



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200849018**
Release Date: 12/5/2008

Date: September 10, 2008

Uniform Issue Number:
501.03-19

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

SE:T:EO:RA:T:3

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: May 30, 2008

Uniform Issue Number:
501.03-19

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M =
N =
O =
P =
Q =
R =

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:

M was incorporated in N on O. M's articles of incorporation provide that M is organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. Specifically, M's purpose is to work to build upon and improve the social environment of the local, state, national and international communities through intramural tournaments.

On Form 1023, Application for Recognition of Exemption, M states that it has formed a soccer team. The soccer team and its managers cooperate and collaborate with other teams and leagues. M will play local, national and international intramural soccer.

The soccer team is comprised of males ages 18 through 40. Team members are selected through two weeks of tryouts followed by a three month trial period once

selected. The coaches and managers decide which players are selected to play for the team.

M's training program includes, but is not limited to soccer drills, conditioning, and teaching soccer plays. M states that its soccer team plays in three tournaments and plays individual team matches once per week.

In a letter dated P, M represents that it is an amateur, not a professional team. Although M initially stated that it intends to gain an association with the United States Olympic Committee, M subsequently provided information that it will not prepare soccer players to compete in the Olympic Games. M also states that it will not provide any academic related instruction through any type of curriculum.

M provided information that its organizers understand that impoverished children from the global East and West would benefit tremendously if given the opportunity to play the game of soccer and that M dedicates its resources towards goals that empower children and young adults through sports, specifically soccer. However, in a subsequent letter, M states that the organization does not primarily serve individuals under the age of 18.

M states that it will receive most of its funds from the general public, businesses, public and private foundations. In 2005 and 2006, Q and R were the only contributors to M. M plans to spend the majority of its funds on practice fields, uniforms, travel and meals for team members and coaches.

LAW:

Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 501(c)(3) of the Code describes, in part, an organization that is organized and operated exclusively for charitable or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment...)

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 which accomplish one or more 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 is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) unless it

serves public rather than private interests. 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, or persons controlled director or indirectly, by such private interests.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

501(j) provides that an amateur sports organization which is organized and operated exclusively to foster national or international amateur sports competition may qualify for exemption from federal income taxes if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports.

Rev. Rul. 80-215, 1980-2 CB 174, provides that an organization which promotes competition in sports among children is a charitable organization described in section 501(c)(3), even though it does not teach the sport or support an institution that does. By providing local and state-wide competition for individuals under 18 years of age, the organization is charitable because it combats juvenile delinquency by providing a recreational outlet for the young people. Additionally, the organization promotes the education of the children by providing a format for educational activities.

Rev. Rul. 77-365, 1977-2 CB 192, provides that an organization that gives free instruction to the public in various sports and provided free equipment and facilities at schools, playgrounds, and parks is a charitable organization described in section 501(c)(3) even though the only activity conducted by the organization was providing free instruction to the public.

Rev. Rul. 70-4, 1970-1 CB 126, provides that an organization whose activities consisted primarily of the promotion and regulation of a sport for amateurs is not exempt as a section 501(c)(3) educational organization because the promotion and regulation of a sport for amateurs as described neither improve nor develop the capabilities of the individual nor instruct the public on subjects useful to the individual and beneficial to the community. However, the organization qualified under section 501(c)(4) because by promoting and regulating a sport for amateurs, it was providing wholesome activity and entertainment for the social improvement and welfare of the community.

In Hutchinson Baseball Enterprises v. Commissioner, 73 T.C. at 144, affd. 696 F.2d 757 (10th Cir. 1982), the organization funded and operated an amateur baseball team, leased and maintained baseball fields for the use of Little League³, American Legion teams and a baseball camp, and provided coaches for Little League teams. The court held, and the Tenth Circuit affirmed, that the promotion, sponsorship and advancement of amateur and recreational sports is a charitable purpose within the meaning of section 501(c)(3).

ANALYSIS:

M must establish that it is operated exclusively for one or more exempt purposes. To satisfy the operational test, an organization must engage primarily in activities furthering an exempt purpose and cannot engage except in insubstantial part, in activities not furthering an exempt purpose. A single substantial nonexempt purpose will disqualify an organization under section 501(c)(3) regardless of the number or importance of its exempt purposes. Better Business Bureau v. United States, supra. If an organization serves private rather than public interests, it also will not meet the operational test. See, Section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

The Service has traditionally recognized exempt status when the organization has instructed children in sports or provided educational instruction to the community, but denied it when the organization merely promoted recreational sports among adults. See Rev. Ruls. 80-215, supra and 77-365, supra. Unlike the organization in Rev. Rul. 80-215, M states that it provides little to no instruction for youths under the age of 18. Therefore, M does not meet the operational test for 501(c)(3) by combating juvenile delinquency through the operation of a soccer team. Nor is M like the organization in Rev. Rul. 77-365, because it does not promote educational purposes by providing clinics, workshops, lessons, or seminars for the community for free or for a nominal fee.

