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## **Rev. Rul. 70-101**

The Internal Revenue Service has been requested to state its position with respect to the classification of professional service organizations formed under state professional association or corporation statutes.

In the light of recent decisions of the Federal courts, the Service generally will treat organizations of doctors, lawyers, and other professional people organized under state professional association acts as corporations for tax purposes.

The Government has not applied for certiorari in the cases of *United States v. O'Neill*, 410 F. 2d 888 (6th Cir. 1969); *Kurzner v. United States*, 413 F. 2d 97 (5th Cir. 1969); *Empey v. United States*, 406 F. 2d 157 (10th Cir. 1969); and *Holder v. United States*, 289 F. Supp. 160 (1968), affirmed, per curiam, 412 F. 2d 1189 (5th Cir. 1969). Also the Government will not further press its appeals in *Wallace v. United States*, 294 F. Supp. 1225 (1968). Furthermore, no appeal will be prosecuted in any other pending cases decided adversely to the Government on the same issue involving similar facts and all similar cases now in litigation or under audit are being reviewed to see if they should be conceded. However, the Government reserves the right to conclude differently in any cases reflecting special circumstances.

Other cases that have been decided adversely to the government include: *Cochran v. United States*, 299 F. Supp. 1113 (1969); *Van Epps, et al. v. United States*, 301 F. Supp. 256 (1969); *Kelsey v. United States*, \_\_\_\_ F. Supp. \_\_\_\_ (1969); *Mendelsohn v. United States*, \_\_\_\_ F. Supp. \_\_\_\_ (1969); *Smith v. United States*, 301 F. Supp. 1016 (1969); *Williams v. United States*, 300 F. Supp. 928 (1969); *Fowler v. United States*, \_\_\_\_ F. Supp. \_\_\_\_ (1969); *First National Bank & Trust Co. of Tulsa*, 301 F. Supp. 1016 (1969); *Ryan v. United States*, \_\_\_\_ F. Supp. \_\_\_\_ (1969).

It is held that a professional service organization will be treated as a corporation in any case arising in the same state as, and having facts similar to, the cases cited above.

A professional service organization that is organized and operated under the statutes listed below for each state will also be treated as a corporation except in those instances in which it is illegal, as a matter of state law, for the professional service organization claiming corporate status to engage in the practice of the particular profession that it is organized to engage in.

**ALABAMA:** Code of Alabama, Title 46, Chapter 16, Sections 330 to 345 (Unincorporated Professional Associations), approved September 8, 1961.

**ALASKA:** Alaska Statutes, Title 10, Chapter 45, Sections 10 to 260 (Professional Corporation Act) effective November 1968, amended S.B. 45 effective August 4, 1969.

**ARIZONA:** Arizona Revised Statutes, Title 10, Chapter 3, Sections 10-901 to 10-909 (Professional Corporations) effective March 20, 1962.

ARKANSAS: Arkansas Statutes (1947), Title 64: Chapter 17, Sections 64-1701 to 64-1717 (Medical Corporation Act) approved March 6, 1961; Chapter 18, Sections 64-1801 to 64-1817 (Dental Corporation Act) approved March 16, 1961; Chapter 20, Sections 64-2001 to 64-2018 (Professional Corporation Act) effective March 5, 1963.

CALIFORNIA: Annotated California Codes (West's), Title 1, Part 4, Sections 13400 to 13410 (Professional Corporations) effective November 13, 1968.

COLORADO: Colorado Revised Statutes (1963), Chapter 91, Article 1, Section 91-1-37 (Colorado Medical Corporation Act) effective July 1, 1969; Rules of Civil Procedure Chapter 22, Rule 265 (Professional Service Corporations) effective December 5, 1961.

CONNECTICUT: P.A. 332 (Professional Services Corporation) effective May 29, 1969, amended by P. A. 775 effective October 1, 1969; P. A. 442 (Architectural Corporation Act) effective October 1, 1969.

DELAWARE: Delaware Code Annotated, Title 8, Chapter 6, Sections 601 to 620 (Professional Service Corporation Act) effective June 7, 1969.

FLORIDA: Florida Statutes annotated, Title 34, Chapter 621, Sections 621.01 to 621.15 (Professional Service Corporation Act) effective September 1, 1961, amended effective September 1, 1967; amended effective July 1, 1969.

GEORGIA: Code of Georgia Annotated, Title 84, Chapter 84-43, Sections 84-4301 to 84-4318 (Georgia Professional Association Act) effective 1961.

HAWAII: Hawaii Revised Statutes, Sections 416-141 to 416-154 (Professional Corporation Law) effective July 14, 1969.

