



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: 200914064
Release Date: 4/3/2009

Date: JANUARY 7, 2009

UIL: 501.32-00; 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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosures:
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

Date: JANUARY 7, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A = Officer of M
B = Officer of M
C = Officer of M
D = Owner of N
M = Applicant
N = For-profit business
O = State
P = Area of state
q = Date 1
r = Date 2

UIL:

501.32-00

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.

Issues

Does the applicant (hereinafter 'M') qualify for exemption under section 501(c)(3) of the Code?

Facts

You, M, were formed as an unincorporated association in the state of O on date q.

The preface to your Constitution states that you were formed by the parents and teachers of children enrolled at N. The principal activity of your group will be to conduct meetings,

fundraisers and other not-for-profit functions. All money raised from your endeavors will be used to purchase equipment and materials, and provide activities for children registered at N.

Article II of your Bylaws states that your purposes are "To establish good relations among parents, teachers, and school administration; to provide a vehicle for communication among parents, teachers, and school administration, and to serve the educational process at N by means of moral, financial, and volunteer support," and "To enhance the educational opportunities and environment for the students of N."

Per your response dated on r, your organization is associated with N, a for-profit facility owned by D. A and B are officers of M and directors of N. C is an officer of M and an employee of N. N has four locations in P.

You are a membership organization. Per Article III of your Bylaws, all parents and guardians, teachers, aides, administrative staff, and directors of N are eligible to become a member of M. Participation in your organization is voluntary, as stated by your response of r.

Your activities consist primarily of holding fundraisers to raise revenues. As indicated in your Statement of Activities, you will be running fundraisers throughout the year. Part VIII of your 1023 application states you will run at least 2 fundraisers a year. The parents and employees of N sell the items and you collect the funds. The attachment to Part IV of your 1023 application states that your fundraisers have included sales of candy, cosmetics and home decorating items, bake sales, car washes, and Christmas programs. Your revenues are deposited into one account separate from N.

Members attend your meetings to vote on fundraisers and the use of your funds prior to disbursement. Your revenues are dispersed to purchase equipment and materials and to provide activities for the children at N. An attachment to Part IV of your 1023 application indicates your funds have been used for "extra activities and to enhance your curriculum." Past activities have included: "field trips, bus costs, rugs, materials for special holiday crafts, and field days for the children." You have already purchased carpets and an outdoor playset for N.

Per your response of r, you are providing activities not covered by N and without your organization, "the extras would not be provided." The extras you provide include "equipment above what the company is willing to provide." Your response states that parents had been responsible for the costs of the field trips in the past. Your response also states that you do not have sole discretion over which activities are performed and how funds are used. The owner of N approves which activities and equipment purchases will be funded.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Regulation 1.501(c)(3)-1(a)(1) 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.

Regulation 1.501(c)(3)-1(c)(1) 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 is not in furtherance of an exempt purpose.

Regulation 1.501(c)(3)-1(c)(2) 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.

Regulation 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization formed by the parents of pupils attending a private school exempt under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children who parents belong to the organization. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves private rather than public interests. Accordingly, the organization does not qualify for exemption under section 501(c)(3).

Revenue Ruling 70-533, 1970-2 CB 112, The organization was formed to operate a work related child care and development center. The center operates in conjunction with an industrial company to provide pre-school age children of factory workers with an educational program and care during the work day. The center enrolls pre-school age children of employees of the company, children of parents employed in nearby factories, and children of parents recommended through contacts with antipoverty and welfare agencies. Employment with the company does not give any employee the right to have his child enrolled at the center. Children are selected on the basis of the financial need of the family and the need of a child for the care and development program. Accordingly, it is held that this organization is exempt from Federal income tax under section 501(c)(3) of the Code.

In **Better Business Bureau of Washington, D.C., Inc v. United States**, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that, in order to fail within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

Application of Law

You are made up of a group of parents, teachers, and directors who have joined together to work cooperatively for the primary objective of providing funds to defray the costs of providing equipment and activities to students attending daycare. These costs would otherwise have to be paid for by the parents or guardians of the students. Therefore, your operation indicates that you are primarily serving the interests of the parents and guardians. In this way, you are similar to the organization described in **Revenue Ruling 69-175**, 1969-1 C.B. 149, held to be primarily engaged in activities designed to fulfill the parental responsibility of its parent members.

You are distinguishable from the organization described in **Revenue Ruling 70-533**. While that organization provided benefits to any child, based on financial need, your benefits are limited to children of individuals who have a personal interest in your organization.

In addition, you provide a private benefit to N by raising money to buy equipment for N and to pay for activities for students at N, thereby promoting its business. This private benefit is evident from the fact that N has final approval authority over your disbursements.

By serving primarily private interests, you are not operated exclusively for an exempt purpose. See section 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(d)(1)(ii) of the regulations. See also **Better Business Bureau**, *supra*.

Conclusion

Based on the facts presented in your application, we conclude that you are not tax exempt under section 501(c)(3) of the Code because you do not meet the operational test outlined in section 1.501(c)(3)-1(c) of the Regulations.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. An organization will not be so regarded if its net earning inure in whole or in part to the benefit of private shareholders or individuals.

Based on the information provided, we are not able to conclude that you are operated exclusively for public rather than private purposes. Despite any charitable purposes your activities may achieve, you cannot qualify for tax exemption because more than an insubstantial part of your activities is not in furtherance of exempt purposes.

Accordingly, you do 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. 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". The statement of facts (item 4) must be accompanied by the following 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."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

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.

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
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892