



Tuesday, March 3, 2015

Submitted by:
John Napier Tye, Legal Director
Avaaz Foundation
857 Broadway, 3rd Floor
New York, NY 10003

The Hebron Fund: Request to the Internal Revenue Service to Revoke Tax-Exempt Status

1. Overview: The IRS Should Investigate Whether The Hebron Fund Is Abusing the U.S. Tax Code

Donations to Israeli settlers in the ancient city of Hebron in the West Bank are not considered charitable or tax-deductible -- by the government of Israel.¹ But the U.S. Internal Revenue Service has a different idea.

The Hebron Fund² -- a 501(c)(3) tax-exempt corporation based in Brooklyn, New York -- tells the IRS that its mission is "social and educational well being."³ In fact the Hebron Fund is ineligible for U.S. tax-exempt status because there is reason to believe that, directly and/or indirectly, it supports as a substantial part of its activities:

1. **military and paramilitary** activity
2. **criminal activity** including assault, battery, vandalism and criminal trespass

1

<https://secured.israeltoremet.org//donate/makedonation?MakeDonation=1&AmutaGovId=580035319&mdevent=>

² <https://hebronfund.org/> . Each of the online citations provided in this complaint was accessed on March 2, 2105.

³ See The Hebron Fund's (EIN 11-2623719) 2013 IRS Form 990 filing here
http://990s.foundationcenter.org/990_pdf_archive/112/112623719/112623719_201312_990.pdf?_ga=1.260089229.1841327891.1425214561

See 2012 Form 990 here

http://990s.foundationcenter.org/990_pdf_archive/112/112623719/112623719_201212_990.pdf?_ga=1.78667924.1841327891.1425214561

see 2011 Form 990 here

http://990s.foundationcenter.org/990_pdf_archive/112/112623719/112623719_201112_990.pdf?_ga=1.78667924.1841327891.1425214561

3. individuals associated with **terrorism** may benefit from funds disbursed by The Hebron Fund
4. racial, religious and ethnic discrimination in **housing**, in violation of clearly defined public policy of the United States
5. racial, religious and ethnic discrimination in **freedom of movement**, in violation of clearly defined public policy of the United States
6. racial and ethnic discrimination in **education**, in violation of clearly defined public policy of the United States
7. illegal activity under **international law** as articulated by the United Nations
8. **propaganda** activities with no educational benefits

Any one of these, standing alone, would be sufficient to disqualify The Hebron Fund from tax-exempt status. Together, they paint an overwhelming picture of abuse of the U.S. tax code.

The Hebron Fund is the US non-profit established to fund and further the agenda⁴ of the Jewish Community of Hebron⁵ ("the Community"), an Israeli association comprised of Israeli Jewish settlers in Hebron and two incorporated entities, the Hebron Municipal Committee and the Association for the Renewal of the Jewish Community in Hebron.⁶ The Community represents about 850 religious fundamentalist who live in the city of Hebron⁷ in the West Bank territory between Israel and Jordan. The Hebron Fund is the largest known funder of the Community. In 2013 it provided \$1.7 million to Hebron settlements;⁸ and in 2009, it provided an estimated 45% of the Community's total funding.⁹ This money is raised from U.S. donors whose exempt donations are used to serve and expand Israeli settlements in violation of international law and in open defiance of US government policy condemning settlement growth.¹⁰

⁴ The Hebron Fund describes itself as "a New York based not-for-profit charitable organization [that] was founded in 1979. While the fund is a separate entity, it was created as an affiliate organization of the Jewish community in Hebron and, subsequently, operates in concert with the community there to assess their needs and respond in kind." from <https://hebronfund.org/about-us/about>

⁵ <http://www.hebron.com/english/> ; see also

http://en.wikipedia.org/wiki/Committee_of_the_Jewish_Community_of_Hebron

⁶ <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/hebron%20-%20background.aspx>

⁷ Hebron is the largest Palestinian city, by population, in the West Bank. The city is home to more than 200,000 Palestinians ([http://www.nytimes.com/2012/04/04/world/middleeast/israeli-leader-benjamin-netanyahu-puts-off-
evicting-settlers-from-hebron-house.html](http://www.nytimes.com/2012/04/04/world/middleeast/israeli-leader-benjamin-netanyahu-puts-off-evicting-settlers-from-hebron-house.html)) and roughly 850 Israeli settlers (<http://www.nybooks.com/blogs/nyrblog/2013/mar/22/hope-hebron/>). The city's history stretches back thousands of years, and it is considered a holy site to both Jews and Muslims. Israel took control of the city following the 1967 war. In 1997 the city was divided into two sections: the larger section, H1, to be administered by the Palestinian Authority, and the smaller section, H2, to remain under the control of the Israeli armed forces. The H2 section, encompassing the principal landmarks of the old city, is home to about 30,000 Palestinians and the city's Israeli settler community. Palestinian movement is severely restricted in the H2 section of the city. http://www.tiph.org/en/About_Hebron/ Many settlers believe God wants them to retake the city of Hebron and push out the 200,000 Palestinians who live there. Hebron is one of the most racially and religiously segregated cities on Earth.

