

A cemetery company exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(13) of the Code, will be subject to the loss of its exempt status by the establishment and operation of a mortuary on the cemetery grounds, or elsewhere.

Advice has been requested whether a tax-exempt cemetery company may establish and operate a mortuary without losing its exempt status.

The instant organization, which has been held to be exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(13) of the Code, was formed for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead. It now proposes to establish and operate a mortuary on the cemetery grounds.

Section 501(c)(13) of the Code describes certain organizations which are exempt from tax under section 501(a) of the Code and provides, in part, as follows:

Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit, and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.  
(Emphasis added.)

The Income Tax Regulations in setting forth the requirements for exemption under section 501(c)(13) of the Code, use language similar to that above. See section 1.501(c)(13)-1 of the regulations.

In construing these provisions, it is the position of the Internal Revenue Service that an organization claiming exemption under section 501(c)(13) of the Code may not engage in activities which are not necessarily incident to its burial purposes. The operation of a mortuary is not considered necessary to the procuring, sale, holding, and use of land solely as a burial ground. Accordingly, in the instant case, the organization will become subject to the loss of its exempt status if it establishes and operates a mortuary on the cemetery grounds, or elsewhere.