

H. RENTAL HOUSING FOR THE ELDERLY UNDER IRC 501(c)(3)

Introduction:

This topic has been selected for the EOATRI because of its significance in the exempt organization area. This significance is manifested by the recently published ruling, Rev. Rul. 79-18, 1979-3 I.R.B. 8 (see Attachment 1), as well as by the recurring questions the National Office receives for both technical assistance and advice.

Although this topic deals with housing, it is only one of the problems facing the elderly. Their problems have been rising as our attentions remain focused more on the problems of youth. However, as the expected life span of Americans has increased, the elderly have begun to demand headline attention which is clearly evident from a cursory reading of the daily newspapers. Besides housing projects, today's projects for the elderly include: food programs, sales and real estate tax benefit programs, free transportation, social and recreational programs, free health clinics and legal aid. A review of this area reveals that these programs have been organized, funded and administered not only on the Federal level, but also on the local levels through churches, social organizations, fraternal orders, self-created elderly groups and state and county governmental agencies.

The trend towards new programs or benefits for the elderly continue. For example, in P.L. 95-600, 1978-3 (Vol. 1) C.B. 119, IRC 4942 was amended to provide a special private operating foundation classification for long-term care facilities. See the Legislative Development section of this EOATRI for information on this change.

This topic will briefly trace the legal background of organizations providing housing and auxiliary services to the elderly, in the context of exempt status, leading up to publication of Rev. Rul. 79-18. It will also discuss the standards that homes for the aged, and, in particular, rental housing projects for the elderly, must meet in terms of specially designed housing units, age of residents, financial security and health care in order for such organizations to qualify for recognition of exemption as charitable organizations.

To assist in case development, some workable definitions for commonly used generic terms and descriptions of some Federal funding programs relating to the elderly and their institutions are listed in Attachments 2 and 3, respectively.

1. Background

It wasn't too long ago that the Service did not consider the elderly to be a charitable class, nor the relief of their distress to be a charitable activity per se. Our earlier position was that only those elderly persons unable to provide care for themselves without undue financial stress were proper objects of charity. See Rev. Rul. 57-467, 1957-2 C.B. 313, which held that a home for the aged which did not accept charity guests and which required the discharge of guests who failed to make the required monthly payments, did not qualify for recognition of exemption as a charitable organization. This position was based on the theory that the charitable purpose of these institutions was to relieve the distress of elderly persons who were suffering financial hardship. It was consistent with the traditional view of the law of charity as it related to this area. For example, in the case of Oregon Methodist Homes, Inc. v. Horn, 360 P. 2d 293 (1961), one of the factors determinative of the charitable status of an old age home was:

whether there [was] a charitable trust fund created by benevolent and charitably minded persons for the needy or donations made for the use of such persons.

By this view, old age, per se, was not equated with need.

It was also the Service's position that a nonprofit home for the aged would be eligible for exemption as a social welfare organization under IRC 501(c)(4), if it could not meet the requirements of Rev. Rul. 57-467. The theory behind exemption under IRC 501(c)(4) was that the activity of operating an old-age home on a nonprofit basis is one which reasonably qualifies as a service beneficial to the community. See Fredericka Home for the Aged v. San Diego County, 221 P. 2d 68.

The next publicized development in this area was Rev. Rul. 61-72, 1961-1 C.B. 188. Here the Service publicized a more liberalized approach, that is, charitable status was extended to a home which did not attempt to provide care entirely free-of-charge or at less than the established monthly charge in cases of those unable to pay. Rev. Rul. 61-72, states that charity is not limited to free care of indigent persons. In this Rev. Rul. the Service recognized 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, 1956-1 C.B. 202; and also, Rev. Rul. 69-545, 1969-2 C.B. 117; Rev. Rul. 79-17, 1979-3 I.R.B. 7). An extensive discussion on Health Care

organizations under IRC 501(c) may be found in this EOATRI Textbook at p. 184-233.

It should be noted that the facilities of the organization described in Rev. Rul. 61-72 were not lavish, nor were they more than required to meet the reasonable needs of senior citizens of limited means. One of the essential objectives of the home was to insure security and care over an indefinite period.

The basic principles we looked for to determine the charitable status were:

- a. the organization must be dedicated to providing and, in fact, furnish relief of the distress and hardship of old age by ministering to the particular needs of the elderly;
- b. the organization must offer care and housing to its entrants substantially below cost, or offer them free to a substantial number of individuals, to the extent of its financial ability, and;
- c. the organization must render these services to those elderly persons unable to provide for themselves without distress.

Rev. Rul. 64-231, 1964-2 C.B. 139, added another dimension in the area of treating homes for the aged as charities. This Rev. Rul. held that entrance fees should be computed in the below cost test of Rev. Rul. 61-72, and that such fees may be amortized over the remaining life expectancy of the residents.

The basic position that the elderly are not a charitable class per se remained the Service position through the 1960's. See Rev. Rul. 66-257, 1966-2 C.B. 212.

