

An organization created pursuant to the will of a stockholder of a company to pay pensions to all retired employees of that company does not qualify for exemption under section 501(c)(3) of the Code.

The Internal Revenue Service has been asked whether the organization described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was created pursuant to the will of a stockholder of a company for the sole purpose of paying pension benefits to retired employees of the company. The pension benefits are paid to all retired employees age 65 or over, regardless of their economic resources. Although the company does not have a pension plan, its retired employees generally receive social security payments. The company employs approximately 750 persons. In an average year, 35 employees retire.

The assets of the organization consist of various investments and cash bequeathed to it by the testator. Income is derived from the investments. The company does not contribute funds to the organization nor does the company have any control over its affairs.

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 relief of the poor and distressed or of the underprivileged.

The organization claims it is organized for the relief of the poor. To come within the scope of the term 'relief of the poor,' the organization must at least show that the class it benefits is lacking in the necessities or comforts of life. Scott on Trusts, Sec. 369.3 (1967), provides:

'A trust for the relief of poor persons is charitable although it is not limited to those who are destitute. It is sufficient that the persons to benefit from the trust are in needy circumstances although they have a certain amount of property, but not enough to afford the necessities or the comforts of life.'

A similar issue was considered by the United States Court of Appeals for the Third Circuit in *w. W. Watson et al., Exrs. v. United States*, 355 F.2d 269 (1966). In that case the question was whether the estate was entitled to a deduction under section 812(d) of the 1939 Code (which corresponds to section 2055(a) of the 1954 Code) for a bequest to trustees exclusively for charitable purposes. The major stockholder of Jacques Wolf and Company died and his will provided for the establishment of a

trust equal to a certain percentage of the estate. The primary purpose and activity of the trust was to make pension payments to certain employees of Jacques Wolf and Company. The court held that the trust was an ordinary pension trust and not created for exclusively charitable purposes. The court found that the employees were not as a class impoverished.

The organization in this case does not pay pensions on the basis of need. It has not shown that the retired employees of the company as a class lack the necessities or comforts of life. Accordingly, the organization does not qualify for exemption from Federal income tax as a charitable organization under section 501(c)(3) of the Code.