Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: NOV 06 2001

[redacted]

Employer Identification Number: [redacted]

Person to Contact - I.D. Number: [redacted]

Contact Telephone Numbers:
[redacted] Phone
[redacted] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption unde other subsections of section 501(c) of the Code. However, we hav concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[redacted]

[redacted]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

> A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven T. Miller

Director, Exempt Organizations

Enclosures: 3

[redacted]

ADDENDUM I

Information submitted with the application indicates the organization was incorporated in [redacted] on [redacted]. The second article of the Articles of Incorporation states, "The corporation shall be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary and educational purposes, including but not limited to providing education to Maine's businesses, government and citizens in order to promote positive activities which will improve the environment and facilitate the economic recovery of resources and shall have such powers to do all lawful acts necessary and desirable to carry out its purposes consistent with [redacted] and §§1170(c) and 501(c)(3) of the Internal Revenue Code of 1986 (as amended)."

On page 2 of its Form 1023, Application for Recognition of Exemption Under 501(c)(3) of the Internal Revenue Code, the organization stated the following:

> "[redacted] ([redacted]) is a charitable organization that focuses its efforts in the areas of business assistance, environmental mentoring and educational outreach. The organization's focus of experience and expertise is in waste management, environmentally sound business practices and operations, educational workshops, seminars, community projects and outreach, on-site environmentally focused assessments and employee training."
>
> "[redacted] will pursue current and anticipated needs of [redacted] businesses, organizations, institutions (including colleges, universities, hospitals) by and through close interaction with state and federal environmental agencies and state educational institutions. [redacted] will partner with businesses, organizations, educational institutions, state and federal agencies to expand and enhance outreach throughout [redacted]."
>
> "Waste management and site assessments will be catalysts to support environmentally sound business practices and operations, thus improving multi-media environs in [redacted]; educational workshops/seminars/training will be used to outreach to large groups and business sector organizations in time and cost effective manners' community projects will promote good corporate involvement and enhance the philanthropic grant opportunities; employee training will be offered as needed and/or requested."

[redacted]

On page 2 of Form 1023, the organization listed its sources of financial support as Grants-state, Federal, philanthropic; fundraising, sponsorships and membership dues; workshops and educational courses and, project specific work.

On page 4 of Form 1023, the organization indicated it is a membership organization. The organization stated,

> "Prospective members must have a focus in [redacted] embrace [redacted]'s mission statement, espouse to be environmentally conscious in their operations, methods, and business practices through accountability, wish to and/or comply with both state and Federal environmental laws and regulations, consciously want to reduce the toxicity and volume of their waste streams, wish to be active in peer mentoring of other [redacted] businesses from an environmentally focused position."

The organization stated,

> "Membership dues are based on the size of the business wishing to become a member (number of employees), or if the prospective member is an individual or non-profit organization."

On page 4 of Form 1023, the organization stated benefits to members in exchange for membership dues include:

> "Discounted registration fees for workshops and training courses organized and presented by [redacted]."
>
> "Reduced cost of on-site assessments, technical assistance and training programs."
>
> "Public recognition by member names being highlighted in press releases to local publications and newsletters."
>
> "Certificate of membership."

As part of the application the organization submitted draft copies of a letter of introduction and a sample membership brochure. The letter of introduction states,

> "[redacted] is one of [redacted]'s newest and unique organizations focused on meeting the ever growing needs for

[redacted]

environmental education, training outreach and technical assistance of [redacted]'s businesses in the areas of waste management, environmental performance and accountability."

The letter further states,

> [redacted] offers on-site technical assistance to businesses in business processes, operations and employee training, focused educational workshops and seminars, and organized outreach events that present current business relevant information in the areas of environmental management of waste streams, environmental performance opportunities including Environmental Management Systems (EMS) and ISO4001, peer networking and volunteer assistance in troubleshooting issues of concern. [redacted] not only meets the current needs of business, but will work to remain a few steps ahead when it comes to finding viable options for balancing both business operations and environmental requirements."

The organization submitted a draft copy of a "Membership Information and Application" brochure. The brochure contains the following statements:

> [redacted] is the next generation of what [redacted] has experienced in the past when it comes to waste management options. [redacted] expands earlier programs by bring (sic) [redacted] businesses unique and focused environmental technical assistance, peer networking and volunteer business assistance, an active and up-to-date resource base, educational workshops, seminars and employee training to help support your business efforts to be both productive and environmentally conscious in today's regulatory world."
>
> [redacted] offers [redacted] businesses the opportunities to receive on-site technical assistance through a site specific evaluation assessment process. Working together with [redacted] staff, each site assessment is structured to meet the needs of the business and facility. Comprehensive and confidential reporting is offered to assist the business in making the best decisions possible for improvements to existing process and planning future enhancements that are both environmentally preferable and economically feasible."