⁸

http://990s.foundationcenter.org/990_pdf_archive/112/112623719/112623719_201312_990.pdf?_ga=1.260089229.1841327891.1425214561

⁹ See U.S. diplomatic cable from U.S. Consul General

https://www.wikileaks.org/plusd/cables/09JERUSALEM2325_a.html

¹⁰ <http://www.theguardian.com/commentisfree/cifamerica/2009/dec/08/us-settlers-hebron-fund-israeli>

Settlers in Hebron have benefited greatly from support from The Hebron Fund and the Community. According to Israeli human rights observers, these settlers have “destroyed shops and doors, committed thefts, and chopped down fruit trees.”¹¹ They have “been involved in gunfire, attempts to run people over, poisoning of a water well, breaking into homes, spilling of hot liquid on the face of a Palestinian, and the killing of a young Palestinian girl.”¹²

The list goes on and on. Israeli military veterans report that settlers throw stones at Palestinian children.¹³ They break into Palestinian homes,¹⁴ and smash their cars.¹⁵ They shout racial epithets, routinely deface Palestinian homes with the Star of David, and commit felony battery¹⁶.

The settlements, and the behavior of the settlers, is now the biggest obstacle to peace for Israel and Palestine,¹⁷ and in direct opposition to policy articulated by several American presidents.¹⁸

The Hebron Fund and The Community coordinate their activities very closely. As a practical matter The Hebron Fund operates as the U.S. fundraising arm of the Community,¹⁹ and the activities of the Community can and should be attributed directly to The Hebron Fund. Neither the Fund nor the Community can distance themselves from these activities of their members and beneficiaries. The pattern of abuses is consistent and pervasive.

¹¹ <http://www.btselem.org/hebron>

¹² <http://www.btselem.org/hebron>

¹³ Examples in this paragraph come from Breaking the Silence, a set of testimonials compiled by Israeli Defense Force veterans describing what they witnessed in Hebron.

http://www.shovrimshatika.org/publications_e.asp

¹⁴ Here a settler gets stuck while illegally trying to gain access to a Palestinian home:

<http://972mag.com/watch-hebron-man-faces-arrest-for-waving-palestinian-flag-on-his-roof/88343/>. But breakins and attacks on homes and shops are common:

<http://www.theguardian.com/world/2008/dec/05/hebron-settlers-shooting-israel-palestinians>

¹⁵ In December, two settlers vandalized property in response to a youth throwing stones:

http://www.btselem.org/press_releases/20141208_settlers_throwing_stones_in_hebron

¹⁶ http://www.nytimes.com/slideshow/2009/09/13/world/20090913SETTLERS_6.html

¹⁷ An unnamed U.S. diplomat said about the failed Kerry peace process:

"people in Israel shouldn't ignore the bitter truth - the primary sabotage [to peace negotiations] came from the settlements. The Palestinians don't believe that Israel really intends to let them found a state when, at the same time, it is building settlements on the territory meant for that state. We're talking about the announcement of 14,000 housing units, no less. Only now, after talks blew up, did we learn that this is also about expropriating land on a large scale. That does not reconcile with the agreement."

that quote comes from <http://www.ynetnews.com/articles/0,7340,L-4515821,00.html> .

¹⁸ In 2009 President Obama said, “The United States does not accept the legitimacy of continued Israeli settlements. This construction violates previous agreements and undermines efforts to achieve peace. It is time for these settlements to stop.” <http://www.newyorker.com/magazine/2009/06/22/the-obama-effect>.

From President Bush: “This means that Israel must remove unauthorized posts and stop settlement expansion.” <http://www.npr.org/templates/story/story.php?storyId=4967498>. The administrations of Presidents Clinton, Bush, Reagan, and Carter have expressed similar concerns.

http://www.cmep.org/content/us-statements-israeli-settlements_short.

¹⁹ David Wilder, for example, one of the settler leaders in Hebron, refers to The Hebron Fund as “our American organization.” <http://www.israelnationalnews.com/Blogs/Message.aspx/5369#.VPP6v7DF94o>

United States tax expenditures that support The Hebron Fund don't merely violate IRS regulations -- they shock the conscience. The Hebron Fund has received millions of dollars in U.S. tax-exempt donations over the years. The taxes that should have been collected on those donations could have paid for education and healthcare for Americans, and to protect the United States. Instead, these lost U.S. taxes have paid to promote the persecution of Palestinians, while slowly strangling the best chance for Israeli-Palestinian peace.