In 1966, the Service began an in-depth review of the exempt status of old-age homes primarily as a result of the sociological and economic developments occurring in the 1960's. These developments of the 1960's were manifested by passage of the Older Americans Act of 1965, Public Law 89-73, 79 Stat. 218; 42 U.S.C. 3001. The Senate Report No. 247, accompanying this Act stated that the Government at all levels has a responsibility to help older people solve their problems.

Revenue Ruling 72-124, 1972-1 C.B. 145, (see Attachment 1), long in the making, was the final result of this review. It superseded the Service's longstanding

position regarding the qualification of homes for the aged, as expressed in Rev. Ruls. 57-467 and 61-72.

Rev. Rul. 72-124, recognized that the elderly as a class are susceptible to forms of distress other than financial. It set forth new guidelines under which a home for the aged could qualify for charitable exemption. That is, it must operate in a manner designed to satisfy the three recognized primary needs of aged persons: 1) housing, 2) health care, and 3) financial security. It also states as requisite elements; relief of distress and community benefit.

The organization described in Rev. Rul. 72-124 was formed under the sponsorship of leaders of a church in a particular community. It provides housing, limited nursing care, and other services and facilities needed to enable its elderly residents to live safe, careful, and independent lives.

With the publication of Rev. Rul. 72-124, the Service recognized the relief of the distress of old age as a charitable purpose no longer based on financial considerations alone. Rev. Rul. 72-124 was to be the revenue ruling to clear up any uncertainties caused by the prior revenue rulings. However, issues concerning rental housing were to be treated in a follow-up revenue ruling (published as Rev. Rul. 79-18, see Attachment 1).

Since publication of Rev. Rul. 72-124, the following revenue rulings have been published. These revenue rulings, for the most part, reinforce the principle in Rev. Rul. 72-124, that the elderly as a class are proper beneficiaries of charitable activity regardless of their income or net worth.

Rev. Rul. 75-198, 1975-1 C.B. 157, held that senior citizen centers may qualify for charitable status. The center offered recreation activities and counselling services relating to health, housing, finances, etc., for the elderly residents of a particular community.

Rev. Rul. 75-385, 1975-2 C.B. 205, held that a vacation home for the elderly poor may qualify for charitable status. The purpose of this organization is to provide poor elderly people with two-week vacations in the country. These brief vacations helped to relieve the distress of being poor as well as aged.

Rev. Rul. 76-244, 1976-1 C.B. 155, held that home delivery of meals to the elderly and handicapped may be considered a charitable activity. This organization delivers nutritious meals to persons, who, by reason of advanced age or a handicap

cannot prepare meals for themselves. Although a reasonable fee is charged, service is not denied if the recipient cannot pay.

Rev. Rul. 77-42, 1977-1 C.B. 142, held that a nonprofit organization, that sets up closed circuit radio transmitting equipment in multiple residence structures such as nursing homes, rest homes, and convalescent homes to provide the elderly residents an opportunity to listen to free, non-commercial and educational broadcasts concerning their special needs such as employment, financial security, health and legal care, as well as cultural and recreational needs, is relieving their distress and qualifies for charitable status.

Rev. Rul. 77-246, 1977-2 C.B. 190 held that low cost transportation to senior citizens and handicapped persons in a community where public transportation is unavailable or inadequate qualifies as a charitable activity. In this case the organization was substantially staffed by volunteers and dependent upon public and private contributions and grants.

Finally, in 1979 Rev. Rul. 79-18, (see Attachment 1) covering rental housing was published. This ruling was the result of a follow-up review of this area initiated after publication of Rev. Rul. 72-124. Rev. Rul. 79-18 and a counterpart ruling relating to special housing for the physically handicapped, Rev. Rul. 79-19, 1979-3 I.R.B. 9, made it patently clear that the "... requisite elements of relief of distress and community benefit..." as stated in Rev. Rul. 72-124, could be met by a rental housing project as long as it could meet the standards delineated in Rev. Rul. 79-18 and as long as the project provides its facilities and services at a charge within the financial reach of a significant segment of the community's elderly persons.

2. Standards

It is vitally important that our elderly citizens have access to housing which is adequate but low cost, is modest in size and easy to maintain, and so designed that it will help them avoid accidents. The housing could be close to public transportation and adequate shopping facilities so that normal activity is sustained. It could be near recreational and cultural facilities, church and community centers so that the elderly residents can remain active in the community.

"To most older Americans, a high degree of independence is almost as valuable as life itself. It is their touchstone for self-respect and dignity..." Poverty and the

Older American Report #1287 by the Special Committee on Aging, U.S. Senate 89th Cong., 2nd Sess., (June 20, 1966) page 7.

It has been stated many times that the mere fact that a group has been described as a charitable class does not mean that any activity undertaken on its behalf would be treated as a charitable activity. The activity must be reasonably calculated to relieve the specific form of distress which causes the group to be described as a charitable class.

To relieve the distress of the elderly in a charitable manner a housing organization must do more than furnish four walls and a roof. It must offer facilities and services that relate to the totality of the needs of the elderly, such as, health care, recreation, good nutrition and financial security.

