

A cemetery company or corporation, operated for profit, shall not be required to include in gross income, for Federal income tax purposes, that portion of the contract sale price of burial lots, or mausoleum crypts, which, by requirement of state law or its own by-laws and/or contracts, it is obligated to irrevocably set aside in trust solely for perpetual care and maintenance of the cemetery, burial lots, or mausoleum crypts to the extent that such portion is so set aside.

An organization, including a trust, created by formal action, the funds of which are irrevocably dedicated to the perpetual care of a nonprofit cemetery, as a whole, none of the earnings of which inures to the benefit of any private shareholder or individual, may qualify for exemption from Federal income tax as an organization described in section 501(c)(13) of the Internal Revenue Code of 1954.

Voluntary contributions to or for the use of a nonprofit cemetery company or corporation, the funds of which are irrevocably dedicated to the perpetual care of the cemetery, as a whole, are deductible by the donors as charitable contributions in the manner and to the extent provided by section 170(c)(5) of the Internal Revenue Code of 1954. However, a donor may not deduct a contribution for the perpetual care of a particular lot or mausoleum crypt.

Payments made to a cemetery company or corporation, which constitute a part of the purchase price of a burial lot or mausoleum crypt and are irrevocably dedicated to a perpetual care fund, are not deductible as charitable contributions.

Where funds are received by a cemetery company or corporation through a will or from a living person for the perpetual care of an individual lot or crypt, a trust is created which is subject to the tax imposed by section 641 of the Internal Revenue Code of 1954.

The income of any trust, which is used or permanently set aside for the care, maintenance or beautification of a particular family burial lot or mausoleum crypt, is not allowable as a deduction under section 642(c) of the Internal Revenue Code of 1954 in computing the net income of such a trust.

G.C.M. 8446, C.B. IX-2, 370 (1930), modified; I.T. 1881, C.B. 11-2, 200 (1923), revoked.

Advice has been requested relative to the Federal income tax consequences of transactions connected with the operation of a cemetery and the maintenance and care of burial lots or mausoleum crypts, as more fully described in the four situations set forth below.

## SITUATION 1.

A cemetery association, company, corporation, or society organized and operated for profit under the laws of the state in which it is located, sells certain rights in burial lots, or mausoleum crypts, and maintains and cares for the cemetery grounds and buildings. Under the state law, and/or in accordance with the by-laws and contracts of the organization, it sets aside a stated percentage of the gross proceeds from the sale of the burial lots and crypts in an irrevocable trust, as a trust fund, the income from which is to be applied to the perpetual care and maintenance of the cemetery, burial lots, and mausoleum crypts.

It is held that the portion of the receipts from the sale of burial lots and mausoleum crypts set aside by a profit cemetery company, pursuant to state law and/or pursuant to its by-laws and contracts, as a fund to be used for the perpetual care of the burial lots, and mausoleum crypts constitutes a trust fund from the very instant such portion passes into the hands of the company and that such fund so set apart does not give rise to taxable income to the company. See *Inglewood Park Cemetery Association v. Commissioner*, 6 B.T.A. 386, acquiescence substituted for nonacquiescence, C.B. 1955-2, 6. See also *Community Mausoleum Company v. Commissioner*, 33 B.T.A. 19, acquiescence substituted for nonacquiescence, C.B. 1955-2, 4, and *Twin Hills Memorial Park and Mausoleum Corporation v. Commissioner*, T.C. Memo. 1954-206. G.C.M. 8446, C.B. IX-2,370 (1930), which limits the exclusion from gross receipts of the association only to that portion of the contract price of the burial lots or crypts which is actually paid by the association to the trustee of the fund, is modified to conform to the conclusion reached herein.

## SITUATION 2.

An organization was formed to receive, maintain and administer funds which it received from a nonprofit cemetery association pursuant to state law and contracts. Such funds consist of a part of the purchase price of lots and crypts, income from the investment of such funds, and payments made to it for the perpetual care of the cemetery as a whole. The organization does not own any land dedicated to the burial of the dead or perform any services usual to the operation of a cemetery other than receiving and administering funds for the perpetual care of the nonprofit cemetery. No part of its net earnings inures to the benefit of any private shareholder or individual.

