

Music; recording and sale of composers' works. An otherwise qualifying organization created to develop and promote an appreciation of contemporary symphonic and chamber music by recording and selling, primarily to educational institutions, new works of unrecognized composers as well as neglected works of more established composers is exempt from tax under section 501(c)(3) of the Code.

ISSUE

Does an organization that promotes interest in and appreciation of contemporary symphonic and chamber music, under the circumstances described below, qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code?

FACTS

The organization, which otherwise qualifies for exemption under section 501(c)(3) of the Code, was created to stimulate, promote, encourage, and sustain interest in and appreciation of contemporary symphonic and chamber music. The organization records the new works of unrecognized composers as well as the neglected works of more established composers. The music selected for recording has a limited commercial market and is not generally produced by the commercial music publishing and recording industry for sale to the public.

The organization sells its recordings primarily to libraries and educational institutions. Some records are provided free to radio stations operated by educational institutions. The organization also makes some sales to individuals. The records are not made available for sale through commercial record dealers except in a few specialty shops, but are sold through mail orders.

The organization does not engage in any advertising, but relies upon those who are interested in this type of music to communicate the availability of the records. All sales are facilitated by the use of a catalog published by the organization. The catalog contents include information about the compositions and the composers. This information is retained in the catalog so that the catalog serves as an archive with respect to these compositions and recordings. Copies of all recordings are maintained for availability in the future. The liner notes on the album covers contain a biography of the composer and a description of the composition by its composer.

Compositions to be recorded by the organization are selected by an editorial board. The members of the editorial board are appointed by the president of the organization. The board is comprised of recognized experts in the contemporary music field, none of whose works may be considered for recording. Members of the board are replaced every two years to insure selection of a

broad range of compositional styles. Selections are made based upon the quality of the work rather than any potential for profit.

Composers receive royalties from the sale of recordings as required by federal law. Due to the limited commercial market for this type of music, the royalties received by the composers are insignificant. Pursuant to contractual agreement, nonexempt corporations and individuals that provide subsidies for the production of recordings receive nine percent of the gross sales in repayment but may not be paid an amount greater than their subsidy. The organization's deficits are made up by means of contributions from the public and grants from organizations exempt from federal income tax under section 501(c)(3) of the Code.

LAW AND ANALYSIS

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations states that the term 'educational,' as used in section 501(c)(3) of the Code, relates to the instruction or the training of the individual for the purpose of improving or developing his or her capabilities, or the instruction of the public on subjects useful to the public and beneficial to the community.

Organizations devoted to the promotion and development of the arts may qualify for exemption as educational and charitable organizations. See Rev. Rul. 75-471, 1975-2 C.B. 207; and Rev. Rul. 65-271, 1965-2 C.B. 161.

By providing a vehicle for the presentation of the new works of unrecognized composers as well as the neglected works of more recognized composers, the organization is promoting and developing serious music composition as an art form and is thus furthering charitable and educational purposes. For purposes of determining its qualification as an organization described in section 501(c)(3) of the Code, the organization's sale to the public of recordings of musical compositions is not distinguishable from the presentation of live performances for a fee. Compare Rev. Rul. 67-392, 1967-2 C.B. 191, which holds that an organization that encourages and promotes the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts by the artists, and securing paid engagements for the artists qualifies for exemption under section 501(c)(3), and Rev. Rul. 66-178, 1966-1 C.B. 138, which holds that an organization that sponsors a public art exhibit at which the works of unknown but promising artists are displayed qualifies for exemption under section 501(c)(3).

Moreover, the recording and sale of musical compositions, not generally produced by the commercial recording industry, is similar to the publication and sale of educational material in a

noncommercial manner. See Rev. Rul. 67-4, 1967-1 C.B. 121, which holds that an organization that was formed to encourage scientific research in, and to disseminate educational information about, specific types of physical and mental disorders by the publication of a journal containing current technical literature relating to these disorders qualifies for exemption under section 501(c)(3) of the Code, if the content of the publication is educational; the preparation of the material follows methods generally accepted as 'educational' in character; the distribution of the materials is necessary or valuable in achieving the organization's educational and scientific purposes; and the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

HOLDING

An organization that promotes interest in and appreciation of contemporary symphonic and chamber music, under the circumstances described above, is operated exclusively for charitable and educational purposes and is exempt from federal income tax under section 501(c)(3) of the Code.

APPLICATION INSTRUCTIONS

Even though an organization considers itself within the scope of this revenue ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.508-1(a) of the regulations.

In accordance with the instructions to Form 1023, the application should be filed with the Director of Internal Revenue for the key district indicated therein.