The Service has recognized charitable status for homes for the aged based on the charitable concept of relief of the distress of old age. Financial considerations are no longer the only basis. But a charitable home, whether it is one which provides medical or nursing care, or domiciliary care, must provide services which minister to the special needs of its residents.

Nursing homes are designed for persons who are in need of continuous medical attention and/or a controlled and protective environment. Residential care facilities or congregate housing facilities are designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. Rental housing units are designed for independent living with the organization either directly providing for the basic needs of its residents or making arrangements with other providers on behalf of its residents.

a. Housing Units

To satisfy the need for housing an organization must provide residential facilities specifically designed to meet some combination of the physical, emotional, recreational, social, religious, and similar needs. The home should be designed with safety features such as grab bars by bathtubs and toilets, wide entrance-exit doorways, ramps and elevators for wheelchair use, floors designed to help prevent slips and falls, conveniently located electrical outlets and cabinets to avoid strenuous bending or stretching, lower windows to enable those confined to wheelchairs a view of the surroundings, emergency 24-hour alarm system; and should be constructed with fire-resistant materials.

Although a rental housing project should not have to provide day-to-day assistance to qualify as charitable, it should have a recreational and/or social program. The home should be operating with the intent of providing something more than just housing. The project should have a counselor or trained manager to either coordinate or assist the residents to coordinate social and recreational activities.

b. Age of Residents

The Service in Rev. Rul. 72-124, Rev. Rul. 75-198, and Rev. Rul. 79-18, has directly ruled that the aged constitute a charitable class with special needs. These Revenue Rulings describe organizations that provide for the needs of senior citizens primarily aged 65 and over in a particular community. These Revenue Rulings were based on the Federal public policy (delineated in the Older Americans Act of 1965), that the elderly have special needs apart from financial distress. Satisfaction of these needs may in the proper context constitute charitable purposes or functions. See the Older Americans Act of 1965, Section 101, 42 U.S.C. section 3001 (Supp. VI, 1969).

The Older Americans Act was first enacted by the 89th Congress in 1965 and thereafter, it was revised in 1967 and 1969. A certain portion of the funds was allotted to the various states based on their population aged 65 or over. In 1972, an act to amend the Older Americans Act was enacted by Congress and signed into law by the President. In discussing eligibility in this amendment the House Report No. 92-726 states the following:

"Any minimum age limitation applied to participants is perforce arbitrary. Nonetheless, the Committee determined on the basis of evidence before it with respect to this bill, and other evidence that it has considered relating to the problems of the elderly, that an age limit of sixty is more reasonable than age sixty-five..."
U.S. Cong. and Adm. News, page 2092 (1972).

The following year, the Older Americans Comprehensive Services Amendments of 1973, was enacted into law to strengthen, improve and expand on the programs promoted by the Older Americans Act. See 42 U.S.C.A. section 3000; 87 Stat. 30. Funding under this act used a ratio formula which takes into consideration the population aged 60 or over.

Although in Revenue Rulings 72-124 and 79-18, admission to the housing project is generally limited to persons who are at least 65 years of age, congressional mandate would seem to prevent us from denying or revoking Federal income tax exemption to an organization on the basis that it is not serving a charitable class if benefits are extended to those between the ages of 60 and 65. Although in the revenue rulings the class being served consists mainly of those age 65 and over, there should be no objection by the Service if any organization allows its benefits to those between 60 and 65.

Although statistics relating to the elderly population are quite limited, we do know that the average age of nursing home patients is 82. Ninety-five percent are over 65, and seventy percent are over 70. It is safe to presume that the average age would fall and the percentages mentioned above decrease for homes with less nursing care and more independent type living environment, such as a rental housing project.

Applications received from senior citizens organizations which allow benefits to flow to those as young as 55 should be carefully developed to insure that the class of individuals receiving its benefits is composed principally of the elderly, or as an alternative, that those younger aged individuals qualify as a charitable class in some way other than by age. Keep in mind that statistics seem to support that these organizations should have little difficulty substantiating that most residents are 65 or older.

c. Health Care

It is well recognized that the aged are highly susceptible to certain forms of distress because of their advanced age and that they are in need of special care. However, unlike hospitals and nursing homes (skilled nursing facilities or extended care facilities), the primary function or role of a home for the aged (residential care facility or intermediate care facility), or a rental housing project is a domiciliary one. Consequently, it is not necessary that a home for the aged or a rental housing project provide on its premises the degree of care characteristic of a hospital or nursing home. Although residents of senior citizen apartment (rental housing) projects presumably have less immediate need for health care than those who have entered institutions which offer nursing care and a regulated environment, they should be able to reside there with the assurance and comfort of knowing that if they should fall sick or ill, the mechanism for care is readily available.

The particular means used to meet the unique health needs of the elderly may vary from case to case. However, the senior citizen apartment project must demonstrate that the health needs of its residents are being met. The mere referral of residents to other health care organizations by itself is not sufficient. To satisfy the health care needs of the elderly and to meet our standards, the senior citizen apartment project must provide some form of definitive health program for its residents.

