

A corporation is organized and operated on a non-profit basis. It publishes a foreign language magazine containing fiction, poetry, book reviews and articles alleged to be of a literary, scientific and educational character. The magazine is available to the general public through regular paid subscriptions. Held, since the sale activity of the corporation is the publishing and public sale of a magazine it is not exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Advice has been requested whether a corporation is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 under the circumstances described below.

A corporation is organized and operated on a non-profit basis. It publishes a foreign language magazine containing fiction, poetry, book reviews and articles which it states is of a literary, scientific and educational character. The magazine is available to the general public through regular paid subscriptions.

The corporation's stated purposes as set out in its articles of incorporation are to receive and administer funds and other property exclusively for charitable, scientific, literary and educational purposes and, in furtherance thereof, to publish a magazine or other material in a specified foreign language. The articles of incorporation also state that the magazine or other material is to provide a vehicle for the creative activity of writers and scholars emigrating from a certain foreign country to the United States and to acquaint other immigrants from that country with American life and help them to become integrated in the American way of life.

The activities of the corporation are devoted solely to publishing the magazine and making it available to the general public through the corporation or subscription agencies at regular subscription rates. The corporation's income is derived mainly from subscriptions and sales of individual copies of the publication, and some is from advertising and contributions. Its expenditures consist of fees paid to authors for their works, salaries, printing, advertising, shipping packing, postage and other operating costs incurred in the publication of the magazine. The corporation is organized on a non-profit basis.

Section 501 of the Code provides as follows:

(a) EXEMPTION FROM TAXATION.-An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

(c) LIST OF EXEMPT ORGANIZATIONS.-The following organizations are referred to in subsection (a):

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(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, * * *.

Section 1.501(c)(3)-1 of the Income Tax Regulations provides, in part, that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

An organization is not 'organized exclusively' for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3) of the Code. Thus, an organization that is empowered by its articles 'to engage in a manufacturing business,' or 'to engage in the operation of a social club,' does not meet the required organizational test for such exemption regardless of the fact that its articles may state that such organization is created 'for charitable purposes within the meaning of section 501(c)(3) of the Code.' Section 1.501(c)(3)-(b)(iii) of the regulations.

An organization will be regarded as 'operated exclusively' for one or more of such exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Section 1.501(c)(3)-1(c)(1) of the regulations.

Consideration of the corporation's charter power, in the light of the actual operations, indicates that the corporation is organized for the primary purpose of publishing a magazine. It is true that there is language in the articles of incorporation which, standing alone, indicates charitable, scientific, literary and educational purposes. The corporation, however, has a specific power to publish a magazine, the use or distribution of which is not distinctly required to accomplish any of such purposes. This power, as construed and exercised by the corporation, shows that the corporate assets are not dedicated to charitable, scientific, literary or educational purposes and that they are not impressed with a trust which may be enforced for such

purposes by the state in which it is incorporated or by an interested person. Materials may be selected and purchased for publication, and other operations in publishing and distributing the magazine may be undertaken, at the discretion of the corporate officers and without regard on their part to the fiduciary responsibilities that ordinarily attach to funds and assets definitely committed to charitable, scientific, literary or educational uses.

In this case, the corporate activities, which presumably are within the charter powers, are, per se, business activities. They are devoted to publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices. The corporate assets are subjected to the usual business risks incident to such activities. Although the magazine is printed in a foreign language and may provide some materials unlike those in other magazines, there is no showing that the operations fulfill a corporate role which in and of itself is exclusively charitable, scientific, literary or educational. The mere fact that the corporation is not organized for the profit of its members does not remove the necessity for the corporation to bear its burden of proof to a right to exemption.

In view of the above, it is held that the instant corporation is not an exempt charitable, scientific, literary or educational organization within the meaning of section 501(c)(3) of the Code.