



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200829056**

Release Date: 7/18/2008

Date: April 25, 2008

UIL: 501.32-00, 501.32-01, 501.33-00

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.

Since 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.

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, you should 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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

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

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

Date: March 4, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M = Association

O = State

P = Date #1

Q = Date #2

R = Date #3

UIL #'s:

501.32-00

501-32-01

501.33-00

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.

Issue:

Whether you, M, qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 by primarily providing services to home schooling families.

Facts

You were formed as an unincorporated association on P. For insurance purposes, you were incorporated on Q, in the state of O.

In Article III of the original Articles of Incorporation, you stated that you were created,

"To provide educational and recreational activities for the academic and social development of its member home schooling families." (Emphasis Added).

In your Articles of Amendment filed R, Article III was changed to,

“Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.”

Article 2, Section 2 of your Bylaws indicated that;

“The purpose of the corporation shall be to further the interests of home education of children by their parents and guardians by all lawful means, including, but not limited to, support of and assistance to members of the corporation who are educating their own children at home, dissemination of information regarding the rights of parents and guardians to direct the education and upbringing of their children, participation in and sponsorship of conventions and educational seminars, organization of field trips and extra-curricular activities for members of the corporation”.

Article 11, Section 1 of your Bylaws indicated, in part, that;

“Membership shall be open to all home schooling parents and guardians who support the purposes of the Association and who have paid dues.”

In the 1023 Application attachments you stated that fundraising activities are conducted for the benefit of members (Emphasis Added).

You stated in your September 6, 2007 reply that the estimated use of its time resources for specific activity categories that you previously identified. You also stated that the costs for these activities were borne by the parents and not the organization.

The key time information is shown below (Note that the total time does not equal 100%):

| <u>Activity</u> | <u>% of Time Resource</u> |
|---|---------------------------|
| I. <u>Organizing Extra Curricular Activities</u> (Christmas Craft Making, Talent Show, Sewing and Artwork Projects, Valentine's Day Party, Yearbook, and Science Fair) | 21% |
| II. <u>Organizing Field Trips</u> | 4% |
| III. <u>Testing Student's Level of Physical Fitness</u> | 5% |
| IV. <u>Sponsorship of the Standardized Testing</u> | 21% |

In the August 1, 2007 reply you state that the organization consists of 106 home schooling families. In your September 6, 2007 reply you state that the organization “directly supports the educational efforts of the parents.”

You have shown in the 1023 Application, which has estimated income and expense data, that your annual dues, on average, account for about one third (1/3) of its income.

The following highlights some key financial information:

| <u>Income/Expense</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>Total</u> |
|-----------------------|-------------|-------------|-------------|--------------|
| Gifts, grants, etc... | | | | |
| Membership Fees | | | | |
| Gross Inv. Income | | | | |
| Other Revenue | | | | |
| Gross Receipts: | | | | |
| Used Book sales | | | | |
| Testing | | | | |
| <u>Yearbook sales</u> | | | | |
| Total Revenue | | | | |
| Occupancy | | | | |
| Professional Fees | | | | |
| Insurance | | | | |
| Testing | | | | |
| Yearbook | | | | |
| <u>Other</u> | | | | |
| Total Expense | | | | |

You are receiving \$ (38%) of your income and expending \$ (34%) of your expenses for the yearly Standardized Student Testing Program. This also represents 21% of your time resource.

You provided a copy of the State of Q Home Education Statutes with your September 6, 2007, reply. This is summarized as follows:

The Q Statutes for a Home Educational Programs, states, in part, that,

“(1)(c) The parent shall provide (Emphasis Added) for an annual educational evaluation in which is documented the student's demonstration of educational progress at a level commensurate with her or his ability. The parent shall select the method of evaluation (Emphasis Added) and shall file a copy of the evaluation annually with the district school superintendent's office in the county in which the student resides. The annual educational evaluation shall consist of one of the following.” The statute then lists five possible testing options from which the parent may select. The effectiveness or the uses of any particular testing methods are not in question.

The statute also states “(2) The district superintendent shall review and accept the results of the annual educational evaluation of the student in a home education program. If the student does not demonstrate educational progress at a level commensurate with her or his ability, the district school superintendent shall notify the parent, in writing, that such progress has not been achieved. The parent (Emphasis Added) shall have 1 year from the date of receipt of the written notification to provide remedial instruction to the student. At the end of the 1-year probationary period, the student shall be reevaluated as specified in paragraph (1)(c). Continuation in a home education program shall be contingent upon the student demonstrating educational progress commensurate with her or his ability at the end of the probationary period. (Emphasis Added)”

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational", as used in section 501(c)(3), relates to—

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that 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 exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities (Emphasis Added) 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 organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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 (Emphasis Added), or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 69-175, 1969-1 C.B. 149; A nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children, serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code. When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. The organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it is not exempt from Federal income tax under section 501(c)(3) of the Code.

