

## **Fiscal Sponsors and the Occupy Wall Street Movement**

Of the available purposes for which a 501(c)(3) can be organized, perhaps none gives the Internal Revenue Service more uneasiness, as of late, than do fiscal sponsorship organizations. One such organization, Alliance for Global Justice (AFGJ), is organized to “[nurture] organizations seeking fundamental change in international and national conditions that disempower people, create disparities in access to wealth and power, poison the earth, and plunder its resources.”<sup>1</sup> In nurturing these organizations, AFGJ acts as a fiscal sponsor. A 501(c)(3) fiscal sponsor collects donations and distributes them to organizations, who may or may not be tax-exempt themselves, but that embody their tax-exempt purpose. The reason fiscal sponsors make the IRS feel uneasy stems from the possibility of exploitation of the the tax-exempt regulations. The typical situation looks like this: a donor gives to a tax-exempt organization in order to get a deduction, but the donation is really intended for – and is ultimately transferred to – a third party that is not exempt.

If the fiscal sponsor substantially allocates funds to an organization that does not further the sponsor’s tax-exempt purpose, the organization may lose its tax-exempt status.<sup>2</sup> An example of a non-qualifying activity would be donating money to an organization that induces the commission of a crime.<sup>3</sup>

---

<sup>1</sup> ALLIANCE FOR GLOBAL JUSTICE, <http://afgj.org/about> (last visited Oct. 14, 2012).

<sup>2</sup> *Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 370 (7th Cir. 1991)

<sup>3</sup> Rev. Rul. 75-384.

One of the organizations that AFGJ donated to was the Occupy Wall Street movement (OWS). OWS began as a grassroots movement to draw attention to the inequality between the upper and middle class. The principle way of effectuating OWS's message was to camp in certain parks in cities across the nation. Although many of the protests were peaceful, there were some alarming activities approved by OWS's General Assembly that could, in my mind, give reason for the IRS to remove AFGJ's tax-exempt status if it determined OWS's fiscal sponsor was substantial.

First, many of the members of the OWS movement occupied "privately owned public space" overnight, which is a municipal violation.<sup>4</sup> Second, the General Assembly in New York created a brochure to hand out to the movement's followers advocating "direct action," something the Third Circuit has specifically stated is a form of illegal protest.<sup>5</sup> Third, most of the activities designed to upset the normal functioning of the various cities, were organized on a website paid for by the OWS General Assembly.<sup>6</sup> Although an argument could conceivably be made that these illegal incidents were not the purpose of the movement, the organizing of the illegal acts by "higher ups" is hard to refute.

---

<sup>4</sup> Philip Thompson, *Occupy Wall Street and Tax Exemption*, Apr. 12, 2012.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

As a matter of policy, it seems that the ability of a donor to donate to an organization that knowingly shifts money to a movement engaged in illegal purposes, offends the reasons for which the IRS granted AFGJ tax-exempt status. It could argued that the amount of money given to the OWS movement may not be interpreted as substantial, but as the courts have noted, even one such instance of appropriation to such an organization could create grounds for revocation of exempt status.<sup>7</sup> I want to make clear, however, that I do not think AFGJ's purpose is inherently illegal. The organization promotes other good causes that justify its 501(c)(3) status. The real question is whether or not their sponsorship of OWS was in any way substantial. That final determination will be up to the IRS.

*Kenneth Safley*  
*15 October 2012*

---

<sup>7</sup>Total expenditures, Fiscal Year ending March 30, 2011, were \$1,081,636. As of November 24, 2011 AFGJ had raised at least \$274,027 for OWS but has only expended a small portion of that money thus far. *Id.*