

Exemptions; residential treatment center; school program. A residential treatment center for emotionally disturbed children run by a nonprofit organization conducts a school program that operates five hours a day, five days a week, on a year-round basis. The school enrolls children who are not part of the residential program, provides an educational treatment plan for each child, and provides one staff member for every two children and one teacher, who has a credential to teach severely emotionally disturbed children, for every six children. The treatment center is a nonprofit educational organization and qualifies for exemption from tax under sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Code.

#### ISSUE

Whether the treatment center described below is a nonprofit educational organization for purposes of the federal excise tax exemptions provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Internal Revenue Code of 1954.

#### FACTS

A nonprofit organization operates and maintains a residential treatment center for emotionally disturbed children to encourage and promote their emotional stability and well being. The center conducts a school program that is operated five hours per day, five days a week, on a year-round basis. Children who are not part of the residential program can be enrolled in the school program. The children in the school program are grouped by age and academic ability among four classrooms.

Each child is provided with an educational treatment plan under which the child learns to relate to staff members and other children. In addition, the treatment plan may include art therapy, therapeutic play sessions, psychotherapy, and speech therapy. The media of art, music, and dramatic play are used as specialized techniques and are integrated into the individual and group programs. The program provides a ratio of one staff member to two children and, as required by the State Board of Education, one teacher who has a credential to teach severely emotionally disturbed children for every six children. The organization has been recognized as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

#### LAW

Sections 4041(g)(4) and 4221(a)(5) of the Code provide that no special fuel taxes or manufacturers excise taxes shall be imposed on sales 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 4253(j) of the Code provides that 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). The term also includes a school operated as an activity of an organization described under section 501(c)(3) 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.

Section 170(b)(1)(A)(ii) of the Code describes an 'educational organization' as 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.

#### HOLDING

The above-described school program of the treatment center meets the requirements relating to faculty, curriculum, and enrolled student body prescribed in the statute. The organization itself is equivalent to a boarding school for emotionally disturbed children. Accordingly, the organization is a nonprofit educational organization within the meaning of the statute and regulations.

Therefore, articles that would otherwise be subject to the special fuels taxes and the manufacturers excise taxes may be sold tax free to the organization for its exclusive use. Likewise, communication services may be furnished tax free to the organization for its exclusive use.