

Port area spillage control. A nonprofit organization whose purpose is to prevent liquid spills, primarily oil spills, within a city port area and to develop a program for the containment and cleanup of liquid spills that do occur is entitled to exemption as a social welfare organization under section 501(c)(4) of the Code provided that its services are equally available to members and nonmembers and both members and nonmembers are charged on the same basis for the cleanup services rendered.

Advice has been requested whether the nonprofit organization described below qualifies for exemption from federal income tax as a social welfare organization described in section 501(c)(4) of the Internal Revenue Code.

The organization was formed to prevent liquid spills, primarily oil spills, within a city port area and to develop a program for the containment and cleanup of liquid spills that do occur. Its membership includes business firms, primarily oil and chemical companies, which store or ship liquids in the port area and two government instrumentalities which operate port terminal facilities. The city fire department and the U.S. Coast Guard are associate members, but they are not represented on the organization's board of directors. Members are charged dues based on the quantity of spillable liquid each member stores or ships in the port area each year.

The organization is an approved discharge cleanup organization under the applicable state law dealing with the prevention of oil spills and pollution control. As such, it is required under state law to clean up spills of unknown source upon request of the appropriate state authorities, but is not required to clean up spills of identified nonmembers. Membership in such an organization enables certain of the members to meet part of the requirements for the necessary state licensing of their facilities and to make required showings of financial responsibility. Moreover, to the extent such an organization exists and operates successfully, insurance rates in the port community will be lowered.

The organization visits members' facilities to give technical assistance and to recommend improvements in handling liquids. It disseminates information pertaining to liquid spillage prevention and cleanup to the port's users and to similar spillage cleanup organizations throughout the state and nation. In addition, the organization cleans up liquid spillage within the city port area.

To carry out the cleanup operations, the organization has acquired equipment and supplies needed to contain and remove spills and has trained members of the city fire department and personnel of its member organizations in their effective use. In the event of a spill, the U.S. Coast Guard calls the organization

to the scene while the fire department contains the spill by means of a specially equipped fire boat, the acquisition of which was financed in part by a donation from the organization to the city. The organization responds to the Coast Guard's call immediately, regardless of who caused the spill.

After the spill is contained, the organization moves in with trained personnel to clean up the spill under the general supervision of the U.S. Coast Guard. This arrangement is part of the Coast Guard's Pollution Contingency Plan which the organization assisted in preparing.

When a member is responsible for spillage, the organization charges the member a fee equal to the cost of labor, supplies, and equipment used in the cleanup. A nonmember identified as being responsible for a spill also must pay a fee to cover the cost of labor, supplies, and equipment used. If the party responsible for the spill is not identified or for some reason cannot be compelled to pay its fee, the U.S. Coast Guard reimburses the organization for labor costs only, and the organization absorbs the remaining costs of cleanup.

There are no commercial cleanup companies operating in the entire geographical region where the port is located. Although there are a few commercial organizations providing similar services in other geographical areas, previous studies show that operation of a commercial cleanup organization is not economically feasible in the port area served by the organization.

Section 501(c)(4) of the Code provides for the exemption of a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. However, the regulation further provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

By preventing and cleaning up liquid spills that endanger marine life and foul recreational beaches and shorefront property in the port area, the organization is primarily engaged in activities designed to benefit all inhabitants of the community served by it.

The organization's cleanup services are equally available to members and nonmembers and both members and nonmembers, if identifiable, are charged for the cost of labor, supplies, and equipment used in the cleanup of their spills. By cleaning up

spills of members and nonmembers, identified and unidentified, the organization is acting to prevent deterioration of the port community and not merely to prevent damage to facilities of its members. Thus, any effect the organization has in aiding compliance with applicable state law and in lowering insurance rates in the port area extends to all members of the port community not just to members of the organization. Therefore, any benefits to members can properly be characterized as incidental to the primary activity of the organization.

As charges for the organization's services are sufficient only to cover the cost of labor, equipment, and supplies used the organization is not carrying on business with the general public in a manner similar to organizations operated for profit. Furthermore, the organization cleans up spills of both members and nonmembers, identified and unidentified.

Accordingly, the organization qualifies for exemption from federal income tax as a social welfare organization under section 501(c)(4) of the Code. Compare *Contracting Plumbers Cooperative Restoration Corp. v. United States*, 488 F.2d 684 (2d Cir. 1973), cert. denied 419 U.S. 827 (1974), denying the exemption of an organization that made repairs to damaged property only if the property was damaged by its members.

Even though an organization considers itself within the scope of this revenue ruling, it must file an application on Form 1024, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(4) of the Code. The application should be filed with the District Director of Internal Revenue for the key district indicated in the instructions to the Form 1024. See section 1.501(a)-1 of the regulations.