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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200912038**
Release Date: 3/20/2009

Date: **DEC 23 2008**

UIL Number: 501.03-02
501.03-05
501.03-08

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:
12/31/ and Subsequent 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,

Robert Choi

Robert S. 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

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Date: **NOV 21 2008**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL INDEX:

501.03.02
501.03.05
501.03.08

LEGEND:

M = Name of Organization
A = Name of For-Profit Entity
B = President/Treasurer
C = Vice President/Secretary
D = Name
State = State

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.

ISSUES:

1. Does M qualify for exemption under section 501(c)(3) of the Internal Revenue Code?

2. If M is exempt, will it qualify for exemption as a private operating foundation under section 4942(j)(3) of the Code?

FACTS:

You, M, are a corporation who filed Articles of Incorporation on September 26, with State. The Articles of Incorporation that were filed did not include a purpose or dissolution clause. A separate document titled "Explicit Articles of Incorporation" states that you were formed exclusively for purposes described in section 501(c)(3) and upon dissolution all of the assets will be donated to another 501(c)(3) organization. However, this document does not show that it was filed with the state and it was dated January 24, , which is four months after your articles were filed with the state.

Your board of directors consists of B and C, husband and wife. Your organization is requesting exemption as a private operating foundation. In B and C received a $ bequest that was to be used to establish a charitable foundation in furtherance of D. The financial data shows that $ was contributed to M from B and C. The difference of $ was given to B and C before the bequest. The total expenses shown on page 9 from through were $. The investment income for those three years was $. You state that you do not plan to engage in any fundraising activities.

Your main activity will be for educational purposes through the support and furtherance of D in the educational areas of religion, philosophy, daily life and personal relationships, language and communication, well being, and music ...and for the creation of related printed matter, intellectual property, teaching seminars and materials, and associated products. D has offered these and similar services and teachings since . These teaching have been formulated by B and C in State and are presently offered to individuals and study groups in several states. All of the activities are developed and conducted by B and C.

In your narrative to Part IV of your Form 1023 application you state, "the purpose of M in supporting the furtherance of D will be met by continuing to conduct public discussions, lectures, forums, private guidance sessions, professional "continuing education" course, radio and television programs, web site presentations, DVD, video and cassette tape instruction, guiding lifecare and educational professionals expand their practices and facilities, semi-annual seminars, and offering of written materials for reference instruction guidance."

You also included a far more complete description of past, present and planned activities, a copy of the front page of your website, and examples of documents which further D products and services which further your purposes. Your application indicates that you provide D educational literature, reference booklets, teaching material, and related products to individuals, as well as personal and group teaching seminars and private guidance.

The list of activities which you intend to continue and expand upon includes the following:

- Computer Networking - D has its own web-site.
- Combining D teachings with the practices of massage and yoga to develop unique massage and yoga techniques which are used by other healthcare professionals.
- Advised and guided a counselor and chiropractor in the creation of a center offering D techniques.
- Developed a new high school curriculum and teaching procedures for private school.
- As a registered architect, B is licensed to design or advise about the design of physical structures.
- Public and private music presentations. Original music, lyrics, and orchestration ...and performance by C, teaching parables and reading by B.
- Thirty years of weekly dream workshops.
- To the list of personal presentations, add the many, many books, pamphlets, teaching materials, and reference guides comprising thousands of pages which have been produced by D; tapes and transcripts of thousands of hours of personal consultation and awareness for several thousand individuals; and DVD's, videos, CD's and tapes created by D.

You state that you will carry out your "exempt purposes by expanding the studies, research, offerings and presentations, training, consultation, and guidance which have been carried on by B and C for years with the assistance of two volunteers. Future teachers and lifecare professional directly concerned with D and M will remain volunteers...and B and C can continue the research and development which is necessary as the ever-expanding foundation of these teachings."

You state that D has offered these and similar services and teachings since . B has presented seminars since the ; and B and C have presented seminars since . These teachings have been formulated by B and C and are offered to individuals, study groups, and those who respond to your website. You state that B and C offer personal guidance, provide weekly teachings by computer and telephone through a conferencing hook-up, and present group seminars twice a year. B and C spend essentially 100% of their daily working time in the creation and dissemination of these educational materials and services, intellectual properties, and teaching practices.

