

If otherwise qualified, a home for the aged which is dedicated to providing and does furnish care and housing to its residents at established rates which are substantially less than the costs of the services furnished, is exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as a charitable organization described in section 501(c)(3) thereof.

Revenue Ruling 57-467, C.B. 1957-2, 313, distinguished.

Advice has been requested whether a nonprofit organization, providing care and housing for aged people at established rates which are substantially less than the actual costs of the services furnished, is entitled to exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as a charitable organization described in section 501(c)(3) of the Code.

The organization in question was incorporated without capital stock under state law to establish and conduct a home to provide care to aged persons who lack adequate financial means to provide for themselves without distress; to build, operate and maintain a residence for such aged persons; and to administer to their needs to the extent of its financial ability without respect to the cost of such services. The organization's income is derived from gifts, contributions and charges to its resident members. No part of its net earnings inures to the benefit of any private individual. Upon dissolution of the corporation, any assets remaining after the payment of its debts, will be distributed to an exempt charitable organization.

Applicants for admission to the home are required to furnish proof of good character and physical condition. Although the organization, by the provisions of its charter, dedicates itself generally to the care of the aged who lack financial ability to care for themselves without distress, it nevertheless satisfies itself that applicants will be financially able to make the established monthly payments which are, in fact, less than the cost of the services and care furnished. The facilities are not lavish, nor are they more than required to meet the reasonable needs of aged persons of limited means.

Although no provision is made for the care of aged individuals free of charge or at less than the established charge in cases of those unable to pay the established charge, the organization attempts to minister to the needs of the aged to the extent of its financial ability without regard to the actual cost of the services and as much below cost as is financially possible. When operated at full capacity, the cost of services and facilities furnished the residents of the home regularly exceeds the gross receipts of the organization from its residents by an amount which, in relation to its monthly gross income, is equivalent to approximately 35 percent of its total revenue. In

actual operation, the home furnishes care and assistance as well as living quarters and food to its residents.

Income is derived from residents' fees, gifts and donations, and is expended in the operation of the home. The organization has also made several contributions to universities for use in research in the general field of gerontology (the scientific study of the phenomena of old age).

Section 501(c)(3) of the Code describes certain organizations exempt from taxation under section 501(a) and reads, in part, as follows:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, \* \* \*.

Since the home does not attempt to provide care entirely free of charge, or at less than the established monthly charge in the case of inability to pay, the question arises whether the furnishing of such services and care to the aged for a fixed charge, but at less than actual cost of such care, will support a charitable exemption.

The fact that an organization makes some charge for its services does not necessarily preclude qualification as a charitable organization under section 501(c)(3) of the Code. Nor is charity limited to so-called 'free' care of indigent patients.

The Internal Revenue Service recognizes that charity may also be dispensed in the form of services below cost, as in the case of some hospitals. See Rev. Rul. 56-185, C.B. 1956-1, 202.

If the particular charitable activities which the organization engages in are sufficiently substantial to characterize it as charitable, then failure to undertake further charitable activity in some other, or additional form (as taking in a limited number of residents free of charge) does not detract from or lessen its charitable character. The residents in homes for the aged usually stay for extended periods, and one of the essential objectives of the homes is to insure security and care over an indefinite period.

In the instant case (1) the organization is dedicated to providing, and in fact furnishes, care and housing to aged individuals who would otherwise be unable to provide for themselves without hardship, (2) such services are rendered to all or a reasonable proportion of its residents at substantially below the actual cost thereof, to the extent of the organization's financial ability, and (3) the services are of the type which minister to the needs and the relief of hardships or distress of

aged individuals. Therefore, the organization is considered as making a gift in the charitable sense to a group that qualifies as a charitable class. It thereby qualifies for exemption despite the fact that it may exact a uniform fee from all of the residents for admission to the home.

Accordingly, it is held that the organization herein under consideration is entitled to exemption from Federal income tax under section 501(a) of the Code as a charitable organization described in section 501(c)(3) of the Code.

The facts in this case are distinguishable from the facts in Revenue Ruling 57-467, C.B. 1957-2, 313, which holds that a home for aged people, which does not accept charity guests and which requires the discharge of guests who fail to make certain required monthly payments, is not entitled to exemption from Federal income tax as a charitable organization. In that case the home was neither organized nor operated for the purpose of furnishing any substantial amount of services at less than cost. In fact, the terms and conditions of admission were strongly indicative of the contrary. Further, there was no showing of any substantial form of charitable undertaking requiring full dedication of the organization's assets and income to an extent justifying the organization's failure to care for a reasonable number of individuals unable to pay.

In order to establish an exemption under section 501(c)(3) of the Code, it is necessary to file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the Income Tax Regulations.