IDAHO: Idaho Code Annotated, Title 30, Chapter 13, Sections 30-1301 to 30-1314 (Professional Service Corporations) effective March 19, 1963.

ILLINOIS: Illinois Annotated Statutes, Chapter 32, Section 631 to 647 (Medical Corporation Act) effective August 30, 1963; H.B. 664 (Professional Service Corporation Act) effective September 15, 1969. <Page 279>

INDIANA: Burns Indiana Statutes, Title 25: Chapter 49, Sections 25-4901 to 25-4921 (Medical Professional Corporations) effective August 12, 1963; Chapter 50, Sections 25-5001 to 25-5017 (Dental Professional Corporation Act) effective December 29, 1965; Chapter 51, Sections 25-5101 to 25-5111 (Professional Corporation Act of 1965) effective December 27, 1965.

KANSAS: Kansas Statutes Annotated, Chapter 17, Sections 17-2706 to 17-2719 (Professional Corporation Law) effective June 30, 1965.

KENTUCKY: Kentucky Revised Statutes, Chapter 274, Sections 274.005 to 274.990 (Professional Service Corporation) effective June 14, 1962, amended effective June 13, 1968.

LOUISIANA: West's Louisiana Statutes Annotated, Title 12: Chapter 8, Sections 801 to 815 (Professional Law Corporations) enacted 1964, revised and recodified effective January 1, 1969; Chapter 9, Sections 901 to 915 (Professional Medical Corporations) enacted June 29, 1968, effective 20 days after adjournment.

MAINE: Maine Revised Statutes Annotated, Title 13, Chapter 22; Sections 701-716 (Professional Service Corporation Act) approved June 18, 1969, effective 90 days after adjournment.

MARYLAND: Annotated Code of Maryland (1957), Article 23, Sections 430-444 (Professional Service Corporation Act) effective July 1, 1969.

MASSACHUSETTS: Annotated Laws of Massachusetts, Title 22, Chapter 156A, Sections 1-17 (Professional Corporations) approved August 17, 1963, effective 90 days thereafter.

MICHIGAN: Michigan Statutes Annotated, Title 21, Sections 21.315(1) to 21.315(15) (Professional Service Corporation Act) effective March 28, 1963, amended effective September 6, 1963.

MINNESOTA: Minnesota Statutes Annotated, Chapter 319: Sections 319.01 to 319.23 (The Minnesota Professional Corporation Act) effective May 7, 1961, amended effective April 3, 1963; Sections 319.26 to 319.41 (Attorneys Professional Corporation Act) effective April 2, 1963; Sections 319.46 to 319.68 (Dental Professional Corporation Act) effective April 18, 1969; Sections 319.71 to 319.93 (Chiropractors Professional Corporation Act) effective May 25, 1969; Sections 319.941 to 319.961 (Optometrists Professional Corporation Act) effective June 1, 1969.

MISSISSIPPI: Mississippi Code Annotated (1942), Chapter 4B, Sections 5390-41 to 5390-57 (Professional Corporation Act) effective September 1, 1968.

MISSOURI: Vernon's Annotated Missouri Statutes, Title 23, Chapter 356, 356.010 to 356.200 (The Professional Corporation Law of Missouri) effective 1963.

MONTANA: Montana Revised Code (1947), Title 15, Chapter 21, Sections 15-2101 to 15-2116 (The Professional Service Corporation Act) effective July 1, 1963; amended effective July 1, 1964; amended effective July 1, 1967.

NEBRASKA: L.B. 330 (Professional Corporation Act) approved August 7, 1969, effective three months after adjournment.

NEVADA: Nevada Revised Statutes, Title 7, Chapter 89, Sections 89.010 to 89.110 (Professional Corporations Act) effective July 1, 1963, amended S.B. 204 (Professional Corporation and Association Act) effective July 1, 1969.

NEW HAMPSHIRE: New Hampshire Revised Statutes Annotated, Title XVII, Chapter 294-A, Sections 1 to 8 (Professional Association Act) effective July 6, 1969.

NEW JERSEY: New Jersey Statutes Annotated, Title 14, Chapter 19, Sections 14:19-1 to 14:19-17 (Professional Service Corporations) effective February 4, 1963.

NEW MEXICO: New Mexico Statutes (1953), Chapter 51, Article 22, Sections 51-22-1 to 51-22-14 (Professional Corporation Act) effective July 1, 1963, amended H.B. 298 effective April 13, 1969.

NORTH CAROLINA: Chapter 55 B, Sections 1 to 23 (Professional Corporation Act) effective January 1, 1970.

NORTH DAKOTA: North Dakota Century Code, Title 10, Chapter 10- 31, Sections 10-31-01 to 10-31-14 (Professional Corporations Act) enacted 1963.