Additionally, you state M provides electronic equipment and communication facilities for a weekly broadcast of D information, maintain the D website, and send a weekly article of D teachings to approximately 300 people around the world.

Your application states that you will create printed matter in relationship to D which includes "intellectual property, teaching, seminars and materials and associated products". Your application also includes details of the various prices charged for the booklets, pamphlets, books, manuals, reference cards, CD's, DVD's, and videos that are sold to the public. In the past, C produced CD's, DVD's, and cassettes of D teachings; and books and pamphlets were typed, printed and bound by volunteers. However, with our approval, you intend to print and distribute these in much greater quantity.

You state that existing trademarks, literature, and music copyrights are owned by B and/or C, you will pay any renewal fees, and as a result you may use the copyrighted materials without additional payment to B or C.

Your application states that B and C maintain their separate, personal State business of A. You also provided a corporate identification number for this business. The income from this business was reported on Schedule C of the Form 1040 filed by B and C.

You state that B and C present D seminars and create D books and products as their outside business. M provides technical and financial support, such as payments for website, teleconferencing, reproduction, etc. and for publication and distribution of educational materials created. You indicate that A does not charge for or benefit from your production and sale of products or the sale of teaching tools.

As part of B and C's outside business B provides life readings, offers personal guidance sessions, is a licensed architect, guides dream interpretation groups, is completing books for publication, and offers musical performances. C is a professional musician, creates videos, DVD's, and CD's for private and public organizations including D, is a professional artist, and offers computer services.

You have stated that B and C receive compensation from A. You also admit that "B and C, [husband and wife], coincidently benefit from the preparation and dissemination of goods and services offered to others."

You state that you do not have an interest in the business of A and you do not promote A.

As indicated above, you submitted a detailed schedule showing B's activities during a complete week in relation to D. Additionally, you state that during this time, C worked on creating and editing a new video and participating in many personal and tele-conferencing teachings. There is no indication which of these activities are attributable to M, and which are attributable to A.

Throughout your application you reference your website and your application includes copies of pages of this website. The website includes information about D, classes and discussions, happenings and events, etc. The website does not contain any distinction between activities of A, activities of B and C personally, and activities of M.

Your application states that you receive funding from personal gifts. You also stated that the daily activities are offered by B and C through their personal donations of time and materials, through nominal charges for teachings and seminars, and through sale of related print material and property.

Your application states that B and C manage M for compensation listed in the application plus direct expenses. You have not provided any further explanation of what these "direct expenses" consist of.

As an attachment to your bylaws, you included a "Policy for Sales" and a "Policy for Purchases". The "Policy for Sales" indicates that you can sell goods, services or products to any officer, directors, board member, employee or company in which these individuals have an interest. Sales exceeding $5,000 will be negotiated at fair market value or at a rate not to exceed 20% below fair market value. Sales may also be made through competitive bidding. If no bidders respond, sales may be made at the best reasonable offer or at auction. The "Policy for Purchases" indicates that you can purchase goods, services or products from any officer, directors, board member, employee or company in which these individuals have an interest. Purchases exceeding $5,000 will be negotiated at fair market value or at a rate not to exceed 20% above fair market value.

In relation to the "Policy for Sales" and the "Policy for Purchases," your Bylaws make reference to affiliated transactions. The bylaws state that if there is a contract or transaction between you and one or more of your directors or officers, or between you and any other entity in which one or more of your officers or directors have a financial interest, this relationship must be disclosed to the board of directors. The board of directors may then authorize the contract or transaction by the affirmation vote of a majority of the disinterested directors.

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 religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)1 of the Federal Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it 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 or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to a State or local government, for a public purpose, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

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 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 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 an organization is not organized and operated exclusively for one or more purposes unless it serves a public rather than a private interests. Thus, to meet the requirement it is necessary for an organization to establish that it is not organized and 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.

In American Campaign Academy v. C.I.R. 92 T.C. 1053, the Court stated that having more than an insubstantial part of organization's activities further a non exempt purpose, an organization will fail to establish that it operates exclusively for exempt purposes within the meaning of section 501(c)(3), thus an organization will not be entitled to exemption from taxation under 501(a).

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 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).

In Church of Spiritual Technology v. United States, the court held that publishing rights and copyrights alone carry then the rights to receive the substantial royalties which flow from sales of books and tapes to the public. This is a potential for inurement which could preclude exemption.