An acceptable program should include a scheme in which someone, such as the resident manager, will be responsible in all cases of emergency to take whatever steps are necessary to render aid and ensure that emergency assistance is provided by qualified medical personnel. In addition one or more of the following could be provided as a part of an acceptable health program:

- (1) Annual medical examinations and free transportation for any follow-up treatment.
- (2) An examination room on the premises available for the residents' private physicians. The examination room could contain at least the minimum equipment necessary to perform an adequate physical examination. The following equipment would meet minimum requirements:
 - (a) a comfortable table with stirrups,
 - (b) adequate lighting (floor lamp) for the examination of the nose and throat,
 - (c) a blood pressure machine,
 - (d) a stethoscope,
 - (e) an otoscope,
 - (f) an ophthalmo scope,
 - (g) a percussion hammer, and
 - (h) tongue blades.

- (3) A written arrangement with other organizations such as a hospital, a medical clinic or visiting nurses association to provide needed medical care and attention either on the premises or with free transportation to the more specialized or equipped institutions.

d. Financial Security

To satisfy the need for financial security two conditions must exist. First, the home must be committed to an established policy of maintaining in residence any persons who become unable to pay their regular charges. This may be done by utilizing the organization's own reserves and seeking funds from private and governmental units or the general public. However, note the exception to this for state or federally supported housing projects in Rev. Rul. 72-124.

Secondly, the home must operate so as to provide its services to the elderly at the lowest feasible cost. While the Service no longer requires that a home accept charity residents or operate below cost, it does require that the home's policy is such that it will help alleviate the fear of declining income and rising charges. By operating at the lowest feasible cost, it is expected that residence in such a home will be available to a reasonably broad economic segment of the elderly persons in a community. Review Rev. Rul. 79-18 which holds that admission should be within the financial reach of a significant segment of the community's elderly persons.

Operating at the lowest feasible cost is a relative condition with which will vary from case to case. Generally, it means that a home must offer its services to the elderly, who as a group have a large percentage of financially distressed persons, for the least possible expense. Advertising through church bulletins, seeking the aid of other charitable organizations, soliciting contributions and volunteer help, and applying for federal or state financial aid are methods by which an organization could attempt to meet the requirement of operating at the lowest feasible cost.

Conclusion

As can be perceived by reading the above, there is no reason why rental apartment units cannot fulfill the housing needs of the elderly. It should be understood that the limitation on age for admission to a charitable housing project is meant only as a general guide and not as an absolute requirement. The health care provided by a charitable rental housing project does not have to meet the

degree of care characteristic of a hospital or nursing home. However, such projects must make provisions for ensuring that the special health care needs, (especially, emergency needs) of its residents are being met.

Financial considerations alone are no longer the only basis for exempt status as a charitable organization. However, it is vitally important that our elderly citizens have access to housing which is adequate to meet their special needs, but is low cost, is modest in size and easy to maintain, and so designed that it will help them avoid accidents. While the Service no longer requires a housing project for the elderly to accept charity residents or to operate below cost, the Service does require that such organization's policy is such that it will help alleviate the fear of declining income and rising charges. Residence in a rental housing project should be available to a reasonably broad economic segment of the elderly persons in its community. Finally, elderly housing projects must be committed to an established policy of maintaining in residence any persons who become unable to pay their regular charges to the extent the organization is able.

Attachment 1
Key Revenue Rulings Involving Housing for the Elderly

Rev. Rul. 72-124

Advice has been requested whether an organization that otherwise qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 is operated for charitable purposes by reason of the activities described below.

The organization was formed under the sponsorship of leaders of a church congregation in a particular community for the purpose of establishing and operating a home for the aged. Its board of trustees is composed of leaders of the congregation, as well as other civic leaders in the community. It provides housing, limited nursing care, and other services and facilities needed to enable its elderly residents to live safe, useful, and independent lives. Admission to the home is generally limited to persons who are at least 65 years of age.

The organization is self-supporting in that its operating funds are derived principally from fees charged for residence in the home. An entrance fee is charged upon admission, with monthly fees charged thereafter for the life of each resident. Fees vary according to the size of the accommodations furnished.

Because of the necessity of retiring its indebtedness, the organization ordinarily admits only those who are able to pay its established rates. However, once persons are admitted to the home, the organization is committed by established policy to maintaining them as residents, even if they subsequently become unable to pay its monthly charges. It does this by maintaining such individuals out of its own reserves to the extent available, by seeking whatever support is available under local and Federal welfare programs, by soliciting members of the church congregation and the general public, or by some combination of these means.

The organization's receipts are used exclusively in furtherance of its stated purposes. Its charges are set at an amount sufficient to amortize indebtedness, maintain reserves adequate to provide for the life care of its residents, and set aside enough for a limited amount of expansion sufficient to meet the community's needs. Net earnings are thus generally used to improve the care provided, retire indebtedness, subsidize any resident unable to continue making his monthly payments, or expand the facilities of the home where the needs of the community warrant such expansion. No part of the organization's net earnings inures, directly or indirectly, to the benefit of any private shareholder or individual. All employees receive no more than reasonable compensation for services rendered.

Section 501(c)(3) of the Code provides for exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the relief of the poor and distressed or of the underprivileged.

