

Internal Revenue Service
Appeals Office
1352 Marrows Road, Suite 104
Newark, DE 19711-5445

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:FE:LA:JW

In Re:

EO Determination

Tax Period(s) Ended:

Form Required to be Filed:

1120

Employer Identification Number:

C

Last Day to File a Petition with the United States Tax Court:

Number: **200939033**
Release Date: 9/25/2009

UIL: 501.03-05

Date: July 1, 2009

A

B

Certified Mail

Dear :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3).

Our adverse determination was made for the following reason(s):

You have not demonstrated that you are organized and operated exclusively for charitable, educational, or other exempt purposes as required by section 501(c)(3) of the Internal Revenue Code. You operate substantially for non-exempt purposes. You are not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). 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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

A handwritten signature in black ink that reads "Charles Fisher". The signature is written in a cursive style with a large, prominent "C" and "F".

CHARLES FISHER
TEAM MANAGER



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: April 25, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A = Person
J = Association
L = For-profit entity
M = Applicant
N = Organization
O = State
P = County
Q = Date #1
R = Date #2
S = Date #3
T = Date #4

UIL #'s:

501.03-00
501.03-08
501.03-22
501.05-01
501.33-00
503.01-00
503.01-01
508.00-00

Dear Applicant:

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

Do you, M, qualify for exemption under section 501(c)(3) of the Code? Also, if you did qualify for exemption under section 501(c)(3), would exempt status be retroactive to your date of formation?

Facts

You were incorporated over twenty years ago on the date Q, under the nonprofit laws of the State of O.

In your Certificate of Incorporation, you stated your purposes and objectives to be as follows:

- (a) To stimulate and promote the welfare and continued growth of the cattle business and related agriculture endeavors in general.
- (b) Provide programs of education and other activities for cattlemen and other interested citizens, which will benefit and encourage those engaged in livestock, agricultural, horticultural and other such resources in the County and State.
- (c) To help increase the facilities of the P County Agriculture Center and provide a central organization for cattlemen and those engaged in related agricultural purposes.
- (d) To buy, lease, acquire and occupy lands and to erect buildings and improvements of various kinds thereon and to sell, mortgage, lease or convey said property or any part thereof, in [your] discretion from time to time.
- (e) To affiliate with the State and National Associations of Cattlemen and to work with County, State and Federal governmental agencies and private associations in further development of programs, facilities and other functions that benefit the public through the prosperity of agriculture in general.
- (f) To do any and all things permitted corporations, not for profit, and permitted to be done under the laws of the State of O.

Your Certificate of Incorporation also provided for four classes of membership - Active, Associate, Ex-Officio, and Honorary - as follows:

- (a) Active members shall be restricted to individuals, firms or corporations living in, or engaged in the ownership or active support of the cattle industry or related agriculture activities, in P County, in the State of O.
- (b) Associate members shall apply to individuals, firms or corporations engaged in the cattle business or related agricultural activities or the active support thereof, not living in or located in P County, State of O. Such Associate members shall not be entitled to vote on the floor.
- (c) Ex-Officio members shall consist of the following: The P County Extension Director - Agriculture, and the P County Attorney.
- (d) ...Honorary membership shall generally be restricted to members of long standing who have actively supported the organization....

You are affiliated with J, a non-profit statewide industry organization exempt as an agricultural organization under section 501(c)(5). Those desiring to become a member of your organization must join J and pay dues of \$60. J retains \$55 and remits \$5 dollars to you. In addition, you are assessed an annual payment of \$1 per estimated head of cattle in your county by J. You indicated in your First Response packet dated R that J "uses these funds to promote the cattle business within the state organization." In your subsequent Third Response packet, you appeared to contradict this prior statement by stating, without substantiation or explanation, "J says that the monies are not used for advertisement purposes."

Your activities consist mainly of organizing an annual rodeo, a team roping event, and a bull riding event. Professional and amateur cowboys participate in the events. A rodeo secretary and a professional event organizer are paid to help conduct and manage the events.

In addition to your own events, another major activity for you is to take part in the county agricultural fair by providing concessions and parking to fair vendors and visitors. Participation in the fair has generated for you an average net income of about \$ _____ per year over the past few years.