In Church of Scientology v. C.I.R, 83 T.C. 381(1984) holds that the use of an organization to write materials that are then copyrighted to the organization's founder, and upon which he receives royalties, is a clear use of an organization for a private, as opposed to a public purpose- - the crux of a finding of inurement.

In Salvation Navy v. Commissioner, T.C.M. 2002-275(2002), the court found that one of reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that its net earning would not inure to the benefit of a private individual, its founder.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (9th Cir. 1981), the court affirmed the tax court's decision that held that the organization supplied no evidence showing that the payments to its controlling members were reasonable and the court also found that the potential for abuse created by the family's control of the organization required open candid disclosure of facts.

In Leon A Beeghly v. Commissioner 35 T.C. 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In est. of Hawaii v. Commissioner, 71 T.C. at 1080-81 the court determined that a critical determination is not whether transactions with a for-profit organization is reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the exempt organization.

In this case, a non-profit organization was involved in transactions with three for-profit corporations. The transactions were made at fair market value and the non-profit organization contended that they had no commercial purpose of their own and that the fact that the for-profit corporation may receive a benefit from the transaction was not a ground for denial of tax exempt status.

However, the court claimed that the non-profit organization was a part of a franchise system that was operated for the benefit of the for-profit corporation and that its affiliation with this system taints it with a substantial commercial purpose.

In Church by Mail, Inc. v. Commissioner, 765F.2d 1387, 1390 (9th Cir. 1985) the court upheld that an organization operated for the substantial non-exempt purpose of providing a market for a for-profit corporation was not exempt under section 501(c)(3) of the Code.

In this case, a non-profit organization was formed to promote religion through the distribution of printed religious messages. The non-profit organization was related to a for-profit corporation that provided the printing and mailing services for the non-profit organization. The for-profit corporation also provided similar services to others as part of its normal commercial operations.

The court determined that the non-profit organization was operated for the non-exempt purpose of providing a market for the for-profit corporation's services and that this non-exempt purpose would preclude exemption under section 501(c)(3) of the Code.

In KJ's Fund Raisers, Inc. v. Commissioner, 98-2 U.S. Tax Cas. (CCH) P50,869 the court determined that an organization formed to provide a substantial private benefit to a related for-profit entity was disqualified for exemption under section 501(c)(3).

The applicant organization was formed to raise funds for distribution to charitable causes primarily through the sale of lottery tickets. The founders of the organization are also the owners of a for-profit lounge. The lottery tickets are sold by the employees and owners of the lounge at its location.

The court determined that the activities of the applicant organization served to induce customers with a proclivity for this type of gambling not to desert the lounge in favor of other similar establishments. In addition, the lounge benefited from the publicity surrounding the exempt function of the applicant. This showed that the applicant organization, in addition to its exempt purpose of raising money for charitable purposes, was also operated for the substantial private benefit of the lounge and its owners.

In a similar case, P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196, an organization formed to raise money for scholarships was denied exemption under section 501(c)(3).

The organization raised money through the operation of bingo games held at a lounge owned by two members of the board of directors. The bingo games were held during regular business hours and the employees of the lounge solicited the bingo players for food and drink orders. The court determined that the organization has a nonexempt purpose that was substantial in nature, in that they serve to promote business at the lounge through the operation of the bingo games.

In Rev. Rul. 55-231, 1955-1 C.B. 72, holds that an organization whose primary purpose is to promote the circulation of the books of one of its incorporators and whose activities consist of purchasing such works and making them available for public use is not organized and operated exclusively for educational purposes.

Rev. Rul. 67-5, 1967-1 C.B. 123, holds that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of common stock that paid no dividends of a corporation controlled by the foundation's creator and his family, which prevented it from carrying on a charitable program commensurate in scope with its financial resources. This ruling concluded that the foundation was operated for a substantial non-exempt purpose and served the private interest of the creator and therefore, was not entitled to exemption under section 501(c)(3) of the Code.

APPLICATION OF LAW:

ISSUE 1 – IRC 501(c)(3):

The Code and Regulations limits exemption to those organizations that are both organized and operated exclusively for purposes described in section 501(c)(3) of the Code. You are not described in Section 501(c)(3) of the Code because you fail both the organizational test and the operational test.

