a rebuttable presumption of public benefit ([s. 3\(4\)](#)).

### **c) The Determination of Tax Liability**

The Charities Act 2009 decouples the determination of ‘charitable status’ from the determination of ‘charitable tax-exempt status.’ The new Charities Regulatory Authority (‘CRA’), when established, will be responsible for deciding whether a body qualifies as a ‘charity’ under the 2009 Act and is therefore eligible to be registered in the new Register of Charities. The Revenue Commissioners will continue to determine whether a charity qualifies for charitable tax-exempt status. To this end, the Charities Act preserves the Revenue Commissioners’ autonomy in applying tax law ([s.7](#)). In particular, s.7(2) provides that the Revenue Commissioners shall not be bound by a determination of the CRA as to whether a purpose is of public benefit or not in the performance by the Revenue Commissioners of any function under the Tax Acts.

Conceivably, it would be possible for the CRA to decide that an organization is a ‘charity’ under the Charities Act and for Revenue to refuse to grant that body charitable tax-exempt status or *vice versa*. However, the Charities Act provides that the CRA may enter into memoranda of understanding with other relevant regulators to ensure, as far as practicable, consistency between decisions made or measures taken by the CRA and relevant regulators.

In examining an application for tax exemption, the practice of the Revenue Commissioners has been to consider the objects and the actual activities of the applicant, and how they comport with charity case law.

An organization seeking charitable tax exemption must also have a constitution or other governing instrument that includes particular provisions detailed in the tax section below.

When granting an application for charitable status, the Revenue Commissioners assign the organization what is known as a CHY reference number, which indicates that it is eligible for charitable tax exemption.

## **V. Specific Questions Regarding Local Law**

### **A. Inurement**

Under Irish law, NGOs are not generally subject to any restrictions on inurement. Situations may arise where inurement may present problems, most notably upon dissolution of certain kinds of organizations (*see Section C, below*).

Section 2 of the Charities Act defines a charitable organization as one that: (a) promotes a charitable purpose only; (b) under its constitution is required to apply its real and personal property in furtherance of its charitable purpose except for monies expended in the maintenance and operation of the body and in the case of a religious organization or community, on accommodation and care of members of the organization or community; and (c) prohibits remuneration of members of the body other than in accordance with the Charities Act. Under the Charities Act, charity trustees and persons with whom a charity trustee of the charitable organization has a personal connection are permitted, subject to the provisions of s. 89 of the Charities Act 2009, to receive remuneration from the charity for work undertaken that is unrelated to their trusteeship.

## **B. Proprietary Interest**

*Charities:* For an NGO to receive tax exemption as a charity, the Revenue Commission requires a clause providing that all income and property of the organization are to be applied solely toward its charitable main objects. In addition, according to the Revenue Commissioners, donations should generally be at arm's-length and with no strings attached. Although the donor may advise, the use of the donation is subject only to the charity's governing instrument. Finally, donors cannot receive benefits, other than such nominal or incidental ones as newsletters, in exchange for donations. Examples of prohibited benefits include free tickets and preferential rights of entry to prestigious events.

*Other NGOs:* Founders may retain a proprietary interest in assets transferred to a non-charitable organization. Specifically, the founders are entitled to reacquire their contributed assets upon the NGO's dissolution.

## **C. Dissolution**

*Charities:* Upon the winding up or dissolution of a charity, any remaining property must not be paid to or distributed among the members of the body. Instead, under the doctrine of *cy près*, as applied either by the CRA (which, when established, will take over the functions of the now dissolved Commissioners for Charitable Donations and Bequests) or upon application to the High Court, such property must be transferred to some other charitable institution or institutions whose main objectives are similar to those of the dissolving body, or, failing that, to some other charitable body. From a tax law perspective, the Revenue Commissioners require a clause to this effect in the charity's governing instrument.

*Other NGOs:* Upon its dissolution, a non-charitable NGO's remaining assets will be distributed according to the governing instrument.

## **D. Activities**

## 1. General Activities

A charity can be established only for a charitable purpose, and its activities must advance that purpose (Charities Act 2009 (2)(1)). Subject to s. 2(1) of the Charities Act, it cannot engage in certain commercial or political activities. As discussed below, these sorts of restrictions are generally limited to charities and do not apply to other NGO forms.