You also hold monthly membership meetings approximately 8 months out of each year. As stated in your First Response packet, the meetings "provide dinner at [the Applicant's] expense and interaction between members with the common goal of promoting the cattle industry in P County. The meetings sometimes feature guest speakers concerning forestry, land management, feed, fertilizer, and other products for use in the industry." The year 20 _____ meeting list submitted with your Third Response packet showed that speakers were present at 4 of the 8 meetings that year. Planning for the rodeo and other events also take place at the meetings.

You operate a scholarship program. Up until December of year 20 _____, scholarships were open only to children and grandchildren of members who have been part of your organization for a minimum of two years. (In your Third Response packet, you stated that scholarships will now be open to all county residents.) Scholarships have not been selective; instead, your policy has been to award a scholarship to all qualified applicants to the extent possible.

The bulk of your revenue comes from event receipts and sponsorship contributions. Event expenses account for the largest part of your expenditures. Of total revenues of \$ _____ received over the 4-year period from 20 _____ to 20 _____ (including \$ _____ in sponsorship contributions and interest income), \$ _____ (65.4% of revenues) were spent on the conduct of events.

During the same period, \$ _____ (4.8% of revenues) were distributed as scholarships, and contributions to other organizations (_____, etc.) totaled \$ _____ dollars (1% of revenues). Expenditures for conferences and meetings were \$ _____ (1.4% of revenues). Another \$ _____ dollars (2.9% of revenues) were spent on banquets. Remaining expenditures were for dues, payments to affiliates, equipment rental and maintenance, depreciation, and various office and administrative costs. Altogether, these expenditures totaled \$ _____ (10.9% of revenues). After accounting for all expenses and distributions, your net income over the 20 _____ to 20 _____ period was \$ _____ (13.6% of revenues).

You submitted Form 1023 in February of 20 _____. You requested recognition of tax exemption under section 501(c)(3) retroactive to your formation date. In your application, you indicated that you did not file Forms 1023 and 990 earlier because you were a fledgling operation with receipts under the minimum filing requirement.

Financial information presented on page 9 of your Form 1023 showed that, for the Years 20 _____ and 20 _____, your total revenues were over \$ _____ per year. You indicated that financial data prior to 20 _____ were not available. In your 1st Response packet, you stated that your current officers and directors are longtime members and have indicated that operations and finances were substantially the same in years prior to 20 _____ as they are currently.

Subsequently, in your 2nd Response packet, you indicated that you had previously engaged a tax preparer (CPA), who had advised you that no return was required and had failed to advise you of the need to complete Form 1023. You further indicated that "[t]ax returns were not filed previous to 20 _____ due to the fact that the records were destroyed/lost by the former treasurer, who is no longer a

member of the organization." You have submitted a statement signed by an officer reiterating the foregoing circumstances, but you have not provided any specifics or independent documentation of your reliance on the advice of a professional accountant or of the loss of your pre-20 records. Annual reports filed with the office of the O Secretary of State indicate that A, your current treasurer, has held the position of treasurer since two years prior to 20 .

Your response received on the date of S indicated that "professional cowboys as well as amateur cowboys participated in the team roping, bull riding, and the rodeo events. No money was paid to the participants directly from the organization. Any prize money to the participants is paid by the organizer. The event organizer, L, was paid for their services. L was paid \$ in 20 , \$ in 20 and \$ in 20 ." Therefore, in 20 -20 , 17.5% (\$) of your Total Revenue was paid to a for-profit entity, L.

Law

Section 501(c)(3) of the Internal Revenue Code ("Code") provides, in pertinent part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 508 (a) of the Code provides that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it has given notice, in such manner as the regulations prescribe, that it is applying for recognition of such status. An organization shall not be treated as an organization described in section 501(c)(3) for any period before the giving of such notice, if such notice is given after the time prescribed by the regulations for giving such notice.

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

Section 1.501(c)(3)-1(c)(1) of the Regulations states 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) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. The organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the persons who created it, or shareholders of the organization.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.508-1(a)(2)(i) of the Regulations provides that the notice referred to in section 508(a) of the Code must be filed within 15 months from the end of the month in which an organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023, Application for Recognition of Exemption under section 501 (c) (3) of the Internal Revenue Code.