In a letter dated [redacted] stated, "Approximately [redacted]% of the activities organized and benefits offered by the organization will be available only to members."

[redacted]

In a letter dated [redacted] indicated the following services will be offered free of charge to the general public:

- Quarterly newsletters, in both hard copy mailed format and via electronic version through email
- Over the phone or via email resource information geared specifically to the needs of the person or organization requesting the information
- Eventually, the general public will be able to access the organization's web-site which will offer resource information including such information as recycled content and environmentally preferable products purchasing information, environmental information and notices of regulatory/legislative issues/changes of interest to a broad audience, notices of meetings, seminars and workshops to be held around [redacted] quarterly newsletters, and additional information as it becomes available and is in-line with the mission of the organization.

In its letter dated [redacted] indicated non-members will be required to pay for all other educational and informational events, on-site technical assistance which they request and initiate based on their own needs for services.

The same letter further stated, "Members will receive a small discount for such services rendered as a benefit for membership in the organization."

In the letter dated [redacted] stated,

> "Fees charged to non-members are based on the actual cost to present the services they are benefiting from. This will include hourly labor rate for personnel to perform the service, direct costs associated with the service including mileage, telephone/fax, reproduction, postage, overnight lodging (if necessary), rental of spaces for educational events, costs for hiring speakers (as necessary), food and beverage costs during events."

[redacted] in its letter further stated,

[redacted]

"Fees for members are based on an adjusted cost benefit basis. Membership fees paid by each member off-set the operating costs of the organization as well as costs associated with specific events and services such as workshops, seminars, on-site technical assistance, publications. The benefit to members is only that their membership dollars will benefit them as they need it on a "value-added" basis including discounted services and discounted events registration. Discounts may vary, depended (sic) upon the overall actual costs to present each event."

In its letter dated [redacted] stated, "Fees charged for events and services rendered are based on actual costs to present each event and offer the specific service requested by a member or non-member."

In response to a letter informing the organization of our intention to deny the application for exemption, [redacted] in its letter dated [redacted] for the first time stated it would provide services to any person, including public and private entities, and any branch of local, state and federal government.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for "Corporations, and any community chest, fund, or foundation, 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 Income Tax Regulations states, "In order to be exempt as an organization described in section 501(c)(3), 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 or operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states, "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

[redacted]

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of the subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(a)(1)-1(c) of the Income Tax Regulations states, "The words 'private shareholder or individual' in section 501 refer to persons having personal and private interest in the activities in the organization."

In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 279 (1945) the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Scripture Press Foundation v. United States, 152 Ct. Cl. 463; 285 F.2d 800 (1961) the applicant organization was denied exemption under section 501(c)(3) on the basis that the organization was not operated exclusively for religious and charitable purposes. Scripture Press Foundation produced and published religious materials for sale to the general public and religious organizations. Scripture Press Foundation also conducted door-to-door evangelicalism. Additionally, Scripture Press Foundation claimed its most important activity was the conduct of free instructional work that was provided without promoting the sale of materials produced by the organization. The applicant organization contended that all of its publishing and instructional activities were conducted in order to better the Sunday schools of America by improving both the quality of instruction and the quality of religious materials used in those schools. The applicant organization also claimed that if it did not qualify for exemption as a religious organization, then it qualified for exemption as an educational foundation.

The Court concluded that what is dispositive is whether the business activities of the taxpayer are incidental to its charitable objectives or whether, in fact, the converse is true. In this instance, the Court concluded, the sale of religious literature was the primary concern of the organization's activities. The Court further concluded that the sale of the materials, however religiously inspired, involved the organization directly in the conduct of a trade or business. The Court concluded that the sales aspect of the organization's activities overshadowed all else. The conduct of a trade or business does not fall within the scope of section 501(c)(3). If the conduct of a trade or

[redacted]

business constitutes a substantial purpose the organization does not qualify for exemption under section 501(c)(3).

As to the organization's contention that if it did not qualify as a religious foundation it qualified as an educational foundation, the Court disagreed. The Court affirmed that the same defects that applied to the claim as a religious organization applied to the claim to be an educational organization. Thus, the Court applied the same criteria to both religious and educational organizations.

In Federation Pharmacy Services, Inc. v. Commissioner of Internal Revenue, 72 T.C. 687 (1979) the Court sustained the Internal Revenue Service's determination that the applicant organization did not qualify for exemption under section 501(c)(3). The applicant organization, Federation Pharmacy Services, Inc. was formed to provide prescription drugs at discount prices to the elderly and handicapped members of the Metropolitan Senior Foundation under whose auspices Federation Pharmacy Services, Inc. was created and organized. Although Federation Pharmacy Services, Inc. was required by the Minnesota State Pharmaceutical Board to serve the general public, only members received discounted prices. The organization did not advertise and it did not sell other items normally sold for profit by pharmacies. The organization's operations were directed by various community leaders, none of whom received any personal financial information from their participation. The organization intended to return any revenues in excess of expenses to the operation of the business to be used to effect further price reductions and discounts for members. Financial need was not a stated requirement for membership.

The organization contended that the promotion of health and the relief of financial distress of a recognized charitable class, i.e., the aged and handicapped, were generally considered to be charitable purposes, and that the organization was organized to and in fact did promote the health of and relieve the financial distress of its elderly and handicapped members. Thus, American Pharmacy Services, Inc. contended, it was entitled to exemption under section 501(c)(3).

In sustaining the denial of the organization's exemption the Court stated it was clear that the organization's exclusive purpose for being was to sell drugs, an activity that is normally carried on by a commercial profit making enterprise. The Court stated that the selling of goods, health or otherwise, at a discount, is not of itself, a charitable deed. Nor does the fact that goods are sold at cost alter the result. Finally, the Court found that the organization's sole activity was in direct competition with profit making drugstores. The fact that the items sold bear a relationship to health care does not remove the commercial taint or make the competition with drugstores any less disabling. Certainly, the Court stated, the purpose of selling at

[redacted]

a discount, as distinguished from selling below cost, smacks more of commercialism than charity.

In Christian Stewardship Assistance, Inc. v. Commissioner of Internal Revenue, 70 T.C. 1037 (1978) the Court affirmed the Service's denial of exemption under section 501(c)(3) to an organization that engaged in financial counseling by providing a financial planning service to wealthy individuals who have contributed to various Christian organizations and whose net worth exceeded one-half million dollars. The counseling given by the organization consisted of advice on how to increase a contributor's current or deferred donations to Christian organizations by preparing a financial plan for each contributor which took into account his personal goals and the applicable tax savings. The financial plan was developed to permit increased contributions by rearranging the *inter vivos* or testamentary disposition of assets so as to result in a reduction of Federal income and estate taxes. The organization also assisted the individual's attorney in implementation of the individual's financial plan.

The costs of the organization's operations were funded by fees paid by member organizations who would receive contributions from individuals whose financial plan was prepared by Christian Stewardship Assistance, Inc. Individuals who were assisted by the organization were not billed for services and were not informed of the costs of the counseling they received, although they could make donations to the organization.

Christian Stewardship Assistance, Inc. contended that neither the founders nor individual clients benefited financially from the services offered by the organization; rather, it was the charitable organizations to which gifts were made under the individual plans which received the greatest economic benefit from the organization's activities. The organization characterized tax benefits as incidental and parallel to the main charitable fundraising purpose.

The Court held the applicant organization failed to meet the operational requirement of section 501(c)(3) and, therefore, failed to qualify for exemption because the organization was not operated exclusively for charitable purposes. The Court stated that the sole financial planning activity, albeit an exempt purpose furthering Christian fundraising efforts, had a nonexempt purpose of offering advice to individuals on tax matters that reduced an individual's personal and estate tax liability. The Court found that those private benefits created a non-exempt purpose greater than the exempt purpose.

The Court further stated that in order for the organization to obtain contributions, it had to proffer something valuable in return. This necessity or purpose to provide such information and service as would be desired by the public places the organization in competition with

the advice. The organization's intent was to raise funds for various other organizations who would receive funds as a result of the plans formulated for individuals. Different from the costs of services were not paid by the individuals who received the direct services. Rather, the costs of services were paid by the organizations who were the indirect recipients.

Ultimately, the Court found that the exempt purpose of furthering Christian fundraising was outweighed by the non-exempt purpose of offering advice to individuals about how to reduce their individual tax liability. seeks to promote environmental preservation by providing public and private entities with advice on matters such as employee training and business practices dealing with waste management.

