

Rev. Rul. 61-170, 1961-2 C.B. 112

An association composed of professional private duty nurses and practical nurses which supports and operates a nurses' registry primarily to afford greater employment opportunities for its members is not entitled to exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(3) of the Code.

Furthermore, the association is not entitled to exemption as a business league described in section 501(c)(6) of the Code since its primary purpose is the operation of a regular business of a kind ordinarily carried on for profit and it is engaged in rendering particular services for individual persons rather than promoting the general business conditions of the nursing profession.

Revenue Ruling 55-656, C.B. 1955-2, 262, distinguished.

Advice has been requested whether an association composed of professional nurses and practical nurses which operates a nurses' registry primarily to afford greater employment opportunities for its members is entitled to exemption from Federal income tax.

The instant association was incorporated as a nonprofit corporation for the general purpose of organizing private duty and practical nurses for their mutual benefit and in order to make their services more readily available when needed by the general public. The by-laws state that its specific purposes are to provide employment for its members as well as to organize an adequate and available nursing placement service for the community. The association is controlled by a board of trustees composed of professional nurses. Its membership is open to both registered and practical nurses who meet specified requirements. The organization maintains a registry of its members showing their respective qualifications and the types of services they perform.

Reference and placement from the register are made on a rotating basis upon a request for nursing services. Continued membership in the organization is contingent upon continued demonstration of ability and the adherence to ethical standards prescribed by the organization.

The income of the organization is derived principally from membership dues, fees and assessments. Expenditures are for salaries, office supplies and expenses, and other miscellaneous expenses. No part of its net earnings inures to the benefit of any private shareholder or individual.

Section 501(c)(3) of the Code describes certain organizations which are exempt from taxation under section 501(a) of the Code. The exemption applies to any corporation, 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, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

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

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of section 501(c)(3), it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

On the basis of the information presented, the instant organization is primarily engaged in the performance of personal services by operating an employment service principally for the benefits of its members. Public participation in the management and support of the organization is negligible. This is shown by the fact that it draws its support primarily from members and is controlled by a board of trustees composed of professional nurses, without public participation of any kind. Therefore, the organization is not free from substantial private considerations in the operation of its nurses' register.

Accordingly, it is held that the instant organization does not qualify for exemption from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code since it is shown that the organization is not organized and operated exclusively for charitable purposes or for any of the other purposes specified therein.

The instant situation is distinguishable from Revenue Ruling 55-656, C.B. 1955-2, 262, wherein it is held that the organization involved therein was exempt from Federal income tax as a charitable organization described in section 501(c)(3) of the Code, since it was primarily controlled and supported by the general public for the public benefit and did not exist primarily for the purpose of providing an employment agency for the benefit of members as is the case with the instant association.

Consideration has also been given to the question of whether

the instant association qualifies for exemption as a business league under section 501(c)(6) of the Code.

Section 1.501(c)(6)-1 of the Income Tax Regulations describes a business league as an organization of persons having some common business, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Such an organization is of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Based on its stated purposes and activities, the instant association is organized and operated primarily as an employment agency for the benefit of its members. As such, its functions are substantially similar to those of a commercial employment agency.

Thus, it is engaged in a regular business of a kind ordinarily carried on for profit and is rendering particular services for individual persons rather than promoting the general business conditions of the nursing profession.

Accordingly, it is held that the instant association, which maintains a nurses' registry of its member nurses and assigns them to places of employment, is not entitled to exemption from Federal income tax as an organization described in section 501(c)(6) of the Code. Compare G.C.M. 20941, C.B. 1939-1 (Part I), 186, which holds that a nurses' association incorporated and operated for the betterment of the profession is entitled to exemption from Federal income taxation as a business league.