Section 301.9100-2 of the Regulations provides for an automatic extension of 12 months beyond the 15-month period.

Section 301.9100-3 of the Regulations provides for discretionary extensions past the 15-month period and the automatic 12-month extension. An organization requesting such extension must show that it acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government by resulting in a lower tax liability to the organization and any other affected taxpayers (in the aggregate for all taxable years affected) than if the application had been timely filed.

In Revenue Ruling 67-216, it is held that an organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption under section 501(c)(3). The organization's activities and exhibits are planned and managed by or in collaboration with person whose business it is to inform and instruct farmers and the general public on agricultural matters (i.e., home demonstration agents, county agricultural agents), and the resulting displays are designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

In Revenue Ruling 68-224, an organization that conducts an annual festival centered around regional customs and traditions is determined to qualify for exemption under section 501(c)(4). The festival takes place in an agricultural region where interest in horses and Western traditions runs high and enjoys the broad involvement of local citizens. It typically features a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area, and a rodeo. The revenue ruling holds that, in carrying on these activities, the organization provides recreation for the community and generally promoted civic betterments and social improvements.

Revenue Ruling 70-4 considered an organization that was formed for the stated purposes of promoting the health of the general public by encouraging all persons to improve their physical condition and of fostering by educational means public interest in a particular sport for amateurs. Its primary activities are directed toward reviving and promoting a sport by circulating printed material about the sport, conducting exhibitions to introduce the sport to the public, conducting tournaments, and giving occasional instructive clinics. The revenue ruling concluded that promotion of a sport in this manner neither improves nor develops the capabilities of the individual nor instructs the public on subjects useful to the individual and beneficial to the community within the meaning of the Regulations and that the organization was therefore not qualified for exemption under section 501(c)(3), but that since the organization's activities provided wholesome activity and entertainment for the social improvement and welfare of the community, it qualified for exemption under section 501(c)(4).

In Revenue Ruling 85-175, it was held that a trust that awards scholarships on a preferential basis to family members and relatives of the trust's grantor does not award such scholarships on an objective and nondiscriminatory basis and that such a grant program is not consistent with exempt status under section 501(c)(3) because it serves a private purpose of the grantor rather than a public purpose. A preference accorded to family members and relatives is not a criterion, like financial need and academic achievement, which is related to the purpose of an educational grant.

In *Better Business Bureau of Washington, D. C., Inc. v. United States*, 326 US 279 (1945), the Supreme Court considered the question of what it means for an organization to be "organized and operated exclusively for...charitable...or educational purposes" and concluded that, "This plainly means that the presence of a single [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes."

Application of Law

You have represented that your monthly meetings, rodeos, and other events are educational in and of themselves, and that the events also serve as fundraisers enabling you to provide scholarships to local youth for postsecondary study and to make distributions to charitable organizations.

We do not agree with the characterization of your monthly meetings and your rodeo, team roping, and bull riding events as being exclusively educational, and we believe the record of your distributions, as well as your scholarship eligibility criteria, do not support a conclusion that your activities have been conducted in order to afford charitable or educational distributions.

With regard to your monthly meetings, only half of them include a speaker presentation, and there is no evidence of any other organized educational activity that takes place at the meetings. The only constant of the meetings is the opportunity for members to interact with each other over the evening meal. Therefore, we believe that, in addition to any educational purpose, an equally important purpose of the meetings is to foster, in a relaxed dinner setting, socializing and networking among your membership.

With regard to your scholarship awards and contributions to other charitable organizations, you distributed only 4.8% of your total revenues as scholarships over the 20 to 20 period; contributions to other charitable organizations were even less, accounting for only 1% of total revenues. The amounts distributed (\$ + \$) were also significantly less than the \$ you received from sponsor donations and interest income during this period. In comparison, \$ were spent on your own general expenses, including meetings, banquets, equipment rental and maintenance, depreciation, various administrative and office expenses, and amounts paid to J to cover the \$ per head of cattle assessment.