OHIO: Page's Ohio Revised Code Annotated, Title 17, Chapter 1785, Sections 1785.01 to 1785.08 (Professional Associations) effective October 17, 1961, amended effective January 23, 1963.

OKLAHOMA: Oklahoma Statutes Annotated, Title 18, Chapter 18, Sections 801 to 819 (Professional Corporation Act) effective July 26, 1961; amended effective June 24, 1963.

OREGON: S.B. 303, Chapter 592 (Professional Corporation Act) effective August 23, 1969.

RHODE ISLAND: General Laws of Rhode Island, Title 7, Chapter 5.1, Sections 1 to 12 (Professional Service Corporation Law) effective May 6, 1964; amended effective May 14, 1969.

SOUTH CAROLINA: Code of Laws of South Carolina, 1962, Title 56, Chapter 32, Sections 56-1601 to 56-1617 (South Carolina Professional Association Act) effective January 9, 1962.

SOUTH DAKOTA: South Dakota Compiled Laws (1967), Title 47, Chapter 47-11, Sections 47-11-1 to 47-11-21 (Medical Corporation Act) effective June 1, 1961; Chapter 47-12, Sections 47-12-1 to 47-12-21 (Dental Corporation Act) effective June 4, 1963; Chapter 47-13, Sections 47-13-1 to 47-13-21 (Veterinary Corporation Act) effective May 30, 1964.

TEXAS: Vernon's Annotated Civil Statutes, Article 1528e, 1 to 20, S.B. 589 (Texas Professional Corporation Act) effective January 1, 1970.

UTAH: Utah Code Annotated (1953), Title 16, Chapter 11, Sections 16-11-1 to 16-11-15 (Professional Corporation Act) effective May 14, 1963.

VERMONT: Vermont Statutes Annotated, Title 11, Chapter 4, Sections 901 to 913 (Incorporation of Professional Persons) effective July 3, 1963.

VIRGINIA: Code of Virginia (1950), Title 54, Chapter 25, Sections 54-873 <Page 280> to 54-898 (Professional Association Act) enacted 1962, amended 1966, 1968.

WASHINGTON: S.B. 109 (Professional Service Corporation Act) effective June 12, 1969.

WEST VIRGINIA: West Virginia Code, Chapter 30, Article 3, Sections 30-3-4b, 30-3-4c (Medical Corporations) effective June 12, 1965; Article 4, Sections 30-4-4b, 30-4-4c (Dental Corporations) effective March 10, 1967.

WISCONSIN: West's Wisconsin Statutes Annotated, Title 17, Chapter 180, Sections 180.99(1) to 180.99(11) (The Service Corporation Law) enacted 1961.

A professional service organization that is organized and operated under Section 61-105(3), Chapter 1, Title 61, of the Tennessee Code Annotated will also be treated as a corporation pending further instructions.

Furthermore, if a corporation is organized and operated as a professional service business under the general business corporation statute of its state, it will generally be recognized as a corporation.

In addition, a professional service organization that meets the requirements for corporate classification under section 301.7701-2 of the Procedure and Administration Regulations, exclusive of the 1965 amendments ( section 301.7701-2(h) of the regulations) made thereto, in its organization and operation will be classified as a corporation. An organization formed under

Purdon's Pennsylvania Statutes Annotated, Title 15, Chapter 41, Sections 12601-12619 (Professional Association Act), effective 1961; Illinois Annotated Statutes, Chapter 106 ½, Sections 101-110 (Professional Association Act) approved August 9, 1961, and Vernon's Annotated Civil Statutes, Article 1528f, Sections 1-20 (Texas Professional Association Act) effective June 18, 1969, may or may not so qualify for classification as a corporation in a given case.

A professional service organization must be both organized and operated as a corporation to be classified as such. See Jerome J. Roubik and Joan M. Roubik, et al., v. Commissioner, 53 T.C. 365, No. 36 (1969).

Notwithstanding that a professional service organization is, in accordance with this Revenue Ruling, classified as a corporation, if it reported income as a partnership in accordance with then existing regulations for taxable years ending prior to the issuance of this Revenue Ruling, March 2, 1970, it will not be required to report income as a corporation for such prior years. Also, a professional service organization that qualifies as a corporation under this Revenue Ruling and is presently reporting income as a partnership will be permitted to continue reporting such income as a partnership for any taxable year ending on or before December 31, 1970.

The foregoing position relates solely to the issue of the tax classification of professional service organizations. Professional service organizations classifiable as corporations are subject to audit to the same extent as other corporations, and nothing contained herein is to be construed as waiving the assertion of any issues against such organizations other than that of classification.