The Court further stated in Christian Stewardship Assistance that in order for the organization to obtain funds it proffered technical advice in return. will proffer technical advice in return for funds from clients.

As the Court found to be the case in Christian Stewardship Assistance, the necessity or purpose to provide such services as would be desired by the public causes to operate with a commercial purpose. The commercial purpose and the private benefit derived by s clients and members create a non-exempt purpose. Under the rationale of the Supreme Court in Better Business Bureau, if an organization has a substantial non-exempt purpose the organization does not qualify for exemption regardless of the number or importance of truly exempt purposes.

is like the organization that was denied exemption in American Institute for Economic Research. The organization that was denied exemption in this case provided both free educational information to the general public as well as particular services tailored to the needs of clients who paid fees for those services. Like the organization in American Institute for Economic Research provides services that address specific needs of individual clients. Like the clients of the American Institute for Economic Research, which was denied exemption, clients received full value in exchange for their payments. Like the organization in American Institute for Economic Research, provides some educational materials for the general public. In American Institute for Economic Research. The Court found these activities, even though educational, were outweighed by the activities whose characteristics were indicative of a business. The

[redacted]

Court decided this was a commercial purpose and the organization was not exempt.

The proposed budgets submitted by [redacted] indicate the organization expects to realize small profits in its initial years of operations. In Elisian Guild, Inc. the Court found that the presence or absence of a profit was not in and of itself a basis for approval or denial of exemption, although the presence or absence of a profit is one factor to be considered when determining whether or not an organization is precluded from exemption because it is primarily operated for a commercial purpose.

In B.S.W. Group, Inc. the Court did consider the presence of a profit to be a factor when it determined the applicant was operating for a commercial purpose and did not qualify for exemption.

[redacted] is like the organization that was denied exemption in B.S.W. Group, Inc. Like B.S.W. Group, Inc., [redacted] provides consulting services tailored to small organizations and institutions. B.S.W. Group, Inc.'s goal was to help client organizations deal with problems regarding the external business environments in which they operated by implementing internal planning and management policies and by improving the clients' understanding of governmental policies processes. Likewise, [redacted]'s goal is to help client organizations deal with problems regarding their external business environments in which they operate in terms of waste management and environmental regulations by implementing internal planning, employee training, and management policies as well as improving the clients' understanding of governmental policies and regulations. Just as was true for B.S.W. Group, Inc., [redacted]'s clients are tax-exempt and non-profit organizations (some of which may not be tax exempt). The Court found this to be a negative factor when determining the commercial nature of the activities.

B.S.W. Group, Inc. negotiated a fee with the client that was to some extent based on the client's ability to pay as well as the value of the services provided. B.S.W. Group, Inc.'s general policy was to provide services at or close to cost. [redacted] has repeatedly stated it will provide services at or close to cost.

The description provided of the activities of B.S.W. Group, Inc. which was denied exemption, is like the description of the activities of Maine Alliance for Waste Reduction and Recovery. Like B.S.W. Group, Inc., [redacted]'s activities constitute the conduct of a consulting business of the sort that is

[redacted]

ordinarily carried on by commercial ventures organized for profit. In B.S.W. Group, Inc., the Court ultimately found that though fees were based on the recipients ability to pay, this was not enough to prove an organization's purposes are exempt under section 501(c)(3). Likewise, the fact that [redacted] charges fees based on recipients ability to pay is not enough to prove its purposes are exempt under section 501(c)(3).

Although [redacted] has indicated that some clients may receive services free of charge, this is not sufficient to demonstrate a purpose that qualifies for exemption under section 501(c)(3) because when clients are charged they are charged actual cost or close to actual cost. When a substantial number of clients are charged according to arrangements like the fee arrangement described in Rev. Rul. 72-369 and B.S.W. Group, Inc., the organization fails to meet the requirements of Better Business Bureau. Even though some clients may receive services substantially below actual cost, most will not. Better Business Bureau states that if a single non-exempt purpose is present, the organization does not qualify for exemption despite the number or importance of other charitable purposes.

Based on the information submitted as part of the organization's application for recognition of exemption, [redacted] conducts consulting activities for a fee, which constitute a substantial commercial purpose. Therefore, it is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

Accordingly, we conclude [redacted] does not qualify for exemption under 501(c)(3) of the Internal Revenue Code.