ORGANIZATIONAL TEST:

Specifically, you are not organized for exempt purposes as described in Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the Regulations. The articles of incorporation that were filed with the state do not contain a purpose clause or dissolution clause.

The "Explicit Articles of Incorporation" does contain an acceptable purpose and dissolution clause but there is no evidence that it was filed with the state.

Based on the information that was submitted with your application, we concluded that you are not organized exclusively for purposes described in section 501(c)(3) of the Code because your filed articles of incorporation do not include a purpose and a dissolution clause.

OPERATIONAL TEST:

Section 1.501(c)(3)-1(c)(2) of the Regulations states that an organization whose net earnings inure to the benefit of private shareholders or individuals.

Section 501(c)(3)-1(d)(1)(ii) of the Regulations further clarifies that it is necessary for an organization to establish that it is not organized and 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 interest.

Thus far, your organization has not demonstrated it will not benefit A. It is very difficult to distinguish the difference between the activities of M and the activities that are conducted by A. A conducts numerous activities which includes conducting workshops and lectures, publishing books and producing DVD's, CD's, etc.

B and C are the owners of A and report revenue and expenses on Schedule C of their Form 1040. B and C formulated the teachings of D, and also provide personal guidance, study groups, weekly teachings, and group seminars. B and C also create and disseminate educational materials and services, intellectual properties and teaching practices. B and C have been offering these and similar services since at least . M was formed to further these activities.

Similar to the organizations described in Salvation Navy v. Commissioner, supra and Bubbling Well Church of Universal Love , Inc. v. Commissioner, supra, you have not demonstrated that the net earnings would not inure to the benefit of B and C.

Your bylaws indicate that you may sell goods and services to, and/or purchase goods and services from, your board members or any related entities. Your "Policy for Sales" allows you to sell goods and services to related partied for less than fair market value. Your "Policy for Purchases" allows you to purchase goods and services from related parties above fair market value. This demonstrates your intent to provide tangible benefits to board members and related entities. As such, there is a likelihood that your net earnings will inure to the benefit of these private individuals as described in Section 1.501(c)(3)-1(c)(2) of the Regulations.

Additionally, your bylaws contain provisions for how such related party transactions should be handled. According to your bylaws, if there is a contract or transaction between you and a related party, that contract or transaction can only be authorized by an affirmative vote of a majority of disinterested directors. Your only directors are B and C, husband and wife, who would both be interested parties in any such contracts or transactions. As a result, there would not be any disinterested directors who could vote on such contracts or transactions.

You have included a "partial list of the previous and on-going activities of D which will be continued and expanded by M." In describing these activities, you make statements such as the following:

- "D offers its expansively enriching teachings to all individuals and professionals without charge ...or at a minimum charge"
- "D teachings are offered through public discussions, lectures, forums; private guidance sessions; professional "continuing education" courses; radio and television programs; web-site presentations; DVD, video, CD, cassette tape instructions; guiding lifecare and educational professionals expand their practices and facilities, semi-annual seminars; and offerings of written materials for reference-instruction-guidance"
- "The best way to illustrate these on-going activities is to present a picture of B's D activities for this previous week."

M was created as a result of a bequest received in . The grantor had a personal relationship with B and C, but M did not exist and you did not even know of the bequest prior to the grantor's death, at which time you began the process of establishing M as required by the codicil. Even though B and C formed a nonprofit corporation you did not take any steps differentiate themselves from the activities that they were conducting as their business.

Based on the information that was submitted it appears the A was formed by B and C to contain all of the activities that they are conducting. B is a registered architect and C is an accomplished musician. Some of your activities are educational such as conducting lectures and seminars. Other activities, such as B providing advice about the design of physical structures does not appear to further your exempt purposes. One of your major activities is to produce books, CD's, DVD's and other similar products. The copyrights to all of the material produced will remain with B and C. A also includes life readings, offers personal guidance, and guides dream interpretation groups. Similar to Church by Mail, Inc. v. Commissioner, *supra*, your organization was formed for the benefit of a for profit entity.

You are similar to the organization described in Rev. Rul. 55-231. You have paid for the printing of a booklet that was written by B, and you have paid the renewal fees for copyrights held by B and C. Additionally, because you have stated that both you and A will distribute similar educational materials, it appears that materials you create or publish may be distributed and/or sold by both you *and* by A. Therefore, you have not proven that you will not be involved in the creation, publication or distribution of books and other materials that may be written by B and C and distributed by A.

