

ISSUE

Does an organization that operates an exchange program for children of the United States and a foreign country, 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 formed in the United States to encourage and foster cultural and educational development of children by arranging for and participating in the exchange of children, on a temporary basis, between responsible families of a particular foreign country and the United States. To accomplish this purpose, the organization arranges for an American family to exchange one of its children for a child from a family that resides in the foreign country. The organization solicits applications from interested families in both countries, selects and matches qualified families, arranges for transportation to and from the respective countries, and provides a bilingual escort to travel with the children between countries.

The organization interviews all applicants and selects those families for the program that can provide stable home environments and suitable cultural experiences for the children.

Families participating in the organization's exchange program are required to pay a fee equal to the cost of travel and the cost of health, accident, and baggage insurance. The organization also receives income from grants and contributions.

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)(2) of the Income Tax Regulations provides that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the advancement of education.

Rev. Rul. 65-191, 1965-2 C.B. 157, considers a nonprofit organization organized for the purposes of extending hospitality to foreign visitors and students, promoting cultural and educational programs, and providing an environment for social contact between American citizens and foreign visitors and students, which maintains and operates a hospitality or community center. Rev. Rul. 65-191 holds that the provision of a community center for the mingling of foreign students and visitors with one another and with American citizens is charitable within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 68-165, 1968-1 C.B. 253, holds that a domestic nonprofit corporation that joins with a counterpart group in a country in Latin America to promote student and cultural exchanges and to provide technical and material assistance for self-help projects designed to improve living conditions of underprivileged people in Latin America qualifies for exemption under section 501(c)(3) of the Code. Specifically, Rev. Rul. 68-165 holds that promoting student and cultural exchanges helps improve the capabilities of the individual and, thus, is educational.

Like the organizations in Rev. Rul. 65-191 and Rev. Rul. 68-165, the organization in this case is facilitating student and cultural exchanges and, thus, is engaging in a charitable activity. Also, by promoting the exchange of children between families in the United States and families in a foreign country, which allows the children to undergo an educational experience through participation in the everyday activities of families in a foreign country, the organization is promoting education. See Rev. Rul. 69-400, 1969-2 C.B. 114.

The organization in this case is distinguishable from the one described in Rev. Rul. 67-327, 1967-2 C.B. 187, wherein an organization whose sole purpose and activity was to arrange group tours for students and faculty members of a university was held to be not exempt under section 501(c)(3) of the Code.

#### HOLDING

An organization that operates an exchange program for children of the United States and a foreign country, under the circumstances described above, is operated exclusively for charitable and educational purposes and thus qualifies for exemption 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 District Director of Internal Revenue for the key district indicated therein.

#### DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Section 170(a) of the Code provides that there shall be allowed as a deduction, subject to certain limitations, any charitable contribution, as defined in section 170(c), payment of which is made within the taxable year. Section 170(c)(2)(B) defines a charitable contribution to include a contribution or

gift to or for the use of a corporation organized and operated exclusively for educational purposes.

Although the term 'contribution' is not defined either in the Code or in the Income Tax Regulations, it is well established judicially that in order to be deductible under section 170 of the Code, a contribution must qualify as a gift in the common law sense of being a voluntary transfer of property without consideration. To the extent a transferor receives or can expect to receive, for the money or property he or she transfers, a financial or economic benefit, as distinguished from the incidental benefit that inures to a donor as a member of the general public, then no deduction under section 170 is allowable. *Singer v. United States*, 449 F.2d 413 (Ct. Cl. 1971); Rev. Rul. 67-246, 1967-2 C.B. 104; Rev. Rul. 76-185, 1976-1 C.B. 60.

Accordingly, the fees paid by families participating in the exchange program are not deductible as charitable contributions under section 170 of the Code. Further, the expenses incurred by a participating United States family contributing to the support, maintenance and cultural enrichment of the foreign child while the child is a member of the United States family's household for the exchange duration are not deductible as charitable contributions under section 170.

However, contributions from members of the general public, as well as contributions from a family that exceed the fair market value of services received from the family's participation in the exchange program, will be deductible under section 170 of the Code in the manner and to the extent provided therein.

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 67-327 is distinguished.