## 2. Economic Activities

*Charities:*

Irish tax law allows a charity to conduct certain economic activities, or "trading," with profits exempt from tax under a "trading exemption."

The Revenue Commissioners define trading as "generally involving the sale of goods or services to customers with a view to generating a profit." To qualify for a trading exemption, a body established only for charitable purposes must apply the income derived from its trading solely to advancing those purposes.

In addition, the organization ordinarily must satisfy one of the following conditions:

(a) The trade must occur in the course of carrying out a primary purpose of the charity (Taxes Consolidation Act 1997, section 208(2)(b)(i)).

Examples include the following:

- An art gallery or museum holding an exhibition and charging an admission fee;
- A school providing an educational service for a fee;
- A theatre selling tickets to its productions; and
- A hospital providing health care services for a fee.

Economic activities that would not otherwise qualify may nonetheless fall under the trading exemption, if they are ancillary to pursuing the charity's primary purpose. Examples include a theatre selling food and drink to its patrons, or a hospital selling papers, flowers and toiletries to patients and visitors. The Revenue Commissioners operate on a case-by-case basis in these circumstances.

(b) The work in connection with the trade must be carried on mainly by beneficiaries of the charity (Taxes Consolidation Act 1997, section 208(2)(b)(ii)).

Many charities engage in activities where the charity's beneficiaries carry out work. The work usually has an educational or remedial purpose and thus often falls in the preceding category. However, even if the work does not advance the charity's primary purpose, it can still qualify for exemption from tax. In order to obtain this form of exemption, the organization must prove that the greater part of its trade is undertaken by the beneficiaries, particularly where non-beneficiaries (such as employees or volunteers) also

participate. With regard to commercial activities generally, a charity must apply to the Revenue Commissioners for specific exemption and Revenue considers each application on a case-by-case basis.

*Other NGOs:* The economic activities of non-charitable NGOs are not restricted.

## **E. Political Activities**

*Charities:* A charity can never be formed for the primary purpose of promoting a political cause. The Charities Act specifically excludes such bodies (along with political parties or bodies promoting a political party) from charitable status. However, a charity may promote a political cause when the promotion of that cause directly relates to the advancement of the charitable purposes of the body (Charities Act 2009 s. 2(1)).

*Other NGOs:* Other NGOs may freely engage in political and legislative activities subject to electoral law and broadcasting law restrictions.

## **F. Racial Discrimination**

The Equal Status Act 2000 (s.7) prohibits universities and other educational establishments, whether or not supported by public funds, from discriminating on the basis of race. In addition, the Equality Act 2004 transposes into Irish law the European Commission's Race Directive (Directive 2000/43/EC), which outlaws racial discrimination in the provision of goods and services generally, though it does allow asylum seekers to be treated differently in the provision of public services, including education.

## **G. Control of Organization**

Irish charities may be established by natural or legal persons, both domestic and foreign. Therefore, it is possible that an Irish NGO may be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

Ireland has traditionally welcomed UK NGOs that have opted to establish branches within the jurisdiction. There are very many such NGOs, particularly in the area of health and social care service provision. As a nation sharing a land boundary with an adjoining UK jurisdiction, Ireland has become accustomed to dealing with practical issues relating to cross-border NGO activity, such as fundraising. Further, as a full member of the European Union, Ireland is obliged to facilitate the freedom of movement of NGOs and their capital between member States, a fact reflected in s.39 of the Charities Act 2009,

which facilitates the registration of charities established in other European Economic Area or EEA jurisdictions.

## VI. Tax Laws

### A. Tax Exemption

The Charities Act 2009 differentiates between the granting of charitable status *per se* (which falls within the remit of the Charities Regulatory Authority) and the granting of charitable tax exemption (which remains the decision solely of the Revenue Commissioners) (Charities Act 2009 [s. 7](#)). As noted above, the Revenue Commissioners are not bound by the CRA's decisions regarding whether a body has a charitable purpose or has demonstrated sufficient public benefit ([Charities Act 2009 s. 7](#)). The Revenue Commissioners also may grant tax exemptions equivalent to charitable tax exemptions to those human rights organizations that have consultative status with either the United Nations or the Council of Europe, and (a) have as their sole or main object the promotion of observance of the Universal Declaration of Human Rights or the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or both the promotion of observance of that Declaration and the implementation of that Convention, and (b) are precluded by their rules or constitution from the direct or indirect payment or transfer, other than for valuable and sufficient consideration, to any of their members of any of their income or property by means of dividend, gift, division, bonus or otherwise by means of profit ([s.209 of the Taxes Consolidation Act 1997](#)).