Likewise, you are similar to the organizations described in Church of Spiritual Technology v. United States, *supra* and Church of Scientology v C.I. R., *supra*. B and C own existing trademarks, literature and music copyrights. These publishing rights and copyrights alone carry with them the right to receive royalties which flow from sales of materials to the public. You have indicated that A sells materials to the public and you have provided sales prices for these materials. You have also indicated that you will continue and expand upon this activity. You will also be producing, printing, publishing and distributing these materials. By producing, printing, publishing and distributing materials which are copyrighted by B and C, you are providing B and C with the right to receive royalties or proceeds from the sales of the materials to the public. Additionally, by paying the renewal fees for these trademarks and copyrights on behalf of B and C, you are allowing your net earnings to inure to the benefit of B and C.

Your activities are indistinguishable from those of A. In fact, you state that B and C spend essentially 100% of their daily working time in the creation and dissemination of D educational materials and services, intellectual properties and teaching practices. However, you have not indicated how much of this time is spent on the activities of A, versus how much of this time is spent on the activities of M. As a result, you have not been able to prove that your activities will not substantially benefit A.

You are similar to the organization described in est. of Hawaii v. Commissioner, *supra*. You state that your purpose is to provide support and furtherance of D; and that your sole aim "is to support the further development, expansion, teaching and dissemination of these intellectual awarenesses." Because D was created by B and C and is currently being carried out by B and C through A, it is apparent that your activities are substantially benefiting A. Although your activities have some educational merit on their own and are carried on in a commercial manner, your entire operation is being carried on in such a manner that A benefits substantially as a result of your operations. By supporting and furthering D through your own public teachings, private guidance, and various educational materials, you are also promoting and increasing the marketability of the teachings, private guidance and educational materials of A because your activities cannot be distinguished from those of A. This can also be seen by your website. Although you state that this is your website, it includes information about activities conducted by B and C through their sole proprietorship A. The general public is not able to distinguish between the activities of A, the personal activities of B and C, and your activities. By claiming the website as your own, and paying expenses relating to the website, you are also providing a benefit to both B and C, and their sole proprietorship A.

Likewise, you are also similar to the organization described in Church by Mail Inc. v. Commissioner, *supra*. You are formed to educate the public about D. To do this, you create, produce, and distribute educational materials. You will also conduct public and private teachings and be involved in a variety of other educational activities. B and C, through A, provide services to you. For example, B and C formulated all of the teachings of D; B wrote and bound the booklet that you are currently offering; C typed the booklet you are currently offering; and B and C hold copyrights to the materials you will use. B and C, through their operation of A, provide similar services to others as part of A's normal commercial operations. Therefore, like the organization described in this case, you are operated for the non-exempt purpose of providing a market for A's services, and this non-exempt purpose precludes exemption under Section 501(c)(3) of the Code.

Your organization is also similar to those described in KJ's Fund Raisers, Inc. v. Commissioner, *supra*, and P.L.L. Scholarship Fund v. Commissioner, *supra*. In both of these cases, the applicant organization, through its exempt purpose, was benefiting or promoting the related for-profit entity. In your situation, your activities directly promote B and C's sole proprietorship A, and help to promote and market A.

Based on the fact that your activities are indistinguishable from the commercial activities of B and C through their operation of A and because you are providing a substantial benefit to A, you are similar to the organizations described in American Campaign Academy v. C.I.R., *supra*, and Better Business Bureau v. United States, *supra*. A substantial part of your activities are furthering the non-exempt purposes of inurement and private benefit. Thus, regardless of the fact that your activities can be considered educational in nature, you have failed to establish that you are operating exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. You have not demonstrated that you are *not* organized to serve private interests nor have you proved that your net earnings will *not* inure to private individuals.

Control is an important factor in determining whether an organization operates for the benefit of private interests. Similar to the organizations in, Leon A Beeghly v. Commissioner, supra and Rev. Rul. 67-5, M is controlled by B and C. M was formed to further the philosophy of D and D was developed by B and C.

The philosophy of D is taught through lectures and seminars by B and C. The revenue and expenses of B and C are reported on Schedule C of Form 1040. This certainly indicates that there is a commercial purpose to the activities of M, B and C. Furthermore, you also sell books, CD's, DVD's and other products.

