



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200818028**

Release Date: 5/2/08

Date: February 8, 2008

UIL Code: 501.03-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: December 31, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Dear

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

FACTS

You were formed as a Non-Profit Corporation and have requested classification as an organization organized and operated exclusively for charitable, scientific, or other exempt purposes under sections 501(c)(3) and 509(a)(2) of the Code.

Your bylaws state that your purpose is "to promote direct marketing of farm products and handcrafted goods...to operate a farmer's market." You provide booths at an open-air market for local producers of farm products and handcrafted goods. Booths at the market are provided only to members. Membership is available for anyone who sells locally grown farm products and similar goods, such as flowers and artisan crafts. There is no membership fee, but members are charged rent for space in the market. These rent charges account for over 90% of your revenue. All of your directors are members and vendors at the market.

Most of your activity is devoted to promotion and marketing of the open-air market and you devote 70% of your expenses to advertising. The rest of your expenses are allocated for operation of the market, such as rent, insurance, supplies, and professional fees. When asked to describe your activities, you detailed your promotional activities and stated that such activities "are very important for maintaining consumer traffic throughout our Market Season." Your rules cover the obligations of vendors to clean up their assigned areas, ensure health codes are followed, and conform to the market's operating hours.

LAW

Section 501(c)(3) of the Code provides for the exemption of organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the

benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. However, an organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It cannot operate for the benefit of specific individuals, including those who created it.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes an organization created to provide bus transportation for school children to a tax-exempt private school. The organization was formed by the parents of pupils attending the school. The organization provided transportation to and from the school for those children whose parents belonged to the organization. Parents were required to pay an initial family fee and an additional annual charge for each child. The organization's income approximately equaled the expenses involved in its operations. The Internal Revenue Service determined that "[w]hen a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest."

Rev. Rul. 71-395, 1971-2 C.B. 223, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code. The IRS concluded that the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings were also educational in some respects.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization operating a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in section 501(c)(3) of the Code because it served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with a one political party and that most of the organization's graduates worked in campaigns for the party's candidates. The court concluded that the organization conducted its activities to benefit the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered a collective organization created to dredge waterways. The majority of the funds for this activity came from owners of property adjacent to the waterways. The court found that the primary beneficiaries were the

adjacent property owners. Any benefit to the general public because these dredged waterways would be a safe harbor for boats during a storm was secondary. Therefore, the organization was not exempt because of the significant private benefit provided.

ANALYSIS

Based on our analysis of the information you submitted during the application process and in light of the applicable law, we have determined that you do not operate exclusively for any of the purposes described in section 501(c)(3) of the Code.

An organization is not exempt from taxation merely because its operations are not conducted to produce a profit. The organization must operate exclusively for one or more of the purposes described in section 501(c)(3) of the Code and the applicable regulations.

Section 1-501(c)(3)-1(d)(1)(ii) of the regulations requires an organization to show that it is not organized or operated for private interests in order to be exempt under section 501(c)(3) of the Code. When a group of individuals associate to provide a service for themselves, they are serving a private interest. See Rev. Rul. 69-175; Rev. Rul. 71-395; Ginsburg v. Commissioner. Your primary activities are providing a location for members to sell goods and promotion of their sales activity. Ninety percent of your funding comes from those same individuals. In addition, all of your directors are vendors at the market and personally benefit from your operation. These facts demonstrate that you provide a substantial private benefit to your members.

The presence of a single substantial non-exempt purpose will prevent the grant of tax-exemption. See Better Business Bureau of Washington D.C., Inc. v. United States. There is no indication that your organization engages in educational, economic development, charitable, or other exempt activities. The operation of the market for the benefit of your members is a substantial part of your activities and therefore prevents the grant of tax-exempt status.

CONCLUSION

Based on the information submitted, we conclude that your organization does not meet the operational test for exemption under section 501(c)(3) of the Code. You are operating for the mutual benefit of your members and in a manner indistinguishable from commercial entities. Therefore, you do not serve a public interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

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.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements