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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B8

PLR-157417-03

Date: November 29, 2004

LEGEND:

Taxpayer =

Dear :

This responds to your letter dated August 28, 2003, and supplemental correspondence, asking whether your organization qualifies as a nonprofit educational organization for purposes of exemptions, refunds, and payments related to federal excise taxes under §§ 4041(g), 4221(a)(5), 4253(j), and 6421(c) of the Internal Revenue Code.

FACTS

Taxpayer is a nonprofit charitable organization that is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3). Taxpayer's purpose is to provide care and supports to persons with developmental disabilities, including mental retardation, while offering, but not mandating, instruction in religious doctrine. Taxpayer's articles of incorporation define its charitable purpose as caring for developmentally disabled children and adults; providing for their spiritual, physical, social, mental and emotional needs; developing their potential; and increasing their knowledge and skills to enhance their ability to deal with their environment.

Taxpayer provides four basic categories of client service programs: institutional facilities; group homes; in-home services; and day services.

Taxpayer serves about half of its clients in institutional facilities, which are regulated by Medicaid under 42 C.F.R. §§ 483.400-.480. These facilities provide services to the most disabled clients with more involved medical and behavioral needs. In these facilities, Taxpayer provides or arranges for all habilitation and support services required by the client, including medical, psychological, dietetic, active treatment, direct care and social services.

Taxpayer's group homes typically house three to six clients each. Group homes service the whole spectrum of developmentally disabled clients, even those with more involved medical and behavioral needs, if appropriate staffing and supports are available.

In-home services are provided in the client's own home, typically to higher functioning, more independent clients. These in-home support services are scheduled for specific and limited hours. Day services provide supports and services for limited periods as requested by the client or family/guardian, and are often available during business hours from Monday through Friday.

Client training and education is a significant element of all services and supports offered by Taxpayer. Such training and education does not occur in a group classroom-type instructional setting which is typical of the education of persons with developmental disabilities, however. Taxpayer uses a standardized methodology for working with the developmentally disabled. This methodology is an integrated and inherently inseparable part of the services Taxpayer provides in all of its programs. Taxpayer develops goals and objectives specific to each client's particular level of disability and personal growth needs, including functional goals (such as learning to dress), behavioral goals (such as learning appropriate mealtime behavior), traditional academic functions (such as reading), and vocational skills. For each client, these goals are recorded in a written individual plan, as required by federal and/or state regulations that govern Taxpayer's developmental disabilities services. Staff members follow the plan while interacting with clients. Taxpayer does not maintain a separate faculty.

LAW & ANALYSIS

Section 4041(a)(2) imposes a tax on special motor fuel that is sold for use or used as a fuel in a motor vehicle or motorboat. Chapter 32 imposes manufacturers excise taxes on certain manufacturer's sales. Section 4081 imposes a tax on certain removals, entries and sales of gasoline. Section 4251(a) imposes a tax on amounts paid for certain communications services including local telephone service (defined in § 4252(a)), toll telephone service (defined in § 4252(b)), and teletypewriter exchange service (defined in § 4252(c)).

Section 4041(g)(4) exempts from tax special fuels sold to a nonprofit educational organization for its exclusive use and the use of these fuels by a nonprofit educational

organization. Similar exemptions apply to manufacturing taxes (§ 4221(a)(5)) and communications taxes (§ 4253(j)).

Section 6421(c) provides that if gasoline on which tax has imposed under § 4081 is sold to a nonprofit educational organization for its exclusive use, then the ultimate purchaser of the fuel is eligible for a payment with respect to the tax.

For these exemptions or claims for payment, the term “nonprofit educational organization” is defined under §§ 4041(g), 4221(d)(5), and 4253(j) and §§ 48.4041-17(b) and 48.4221-6(b) of the Manufacturers and Retailers Excise Taxes Regulations as an educational organization described in § 170(b)(1)(A)(ii) that is exempt from federal income tax under § 501(a). The term also includes a school operated as an activity of an organization described in § 501(c)(3) that is exempt from income tax under § 501(a), if the school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 1.170A-9(b)(1) of the Income Tax Regulations provides that an educational organization is described in § 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The regulations state that the term “educational organization” does not include organizations engaged in both educational and non-educational activities unless the latter are merely incidental to the educational activities.

Rev. Rul. 80-20, 1980-1 C.B. 231, holds that a nonprofit corporation that is primarily a vocational rehabilitation center is not a nonprofit educational organization exempt from federal excise taxes. Rev. Rul 80-20 further holds that the nonprofit corporation’s classroom training program is a school operated as an activity of an exempt organization. In general, the nonprofit corporation provides employment and on-the-job training, classroom training, personal counseling, vocational evaluation, medical treatment, and unemployment placement services. The classroom training portion of the program consists of regularly scheduled classes taught by a staff of qualified instructors on a year-round basis, provided to regularly enrolled student/trainees in subjects such as merchandising, welding, shoe repair, carpentry, elementary English, writing, arithmetic, reading Braille, using a cane, sewing, shopping and handling money. The classes vary from three to nine months, depending on the student’s level of competence.

Rev. Rul. 80-20 reasons that the primary function of the organization was not the presentation of formal instruction, but rather, the operation of a vocational rehabilitation center involving employment, educational, and social service activities. Providing classroom training is insufficient, in itself, to bring the corporation’s primary purpose within the scope of §§ 1.170A-9(b)(1) and 48.4221-6(b) of the regulations. The

personal counseling, vocational evaluation, medical treatment, and employment placement services do not satisfy the regulations, because they relate to the corporation's overall rehabilitation functions. The revenue ruling concludes that the classroom training portion of the center is a school operated as an activity of an exempt organization, in that its primary purpose is the presentation of formal instruction, it has a curriculum, and a regularly enrolled student body in attendance at a designated place where instruction is normally provided by a regular faculty at regular sessions.

Although an organization furthers charitable and educational purposes as described in § 501(c)(3) and engages in some educational activities, it does not necessarily follow that such organization qualifies as a "nonprofit educational organization" within the meaning of § 170(b)(1)(A)(ii). To satisfy the requirements of § 170(b)(1)(A)(ii), an organization must have as its primary function the presentation of formal instruction and must have a regular faculty and curriculum and a regularly enrolled body of students or pupils in attendance at a place where the organization's education are regularly carried on.

Taxpayer's primary function is providing care and supports to persons with developmental disabilities; not the presentation of formal instruction. Taxpayer's training and educational activities are not carried out in a classroom-type instructional setting typical for developmentally disabled clients. Taxpayer does not maintain a separate faculty. Taxpayer's client service programs are designed, in part, to train and educate its clients and to assist each client in developing to his or her maximum potential. These aspects of Taxpayer's activities have been developed by using a standardized educational methodology to best meet the educational and training needs of clients with developmental disabilities. The educational function relates to the many client support services that Taxpayer provides. Therefore, we conclude that Taxpayer is not a nonprofit educational organization, because its educational activities are incidental to its primary functions. Accordingly, we conclude that Taxpayer does not operate a school as an activity of an exempt organization and does not qualify for the exemptions, refunds and payments regarding federal excise taxes under §§ 4041(g), 4221(a)(5), 4253(j), and 6421(c).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Barbara B. Franklin
Senior Technician Reviewer