

An organization owns, operates, and maintains a cemetery in which only members of the A family, their descendants, and persons intermarried with descendants of the family are entitled to be buried. The cemetery is supported by assessments and contributions of the family members. Held, the organization does not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) or 501(c)(13) of the Internal Revenue Code of 1954, nor are contributions to it deductible under section 170 of the Code.

Advice has been requested whether an organization organized and operated for the purposes and in the manner described below may qualify for exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described either in section 501(c)(3) or 501(c)(13) of the Code, and to which contributions would be deductible under section 170 of the Code as an organization described in section 170(c)(2) or 170(c)(5) of the Code.

The organization was created as a trust, not for profit, for the purposes of owning, preserving, and maintaining a cemetery to serve as a burial place for all lineal descendants of A, and for any persons intermarried with such descendants. A and 45 of his descendants are buried in the cemetery. Over 100 living descendants are eligible for burial in the cemetery.

The organization's income consists of assessments and contributions from members and relatives of the A family who are eligible for burial in the cemetery, and income from a capital fund set up by the organization. Its expenditures are for perpetual care and maintenance of the cemetery. The only service provided for any beneficiary of the trust is the right to burial in the cemetery. Many of the members, when making their contributions to the capital fund, do so with the understanding that, to the extent necessary, the funds contributed by them will be used first for the care of the lot wherein members of their respective families are buried, and the balance to be made available for use by the cemetery as a whole.

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

(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, * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual. * * *

Section 1.501(c)(3)-1(a) of the Income Tax Regulations relating to the requirements for exemption under section

501(c)(3) of the Code provides, in part, as follows:

(1) 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 purposes specified in such section. If an organization fails to meet either the organizational test, or the operational test, it is not exempt.

(2) The term 'exempt purpose or purposes' as used in this section, means any purpose or purposes specified in section 501(c)(3), * * *.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides as follows:

An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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 * * *.

On the basis of the above cited provisions of the Code and regulations, it is concluded that an organization which is organized to operate and maintain a family cemetery is not organized for or operated in furtherance of one or more of the purposes described in section 501(c)(3) of the Code and is, therefore, not entitled to exemption from Federal income tax under that section of the Code.

Section 501(c) of the Code, in describing cemetery companies which qualify for exemption under section 501(a) of the Code, provides, 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.

The income of an organization established and designed, as in the instant case, for the purpose of caring for a private burial ground inures to the benefit of the creator and his family so that any disbursements made by the organization for such purposes are not being used exclusively for the purposes specified in section 501(c)(13) of the Code. In this connection, for Federal income tax purposes there is no distinction between a private family plot in a public cemetery, and a private cemetery where burials are limited to the descendants of a single family.

In either case, the funds used for upkeep of the cemetery serve the private interests of the individuals eligible to be buried there rather than promote the support of the cemetery. This situation is considered analogous to one set forth in Revenue Ruling 58-190, C.B. 1958-1, 15 at 18, (Situation 4) in which it is held that expenditures by a trust for the care and maintenance of a family burial lot located in a nonprofit community cemetery are not deductible as charitable contributions under section 642(c) of the Code because the income of the trust inures to the benefit of the grantor.

Based on the above, it is held that the organization does not qualify for exemption from Federal income tax as an organization described in either section 501(c)(3) or 501(c)(13) of the Code.

Since the organization is not entitled to exemption under either section aforementioned, and since the provisions of section 170(c)(5) of the Code, allowing contributions to certain cemeteries are no less restrictive than the exemption provisions of section 501(c)(13) of the Code, it follows that contributions made to the organization are not deductible under section 170 of the Code.