The time has come to stop this.

2. The Hebron Fund Substantially Supports Non-Charitable Purposes Engaged in by Hebron Settlers

As described below, settlers living in the settlements supported by The Hebron Fund have engaged in systematic acts of violence and discrimination. The IRS should investigate whether The Hebron Fund is supporting activities that are illegal or contrary to U.S. public policy, as well as whether it is monitoring use of the funds it collects and disburses, with the benefit of tax-exempt status, to ensure that those funds are used exclusively for charitable purposes.

2.1 Hebron Settlers Engage in Military and Paramilitary Activity



An armed settler walks past a Palestinian on Shuhada Street, in the West Bank city of Hebron. (Nayef Hashlamoun/Reuters)²⁰

The settlements in Hebron are heavily militarized, with about two Israeli Defense Force (IDF) soldiers for every Jewish settler.²¹ Hebron's settlers interact with the military every day and have

²⁰ <http://www.theatlantic.com/international/archive/2014/06/the-shame-of-shuhada-street-hebron/372639/>

an explicitly militaristic worldview. David Wilder, named as “Hebron Spokesman” on The Hebron Fund’s site, writes:

“We are all soldiers, whether we wear khaki uniforms or not. . . . There is no choice, it’s us or them. And we don’t have any intentions to allow them to win. Whatever the cost. That is the way of an army, of soldiers, and that is what we all are.”²²

The Hebron Fund puts those words into action, acknowledging on its website that it supports “IDF training programs and more” and “IDF Soldiers Assistance.”²³ Support for a foreign military is not a charitable purpose under Section 501(c)(3).

The IRS should also investigate whether The Hebron Fund directly or indirectly supports non-IDF settler paramilitary activities. The Hebron Fund lists a Chief Security Officer on its website. Like settlers across the West Bank,²⁴ settlers in Hebron have access to advanced military grade weapons.²⁵ Earlier this year, armed settlers in Hebron attacked a US consulate car.²⁶

2.2 Hebron Settlers Engage in Widespread, Pervasive & Coordinated Criminal Activity

Palestinians near the Hebron settlements are regularly subject to violence, harassment, and discrimination. Common crimes include assault, battery, vandalism and criminal trespass. The UN has issued condemnations of settler and military attacks on Palestinians in Hebron, including allegations of settlers shooting at Palestinian activists.²⁷

One video emblematic of the regular assaults on Palestinians by local settlers shows settler children kicking and then throwing rocks at Palestinian children returning from school.²⁸ Another shows a settler woman assaulting and then repeatedly calling a Palestinian woman a “whore.”²⁹ There are countless other examples of violent and racist behavior including deeply bigoted graffiti reading “Gas the Arabs.”³⁰ In another case a family was prevented from leaving their house -- legally a form of kidnapping.³¹

²¹ See U.S. diplomatic cable from U.S. Consul General

https://www.wikileaks.org/plusd/cables/09JERUSALEM2325_a.html

²² <https://hebronfund.org/blog/86-keep-the-show-going>

²³ <https://hebronfund.org/support/calendar>

²⁴ <http://tabletmag.com/jewish-news-and-politics/119408/why-israel-has-no-newtowns>

²⁵ See photo: <http://www.nytimes.com/2007/10/14/books/review/LeBor-t.html>

²⁶ <http://www.politico.com/story/2015/01/israeli-settlers-stones-us-consulate-general-vehicle-113940.html>

²⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E>

²⁸ <https://www.youtube.com/watch?v=FqvLtoWBpTU>

²⁹ <https://www.youtube.com/watch?v=KUXSFsJV084>

³⁰ <http://972mag.com/wp-content/uploads//2014/02/0030-035.jpg>

³¹ <https://alethonews.wordpress.com/2013/10/11/illegal-settlers-prevent-family-from-leaving-their-home-and-attack-internationals-while-israeli-soldiers-watch/>

Israeli human rights groups reported in February that Palestinian olive trees in the Hebron area have been routinely destroyed by local settlers, and nothing was done by the nearby Israeli military to stop the vandalism.³²

In 2008, settler rioters set several cars and one house on fire, desecrated a Muslim cemetery, and shot and injured two people.³³ Settler violence is not exclusively aimed at Palestinians. At times, such as the 2008 evacuation of a Rajabi building, settlers have attacked the Israeli armed forces causing injuries.³⁴

In 2011, Baruch Marzel, who now lives in an outpost that receives Hebron Fund support (see below), set a bounty of \$100,000 for the murder of a Palestinian man.³⁵ The source of the funds designated to pay for this murder is unknown.