Although your activities have some educational merit in and of themselves, it is impossible to make a distinction between the activities you conduct and those conducted by B and C in the form of A. In addition, you have shown that your activities will benefit A, as well as B and C individually. Therefore, M is not operating in furtherance of an exempt purpose and does not meet the operational test for exemption.

APPLICANT'S POSITION:

Although you have stated that you do not have an interest in A and you do not promote A, you admit that "B and C [husband and wife] coincidently benefit from the preparation and dissemination of goods and services offered to others."

In addition, you explained your position by stating any of your activities may be for-profit in nature, but such activities are not for-profit in fact simply because all resultant funds must remain within your organization to be used for exempt purposes and cannot be distributed or used to fund, to any significant degree, any non-exempt purpose or activity. You conclude that theses "similarities" do not change or threaten your status as a non-profit and no private benefit or inurement exists and that your activities are educational in nature.

You also state that you have not allowed any net earnings to inure to the benefit of any private individuals. You state that you have detailed Conflict of Interest provisions in place to prevent B and C from voting on any action which may benefit them; and that you have procedures in place for B and C to recluse themselves from such votes. You state that if "B and C cannot vote, then the third board member's vote determines the issue".

You have disagreed with our interpretation of Rev. Rul. 55-231 because you state that the circulation of educational materials is not your primary purpose. Instead, you state that "the circulation of these products is only as teaching tools...these products are secondary to and supportive of your educational purposes". Additionally, you state that you do not directly or indirectly purchase any of these products from B or C, and you will not pay for any rights or use of the products. You state that all materials you produce will be produced and offered in the same way.

You state that you do not advertise, therefore your actions do not increase the marketability of A's goods and services. You also state that "M benefits from whatever advertising the for-profit business might do, and any reverse benefit to the for-profit business in purely incidental and unintentional".

SERVICE'S RESPONSE TO APPLICANT'S POSITION:

We hold that you do not meet the requirements for tax exemption under section 501(c)(3) based on the explanation provided above. Although you state that you do not have an interest in A, you have not been able to clearly differentiate your activities from those of A. You admit that B and C may benefit as a result of your preparation and dissemination of good and services offered to others. You have not proven that this private benefit is incidental and necessary to the fulfillment of your exempt purpose.

We agree that your activities can be considered educational in nature. However, you state that all funds resulting from your activities are used for exempt purposes and are not used to fund any non-exempt purposes or activities. However, you have indicated that you will pay renewal fees for copyrights owned by B and C, and you have paid the printing expenses for a booklet written by B.

You state that will not allow your net earnings to inure to the benefit of any private individuals; however, you state that you will provide electronic equipment and facilities for a weekly broadcast of D information that is presented by B and C through their sole proprietorship A. You will maintain the D website which includes information regarding A's activities; and you will send a weekly article of D teachings which is currently an activity of A. By covering expenses such as these which would normally be attributable to A, you are allowing your net earnings to inure to the benefit of A. Additionally, your "Policy for Sales" and "Policy for Purchases" allows your net earnings to inure to the benefit of private individuals and related entities. You admit that you are unable to prove that an excessive private benefit or inurement will not occur.

You state that your actions do not increase the marketability of A's goods and services; however you admit that any benefit to the for-profit is incidental and unintentional. Because the general public is not able to clearly and easily differentiate between your activities, the activities of A, and the activities of B and C personally, you are unable to prove that your actions are not benefiting A. Your board members are the owners of A. You share similar activities, products, revenues and expenses. As a result of the closeness between you and A, the activities of one entity will inherently further the activities of the other. You admit that you are unable demonstrate that there is a separation between your activities and the activities of A, or that no benefit to A would occur. You provide equipment and facilities for a weekly broadcast presented by A. This is clearly allowing A to conduct their commercial activities. You maintain a website which includes detailed information about A's activities. Again, this clearly is increasing the visibility and marketability of A. You will create, publish and disseminate educational materials regarding D, a concept developed by A. You will also provide public and private teachings about D. Because A is still involved in similar activities, and because these activities are indistinguishable from your own, it is clear that your actions will have an impact on the long-term success of A.