Providing for the special needs of the aged has long been recognized as a charitable purpose for Federal tax purposes where the requisite elements of relief of distress and community benefit have been found to be present.

Of principal importance are three rulings in which the Internal Revenue Service has given consideration to the tax exempt status of homes for the aged as charitable organizations described in section 501(c)(3) of the Code: Revenue Ruling 57-467, C.B. 1957-2, 313; Revenue Ruling 61-72, C.B. 1961-1, 188; and Revenue Ruling 64-231, C-B. 1964-2, 139.

Revenue Ruling 57-467 holds that a home for aged people that does not accept charity guests and that requires the discharge of guests who fail to make certain required monthly payments is not organized and operated exclusively for charitable purposes and is, therefore, not entitled to exemption from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 61-72 holds that, if otherwise qualified, a home for the aged is exempt under section 501(c)(3) of the Code if "(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 hardship or distress of aged individuals."

Revenue Ruling 64-231 holds that an entrance fee paid in addition to a required lump sum life-care payment as a prerequisite to obtaining direct personal services and residence in a home for the aged must be included along with the required lump-sum life-care payment to the home in determining whether the home meets the "below cost" requirement of Revenue Ruling 61-72.

Under the Revenue Rulings referred to above, exemption from Federal income tax under section 501(c)(3) of the Code is conditioned, in effect, upon whether an organization relieves the financial distress of aged persons by providing care and housing for them on a gratuitous, or below cost, basis.

However, it is now generally recognized that the aged, apart from considerations of financial distress alone, are also, as a class, highly susceptible to other forms of distress in the sense that they have special needs because of their advanced years. For example, it is recognized in the Congressional declaration of objectives, Older Americans Act of 1965, Public Law 89-73, 89th Congress, 42 U.S.C. 3001, that such needs include suitable housing, physical and mental health care, civic, cultural, and recreational activities, and an overall environment conducive to dignity and independence, all specially designed to meet the needs of the aged. Satisfaction of these special needs contributes to the prevention and elimination of the causes of the unique forms of "distress" to which the aged, as a class, are highly susceptible and may in the proper context constitute charitable purposes or functions even though direct financial assistance in the sense of relief of poverty may not be involved.

Thus, an organization, otherwise qualified for charitable status under section 501(c)(3) of the Code, which devotes its resources to the operation of a home for the aged will qualify for charitable status for purposes of Federal tax law if it operates in a manner designed to satisfy the three primary needs of aged persons. These are the need for housing, the need for health care, and the need for financial security.

The need for housing will generally be satisfied if the organization provides residential facilities that are specifically designed to meet some combination of the physical, emotional, recreational, social, religious, and similar needs of aged persons.

The need for health care will generally be satisfied if the organization either directly provides some form of health care, or in the alternative, maintains some continuing arrangement with other organizations, facilities, or health personnel, designed to maintain the physical, and if necessary, mental well-being of its residents.

The need for financial security, i.e., the aged person's need for protection against the financial risks associated with later years of life, will generally be satisfied if two conditions exist. First, the organization must be committed to an established policy, whether written or in actual practice, of maintaining in residence any persons who become unable to pay their regular charges. This may be done by utilizing the organization's own reserves, seeking funds from local and Federal welfare units, soliciting funds from its sponsoring organization, its members, or the general public, or by some combination thereof. However, an organization that is required by reason of Federal or state conditions imposed with respect to the terms of its financing agreements to devote its facilities to housing only aged persons of low or moderate income not exceeding specified levels and to recover operating costs from such residents may satisfy this condition even though it may not be committed to continue care of individuals who are no longer able to pay the established rates for residency because of a change in their

financial circumstances. See, for example, section 236 of the National Housing Act, P.L. 90-448, 82 Stat. 476, 498 (12 U.S.C. 1715 z-1).

As to the second condition respecting the provision of financial security, the organization must operate so as to provide its services to the aged at the lowest feasible cost, taking into consideration such expenses as the payment of indebtedness, maintenance of adequate reserves sufficient to insure the life care of each resident, and reserves for physical expansion commensurate with the needs of the community and the existing resources of the organization. In case of doubt as to whether the organization is operating at the lowest feasible cost, the fact that an organization makes some part of its facilities available at rates below its customary charges for such facilities to persons of more limited means than its regular residents will constitute additional evidence that the organization is attempting to satisfy the need for financial security, provided the organization fulfills the first condition regarding the provision of financial security. The amount of any entrance life care, founder's, or monthly fee charged is not, per se, determinative of whether an organization is operating at the lowest feasible cost, but must be considered in relation to all items of expense, including indebtedness and reserves.

The organization described in the instant case is relieving the distress of aged persons by providing for the primary needs of such individuals for housing, health care, and financial security in conformity with the criteria specified above. Accordingly, it is held that the organization is exempt from Federal income tax under section 501(c)(3) of the Code as an organization organized and operated exclusively for charitable purposes.