Over the years 20 through 20 , you also accumulated \$ in net income. In your Second Response packet, you indicated that these accumulations were necessary in order to pay for renewals of scholarships by previous scholarship recipients. However, you indicated in your Third Response packet that the money has not been set aside in a separate fund dedicated to scholarship purposes, nor is the Applicant obligated to use the money for scholarships since the awards are not automatically renewed but must be applied for each year.

In addition, up to December of 20 , scholarships were open only to children and grandchildren of your members. While applicants also had to meet other criteria, the threshold consideration was the family relationship to a member. As discussed in Revenue Ruling 85-175, a preference accorded to family members and relatives is not a criterion, like financial need and academic achievement, which is related to the purpose of an educational grant. Instead, such preference tends to demonstrate that it is the private interest of the scholarship grantor that is being served through the awarding of scholarships, rather than the public interest.

After an initial effort to defend this limit on scholarship eligibility, you have now widened possible recipients to include all youths in the community. However, the scholarship application continues to place heavy emphasis on the applicant's involvement in your organization, and the scholarship committee continues to consist solely of your members.

In sum, we believe that the available financial information indicates that your events have not been conducted only to raise funds for scholarships and charitable contributions, but instead serve as your primary means of securing funding for your general operations that cannot be covered by the nominal \$ per person membership fee. Furthermore, of the small percentage of funds that has been expended as scholarships and charitable contributions to other organizations, the lion's share has been used to provide a private benefit to your members by paying for their children or grandchildren's schooling, and it is uncertain that you have sufficient controls in place in the operation of your scholarship program to ensure that future distributions would not similarly benefit private interests.

Like the organization in *Better Business Bureau of Washington, D. C., Inc.*, you are operated to serve a mixture of purposes, including not only educational and charitable purposes, but also substantial purposes of promoting the cattle industry and recreation, neither of which are exempt purposes within the meaning of section 501(c)(3). The presence of these substantial nonexempt purposes precludes exemption under section 501(c)(3).

We would also note that you have been and continue to be affiliated with J, the state-level cattlemen's industry association exempt under section 501(c)(5). By the terms of such affiliation, which require a \$ per person membership fee and an additional \$ per head of cattle assessment to be paid to J, you cannot help but provide financial support to J's general operations and/or activities, which are not dedicated to serving section 501(c)(3) purposes but to the purpose of promoting the cattle industry. Since you have approximately 100 members, you have provided some \$ to J each year, or about \$ over a four-year period such as from year 20 through 20 . This amount is comparable to the amounts you have distributed in scholarships and charitable contributions and is before taking into account the additional \$ dollars per cattle assessment.

You have requested relief under Regulations section 301.9100-3 for relief from the prescribed 27-month deadline for filing Form 1023, so that you may be treated as a section 501(c)(3) organization retroactive to your formation date. Since it is our position that you are not described under section 501(c)(3), this would appear to be a moot issue. Were it not a moot issue, we would note that your Articles of Incorporation failed to meet the organizational test of section 501(c)(3) prior to 20 in having purposes broader than permissible under that section; that you have not provided us with

any particulars regarding your pre-2000 operations that would permit us to conclude you were operated in conformance with section 501(c)(3) requirements; that you have indicated no assets and no liabilities prior to 2000, despite having been in existence for over twenty years; that prior to December of 2000 you provided private benefit to your members in the form of scholarships open only to their close family; and that, in view of the foregoing, it appears likely to be prejudicial to the interests of the government to grant relief.

Applicant's Response

In your response letter dated April 16, 2007 you disagreed with our assertion that, while you applied under Section 501(c)(3), you may be better described under Section 501(c)(5).

You indicated that your articles and bylaws both indicate your 501(c)(3) purposes. No changes appear to have been made to the Certificate of Incorporation until September of 2000. In the midst of the exemption application process, when Amended and Restated Articles of Incorporation were adopted at a membership meeting (per un-filed copy submitted with your Second Response packet dated 8/15/07, responding to our request for additional information regarding your Form 1023 application). The Restated Articles limit your purposes to exclusively religious, charitable, scientific, literary, and educational purposes within the meaning of section 501(c)(3). In fact, your response received T-1 indicated that "we no longer subscribe to any of the purposes listed" in your original articles.

