



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Release Date: 02/04/05

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Date: November 10, 2004

Legend:

UIL No.: 501.03-30

A =

M =

X =

Y =

Dear _____ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in the state of M by A on September 5, 2001. A is on your board of directors and your president.

In your Articles of Incorporation, you state that you are organized exclusively for charitable, religious, educational, literary, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations within the meaning of section 501(c)(3) of the Internal Revenue Code, and including, but not being limited to being a public interest law firm, to litigate and to protect and preserve the inalienable Constitutional and legal rights of the people of M and the State of M. In your application, you state that as a public interest law firm, your main endeavor will be to litigate to protect and preserve the inalienable, Constitutional, and legal rights for the people of M and of the State of M.

In the application, you state that you will employ one in-house attorney and one in-house paralegal as salaried employees. A Legal Board selected by your board of directors will provide services for no compensation. It will be separate and distinct from your board of directors and will be comprised of eight attorneys who will serve as a consulting board for your in-house attorney and paralegal. Its members are to be representative of the different specialties of law in M. The Legal Board is to provide advice, research and other services to your legal team.

You will use an Oversight Committee to screen applications in an effort to provide services to litigate those cases that benefit a broad public interest. The committee will not be comprised of persons serving on your Board of Directors, your Legal Board, or your legal team. You explain that to maintain your mission and purpose, the committee will screen applications to determine those that fit the criteria for representation as established by your board of directors.

Under your "Guidelines", the merits of a case being considered for litigation are to be assessed by the Oversight Committee/Advisory Council. A staff attorney or a volunteer attorney is to evaluate the facts of the case, the sincerity or commitment of the client and his or her cooperation, and the likelihood of success in the litigation. The committee is then to determine whether the case should be litigated.

In response to one of our letters, you stated that pending litigation captioned X (A versus a State of M official) demonstrated the type of litigation in which you would engage. In response to our request for copies of legal documents filed in the litigation, you submitted documents in the civil action captioned Y (with you as plaintiff and various elected officials in the State of M named as defendants) that was filed in 2002. The civil action was filed in your name by A, pro se, as your Executive Director.

In your May 2004 letter, you state that the Oversight Committee is still being established, and an Advisory Council is functioning in its place. The role of the advisory council, whose membership has not been finalized, is to evaluate applications for litigation and to advise you as to their feasibility and expense. You state that members of the advisory council will have a legal/professional background. You explain that since the membership of the advisory council and oversight committee were never finalized and confirmed, there are no minutes of meeting or correspondence. You state that neither the oversight committee nor the advisory council participated in the litigation you referenced.

You state that A initiated the litigation, which is illustrative of the type of litigation in which you propose participating. You further state that you supported A's involvement in the civil action. You also state that no formal procedures were used to screen, evaluate, accept and approve the case under the guidelines used during this process. You explain that if you have an attorney, litigation would be done through you. However, if you do not have an attorney, then litigation might be in the name of A or other board members individually.

You provided a copy of the representation agreement that you will use. You state that no formal agreement concerning the litigation discussed above was entered into or between you and A. You state that your role in the litigation was supportive and consultive. You explain that no documents exist related to the decision to deviate from procedures set forth in your application for choosing cases for litigation since the advisory board and oversight committee

were not filled positions at the time that this case arose. You state that A and the other board member who was present approved your supporting the litigation in their positions as board members.

You state that you have adopted Rev. Rul. 75-174, 1975-1 C.B. 152, as the standard for representation. You state that no more formal guidelines detailing how a final decision is reached and the specific factors applied to cases have been adopted. You further state that no formal guidelines have been adopted regarding whether an individual's or a group's financial ability to afford competent counsel on their own is considered when choosing a case. And, you stated that no fees would be charged to and none accepted from individuals you represent.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes under Code section 501(c)(3) unless it serves a public rather a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d) of the regulations provides that the term "charitable" is used in its generally acceptable legal sense.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1199 (1990) the Court held that an organization must prove unambiguously that it qualifies for tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974) the court held that an organization seeking a ruling as to recognition of its tax exempt status had the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See also Christian Stewardship Assistance, Inc. v. Commissioner, 69 T.C. 1037, 1042 (1978).

In Better Business Bureau v. United States, 316 U.S. 279 (1945), the Court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy a charitable exemption. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes.