Star of David constructed by Israeli settlers on Palestinian land in the Hebron hills. This marks territory, prevents grazing of Palestinian sheep, and was not stopped by the IDF. February 28, 2015.³⁶

2.3 Some Settlers Are Associated with Terrorist Activities

In 1994, Baruch Goldstein, a local settler from Brooklyn, murdered 29 Palestinians in prayer at the Ibrahimi Mosque in Hebron.³⁷ After this event, Israel and then the US government listed the extremist Kach Party, to which Goldstein belonged, as a terrorist organization;³⁸ it is still listed.³⁹

³² http://www.btselem.org/settler_violence/20150226_olive_tree_vandals ,
<http://palsolidarity.org/2015/02/israeli-settlers-cut-36-olive-trees-in-the-south-hebron-hills/>

³³ Nathan Jeffay, "Hebron Rioters Inspired by Radical Settler Leaders," The Jewish Daily Forward, Dec. 11, 2008. Available online at <http://www.forward.com/articles/14717/>

³⁴ <http://unispal.un.org/UNISPAL.NSF/0/665317F0F18D199B852575230075076D>

³⁵ <https://displacedpalestinians.wordpress.com/category/palestinian-detainees/page/4/>

³⁶ <http://972mag.com/photo-settlers-build-star-of-david-on-palestinian-land/103466/>

One of the most prominent settlers in the Hebron settlement community is Baruch Marzel, a onetime Kach Party spokesman and alleged leader.⁴⁰ Mr. Marzel, a convicted felon, has a long history of violent, anti-Arab incitement that has been well-documented in the Israeli and foreign press. Marzel lives in the Tel Rumeida outpost in Hebron.⁴¹

The Hebron Fund lists the Tel Rumeida outpost on their website.⁴² The IRS should investigate whether The Hebron Fund provides funding that supports a man who has reportedly been active with an entity listed by the United States as a terrorist organization.

The newspaper Haaretz wrote this about the case of Menachem Livni:

Toward the end of 2009, Livni – a senior figure in the Jewish Underground [terrorist⁴³] organization in the 1980s, who was convicted of murder (his prison term was commuted in 1989 by President Chaim Herzog) – was appointed director general of the [Association of the] Renewal of the Jewish Community in Hebron. Livni held the post until 2012. In 2010, his annual salary was NIS 234,000. Given that donations to the Hebron Fund are recognized in the United States for tax purposes, it would not be unwarranted to say that the United States indirectly paid part of Livni's salary.⁴⁴

The IRS should investigate whether The Hebron Fund has provided funding to a terrorist and murderer.

2.4 Hebron Fund Supports Racial, Religious and Ethnic Discrimination in Housing, in Violation of the Clearly Defined Public Policy of the United States

Ethno-religious discrimination extends to the settlements themselves, which are directly supported by the Hebron Fund's donations. The settler outposts in Hebron deny access to Palestinians except in special cases. They also prevent Palestinians from living in or purchasing

³⁷ New York Times report on the Massacre: <http://www.nytimes.com/1994/02/26/world/west-bank-massacre-least-40-slain-west-bank-israeli-fires-into-mosque-clinton.html>

³⁸ <http://www.nytimes.com/1994/03/14/world/israel-votes-ban-on-jewish-groups-linked-to-kahane.html> and <http://www.nytimes.com/2000/12/19/nyregion/terror-label-no-hindrance-to-anti-arab-jewish-group.html>

³⁹ <http://www.nytimes.com/2006/10/18/us/18kahane.html> and <http://www.state.gov/j/ct/rls/crt/2011/195553.htm#kahane>

⁴⁰ http://articles.latimes.com/1988-10-05/news/mn-3031_1_supreme-court <http://blogs.forward.com/jj-goldberg/213810/knesset-briefs-kahanist-on-board-bennetts-soccer/>, <http://www.nytimes.com/1994/04/04/world/israeli-police-finally-arrest-fugitive-anti-arab-militant.html>

⁴¹ <http://www.timesofisrael.com/the-extremist-who-could-bring-kahanism-back-to-the-knesset/>

⁴² <https://hebronfund.org/tel-hebron-admot-ishai-tel-rumeida>

⁴³ http://en.wikipedia.org/wiki/Jewish_Underground

⁴⁴ <http://www.haaretz.com/news/features/.premium-1.534384> (registration required)

land or housing within settlements. Palestinian access is limited based on religious and ethnic identity.⁴⁵

The animus and entitlement of local settlers towards Palestinians is so pronounced that nets were hung over Palestinian streets adjacent to settlements to catch the garbage that settlers throw on Palestinians.⁴⁶

2.5 Hebron Fund Supports Racial, Religious and Ethnic Discrimination in Freedom of Movement, in Violation of Clearly Defined Public Policy of the United States

