

Exemption; Yoga classes. Sales of taxable fuel and articles and communication services to a nonprofit corporation for its use in connection with regularly scheduled Yoga courses that are characterized by a regular faculty and curriculum and a regularly enrolled student body come within the excise tax exemption provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Code. Such sales in connection with other classes, lectures, discussions, and seminars that are not characterized by a regular faculty and curriculum and a regularly enrolled student body and that are not incidental to the regular classes are not exempt.

#### ISSUE

Do sales of taxable fuels and articles and amounts paid for communication services furnished to the corporation described below come within the excise tax exemption for nonprofit educational organizations provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Internal Revenue Code of 1954?

#### FACTS

The corporation was established as a nonprofit organization to foster religious and social harmony for all people. Its principal functions include the promotion, study, and dissemination of the practice of Yoga as a way of life.

Its activities include regularly scheduled eight week courses for registered students in various aspects of Yoga. Courses in topics such as basic, intermediate, and advanced Yoga are taught by a regular faculty at the corporation's classroom facilities, and also on occasion at other locations in the community, such as schools and clubs, selected for the convenience of the students. Classes meet once a week, and include instruction in Yogic Philosophy, concentration, meditation, and specific Yoga skills relating to body posture, deep relaxation, and breathing techniques.

In addition, the corporation conducts regularly scheduled open classes for nonregistered participants. These classes are available to the general public on a walk-in-basis. Each open class session is repetitive covering the same basic instruction as the previous open class session. The corporation also offers other classes, lectures, seminars, and discussions without registration and on an irregular basis at the corporation's premises or at various other locations.

The corporation is exempt from Federal income tax under section 501 (a) of the Code as an organization described in section 501(c)(3).

#### LAW AND ANALYSIS

Section 4041(g)(4) of the Code provides that under regulations prescribed by the Secretary, no retailers excise tax shall be imposed with respect to the sale of any taxable liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit education organization of any liquid as a fuel.

Section 4221(a)(5) of the Code provides that under regulations prescribed by the Secretary, no manufacturers excise tax shall be imposed with respect to the sale by the manufacturer of a taxable article to a nonprofit educational organization for its exclusive use (except with respect to coal).

Section 4253(j) of the Code provides that, under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for communication services or facilities furnished to such organization.

Under the provisions of sections 4041(g), 4221(d)(5), and 4253(j) of the Code, the term 'nonprofit educational organization' means an educational organization described in section 170(b)(1)(A)(ii) that is exempt from income tax under section 501(a). An educational organization described in section 170(b)(1)(A)(ii) is an organization that 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 1.170A-9(b)(1) of the Income Tax Regulations under Code section 170 provides that such educational organization must have as its primary function the presentation of formal instruction. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities.

The above sections also include in the term 'nonprofit educational organization' a school operated as an activity of an organization described in section 501(c)(3) of the Code that is exempt from income tax under section 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.

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 the applicability of the exemptions from the aforementioned excise taxes. In order for these exemptions to apply, the organization must meet the prescribed requirements of section 170(b)(1)(A)(ii) and the pertinent regulations to come within the meaning of a 'nonprofit educational organization.'

The statute imposes no limitation on the subject matter of

instruction given by a school for purposes of the exemptions. Thus, the exemptions may apply regardless of the fact that the curriculum is religious. See Rev. Rul. 64-276, 1964-2 C.B. 399.

The activities described above, apart from the eight-week courses, are not characterized by a regular faculty and curriculum and a regularly enrolled student body, and are not incidental to the corporation's educational program within the meaning of section 1.170A-9(b)(1) of the regulations.

Accordingly, the corporation itself does not meet the prescribed requirements under the regulations to qualify as a nonprofit educational organization as that term is used in sections 4041(g), 4221(d)(5), and 4253(j) of the Code. Therefore, except as provided below, the exemptions from the retailers and manufacturers excise taxes provided by sections 4041(g)(4) and 4221(a)(5), and the exemption from the communications taxes provided by section 4253(j), do not apply to sales of taxable articles or communication services to the corporation.

A regular faculty and curriculum are maintained for the eight week Yoga courses conducted by the corporation. Thus, these two requirements prescribed in the statute are met. Further, there is normally a regularly enrolled body of students in attendance at a designated place where the courses are regularly carried on. Therefore, with respect to these courses, the corporation is conducting a school operated as an activity of an exempt organization that is a nonprofit educational organization within the meaning of the statute.

Accordingly, the exemptions from the retailers and manufacturers excise taxes provided by sections 4041(g)(4) and 4221(a)(5) of the Code, and the exemption from the communication taxes provided by section 4253(j) apply to sales of taxable articles or communication services to the corporation for exclusive use in its eight week Yoga courses.

However, sales of taxable articles or communication services to the corporation for use in the open classes, lectures, discussions, and seminars do not come within the above exemptions because such activities are not part of the eight-week course and are not, themselves, a school meeting the statutory requirements of maintaining a regular faculty and curriculum, and having a regularly enrolled body of students.

See Rev. Rul. 75-314, 1975-2 C.B. 442, which illustrates how the nonprofit educational exemption for communication services and facilities applies where a religious organization conducts an exempt school activity. In that revenue ruling involving a church school, the exemption is limited to the extra charges for local telephone service made by the telephone company for an extension telephone used only by the school and to charges for toll calls that are identified as relating solely to the operation of the school. The exemption does not apply to amounts paid for the

basic local telephone service that is used by the church both for the school and for noneducational purposes. The limitations set forth in Rev. Rul. 75-314 would be similarly applicable to the organization in this case.