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

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its

charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Although the instant organization does not own and develop land dedicated to the burial of the dead or perform certain other services usual to a nonprofit cemetery company, it performs a service essential to the maintenance of a cemetery and is considered to be organized and operated for burial purposes within the contemplation of section 501(c)(13) of the Code. Accordingly, it is held that the instant organization whose funds are irrevocably dedicated to the perpetual care of a nonprofit cemetery, as a whole, none of the net earnings of which inures to the benefit of any private shareholder or individual, may qualify for exemption from Federal income tax as an organization described in section 501(c)(13) of the Code. I.T. 1881, C.B. II-2, 200 (1923), wherein it is held that an unincorporated perpetual care fund was a 'trust' and, as such, is not entitled to exemption, is hereby revoked. However, an organization is not exempt from tax merely because it is organized and operated not for profit. In order to establish its exemption, it is necessary that each organization claiming exemption file an appropriate application form 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. An organization claiming exemption under section 501(c)(13) shall file its application of Form 1026, Exemption Application. See section 39.101-1 of Regulations 118 made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, C.B. 1954-2, 47.

### SITUATION 3.

Under the contract of sale of a burial lot or crypt in a nonprofit cemetery, the cemetery company or corporation agreed to set aside in trust a portion of the purchase price of the lot or crypt for the purpose of general maintenance of the cemetery. In addition to the contract price of such lots or crypts, the purchasers also make contributions to the organization for the perpetual care of particular lots or crypts as well as for the general maintenance and care of the cemetery as a whole. The question is presented whether, under such circumstances, that portion of the purchase price of burial lots or crypts, together with any additional contributions irrevocably dedicated to the perpetual care of the cemetery, burial lots, and crypts, may be deducted by the purchasers or donors as charitable contributions under section 170 of the Code.

Section 170(a) of the Code provides that there shall be allowed as a deduction any charitable contribution paid within the taxable year. Subsection (c)(5) of section 170 provides that the term 'charitable contribution' means a contribution or gift to or for the use of a cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered

solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

It is the position of the Internal Revenue Service that the portion of the purchase price of a burial lot or crypt which is required by the contract of purchase or by state or local law to be irrevocably dedicated to the perpetual care of the cemetery as a whole is in consideration of a binding obligation to provide services and facilities for the benefit of the purchaser of the burial lot or crypt. Consequently, the payment does not constitute a charitable contribution. With respect to payments to a cemetery company or corporation 'earmarked' for the care of a particular lot, whether they are made as part of the purchase price of the lot or as a separate payment at the time of purchase or later, where such payments are required to be made, there is a consideration passing to the purchaser or donor which takes the amount out of the classification of a charitable contribution.

Accordingly, it is held that contributions voluntarily made to or for the use of a nonprofit cemetery company or corporation, the funds of which are irrevocably dedicated to the care of the cemetery as a whole, are deductible by the donors as charitable contributions in the manner and to the extent provided by section 170(c)(5) of the Internal Revenue Code of 1954. However, a donor may not deduct a contribution made for the perpetual care of a particular lot or crypt. Furthermore, payments made to a cemetery company as part of the purchase price of a burial lot or crypt, even though irrevocably dedicated to the perpetual care of the cemetery as a whole, are also not deductible.

#### SITUATION 4.

A testamentary disposition of property established a trust in the amount of 25x dollars, the income therefrom to be used perpetually for the care, maintenance and beautifying of a mausoleum and family burial lot located in a community cemetery which is not operated for profit. The question presented for consideration is whether the gross income of the trust may be deducted under section 642(c) of the Code.

Section 641(b) of the Code provides in part that the taxable income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual. Section 642(c) of the Code provides in part that an estate or trust (other than a trust meeting the specifications of subpart B) shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 170(a)) any part of the gross income, without limitation, which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner

specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit.

Where funds are received by a cemetery company or corporation through a will or from a living person for the perpetual care of an individual lot or mausoleum crypt, a trust is created which is subject to the tax imposed by section 641 of the Internal Revenue Code of 1954.

Since it would appear that the income of a trust established and designed for the purpose of furnishing perpetual care for a particular mausoleum crypt or burial lot inures to the benefit of the grantor, it is the position of the Service that any disbursements made by the trust for such purposes are not being used exclusively for charitable purposes. Furthermore, there seems little reason to conclude that payments by a trust for the care and maintenance of one particular mausoleum crypt or burial lot are motivated by other than an incidental interest in the care or maintenance of a public nonprofit cemetery as a whole. Accordingly, it is held that the income of any trust which is used or permanently set aside for the care, maintenance, and beautification of a particular burial lot or mausoleum crypt is not allowable as a deduction under section 642(c) of the Code in computing the net income of such a trust.

G.C.M. 8446, C.B. IX-2, 370 (1930), modified; I.T. 1881, C.B. 11-2, 200 (1923), revoked.