The city of Hebron offers perhaps the most alarming example of physical segregation in the occupied-West Bank. The H2 section of the city is punctuated by Israeli checkpoints. While Israeli settlers are able to move with absolute freedom in this area, Palestinian residents face remarkable restrictions on movement. The most publicized restriction is the ban on Palestinians from accessing Shuhada street. Following the aforementioned murder of 29 Palestinians by an Israeli settler, the Israeli army began to restrict Palestinian traffic on Hebron's main market street. During the course of the Second Intifada, Palestinian access to the street was banned without a special permission, and has not been restored more than a decade later.⁴⁷ Many who own houses or shops on the street are forced to enter via back allies and roofs.⁴⁸ Israelis and foreigners can travel the street freely. This process of explicit racial and religious discrimination - i.e., denying Palestinians access to the main public street of the largest Palestinian city in the West Bank based exclusively on ethno-religious criteria -- is a glaring violation of basic rights norms and laws, and it is perpetuated in service of the small settler community in the city.⁴⁹

Freedom of movement is clearly defined public policy in the United States, guaranteed both by the U.S. Constitution and by the United States' accession to the International Covenant on Civil and Political Rights.

2.6 Hebron Fund Supports Racial and Ethnic Discrimination in Education, in Violation of the Clearly Defined Public Policy of the United States

The Hebron Fund supports "after-school programs, libraries, and summer youth activities; as well as sponsorship of public cultural and educational events in Hebron,"⁵⁰ but only for Jews. Given legal segregation and ethno-racial discrimination in Hebron, Palestinians are not welcome.

⁴⁵ See Conclusion 103;

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>

⁴⁶ <http://www.telegraph.co.uk/meetthesettlers/chapter2.html>

⁴⁷ <http://www.theatlantic.com/international/archive/2014/06/the-shame-of-shuhada-street-hebron/372639/>

⁴⁸ <http://www.btselem.org/video/2006/11/rooftops-hebron>

⁴⁹ <http://www.nybooks.com/articles/archives/2012/feb/23/exclusive-corner-hebron/>

⁵⁰ <https://hebronfund.org/about-us/about>

Admittedly, most Palestinians would not want to attend these educational programs in any case -- precisely because these programs advance an exclusive, ethno-racial agenda.

These activities supported by The Hebron Fund violate the established U.S. public policy that does not permit racial and ethnic discrimination in education.

2.7 Hebron Fund Supports Activity Illegal Under International Law as Articulated by the United Nations, that also Violates Basic Property Rights

A robust body of international law clearly designates the West Bank and its principal cities to be Palestinian territory under Israeli military occupation. The Hebron Fund's role in enabling the expansion of settlements directly contravenes United Nations Security Council Resolution 446 and the obligations of occupying powers as enumerated in the Fourth Geneva Convention.⁵¹

One potential indicator of the Hebron Fund's role in this discriminatory settlement expansion project is the controversial al-Rajabi building/Beit HaShalom outpost. The building was allegedly purchased by Morris Abraham, a Brooklyn resident, who in 2011 listed as a member of the Hebron Fund's dinner committee.⁵² In April 2014, when settlers moved in to the building, the rabbi of Hebron Dov Lior said, "Real peace will be when the nations of the world recognize the exclusive right of the Jewish people to this land."⁵³

2.8 The Hebron Fund Disseminates Propaganda and Unsupported Opinion with No Educational Value

IRS regulations state that:

*An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.*⁵⁴

The Hebron Fund's website is full of unsupported, misleading or one-sided opinions. Take this sentence from the "about us" page: "*A primary goal of the organization is the raising of capital for the improvement of daily life for the residents of Hebron, Israel.*"⁵⁵

This leaves out the very basic fact that the Hebron Fund is only raising capital to improve the lives of about 850 Jews, not the 200,000 Palestinians that live in Hebron. Further, it ignores the very relevant fact that neither United States, the United Nations, nor even Israel itself considers

⁵¹ <http://daccess-ods.un.org/TMP/2595385.90908051.html> ;
<http://www.un.int/wcm/content/site/palestine/pid/11884>

⁵² http://www.salon.com/2011/12/15/new_york_charity_abets_israeli_settler_violence/

⁵³ <http://www.haaretz.com/news/diplomacy-defense/.premium-1.585446>

⁵⁴ cf. <http://www.irs.gov/pub/irs-tege/rr66-255.pdf>

⁵⁵ <https://hebronfund.org/about-us/about>

the city of Hebron to be part of Israel. The website avoids mentioning that the many of the settlers themselves have an an explicitly race-based ideology.⁵⁶

