

A nonprofit organization which was established for the training, educating, and rehabilitating of mentally handicapped children and which meets the prescribed requirements concerning formal instruction, faculty, curriculum, and student body enrollment comes within the scope of the term 'nonprofit educational organization' for purposes of the exemptions from the retailers excise taxes, the manufacturers excise taxes, and the communications and transportation taxes, provided by sections 4057(a), 4221(a)(5), and 4294(a), respectively, of the Internal Revenue Code of 1954. However, another nonprofit organization which is operated primarily as a residential facility for handicapped children does not come within the scope of the term 'nonprofit educational organization.'

Advice has been requested whether the two organizations referred to below as 'M' and 'N' come within the scope of the term 'nonprofit educational organization' for purposes of the exemptions from the retailers excise taxes, the manufacturers excise taxes, and the communications and transportation taxes, provided by sections 4057(a), 4221(a)(5), and 4294(a), respectively, of the Internal Revenue Code of 1954.

M is a nonprofit organization established for the training, educating, and rehabilitating of mentally handicapped children. It operates on a 5-day-week basis and has an enrollment of approximately 75 students. It maintains a staff of nine, consisting of a director, five teachers (one of whom is a nurse and one a speech therapist), a bus driver, a maid, and a clerk-typist. In order to develop each child to his potential, the school offers a complete academic program which includes the teaching of numbers, colors, music, arithmetic, weaving, woodworking, ceramics, and homemaking. The curriculum is basically the same as that provided in public schools for retarded children, in which the curriculum is geared to the level of competence of the students. Organized play and socialization are also offered, and social events are held periodically to round out each child's education and experience.

N, a residential facility for mentally handicapped children, is located in the same general area as M, except that N is situated in a rural section. N is operated by an association for retarded children, which is exempt from income tax under section 501(a) of the Code as a nonprofit organization described in section 501(a)(3). N has complete facilities for year around boarding as well as some facilities for educational and vocational training.

N maintains a staff of five, consisting of a director, a nurse who also serves as housemother, a cook, a maid, and a maintenance man. The ten children who reside at N attend the M school in town during the regular school year. During the summer vacation, the children participate in a program of recreation,

including outdoor play and swimming instruction. Some of them are given training in animal care, in gardening, or in special crafts.

The Transportation is provided so the children may take advantage of the nearby entertainment facilities and cultural opportunities.

During the summer, some of the students who attend M school, but who do not reside at N, come to N on a daily basis to participate in the athletic program and other activities.

Sections 4057(a) and 4221(a)(5) of the Code provide that, under regulations prescribed by the Secretary of the Treasury or his delegate, no retailers excise taxes or manufacturers excise taxes shall be imposed with respect to the sale of taxable articles to a nonprofit educational organization for its exclusive use, or in the case of a tax imposed by section 4041, with respect to the use by a nonprofit educational organization of any liquid as a fuel.

Section 4294(a) of the Code provides that, under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4251 or 4261 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization.

Under the provisions of sections 4057(b), 4221(d)(5), and 4294(b) of the Code, the term 'nonprofit educational organization' means an educational organization which is exempt from income tax under section 501(a) and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 148.1-4(b) of the temporary rules relating to registration and exemption for nonprofit educational organizations, T.D. 6344, C.B. 1959-1, 776, provides, in part, that the term 'nonprofit educational organization' means an organization exempt from income tax under section 501(a) of the Code whose primary function is the presentation of formal instruction and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The fact that an organization may have been granted exemption from Federal income tax as an organization described in section 501(c)(3) of the Code does not, of itself, determine whether that organization (or an activity of that organization) comes within the scope of the term 'nonprofit educational organization' for

purposes of the excise tax exemptions involved here. Whether an organization (or an activity of an organization) comes within the scope of the term 'nonprofit educational organization' depends upon whether the organization (or the activity of an organization) meets the requirements of normally maintaining a regular faculty and curriculum, normally having a regularly enrolled body of pupils or students, and having as its primary function the presentation of formal instruction, in accordance with the definition in the statute and in section 148.1-4(b) of the temporary rules. These requirements are consistent with the Congressional intent to provide exemptions covering articles sold to, or services or facilities furnished to, nonprofit private schools which are set up and operated primarily for the same basic purposes as public schools. See H. Rept. 481, 85th Cong., 2d sess., C.B. 1958-3, 372, at 385.

In view of the foregoing, it is held that M is a 'nonprofit educational organization' within the meaning of sections 4057(b), 4221(d) (5), and 4294(b) of the Code and section 148.1-4(b) of the temporary rules. Accordingly, articles which otherwise would be subject to the retailers excise taxes may be sold to M on a tax exempt basis, subject to the exemption certificate requirements of section 148.1-4(c) of the temporary rules. Likewise, articles which otherwise would be subject to the manufacturers excise taxes may be sold to M on a tax-exempt basis, subject to the registration and evidence provisions of section 148.1-3 of the temporary rules. Furthermore, communications and transportation services and facilities may be furnished to M on a tax-exempt basis, subject to the exemption certificate requirements of sections 148.1-4(e) and 148.1-4(f) of the temporary rules.

However, N is primarily a residential facility and is not a 'nonprofit educational organization' within the meaning of the aforementioned sections of the Code and temporary rules. Accordingly, articles sold to, or services and facilities furnished to, N do not come within the scope of the exemptions from the retailers excise taxes, the manufacturers excise taxes, and the communications and transportation taxes.