Rev. Rul. 71-544, 1971-2 C.B. 227

A non-profit corporation formed to hold title to securities and turn over its income to a selected exempt organization that has no control over the corporation is not an exempt title-holding corporation under section 501(c)(2) 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)(2) of the Internal Revenue Code of 1954.

A group of philanthropists organized a non-profit corporation to which they transferred income-producing stocks and securities. The charter of the corporation provides that the purpose of the organization is to hold title to stocks and securities and at the end of each year to turn over its income, less expenses, to an organization selected by its board of directors. The charter further provides that any recipient organization must be exempt from Federal income tax under section 501 of the Code.

The stock of the title-holding corporation is owned by the group of philanthropists. The stock confers no rights on the shareholders to receive dividends or to participate in liquidating distributions.

Section 501(c)(2) of the Code provides for the exemption from Federal income tax of corporations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount, less expenses, to an organization which itself is exempt under section 501 of the Code.

The history of section 501(c)(2) of the Code indicates that a title-holding corporation within the meaning of that section has traditionally been regarded as being essentially an investment or property holding subsidiary of an organization which is itself exempt under section 501. In the dissent to the decision in Roche's Beach, Inc. v. Commissioner, 96 F.2d 776, 779 (1938), Judge Learned Hand discussed exemption of title-holding companies in terms of a parent-subsidiary relationship. Also, in Banner Building Co., Inc., 46 BTA 857 (1942), the Board of Tax Appeals lent further substance to this concept, holding that the petitioner had not shown that it was under any legal obligation to turn over any of its funds to Banner Council, an exempt fraternal beneficiary society, and the failure in this essential precluded it classification as an exempt title-holding corporation. This concept of a title-holding corporation is in harmony with both the legislative history of the exempting provisions of the Code generally, and the title-holding provisions specifically.

In the statutory scheme of exemption of certain organizations from Federal income tax, Congress has employed a combination of definitional and popular-name descriptions to designate the organizations exempted under the various provisions. Under basic rules of statutory constitution Congress is presumed to have employed such terms according to their legal significance at the time of the enactment of the particular provisions in which they are used. U.S. v. Cambridge Loan and Building Company, 278 U.S. 55 (1928), Commercial Travelers' Life and Accident Ass'n. v. Rodway, 235 Fed. 370 (1913).

A normal reading of the statutory language of the section in question connotes a corporation holding title to property, collecting the income therefrom and paying over the income, less expenses, to a distributee having an ownership interest in the corporation. Decisions of the Supreme Court of the United States both preceding and contemporaneous with the employment of the language used to exempt corporations whose sole function is to hold title to property and distribute the income therefrom in the manner prescribed support such a reading and make it apparent that at the time of its use in the Revenue Act of 1916 the terminology had acquired a well understood meaning in the context of Federal tax law. It connoted a corporation not engaged in carrying on or doing business but merely holding title to investment assets, receiving the income therefrom and distributing it to its stockholders or parent. See Von Baumbach v. Sargen Land Co., 239 U.S. 645 (1917), and cases cited therein. Consequently it is clear that in enacting what is now section 501(c)(2), Congress did not intend to create a completely new category of independent exempt organizations.

Thus, it is concluded that section 501(c)(2) of the Code provides exemption from Federal income tax for a corporation that holds title to property only where there is effective ownership and control over the title-holding corporation by a distributee organization. Control may be evidenced, for example, by owning the voting stock of the title-holding corporation or possessing the power to select nominees to hold the voting stock. See Rev. Rul. 68-222, C.B. 1968-1, 243.

In the situation described above, the title-holding corporation is not owned or controlled by the exempt organization to which it turns over its income. It is independent of the distributee and has complete discretion as to the selection of the distributee.

Accordingly, it is held that the organization is not a title-holding corporation described in section 501(c)(2) of the Code.