Revenue Ruling 57-467 is hereby superseded. Revenue Rulings 61-72 and 64-231 provide alternative criteria for charitable qualification of homes for the aged which are primarily concerned with providing care and housing for financially distressed aged persons. To the extent that a home for the aged can satisfy those criteria, those Revenue Rulings continue to remain in effect. However, Revenue Rulings 61-72 and 64-231 do not constitute the exclusive criteria for exemption from Federal income tax under section 501(c)(3) of the Code and any organization which meets the criteria set forth in this Revenue Ruling may also qualify for exemption under section 501(c)(3).

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Exemption Application, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the 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.

Rev. Rul. 79-17

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for charitable purposes.

The organization, known as a "hospice," operates on both an inpatient and outpatient basis to assist persons of all ages who have been advised by a physician that they are terminally ill to cope with the distress arising from their conditions. It utilizes and coordinates the professional skills of physicians, nurses, therapists, social workers, the clergy, counselors, and lawyers in a planned effort to alleviate the physical and mental distress of dying persons. It does not seek cures through extensive medical treatments that may not significantly alter terminal illnesses, but rather focuses on lessening the distress, pain, and physical difficulties generally experienced by dying persons.

Although the organization operates a facility to supply temporary accommodations to those dying persons in need of specialized housing, the thrust of its program is to provide care and counseling in the patients' homes. The organization also provides information and advice concerning the care and problems of dying persons to relatives of such persons and to interested individuals. Its financial support is derived from reasonable fees charged for its services and from donations by the public.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the relief of the distressed.

By alleviating the mental and physical distress of persons terminally ill, the organization described above relieves the distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. Accordingly, it is operated exclusively for charitable purposes and, thus, qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.5081(a) of the regulations. In accordance with the instructions to Form 1023, the application should be filed with the District Director of Internal Revenue for the key district indicated therein.

Rev. Rul. 79-18

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for charitable purposes.

The organization was formed to meet the housing needs of the elderly by building and operating an apartment rental complex designed especially for them. It was formed under the sponsorship of community leaders to meet a community need for such a facility. Its board of directors consists of civic leaders and other individuals with a particular interest in the problems of the elderly.

The complex consists of apartment units that are designed, constructed, and equipped in such a way as to meet the special needs of its elderly residents. It is constructed with fire-resistant materials and is equipped with safety features such as grab bars by bathtubs and toilets, wide entrance-exit doorways, ramps and elevators for wheelchair use, floors designed to help prevent slips and falls, conveniently located electrical outlets and cabinets to avoid strenuous bending or stretching, windows at eye level for residents confined to wheelchairs, and an emergency 24-hour alarm system.

The complex has an employee on duty 24 hours a day who gives temporary aid in emergencies, contacts professional help (doctor, ambulance service, etc.) and ensures that the steps necessary to render aid are carried out. The complex also provides transportation for medical examination and follow-up treatment.

The complex contains a lounge and indoor and outdoor recreation areas. The resident manager coordinates a recreational and social program for the residents.

Admission to the complex is generally limited to persons who are at least 65 years of age.

While the initial funds for building and equipping the facility were provided by both governmental and foundation grants, the organization is self-supporting in that its operating funds are derived principally from fees charged for residence in the facility. The organization admits as tenants only elderly persons who are able to pay the full stated rental charges. The rental charges are set at a level within the financial reach of a significant segment of the community's elderly persons. However, once persons are admitted to the facility, the organization is committed by established policy to maintaining them as residents, to the extent it is able, even if they subsequently become unable to pay its monthly charges. It effectuates this policy by maintaining such individuals out of its own reserves, by seeking whatever support is available under local and Federal

welfare programs, by soliciting contributions from the general public, or by using some combination of these means.

The organization provides services to its elderly residents at the lowest feasible cost. Its receipts are used exclusively in furtherance of its stated purposes. Its charges are set at an amount sufficient to maintain reserves adequate to pay for the life care of any of its residents who may require it, and to enable it to set aside enough for limited amount of expansion sufficient to meet the community's needs. Net earnings are thus generally used to improve the specialized services and facilities provided, to subsidize any resident unable to continue making his monthly payments, or to expand the facility where the needs of the community warrant such expansion. No part of the organization's net earnings inures, directly or indirectly, to the benefit of any private shareholder or individual. No employee receives more than reasonable compensation for services rendered.

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the relief of the poor and distressed.

Revenue Ruling 72-124, 1972-1 C.B. 145, sets forth requirements that homes for the aged must meet in order to qualify for exemption under section 501(c)(3) of the Code. The Revenue Ruling makes clear that a home for the aged will be deemed "charitable" if it meets the special needs of the elderly such as the need for health care, financial security, and residential facilities designed to meet specific physical, social, and recreational requirements of the elderly. Such a home need not provide direct financial assistance to the elderly in order to be "charitable," since poverty is only one form of distress to which the elderly as a class are particularly susceptible.