Rev. Proc. 90-27, 1990-1 C.B. 514, sets forth procedures with regard to applications for recognition of exemption from federal income tax under sections 501 of the Internal Revenue Code. Section 3.02 of the revenue procedure provides that where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Rev. Proc. 92-59, 1992-2 C.B. 441, provides that the Service will issue rulings and

determinations regarding exemption to new public interest law firms and test the charitable character of such organizations already holding such rulings based on the guidelines set forth in the revenue procedure. The following guidelines are included in those listed in section 3 of the revenue procedure:

The engagement of the organization in litigation can reasonably be said to be in representation of a broad public interest rather than a private interest. Litigation will be considered to be in representation of a broad public interest if it is designed to present a position on behalf of the public at large on matters of public interest. Typical of such litigation may be class actions in which the resolution of the dispute is in the public interest; suits for injunction against action by government or private interests broadly affecting the public; similar representation before administrative boards and agencies; test suits where the private interest is small; and the like.

The policies and programs of the organization (including compensation arrangements) are the responsibility of a board or committee representative of the public interest, which is not controlled by employees or persons who litigate on behalf of the organization nor by any organization that is not itself an organization described in section 501(c)(3) of the Code.

There is no arrangement to provide, directly or indirectly, a deduction for the cost of litigation that is for the private benefit of the donor.

The organization must otherwise comply with the provisions of section 501(c)(3) of the Code, that is, it may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office, no part of its net earnings may inure to the benefit of any private shareholder or individual, and no substantial part of its activities may consist of carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in section 501(h)).

An organization seeking exemption under section 501(c)(3) bears the burden of establishing that it satisfies the organizational and operational tests set forth in the regulations. Harding Hospital, supra. You have failed to meet this burden.

Engaging in litigation that represents a broad public interest is recognized as a charitable purpose under section 501(c)(3) of the Code. Section 1.501(c)(3)-1(d) of the regulations; Rev. Proc. 92-59, supra. The revenue procedure sets forth the rationale for providing exemption to public interest law firms under section 501(c)(3), and the guidelines under which an organization establishes its right to exemption. Such an organization must demonstrate that it engages in litigation that can reasonably be said to be a representation of a broad public interest rather than a private interest.

The revenue procedure requires that the policies and programs of a public interest law firm be the responsibility of a board or committee representative of the public interest that is not controlled by individuals who litigate on behalf of the organization. You stated that you will use a staff attorney and staff paralegal, as well as outside legal assistance to litigate cases. A copy of the Y civil action, which you stated was representative of the type of litigation in which you will be involved, was submitted. A (an officer and board member) initiated the litigation, pro se, in your

name. The resume submitted by A does not reflect any legal training. You state that support of the litigation was approved by a two person board consisting of A and another board member. However, there is no documentation related to how the litigation was brought to your attention, how it was screened so as to determine whether it satisfied the requirements for being accepted, and how a decision was made to become involved in the case. Your board minutes do not contain any such discussion.

You described an Oversight Committee and an Advisory Council that you plan to use for independently identifying and screening cases, and for making a determination that a case should be accepted. The membership of neither has been finalized and confirmed so that the board's selection of the case was not reviewed and screened by either body.

In addition to satisfying the specific requirements of the revenue procedure, an organization seeking exemption a public interest law firm must also satisfy the requirements of section 501(c)(3) of the Code. Rev. Proc. 92-59, supra. Exemption can be denied if there is a single nonexempt purpose that is substantial. Better Business Bureau, supra.

In order for an organization to be exempt under section 501(c)(3) of the Code, it must serve a public rather a private interest. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You have not established that you have undertaken and will undertake litigation in a manner consistent with the requirements of section 501(c)(3) generally and Rev. Proc. 92-59, supra. You stated that the civil action is representative of the cases that you will litigate. You refer to civil action X while you submitted court documents for civil action Y. You are unable to provide documents that would establish that your interests in the litigation are distinguishable from those of A or a third party so that your participation in the action serves a broad public interest.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If it is convenient, you may fax your reply using the fax number shown in the heading of this letter. If you fax your reply, please contact the person identified in the heading of this letter by telephone to confirm that your fax was received.

Internal Revenue Service
TE/GE (SE:TE:EO:RA:T:2)

Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Ward L. Thomas

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437