A body with charitable tax exemption will have a charity reference number issued by the Revenue Commissioners. Under sections [207](#) and [208](#) of the Taxes Consolidation Act 1997, the income of charitable bodies or trusts established for charitable purposes is exempt from income tax, subject to a number of conditions.

The Revenue Commissioners do not normally consider the following activities charitable:

- Lobbying for the reform of law or political activities;
- An organization whose main object is to benefit the members rather than a section of the community;
- Provision of social and recreational activities;
- An organization set up solely to fundraise; and
- Illegal activities.

In addition, the applicant for tax exemption must satisfy the following conditions:

- It is legally established in Ireland; its center of management and control is in Ireland; the majority of its directors are Irish residents; and it has a permanent establishment and some operations within Ireland;

- Its objects and powers are so framed that every object to which its income or property can be applied is charitable; and
- Its main objects and the application of its income or property are bound by a governing instrument, such as a memorandum and articles of association, a deed of trust, or a constitution.

Section 24 of the Finance Act 2010 amends the 1997 Act, inserting s.208A and s.208B, the effect of which is that where a charity is not established in Ireland but rather is established in an EEA/EFTA (European Free Trade Association) state, it can now seek a Determination from Revenue to the effect that, if the body were to have income in Ireland of a kind referred to in Section 207 or 208 Taxes Consolidation Act 1997, it would qualify for the exemptions provided by those sections. To qualify, the body:

- must be legally established in an EEA State or in an EFTA State and have its center of management and control therein. There should be a minimum of three directors/officers/trustees, the majority of whom must be resident within the EEA or EFTA state, and the organization must have a permanent establishment and some operations therein, and
- must ensure that its objects and powers are so framed that every object to which its income or property can be applied is charitable, and
- must be bound, as to its main object(s) and the application of its income or property, by a Governing Instrument (see Revenue Guidance DCHY 1, June 2010 available at <http://www.revenue.ie/en/tax/it/leaflets/dchy1.pdf>)

The Revenue Commissioners further require that the charity's governing instrument include the following provisions:

- A winding-up clause that requires any remaining assets to be distributed to a body having similar main objects, or, failing that, to some other charitable body;
- A clause requiring that all of the organization's income and property be applied solely toward its charitable main objects;
- A clause prohibiting directors, trustees or officers from receiving any remuneration or other monetary benefit; and
- A requirement that any proposed alterations to the governing instrument must be approved by the Revenue Commissioners.

NGOs with charitable tax exemption are exempt from paying income tax on interest, annuities, dividends and shares, rents on property, and profits from trade (subject to the limitations noted above) or land owned and occupied. The tax exemption applies only to funds, or the proportion of funds, used exclusively for charitable purposes. (Taxes Consolidation Act 1997, s. 207(1)(b)(iii)) (Spending funds for non-charitable purposes may endanger a charity's tax-exempt status.) "Charitable purposes" encompasses the

normal expenses of running a charity, including proper remuneration of employees ([Charities Act, 2009, s.2\(b\)\(2\)](#)). If funds are to be accumulated for more than two years, the charity must obtain prior permission from the Revenue Commissioners.

The Revenue Commissioners conduct reviews to ensure that a recognized charity continues to satisfy the conditions for exemption. Within 18 months of the date the exemption was granted, a copy of the charity's financial accounts for the first year and a report on its activities must be submitted to the Revenue Commissioners. Financial statements normally include a Statement of Income and Expenditure as well as a Statement of Assets and Liabilities. Accounts must be audited if the annual income exceeds €100,000 (see CHY 1, November 2005, at <http://www.revenue.ie/leaflets/chy1.pdf>). In addition to the initial 18-month review, the Revenue Commissioners may conduct periodic reviews thereafter. If they conclude that an organization has not complied with its own governing documents or with the Commissioners' requirements, the Commissioners can withdraw its tax exemption, retroactively if necessary.

