

Ruling 200-93-03

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Revised: December 12, 2008, corrections, as indicated by strike-through and brackets

A ruling has been requested concerning the applicability of certain provisions of the Corporate Income and Franchise Tax Act to the following facts:

X, a non-profit corporation, is recognized by the Commissioner of Internal Revenue as a 501(c)(3) organization.

X is planning to establish a separate corporation Y to hold title to and manage certain real estate. The real estate will consist of various office buildings, vacant land and improved real estate adjacent to property X uses in its activities. The new corporation holdings will not include any of the property X uses directly in its activities. X will own 100 % of the stock in Y and X will have total ultimate control of Y. Y may or may not be incorporated as a non-profit organization. Once Y is established, X will seek to have Y designated as a 501(c)(2) corporation by the Commissioner of the Internal Revenue Service.

Section 501(c)(2) of the Internal Revenue Code provides that a corporation organized for the exclusive purpose of holding title to real property, collecting the income and turning over the entire amount, less expenses, to an organization which itself is organized under Section 501(c) is exempt from federal taxation. The corporation qualifying for exemption under Section 501(c)(2) is not required to be non-profit. The corporation can be a stock corporation organized for profit.

X asks, if Y is granted a 501(c)(2) status by the Internal Revenue Service, will Y be exempt from the Corporate Income and Franchise Tax Act?

Section 7-2A-4 NMSA states in part:

No corporate income or franchise tax shall be imposed upon:...

C. religious, educational, benevolent or other organizations ***not organized for profit*** which are exempt from income taxation under the Internal Revenue Code unless the organization receives income which is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code, in which ~~such~~ case the organization is subject to the corporate franchise tax, and the corporate income tax applies to the unrelated business income. (Emphasis added.)

Therefore, if Y is granted exempt status under Section 501(c)(2) of the Internal Revenue Code and is organized as a non-profit corporation, then Y will also be exempt from the New Mexico Corporate Income and Franchise Tax Act. If Y is granted exempt status under Section 501(c)(2) and is organized [as] a profit corporation, then Y will be liable for both the corporate income and franchise tax. The exemption under Section 7-2A-4 NMSA 1978 applies only to organizations

which are not organized for profit.

Y may also be subject to the gross receipts and compensating tax on some of its activities since it is not a 501(c)(3) organization, regardless of its liability for corporate income and franchise tax.