

Housing; physically handicapped. A nonprofit organization that provides specially designed housing to physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for charitable purposes.

The organization was formed to meet the housing needs of the physically handicapped by building and operating an apartment rental complex designed especially for them. It was formed under the sponsorship of community leaders to meet a community need for such a facility. Its board of directors consists of civic leaders and other individuals with a particular interest in the problems of the handicapped.

The organization has designed, constructed, and equipped the complex in such a manner as to enable the handicapped to achieve a greater degree of living independence and mobility, and to make daily living easier for them.

The complex consists of a one-story facility with no stairs. Efficiency, one bedroom, and two bedroom apartments are offered. All units of the complex are interconnected by glass-enclosed walkways. All curbs and approaches are ramped. Windows are designed to be at eye level for the large number of residents who are confined to wheelchairs. Kitchen appliances and bathroom fixtures, as well as all switches and wall plugs, are located at levels accessible to residents in wheelchairs. Each unit has an alarm button for residents needing emergency assistance. The complex contains lounge facilities, a dining facility, office space for visiting doctors, a recreation room, indoor and outdoor swimming pools, and a wheelchair sports area. The organization provides transportation for handicapped residents to work, medical care, shopping, and entertainment facilities.

In order to qualify for admission, an individual must demonstrate that he or she needs specially designed facilities in order to live a reasonably comfortable and secure life. Physically handicapped individuals who are able to live adequately in facilities without specially designed features are not eligible for admission.

While the initial funds for building and equipping the facility were provided by governmental and foundation grants, the organization is self-supporting in that its operating funds are derived principally from fees charged for residence in the facility. The organization admits as tenants only handicapped

persons who are able to pay the full stated rental charges, which are within the financial reach of a significant segment of the community's handicapped persons. However, once persons are admitted to the facility, the organization is committed by established policy to maintaining them as residents, to the extent it is able, even if they subsequently become unable to pay its monthly charges. It effectuates this policy by maintaining such individuals out of its own reserves, by seeking whatever support is available under local and federal welfare programs, by soliciting contributions from the general public, or by using some combination of these means.

The organization provides its services to the physically handicapped at the lowest feasible cost. Its receipts are used exclusively in furtherance of its stated purposes. Its charges are set at an amount sufficient to maintain reserves adequate to pay for the life care of any of its residents who may require it, and to enable it to set aside enough for a limited amount of expansion sufficient to meet the community's needs. Net earnings are thus generally used to improve the specialized services and facilities provided, to subsidize any resident unable to continue making his monthly payments, or to expand the facility where the needs of the community warrant such expansion. No part of the organization's net earnings inures, directly or indirectly, to the benefit of any private shareholder or individual. No employee receives more than reasonable compensation for services rendered.

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the relief of the poor and distressed.

Revenue Ruling 72-124, 1972-1 C.B. 145, sets forth requirements that homes for the aged must meet in order to qualify for exemption under section 501(c)(3) of the Code. The Revenue Ruling makes clear that a home for the aged will be deemed 'charitable' if it meets the special needs of the elderly such as the need for health care, financial security, and residential facilities designed to meet specific physical, social, and recreational requirements of the elderly. Such a home need not provide direct financial assistance to the elderly in order to be 'charitable,' since poverty is only one form of distress to which the elderly as a class are particularly susceptible.

Similarly, the physically handicapped as a class are subject to 'distress' in that they may experience frustration and require substantial assistance in dealing with standard design living, recreational, and transportation facilities. Moreover, they may have greater need for financial security than nonhandicapped persons because their employment opportunities may be more limited

or because they may be required to live on fixed incomes.

Thus, when an organization that otherwise qualifies for exemption under section 501(c)(3) of the Code provides specially designed housing as described above that is within the financial reach of a significant segment of the community's handicapped persons, and when the organization commits itself to operating such housing at the lowest feasible cost (consistent with its maintaining the reserve described above) and to maintaining in residence those tenants who become unable to pay its monthly fees, such organization is operated to relieve the major forms of distress to which the physically handicapped are susceptible. Accordingly, it qualifies for exemption from federal income tax under section 501(c)(3) of the Code as an organization operated exclusively for charitable purposes.

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