## **B. Deductibility of Donations to Irish NGOs by Individuals and Corporations Based in Ireland**

Tax relief is available for donations to “approved bodies,” including “eligible charities” and various educational and other named organizations ([Taxes Consolidation Act, 1997, s. 848\(a\), Schedule 26A, Part 1 \(added by Finance Act 2001, section 45\)](#)).

An “eligible charity” is not simply an organization with charitable tax exemption. Rather, an eligible charity must hold “authorization” from the Revenue Commissioners, which requires, among other things, at least three years of tax-exempt status. Authorizations are valid for up to five years, and, upon expiration, may be renewed ([Taxes Consolidation Act 1997, section 848A, Schedule 26A, Part 3 \(amended by Finance Act 2001, Section 45\)](#)).

To be eligible for a deduction, the minimum donation to a designated charity or other approved body is €250 per year ([Taxes Consolidation Act, 1997, s. 848\(1\)\(a\)\(6\)\(e\), Schedule \(amended by Finance Act, 2001, s. 45\(3\)\)](#)). Donations made in installments also qualify.

There is no maximum qualifying donation, unless the donor is associated with the charity or approved body to which the donation is made. In that instance – e.g., where the donor is an employee or member of the charity or approved body – then tax relief is limited to 10% of the individual's total income during the year of assessment.

A donation must also satisfy the following conditions in order to be deductible:

- It must be in the form of money;
- It must not be repayable;

- It must not confer any direct or indirect benefit on the donor or any person connected with the donor; and
- It must not be conditional on, or associated with, or part of an arrangement involving the acquisition of property by the approved body from the donor or any person connected with the donor.

In the case of corporate donations, the company claims a deduction for the donation as if it were a trading expense ([Taxes Consolidation Act, 1997, s.848A\(4\)\(a\) \(amended by Finance Act, 2001, s.45\(1\)\)](#)). In the case of an individual taxpayer, the relief will be given on a “grossed-up” basis to the eligible charity or approved body, as the case may be, rather than by way of a separate claim to tax relief by the donor ([Taxes Consolidation Act, 1997, s.848A\(7-9\) \(amended by Finance Act, 2001, s.45\(1\)\)](#)). In other words the donation will be treated as having been received by the eligible charity or approved body "net" of income tax.

## **C. Value Added Tax**

Organizations granted charitable tax exemption do not enjoy a comparable general exemption from Value Added Tax. Charities are not generally regarded as supplying goods or services in the course or furtherance of a business, so they are neither obliged nor entitled to register and account for VAT on their income. They are therefore not entitled to a repayment of VAT incurred on purchases, other than in certain circumstances. Charities carrying on a trade, such as selling publications or operating a restaurant, however, are obliged to register for VAT with respect to those trading activities if they exceed the threshold for registration, currently €51,000 for the sale of goods.

Specific items exempt from VAT may relate to charitable activities: a) the purchase and adaptation of vehicles for use by organizations to transport severely and permanently disabled persons; b) the purchase of radio broadcasting reception apparatus intended for use by blind persons; c) the purchase of appliances for use by disabled persons; d) the purchase of sea rescue craft and equipment; e) goods purchased for exportation by philanthropic organizations for humanitarian, charitable, or teaching activities abroad; and f) donated research equipment and donated medical equipment. Further information can be found in the Revenue Commissioner’s information leaflet CHY 10, <http://www.revenue.ie/en/business//chy10.pdf>.

## **D. Double Tax Treaty**

A double taxation treaty exists between Ireland and the United States. When such a treaty is in existence, dividends, interest, and royalties arising in one country and paid in another are subject to tax only in the country where paid.

# **VII. Knowledgeable Contacts**

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## Footnotes

[1] A third section, s. 99, makes it an offence for a Mass card to be sold in contravention of the provisions of this section of the Act. The section was subject to constitutional challenge upon commencement in September 2009. The challenge failed in the High Court and is currently under appeal to the Supreme Court.