Thus, when an organization that otherwise qualifies for exemption under section 501(c)(3) of the Code provides specially designed housing as described above that is within the financial reach of a significant segment of the community's elderly persons, and when the organization commits itself to operating such housing at the lowest feasible cost (consistent with its maintaining the reserve described above) and to maintaining in residence those tenants who become unable to pay its monthly fees, such organization is operated to relieve the major forms of distress to which the elderly are susceptible. Accordingly, it qualifies for exemption from federal income tax under section 501(c)(3) as an organization operated exclusively for charitable purposes.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt

under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.508-1(a) of the regulations. In accordance with the instructions to Form 1023, the application should be filed with the District Director of Internal Revenue for the key district indicated therein.

Rev. Rul. 79-19

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for charitable purposes.

The organization was formed to meet the housing needs of the physically handicapped by building and operating an apartment rental complex designed especially for them. It was formed under the sponsorship of community leaders to meet a community need for such a facility. Its board of directors consists of civic leaders and other individuals with a particular interest in the problems of the handicapped.

The organization has designed, constructed, and equipped the complex in such a manner as to enable the handicapped to achieve a greater degree of living independence and mobility, and to make daily living easier for them.

The complex consists of a one-story facility with no stairs. Efficiency, one bedroom, and two bedroom apartments are offered. All units of the complex are interconnected by glass-enclosed walkways. All curbs and approaches are ramped. Windows are designed to be at eye level for the large number of residents who are confined to wheelchairs. Kitchen appliances and bathroom fixtures, as well as all switches and wall plugs, are located at levels accessible to residents in wheelchairs. Each unit has an alarm button for residents needing emergency assistance. The complex contains lounge facilities, a dining facility, office space for visiting doctors, a recreation room, indoor and outdoor swimming pools, and a wheelchair sports area. The organization provides transportation for handicapped residents to work, medical care, shopping, and entertainment facilities.

In order to qualify for admission, an individual must demonstrate that he or she needs specially designed facilities in order to live a reasonably comfortable and secure life. Physically handicapped individuals who are able to live adequately in facilities without specially designed features are not eligible for admission.

While the initial funds for building and equipping the facility were provided by governmental and foundation grants, the organization is self-supporting in that its operating funds are derived principally from fees charged for residence in the facility. The organization admits as tenants only handicapped persons who are able to pay the full stated rental charges, which are within the financial reach of a significant segment of the community's handicapped persons. However, once persons are admitted to the facility, the organization is committed by established policy to maintaining them as residents, to the extent it is able, even if they subsequently become unable to pay its monthly charges. It effectuates this policy by maintaining such individuals out of its own reserves, by seeking

whatever support is available under local and federal welfare programs, by soliciting contributions from the general public, or by using some combination of these means.

The organization provides its services to the physically handicapped at the lowest feasible cost. Its receipts are used exclusively in furtherance of its stated purposes. Its charges are set at an amount sufficient to maintain reserves adequate to pay for the life care of any of its residents who may require it, and to enable it to set aside enough for a limited amount of expansion sufficient to meet the community's needs. Net earnings are thus generally used to improve the specialized services and facilities provided, to subsidize any resident unable to continue making his monthly payments, or to expand the facility where the needs of the community warrant such expansion. No part of the organization's net earnings inures, directly or indirectly, to the benefit of any private shareholder or individual. No employee receives more than reasonable compensation for services rendered.

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the relief of the poor and distressed.

Revenue Ruling 72-124, 1972-1 C.B. 145, sets forth requirements that homes for the aged must meet in order to qualify for exemption under section 501(c)(3) of the Code. The Revenue Ruling makes clear that a home for the aged will be deemed "charitable" if it meets the special needs of the elderly such as the need for health care, financial security, and residential facilities designed to meet specific physical, social, and recreational requirements of the elderly. Such a home need not provide direct financial assistance to the elderly in order to be "charitable," since poverty is only one form of distress to which the elderly as a class are particularly susceptible.

Similarly, the physically handicapped as a class are subject to "distress" in that they may experience frustration and require substantial assistance in dealing with standard design living, recreational, and transportation facilities. Moreover, they may have greater need for financial security than nonhandicapped persons because their employment opportunities may be more limited or because they may be required to live on fixed incomes.

Thus, when an organization that otherwise qualifies for exemption under section 501(c)(3) of the Code provides specially designed housing as described above that is within the financial reach of a significant segment of the community's handicapped persons, and when the organization commits itself to operating such housing at the lowest feasible cost (consistent with its maintaining

the reserve described above) and to maintaining in residence those tenants who become unable to pay its monthly fees, such organization is operated to relieve the major forms of distress to which the physically handicapped are susceptible. Accordingly, it qualifies for exemption from federal income tax under section 501(c)(3) of the Code as an organization operated exclusively for charitable purposes.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.508-1(a) of the regulations. In accordance with the instructions to Form 1023, the application should be filed with the District Director of Internal Revenue for the key district indicated therein.

Attachment 2
Definitions of Commonly Used Terms Concerning Elderly

The definitions that follow are meant to be descriptive only and are intended to be used only as an aid in case development and for general information. They have been compiled by using various sources such as, Senate Reports, HUD regulations and pamphlets and other materials relating to the elderly. They should not be cited.

1. Nursing Home - is an elderly care facility in which at least 50% of the residents receive nursing care. At least one full time registered nurse (RN) or licensed practical nurse (LPN) is employed.