A legitimate charity working for peace in Hebron would mention the pattern of violence in both directions -- Palestinians against Israelis, but also Israelis against Palestinians. But the Hebron Fund site avoids almost all mention of violence by Israelis against Palestinians. On the Hebron Fund website, David Wilder has this to say on the issue:

"admissions' by Israel of 'unnecessary violence' against Arabs, even when they are clearly the instigators, is similar to kicking a soccer ball into your opponent's goal for him."⁵⁷

The website's "History" section⁵⁸ does not present a "full and fair exposition" of Hebron's history. From a survey of historical travelogues⁵⁹ to the settler movement's arrival in Hebron⁶⁰, the section's author's makes no real mention of the legacy of legitimacy of the indigenous Palestinian population, instead privileging only one aspect of the city's history. In effect, this one-sided historical presentation disinherits Palestinians from their own rich history in the area.

The Hebron Fund advances one-sided, unsupported opinion about Israel and Jewish expansion into the West Bank, and does not present a full or fair exposition of the pertinent facts. Therefore, it cannot claim to be tax-exempt for educational purposes.

3. The IRS Should Investigate the Hebron Fund's Noncompliance with the Tax Exemption Requirements of the Internal Revenue Code

The connections between The Hebron Fund and any activities that are inconsistent with its charitable purpose, contrary to public purpose, and/or in violation of the law, requires an IRS investigation into whether tax exempt status should be withdrawn. The Internal Revenue Code requires that tax exempt organizations be "organized and operated exclusively" for charitable purposes.⁶¹ That requirement is violated if "more than an insubstantial part of its activities is not in furtherance of an exempt purpose."⁶² Activities that are illegal or contrary to public policy disqualify an organization from tax exempt status.⁶³ A charitable purpose is illegal if it tends to induce or encourage illegal conduct.⁶⁴

The Hebron Fund likely violates at least three distinct legal requirements:

⁵⁶ <http://www.nybooks.com/blogs/nyrblog/2013/mar/22/hope-hebron/>

⁵⁷ <https://hebronfund.org/blog/119-david-the-nachalite>

⁵⁸ <https://hebronfund.org/multimedia/articles/history-of-hebron>

⁵⁹ <https://hebronfund.org/multimedia/articles/history-of-hebron/74-hebron-in-travelogues-through-the-centuries>

⁶⁰ <https://hebronfund.org/multimedia/articles/history-of-hebron/51-the-return-to-hebron-june-1967>

⁶¹ 26 U.S.C. §501(c)(3).

⁶² 26 CFR §1.501(c)(3)-1(c)(1).

⁶³ See *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983).

⁶⁴ <http://www.irs.gov/pub/irs-tege/eotopicj85.pdf> at 1.

A. Control & Discretion: In order to ensure that its funds are not misspent, a nonprofit charity that conveys funds to a foreign entity “needs to retain control and discretion as to the use of the funds and maintain records establishing that the funds were used for section 501(c)(3) purposes,”⁶⁵ and cannot act as a mere conduit for raising funds to transfer to the foreign organization. In this case:

- The Hebron Fund describes itself as
 - *“a New York based not-for-profit charitable organization was founded in 1979. While the fund is a separate entity, it was created as an affiliate organization of the Jewish community in Hebron and, subsequently, operates in concert with the community there to assess their needs and respond in kind.”*⁶⁶
- The personnel involved in The Hebron Fund overlap substantially with the Community. The Hebron Fund website lists the Mayor of Hebron, a “Chief Security Officer” and two “Hebron Spokesmen” based in Hebron on the “Board and Staff” page of its website.⁶⁷
- The Community website⁶⁸ links directly to The Hebron Fund website, and describes The Hebron Fund as the exclusive mechanism for donating to the Community in U.S. Dollars. That relationship implies that donations to The Hebron Fund serve as a direct conduit to the Community, in violation of requirements under the IRC.
- David Wilder, one of the leaders of the Hebron Community, refers to The Hebron Fund as “our American organization.”⁶⁹
- There is no indication that The Hebron Fund exerts any control or discretion in grant-making separate from direct transfers to The Community, in violation of IRC requirements.

B. Records of Use for Charitable Purposes: A nonprofit charity must ensure that funds sent abroad are used for charitable purposes, and maintain records showing that the funds are properly used.⁷⁰ To the extent The Hebron Fund has not taken adequate steps to ensure that the money it sends to The Community is used for charitable purposes, and/or to ensure that its funds are not used for purposes that are illegal or contrary to public purpose, it is out of compliance with the requirements of its tax exemption.⁷¹ The burden is on The Hebron Fund to produce adequate records.

The Hebron Fund does not maintain any such records on its website. The IRS should investigate the Hebron Fund to determine whether it has kept the required records.

⁶⁵ <http://www.irs.gov/pub/irs-wd/0504031.pdf> at 2, citing Rev. Rul. 68-489, 1968-2 C.B. 210.