You further indicated that you are like the organization in Rev. Rul. 67-216 where an organization formed to "instruct the residents of neighboring communities on agricultural matters by conducting annual public fairs and exhibitions...was exempt from Federal income tax under section 501(c)(3) of the Code." You believe that the ruling furthers your position when it states, in part, that "*An organization whose purpose and reason for existence is to educate the public in useful and beneficial subjects does not fail to be operated to educate merely because some entertainment is provided to attract the public. This is true even though the recreational attractions and facilities provide an important source of operating revenue. Agricultural fairs have traditionally offered entertainment and recreational facilities to attract the public.*"

You indicate that you are similar to N, created in 1952 and granted 501(c)(3) exemption in 1954. N was formed to "encourage and promote the breeding, raising, and marketing of better livestock and farm products at public fairs and to promote and maintain research and educational functions with the livestock industry".

Your April 16th response summarized your educational purposes as follows:

- 1) Monthly meetings educating members on various agricultural aspects including forestry, land management, feed, fertilizer, and conservation of the area's green belt land.
- 2) Participation in various events such as rodeo, agricultural fair, and team roping events that foster and continue the heritage of these activities and traditions.
- 3) Encouraging the County's youth to pursue careers in agriculture by funding, sponsoring, or conducting educational scholarship programs.

Your April 16th response also indicated your charitable purposes of a scholarship program, which is now open to the general public, and financial support of other charitable entities.

Services Response to Applicant's Position

Your articles and bylaws do now indicate charitable and educational purposes. But, your operations indicate substantial non-exempt purposes. Also, your website indicates your purpose is "the promotion of interest in Agriculture in general and the Beef Cattle Industry in particular".

Furthermore, the Restated Articles make no changes to your membership classes or the eligibility criteria for each class, which continue to be directed primarily toward persons that are "engaged in the ownership or active support of the cattle industry or related agriculture activities".

With regard to your claim to be similar to the organization described in Revenue Ruling 67-216, you have presented no information to support that your events are designed to be primarily educational in nature. Instead, while spectators might gain some insight into cattle handling methods and Western traditions by watching professional cowboys and other experts work with livestock during the events, the usual focus of such type events is to enthrall the audience with exciting feats of skill and daring. As such, the events are no more educational than, say, watching a game of Major League baseball would be to someone seeking to learn the techniques and history of the sport.

While not entirely lacking in instructive value, your events are more akin to the exhibitions and tournaments conducted by the organization in Revenue Ruling 70-4, in that they serve to promote interest in rodeo and, by extension, the cattle industry, but do not improve or develop individual capabilities or achieve public instruction within the meaning of the term "educational" as contemplated in the Regulations.

Therefore, contrary to your assertion that your events are primarily educational and only incidentally recreational, we believe the opposite is true and that the events are primarily entertainment and only incidentally educational, consistent with Revenue Rulings 67-216 and 68-224, both of which characterize rodeos as recreational activities. Unlike county fair organizations that conduct events designed to be educational, your event expenses do not constitute exempt-purpose expenditures.

You indicate that you are similar to N, created in _____ and granted 501(c)(3) exemption in _____. While you may have some similarities to N, to receive exemption N had to prove that its activities exclusively served exempt purposes. A review of your file and subsequent submissions do not lead us to reach a similar conclusion in your case. Regardless, each organization's application must be considered on the facts and circumstances of the particular case and similarities with an exempt organization do not guarantee a recognition of exempt status.

Your responses summarized your educational and charitable activities.

While your activities may further some exempt purposes, your activities primarily consist of organizing an annual rodeo, a team roping event, and a bull riding event in which professional and amateur cowboys participate in the events.

The bulk of your revenue comes from event receipts and sponsorship contributions. Event expenses account for the largest part of your expenditures. Of total revenues of \$ _____ received over the 4-year period from 20 _____ to 20 _____ (including \$ _____ in sponsorship contributions and interest income), \$ _____ (65.4% of revenues) were spent on the conduct of events.