2. Personal Care Home (with nursing) - is a home for the elderly in which less than 50% of the residents receive nursing care. At least one full time RN or LPN is employed.

If a full time nurse is not employed, this institution either: a) provides for the administration of medicines, or b) provides assistance with three or more daily activities, such as bath or shower, shopping, correspondence, walking, and eating.

3. Skilled Nursing Facility (SNF), or Extended Care Facility (ECF) is an elderly care facility that provides continuous nursing service on a 24-hour basis for convalescent patients. This type of facility emphasizes medical nursing care and physical therapy.

4. Intermediate Care Facility (ICF), or Residential Care Facility is a home for the elderly that provides regular medical nursing services and social services. The level of care provided is generally less than the care provided in a SNF or ECF.

5. Apartment dwelling (rental housing) units - are designed for independent living. Such a project usually consists of an efficiency and one bedroom apartments with kitchen, bath and storage. Generally, they contain a central lounge and other rooms for social and recreational activities. Such projects may include central dining facilities.

6. Congregate housing units - are designed for elderly residents, normally well and ambulatory who prefer residential accommodations but need or desire some assistance with day-to-day living. Generally, such projects have: a) a central dining room serving three meals a day; b) emergency room service; c) common areas for

lounges, recreation, and special activities; and d) limited housekeeping and laundry services. Most projects have an infirmary with personnel to administer medications.

7. Nursing Care - involves nursing procedures requiring the professional skills of a registered nurse (RN) or a licensed practical nurse (LPN). This care includes the taking of temperature, pulse, respiration and blood pressure; full bed bath; catheterization; injections; nasal feeding; and oxygen therapy.

8. Personal Care - involves services such as help in walking, eating, correspondence; bathing, and dressing.

9. Residential Care - involves general supervision with a protective environment and a planned program for social and religious needs.

10. Handicapped Person - A person who has a physical impairment which: a) is expected to be of a long-continued and indefinite duration; b) substantially impedes his ability to live independently; and c) is of such a nature that his ability to live independently could be improved by more suitable housing conditions.

Attachment 3
Federal Funding Programs

The programs as described below may have changed. For up to date information you might wish to contact the nearest local HUD office or the Director, Multifamily Division in Washington, D. C., telephone number (202) 755-5866. For a more detailed description of these and other related Federal programs you should consult the Catalog of Federal Domestic Assistance which is published annually by the Office of Management and Budget.

1. Section 236 of the National Housing Act, Public Law 90-448; U.S.C. 1715 - Rental and cooperative housing for lower-income families. Under this program, nonprofit, limited-dividend and cooperative organizations may obtain a HUD-insured mortgage at the market interest rate. To bring the monthly rent down to a level tenants can afford, HUD makes a monthly payment to the lender reducing the interest cost as low as one percent. Tenants pay either the basic rental or 25 percent of their adjusted income, whichever is greater. Those who can afford it pay the fair market rental.
2. Section 221(d)(3) of the Housing and Urban Development Act of 1965; Public Law 89-117; 12 U.S.C. 1701 - Mortgage insurance for low and moderate income housing at market rate interest with rent supplement. Market-rate mortgage insurance is provided for the construction or rehabilitation of rental or cooperative housing of five or more units for persons whose incomes are determined by HUD to be low or moderate. The housing may be primarily for the elderly, or it may combine elderly and family housing. Section 221(d)(3) housing projects may include commercial services, recreation and social areas, and infirmaries.
3. Section 235 of the National Housing Act; Public Law 90-448; 12 U.S.C. 1715 - Home ownerships for lower income families. HUD makes monthly payments to the mortgagee to reduce interest rate costs to as low as one percent. The homeowner must pay at least 20 percent of the adjusted monthly income on the mortgage. Amounts of subsidies vary according to the homeowner's income and the total amount of the mortgage payment at the market interest rate. Families, handicapped individuals, and persons 62 or over are eligible for assistance if their incomes and assets fall within HUD prescribed limits.
4. Rental Supplement Program provides monthly payments for low income housing owned by nonprofit, cooperative, or limited-dividend organizations. A payment amounts to the difference between 25 percent of tenant's gross income

and the FHA - approved rental, but may not exceed 70 percent of the rental. Approximately 25 percent of all rent supplement tenants are elderly.

5. Section 106 of the Housing and Urban Development Act of 1968; Public Law 90-448 -- Interest-free 80 percent loans are made to nonprofit sponsors of low or moderate income housing to cover preconstruction costs involved in planning and financing a proposed project.

6. Section 231 of the National Housing Act; Public Law 86-372; 73 U.S.C. 654; 12 U.S.C. 1715(u) - Mortgage insurance for housing for the elderly. Mortgages are insured by HUD - FHA to finance new or rehabilitated rental housing of eight or more dwelling units specifically designed for persons over 62 or those who are handicapped.

7. Section 221(d)(4) of the National Housing Act - Mortgage insurance for low and moderate income rental housing of at least 5 units. This housing is intended for low and moderate income families, persons age 62 or over and handicapped persons.