⁶⁶ <https://hebronfund.org/about-us/about>

⁶⁷ <https://hebronfund.org/about-us/staff>

⁶⁸ hebron.com

⁶⁹ <http://www.israelnationalnews.com/Blogs/Message.aspx/5369#.VPP6v7DF94o>

⁷⁰ IRS Revenue Ruling 68-489, 1968-2 Cum. Bull. 210; see also IRS Office of Chief Counsel Memorandum re: International Grants and Activities, at 2 (Jan. 28, 2005) (available at <http://www.irs.gov/pub/irs-wd/0504031.pdf>) ; IRS Rev. Rul. 75-65, 1975-1 Cum.Bull. 79; IRS Rev. Rul. 63-252, 1963-2 Cum. Bull. 101; IRS Rev. Rul. 66-79, 1966-1 Cum. Bull. 48.#

⁷¹ In addition, these funds may not be used to advocate for changes in the law of a foreign country. IRS Rev. Rul. 73-440, 1973-2 C.B. 177.

C. Agency, Aiding & Abetting, Ratification: Acts by members or officers of an organization may be deemed acts of the organization if those individuals have actual or purported authority to act on behalf of the organization, they are undertaken as agents of the organization, or they are ratified by the organization.⁷² Therefore, acts taken by individual settlers may cause The Hebron Fund to be out of compliance, if The Hebron Fund or the Community are involved in authorizing or ratifying such acts.⁷³

Concepts of civil liability are helpful by analogy, although they impose a higher standard than the tax exemption requirements. Agency liability is established under civil law when one entity has given another actual or apparent authority to act on its behalf.⁷⁴ Such a grant of authority can be manifested through express statements or through conduct or actions that would lead a reasonable person to believe authority has been granted.⁷⁵ Similarly, aiding and abetting is widely recognized as a basis for holding liable a person who did not commit an injurious act directly,⁷⁶ but who gave substantial assistance or encouragement to the commission of the act.⁷⁷

Finally, even if a specific act has not been authorized or encouraged in advance, an entity can be held liable on a ratification theory if it has authorized similar acts or accepts the benefit of the act after the fact.⁷⁸

In this case, the IRS should investigate whether The Hebron Fund (1) fails to ensure its funds are used only for charitable purposes and not for purposes that are illegal or contrary to public policy, (2) acts as a mere conduit for a nonexempt, foreign organization, (3) fails to maintain records showing its funds are used only for charitable purposes and not for purposes that are illegal or contrary to public policy, (4) has granted agency to settlers engaged in acts that are illegal or contrary to public policy, (5) aids and abets the settlers in acts that are illegal or contrary to public policy, and (6) has retroactively ratified such unlawful acts. The following facts support the need for IRS investigation:

⁷² <http://www.irs.gov/pub/irs-tege/eotopicj85.pdf> at 2

⁷³ *Id.*

⁷⁴ Restatement (Third) of Agency §1.01 (2006). Actual authority is when an agent reasonably believes, based on explicit or implied manifestations from the principal, that the principal wishes the agent to take certain acts. *Id.* §2.01, 2.02. Apparent authority is when a third party reasonably believes, based on manifestations by the principal, that the agent has authority to act on the principal's behalf. *Id.* §2.03; see also *American Soc. of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 565-69 (1982).

⁷⁵ See, e.g., *Manchester Equipment Co., Inc. v. American Way*, 60 F.Supp.2d 3, 7-8 (E.D.N.Y. 1999).

⁷⁶ See, e.g., *Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254, 280-82 (2d Cir. 2007) (Katzmann, J., concurring); see also *id.* at 260; *id.* at 288 (Hall, J. concurring) (citing cases).

⁷⁷ Restatement (Second) of Torts §876 (1965).

⁷⁸ Restatement (Third) of Agency §§4.01. See also, e.g., *Lewis v. Wash. Metro. Area Transit Authority*, 463 A.2d 666, 671 (D.C. Ct. App. 1983); *Holm v. C.M.P. Sheet Metal, Inc.*, 89 A.D.2d 229, 455 N.Y.S.2d 429, 431-32 (D.C. App. Div. 1982).