Your response received on the date of S indicated that "professional cowboys as well as amateur cowboys participated in the team roping, bull riding, and the rodeo events. No money was paid to the participants directly from the organization. Any prize money to the participants is paid by the organizer. The event organizer, L, was paid for their services. L was paid \$ _____ in 20____, \$ _____ in 20____, and \$ _____ in 20____." Therefore, in 20____-20____, 17.5% (\$ _____) of your Total Revenue was paid to a for-profit entity, L.

In addition to your own events, another major activity for you is to take part in the county agricultural fair by providing concessions and parking to fair vendors and visitors. Participation in the fair has generated for you an average net income of about \$ _____ per year over the past few years.

You also have held membership meetings approximately 8 times each year. As stated in your First Response packet, the meetings "provide dinner at [the Applicant's] expense and interaction between members with the common goal of promoting the cattle industry in P County. The meetings sometimes feature guest speakers concerning forestry, land management, feed, fertilizer, and other products for use in the industry." In 20____ speakers were present at 4 of the 8 meetings that year. Planning for the rodeo and other events also take place at the meetings.

Therefore, your meetings, while providing limited educational offerings, are primarily for the benefit of your members and to plan for the conduct of your primary activities, the rodeo and other events.

During 20____-20____, \$ _____ (4.8% of revenues) was distributed by you as scholarships and contributions to other organizations (4-H, Future Farmers of America, etc.) totaled \$ _____ dollars (1% of revenues).

In the past, your scholarships have not been selective; instead, your policy has been to award a scholarship to all qualified applicants to the extent possible. Furthermore, scholarships were open only to children and grandchildren of members who have been part of your organization for a minimum of two years. Now you state scholarships will be open to the general public. However, the scholarship application continues to place heavy emphasis on the applicant's involvement in your organization, and the scholarship committee continues to consist solely of your members.

Therefore, the scholarship program appears to primarily serve the private interests of your membership.

You cite your support for charitable organizations as a positive factor in considering your application for exemption. As mentioned previously, 1% of your total revenue from 20____-20____ was contributed to exempt organizations. This is an insubstantial amount. Furthermore, there is no evidence in the file that support for other charitable organizations is a major activity on your part.

Conclusion

Based on the above, we do not believe your purpose as demonstrated by your operations is exclusively charitable or educational within the meaning of section 501(c)(3).

Your primary activity, as shown by your record of operations and financial submissions, consists of organizing an annual rodeo, a team roping event, and a bull riding event in which professional and amateur cowboys participate in the events. These activities primarily serve non-exempt purposes.

Your meetings are conducted primarily to benefit your membership. Benefits to the public are incidental. Your scholarship program, before 2000, was clearly a substantial private benefit that precluded exemption because it benefited only children or grandchildren of your membership. While you have revised the program, it is not evident that the changes will guarantee public purposes are served because the scholarship application continues to place heavy emphasis on the applicant's involvement in your organization and the scholarship committee continues to consist solely of your members. Finally, your support of other organizations is an insubstantial activity and does not overcome your other non-exempt activities.

Accordingly, we conclude you do not qualify for exemption under Code section 501(c)(3).

Therefore, you will be treated as a taxable entity and are required to file Federal income tax returns on Form 1120.

Contributions to you are not deductible under section 170(c)(2) of the Code.

Retroactive Exemption

Your Articles of Incorporation failed to meet the organizational test of section 501(c)(3) prior to 2000. You have not provided us with any particulars regarding your pre-2000 operations that would permit us to conclude you were operated in conformance with section 501(c)(3) requirements. You have indicated no assets and no liabilities prior to 2000, despite having been in existence for over twenty years. Prior to December of 2000 you provided substantial private benefit to your members in the form of scholarships open only to their close family members. Therefore, it would be prejudicial to the interests of the government to grant relief, and, if the issue should ever become applicable, we conclude that retroactive exemption should not be granted.

Non-501(c)(3) Status

As you have refused consideration of exempt status under other paragraphs of section 501(c), we did not develop possible non-501(c)(3) status.

Appeal Rights

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 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.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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

Enclosure, Publication 892