DETERMINATION - ISSUE 1:

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 Internal Revenue Code. The activities of M and A are so intertwined that they are indistinguishable from one another. As a result, benefits inure to private shareholders or individuals and you are organized and operated for the benefit of private interests. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

ISSUE 2 - PRIVATE OPERATIANG FOUNDATION:

We have considered your application for private operating foundation status under section 4942(j)(3) of the Code in the event that you would qualify for exemption under section 501(c)(3). Our conclusion regarding your private operating foundation request under section 4942(j)(3) of the Code is based on the following factors.

To qualify as an "operating foundation" for a particular taxable year, private foundations generally must satisfy an "income" test and one of the three additional tests respectively; the "assets" test, "endowment" test, and "support" test.

INCOME TEST:

To satisfy the income test of operating foundation status an organization must make qualifying distributions, within the meaning of IRC 4942(g)(1) and (2), directly for the active conduct of its exempt activities equal to substantially all of the lesser of its adjusted net income or minimum investment return. "Substantially all" in this context means "85 percent" or more of the adjusted net income.

Based on the information submitted your organization did make enough qualifying distributions in any of the first three years of your existence. The only income you received from through was investment income. The investment income you receive from through was $, $, and $, respectively. The qualifying distributions made were $, , and . The percentages equal 17.4%, 4.8%, and 4.1% for through , respectively. In conclusion, your organization does not pass the income test and will not qualify as a private operating foundation.

ASSETS TEST:

A private foundation will meet the assets test if 65% or more of its assets:

1. Are devoted directly to the active conduct of its exempt activity or to a functionally-related business (as defined in paragraph (c)(3)(iii) of the Regulations 53-4942(a)(2)); or a combination of the two,

2. Consist of stock of a corporation that is controlled by the foundation (by ownership of at least 80% of the total voting power of all classes of stock entitled to vote and at least 80% of the total shares) and at lest 85% of the assets of which are so devoted or

3. Are any combination of 1 and 2.

An asset is devoted directly to the foundation's exempt purpose only if it is used by the foundation in actually carrying on the charitable, educational, or other similar function that gives rise to the exempt status of the foundation. Assets such as real property, physical facility or objects (such as museum assets, classroom fixtures, and research equipment) and intangible assets (such as patents, copyrights, and trademarks) are directly devoted to the extent they are used by the foundation in directly carrying on its exempt activity. However, assets (for example cash, stock , bonds, or rental property) including endowment funds, when held primary for the production of income, for reinvestment, or some similar use, are not devoted directly to the active conduct of the foundation's exempt function, even though income from the assets is used to carry on the foundation's exempt purpose.

The only asset held by your organization is cash. Therefore, your organization does not pass the asset test.

ENDOWMENT TEST:

A foundation will meet the endowment test if it normally makes qualifying distributions directly for the active conduct of its exempt activities of at least two-thirds of its minimum investment return.

A qualifying distribution is any amount (including program related investments and reasonable and necessary grant administration expense) paid to accomplish religious, charitable, scientific, literary or other public purposes. Qualifying distributions do not include contributions by the contributing foundation or by one or more disqualified persons with respect to the foundation or to private non-operating foundations.

In , two-thirds of your minimum investment return was $ ($ x % = $; 2/3 of $ = $). In your qualifying distributions was only $. Therefore, your organization does not pass the endowment test. Using the same formula your organization would not pass the test in or .

SUPPORT TEST:

A private foundation will meet the support test if:

1. At least 85% of its support (other than gross investment income) is normally received from the general public and 5 or more unrelated exempt organization,
2. Not more than 25 % of its support (other than gross investment income) is normally received from any one exempt organization,
3. Not more than 50% of its support is normally from gross investment income.

Your organization does not pass the support test because all of your support will be from the bequest and investment income.

DETERMINATION – ISSUE 2:

Based on our analysis of your actual and proposed activities and, in light of the applicable law we have determined you do not qualify as a private operating foundation under section 4942(j)(3) of the Code. Your organization did not pass the "income" test, "asset" test, "endowment" test, and the "support" test.

SUMMARY:

Based on our analysis of your activities and, in light of the applicable law, we have determined that you do not qualify for tax exemption as an organization described in section 501(c)(3) of the Code. Even if we determined that you were described in section 501(c)(3), you would be a private foundation and not a private operating foundation under section 4942(j)(3) of the Code. 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. 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.*

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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,

Robert Choi

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892