- The facts cited above concerning the stated mission of The Hebron Fund, the overlap in personnel between The Hebron Fund and the Community, and the website links and text indicating that The Hebron Fund is merely a conduit for donations to the Community.
- It is unlikely that the Community would have the funds to conduct many of their activities without the substantial support of The Hebron Fund. The U.S. Consul General estimated that The Hebron Fund provided 45% of the budget to the Community. According to 2009 report from Temporary International Presence in Hebron, cited by the US Consul-General in Jerusalem, the Hebron Fund has given as much as \$1.5 million annually to Hebron settlements.⁷⁹ Another estimate, also cited by the Consul-General, puts this at 45% of the settlers' budget.⁸⁰ Such a record of financial support clearly indicates approval by The Hebron Fund of the activities of the Community, aiding and abetting of the Community, and ratification the Community's activities.
- The Hebron Fund is fully aware of all the activities and abuses of the Israeli settlers in Hebron cited here, which have been widely covered in the news. Nevertheless, we are not aware that The Hebron Fund has ever criticized any actions by settlers that harmed Palestinians, or otherwise tried to distance itself from even the most violent, illegal and discriminatory activities of the Hebron settler community. Just the opposite -- even after the publication of news stories and videos documenting crimes, The Hebron Fund continues to raise as much money as possible to send to the community, to grow and strengthen their settlement and expand their violent and discriminatory activities. This is conduct that would lead a reasonable person to believe that The Hebron Fund approved of the activities of the Community and individual settlers.
- Individual settlers consistently and overwhelmingly act in full alignment with the publicly articulated views of the Community and The Hebron Fund. In turn, the Hebron Fund and the Community provide significant support to Jewish families and individuals that wish to live in Hebron. The organizations' websites are overflowing with affirmations of how unified and supportive the settlers are of each other and other Jews who wish to visit Hebron to show their strength to the Palestinians. In this way, the individual Jewish settlers, the Community and The Hebron Fund are in a fully-informed, mutually-supportive relationship, in which each works in concert to support the goals of the others.⁸¹
- The community of settlers in Hebron is very insular. Its members share extreme religious views, and an extreme motivation to reclaim the land in the West Bank for Jews. The Community is deeply opposed to Palestinian statehood.⁸² Many of the area's settlers subscribe to or support the principles of the outlawed, terrorist organization the Kach party or its ideological offshoots.

⁷⁹ https://www.wikileaks.org/plusd/cables/09JERUSALEM2325_a.html

⁸⁰ https://www.wikileaks.org/plusd/cables/09JERUSALEM2325_a.html

⁸¹ See list of overlap above in Section 3.A, "Control and Discretion".

⁸² <https://hebronfund.org/blog/78-two-state-solution>

- Taken together, these factors make it difficult or impossible to distinguish decision-making by The Hebron Fund and the Community.

5. Conclusion

*“A question I hear frequently: **‘Isn’t it dangerous to live here in Hebron?’** ... Sometimes, ... I joking [sic] answer, **‘sure it is, for the Arabs around us. When they see you, they’re afraid.’**”*

Actually, this isn’t all joke.”⁸³

- David Wilder, Spokesman for The Community Jews of Hebron



An Israeli Jewish settler throws wine on a Palestinian Muslim woman on Shuhada Street in Hebron, which has been extensively defaced with anti-Palestinian graffiti.⁸⁴ Consumption of alcohol is forbidden to devout Muslims, and many consider physical contact with alcohol to be a defilement. Anyone classified as ethnically Palestinian must obtain a special pass to walk on this street.⁸⁵

Simply put, The Hebron Fund, The Jewish Community of Hebron and the individual settlers in Hebron are cooperating and collaborating as one community on a specific project -- to expand

⁸³ <https://hebronfund.org/blog/159-this-is-what-israel-is-all-about>

⁸⁴ http://www.nytimes.com/slideshow/2009/09/13/world/20090913SETTLERS_6.html

⁸⁵ <http://972mag.com/watch-hebron-shuhada-street-authorized-entry-only/68568/>

the boundaries of Israel and push Palestinians out of their largest city, while denying Palestinians their basic rights. On a fundamental level, this is not a charitable purpose.

There is no way to achieve the goals shared by the Hebron Fund, the Community and the individual settlers of Hebron without deliberately harming and disenfranchising the Palestinian residents of Hebron. Harm to Palestinians is intrinsic and fundamental to the settlement project, and a desire to harm Palestinians is widespread among settlers in Hebron.

The U.S. Supreme Court has said that “a bare desire to harm” a group can never constitute a legitimate governmental purpose.⁸⁶ It certainly can never be a charitable one.

A legitimate charity operating in the West Bank would never seek to displace one group for the benefit of another. It would work to bring together Palestinians and Israelis to live together, as neighbors, in peace and brotherhood, guided by human rights, democracy and the rule of law.

Without the sizeable tax-exempt donations of the Hebron Fund and its supporters, the violent and racially motivated activities of the settlers in Hebron would decrease. The government of Israel recognizes this, and denies tax exemptions for donations to the settlers in Hebron. The Internal Revenue Service should follow suit, by auditing The Hebron Fund and revoking its tax-exempt status.

⁸⁶ <https://www.law.cornell.edu/supct/html/94-1039.ZO.html>