The promotion of recreational sports among adults is not educational under section 501(c)(3). In Rev. Rul. 70-4, supra, the organization circulated printed material about the sport, conducted exhibitions to introduce the sport to the public, conducted tournaments, and give occasional instructive clinics. The organization had no regular program of teaching the sport. It also set the standards for the equipment to be used, established the official rules of the game, and prescribed the official size of the playing area. Because the activities did not improve nor develop the capabilities of the individual nor instruct the public on subjects useful to the individual and beneficial to the community, the activities were not educational and the organization did not qualify under section 501(c)(3).

Based on the information provided, M does not qualify as a section 501(c)(3) educational and charitable organization. Like the organization in Rev. Rul. 70-4, M provides no regular program of teaching soccer. The soccer drills, conditioning exercises, and soccer plays may help develop the soccer players' skills. However, M does not have a sports trainer and does not conduct soccer skills programs for the

public. In addition, M spends most of its funds on travel and meals for the soccer team, rather than on providing coaching, training and other instruction for its players. Accordingly, M is operated for the substantial nonexempt purpose of promoting social/recreational sports among adults.

M is unlike the organization in Hutchinson Baseball Enterprise v. Commissioner, supra. The court in that case found that the organization's predominate motivation for engaging in its activities was the furtherance of amateur athletics. The organization provided coaching and instruction for children, recruited top baseball players to play on the team, and hired a coach, general manager and trainer to work with the team. M, in contrast, provides little or no soccer training to children. M also has no skill requirements for eligibility to play on the team. M provides facilities and equipment and coaches, but does not indicate that it engages in ongoing instruction for its players. Although the furtherance of amateur athletics may be one of M's goals, it also has the substantial purpose of furthering the social and recreational interests of its soccer players.

M states that it plans to empower impoverished children and adults through the promotion of soccer. Organizations that engage in activities that lessen neighborhood tensions, eliminate prejudice and discrimination are included in the definition of charitable. However, the file contains no indication that any neighborhood tension, prejudice or discrimination exists or, if one or more of these circumstances did exist, how M's activities would address those problems.

Finally, M has provided conflicting information in the file regarding whether it is organized and operated exclusively to foster national or international amateur sports competition. Although M is composed of local amateur athletes who primarily play other local teams, the fact that occasionally games are scheduled with teams or organizations in another state does not cause the organization to qualify for tax exemption unless those games can be shown to be part of national competition. M has provided insufficient information to show that the games in which it participates are part of national competition.

Similarly, even if the organization provides information that it participates in a regional tournament, some link to national or international competition must be established. Such a national or international nexus could possibly be established through the organization's membership in a national sports association. An assertion by an organization that it is a training ground for collegiate, professional, and/or Olympic players, absent some evidence that there is a reasonable probability that the members will participate in national or international competition, would not suffice to qualify the organization for exemption.

Some factors that are relevant in determining whether M fosters national or international competition are:

- A. Is the sport that the organization supports an event in the Olympic or Pan-American games?
- B. Are the athletes that the organization supports in the age group from which Olympic-quality athletes are usually chosen?
- C. Are the athletes of a caliber that makes them serious contenders for the Olympic or Pan-American Games?
- D. Do the athletes have to demonstrate a certain level of talent and achievement in order to receive support from the organization?
- E. Does the organization provide intensive, daily training, as opposed to sponsoring weekend events that are open to and attract a broad range of competitors?
- F. Is the organization devoted to improving the performance of a small group of outstanding athletes or does it emphasize the improvement in health of the general public?
- G. Is the organization a member of the United States Olympic Committee?

These factors are not solely determinative of whether an organization promotes national or international competition. All the facts and circumstances of each organization must be taken into account in determining exempt status.

M states that its soccer team plays in three tournaments and plays individual team matches once per week. M has not provided information that it conducts or participates in a regional or national soccer competition. M's athletes range in age from 18 to 40 and it is unclear how many of its athletes are in the age group from which Olympic-quality athletes are usually chosen. Although M supports a sport that is an event in the Olympic and the Pan-American Games, M has not provided information that its athletes are of a caliber that makes them serious contenders. M also has not demonstrated that its soccer players are required to have a certain level of talent and achievement in order to receive support.

M's training program includes, but is not limited to soccer drills, conditioning, and teaching soccer plays. However, the information in the file does not conclusively show that M provides intensive, daily training, as opposed to sponsoring weekend events that are open to and attract a broad range of competitors. Nor is the information sufficient to show that M is devoted to improving the performance of a small group of outstanding athletes. M is not a member of the United States Olympic Committee. After a

consideration of all the facts and circumstances, we conclude that M's primary purpose is not the support and development of amateur athletes for participation in national or international competition. Accordingly, M is not exempt under section 501(c)(3) of the Code.

Based on the above, M does not qualify for exemption under section 501(c)(3) 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.

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:

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