On the other hand, Rev. Rul. 75-196, 1975-1 CB 155 held that an organization operating a law library whose rules limited access and use to members, or their designees, (Emphasis Added) of a local bar association qualified for exemption as an organization described in section 501(c)(3). The fact that the library facilities were limited to a designated class of persons was not a bar to recognition of exemption in that situation. The ruling stated: "What is of importance is that the class benefited be broad enough to warrant a conclusion that the educational facility or activity is serving a broad public interest rather than a private interest.

and is therefore exclusively educational in nature." (Emphasis Added) The library facilities were found to be available to a significant number of people, and the restrictions on the use of the library were primarily due to the limited size and scope of the facilities. The fact that attorneys who used the library might derive personal benefit in the practice of their profession was determined to be incidental to the library's exempt purpose and a logical by-product of an educational process.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner of Internal Revenue Service, T.C. Memo 1986-348, the tax court stated the issue for our consideration is whether petitioner meets the section 501(c)(3) requirement that no part of its net earnings inure to the benefit of a private individual. Thirty percent of petitioner's income (Emphasis Added) is expected to be expended for the benefit of Wendy L. Parker. The petitioner maintained that respondent should have considered actual disbursements before making any determination. However, the court agreed with respondent that approval or denial of tax-exempt status may be based on projected as well as actual operations. The foundation was found to be formed for the benefit of Wendy Parker and her family and therefore was not exempt under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of Law

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily (Emphasis Added) in activities which accomplish 501(c)(3) purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Your stated goal is to further the interests of home education of children by their parents or guardians. The activity of home schooling carries with it a substantial private benefit to the individual families. The important and substantial financial and time resources devoted by you to the activity of the annual testing, which is required by the state laws of Q and falls directly on the parent to provide, is not providing a benefit to the public. The benefit accrues to the home schooling families and assists them in complying with the requirements of Q. In fact, even if some nonmembers were to participate in a few of the M's activities, the interest of the public at large is not being served over the substantial private benefit to members and to home schooling families.

Therefore, you are not engaged primarily in an exempt purpose and your activities serve a private rather than a public interest.

You are like the organization in Rev. Rul. 69-175, 1969-1 C.B. 149 that served the private interests of parents by providing bus transportation to their children. You serve the private interests of your members, who are home schooling parents, by assisting them in complying with State home schooling laws.

You are unlike the organization in Rev. Rul. 75-196, 1975-1 CB 155. The class of individuals benefited by your activities is not broad enough to warrant a conclusion that the activities are serving a broad public interest rather than the private interests of the 106 home schooling family members. The private benefit to your membership is not incidental to your purpose-it is your purpose.

You are like the organization in Wendy L. Parker Rehabilitation Foundation. The requirement that no part of its net earnings inure to the benefit of a private individual is a critical and important concept in the law of charity. The court agreed also that approval or denial of tax-exempt status may be based on projected as well as actual operations. Like the organization in Wendy Parker, you were formed for private interests.

The Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. This concept was in Better Business Bureau of Washington, D.C., Inc. v. United States. Therefore, your single non-exempt purpose of providing services to your membership, destroys your claim for exemption.

Applicant's Position

In our letter of August 28, 2007, we provided you with a copy of Rev. Rul. 69-175, and asked for an explanation of how you served a public and not a private purpose.

In your September 6, 2007 reply, you stated that the bus in Rev. Rul. 69-175 was used to provide transportation for the children of the association members only. Your activities are open to and used by both members and nonmembers, in other words, the public. You stated that nonmembers attend meetings, specifically that "doors to our meetings are always open to anyone wishing to seek information or attend any or all of our meetings". You further state that your information "is disseminated to those who have a personal interest in home educating".

Your December 10, 2007 response clarified that "the estimated average of nonmembers that attend meetings and/or activities would be roughly 20-25%".

Therefore, you serve a public interest, not a private interest.

Service Response to Applicant's Position

As stated earlier, providing services to your membership of home schooling families carries with it a substantial private benefit accruing to members. Each member family has made a choice to engage in the home schooling activity over utilizing the public education system. The home schooling parents must comply with certain State laws. Your organization's primary purpose is to assist your membership of home schooling families in complying with their personal responsibility of complying with State law. The important and substantial activity of the annual testing, which is required by O state law and falls directly on the parent as their responsibility, is not providing a benefit to the public.

Your limited (20-25%) services to nonmembers do not serve a public purpose. The individuals who would attend these meetings and/or activities are most probably home schooling parents and children. In fact, this nonmember activity would serve as a recruiting tool for your organization, thus serving your members interests. And the nonmember activity would also serve the private interests of the nonmember home schooling families by helping them comply with their personal responsibility of complying with State law.

Conclusion

You state that you are directly supporting the educational efforts of your member home schooling families. We agree.

You have tried to caricature yourself as an organization that is serving the public by serving members and some nonmembers. However, your nonmember participation does not serve a public interest. Furthermore, the estimated average of nonmembers that attend meetings and/or activities is roughly 20% to 25%. Even if your non-member activity served a public purpose, this would mean that 75% to 80% of your activities are focused on your member home schooling families. This is a substantial private benefit to members and a substantial non-exempt purpose.

Based on both time and financial resources, your testing activity is a substantial part of the organization's purpose, and is an activity that directly benefits the participating families by allowing them to comply with the requirements of Q's Home Schooling Laws.

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(3) of the Code.

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

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

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may 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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements