

Fraternal beneficiary society; separate support organization. An organization that does not conduct any fraternal activities or operate under the lodge system, but does operate exclusively for the benefit of members of certain related domestic fraternal societies operating under the lodge system, does not qualify for exemption under section 501(c)(10) of the Code.

#### ISSUE

Does an organization that does not conduct any fraternal activities or operate under the lodge system, but does operate exclusively for the benefit of the members of certain related domestic fraternal societies themselves operating under the lodge system, qualify for exemption from federal income tax under section 501(c)(10) of the Code?

#### FACTS

The organization is organized and operated for the purpose of holding real estate and other property of all kinds for the use and benefit of certain related fraternal societies. Each of the related societies is described in section 501(c)(10) of the Code and has representation on the corporation's board of trustees. The organization's charter limits its membership to members of the related fraternal societies. Any net earnings derived from its property holdings are retained and accumulated by the organization. The organization does not operate under the lodge system.

#### LAW AND ANALYSIS

Section 501(c)(10) of the Code provides for the exemption from federal income tax of domestic fraternal societies, orders, or associations operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and which do not provide for the payment of life, sick, accident, or other benefits.

Section 1.501(c)(10)-1 of the Income Tax Regulations provides that an organization will qualify for exemption under section 501(c)(10) of the Code if it is a domestic fraternal beneficiary society, order, or association, described in section 501(c)(8) and the regulations thereunder, except that it does not provide for the payment of life, sick, accident, or other benefits to its members, and devotes its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.

Section 501(c)(8) of the Code provides for the exemption from federal income tax of fraternal beneficiary societies,

orders, or associations that operate under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and that provide for the payment of life, sick, accident, or other benefits to the members of such societies or their dependents.

Section 1.501(c)(8)-1 of the regulations provides that a fraternal beneficiary society is exempt from tax only if operated under the "lodge system" or for the exclusive benefit of the members so operating. "Operating under the lodge system" means carrying on its activities under a form or organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters or the like.

The reference in section 1.501(c)(10)-1(a) of the regulations to the description of fraternal beneficiary societies, found in section 501(c)(8) of the Code and the regulations thereunder, is directed at the fraternal and lodge system characteristics which organizations described in sections 501(c)(8) and 501(c)(10) have in common. The reference does not incorporate the subcategory of organizations which operate "for the exclusive benefit of the members of a fraternity itself operating under the lodge system" in its definition of a domestic fraternal organization under section 501(c)(10). Since that subcategory was added to a predecessor of section 501(c)(8) to cover the separately organized insurance branches of the fraternal beneficiary societies, it does not apply to section 501(c)(10) organizations which cannot provide insurance or other benefits to their members. See 50 Cong.Rec. 3856 (1913) (remarks of Senator Williams).

Furthermore, even though the subject organization is operating for the exclusive benefit of the members of certain related fraternities themselves operating under the lodge system, it does not operate under the lodge system or conduct any fraternal activities.

#### HOLDING

An organization that does not conduct any fraternal activities or operate under the lodge system, but does operate exclusively for the benefit of the members of certain related domestic fraternal societies themselves operating under the lodge system, does not qualify for exemption from federal income tax under section 501(c)(10) of the Code.