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30 copies to District

Date 3-24-86

Surname [REDACTED]

15 JUL 1986

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. We have concluded that you are not entitled to recognition of exemption under that section of the Code. The reasons for our decision are explained below.

The information submitted indicates that you were incorporated on [REDACTED], as a nonprofit corporation under the laws of [REDACTED]. Your Articles of Incorporation indicate, among other things, that you are organized exclusively for the betterment of understanding, and awareness of printmaking as a form of art and to disseminate information to people in the [REDACTED] metropolitan area to increase their cultural awareness.

You conduct membership meetings, board meetings, and committee meetings. Your membership consists of [REDACTED] artists. [REDACTED] of the [REDACTED] constitute your Board of Directors. Your gallery provides space for exhibiting artists to exhibit his or her artwork for sale. The artist is required to hang one print each month in the rear room of the gallery. Each artist is entitled to one solo show or one group show every two years on a rotating basis. Additionally, each artist is entitled to display appropriate artwork in the gallery for a period of six months.

You state that an initial fee of \$[REDACTED] is paid by members who are also obligated to pay dues in the amount of \$[REDACTED] per month. This covers the organization's rent, telephone, insurance, publicity, and mailing expenses.

Revenue derived from the sale of artwork is disposed of by paying the artist who created the print [REDACTED] percent of the sales price. [REDACTED] percent goes to the managing director/artist as a form of salary and [REDACTED] percent goes to the gallery.

You engage in a number of community educational programs and plan additional educational programs in the future.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious or charitable purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.1361(c)(1)-i(2)(ii) of the income tax regulations provides that an organization is not organized or operated exclusively for any of the purposes specified in section 1361(b) of the Code unless it serves a public rather than a private interest. That is, to qualify under section 1361(c)(1), an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or the creator's family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 71-375, 1971-2 C.B. 187, holds that a cooperative art gallery operated by a group of artists for the purpose of exhibiting and selling their work does not qualify for exemption under section 1361(c)(1) of the Code.

Rev. Rul. 76-152, 1976-1 C.B. 181, holds that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selection for exhibit, exhibition, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operation, the gallery does not qualify for exemption under section 1361(c)(1) of the Code.

Rev. Rul. 80-187, 1980-2 C.B. 116, holds that the exempt status of a nonprofit will not be jeopardized where, after an artist's lengthy negotiations, it enters into an agreement with a health-oriented organization to contribute to the care of a local patient's art and art-related income.

However, as only 12 members/artists, six of whom donate the majority of "income," you are similar to the organization described in Rev. Rul. 71-375, supra. You operate a gallery run by volunteer artists, sponsor exhibits of member artworks on a rotating basis, and sell such works to the general public. You are devoted to exhibit and selling only your members/artists' artwork. This is a vehicle for promoting their careers and promoting the sale of their work. They, like you, appear to be members of nonprofit health-related projects, and serve the private interests of your donors to care for an individual member.

Further, since all proceeds of the sales price of artwork goes to the artists who create the prints and 10 percent goes to the managing director/artist, only 1 percent is left to go to the gallery. See Rev. Rul. 71-375, supra.

The information has been submitted which shows that the amount of compensation received by the managing director is reasonable, or was intended to provide an artist's length of services. See Rev. Rul. 80-187, supra. This quantitative factor evidence of significant private benefit.

[REDACTED]

In Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337 (1980), the organization, a multi-faceted cultural arts and educational organization, located in rural North Carolina, operated two art galleries to exhibit and sell the original works of individual artists. The Tax Court found that the purpose of the two galleries was to foster community awareness and appreciation of contemporary artists and to provide a constant flow of art for students to study techniques.

The factors listed below were considered important by the Court in reaching its decision:

1. there are no other art museums or galleries in the area;
2. a jury selects those works that are displayed;
3. works are chosen not for salability but for their representation of modern trends;
4. an artist's more daring works are exhibited;
5. other activities are educational; and
6. art sales were not conducted at a profit.

Furthermore, the Court stated that the sales activities of the organization was secondary and incidental to furthering its exempt purpose.

The Tax Court reached a similar result in Cleveland Creative Arts Guild v. Commissioner, F.C. Memo 1989-316, where the Tax Court concluded that the sale of artwork by a local cultural arts and educational organization were not disqualifying since the sales activities were incidental to its educational activities.

As distinguished from the facts and circumstances involved with the court cases mentioned above, you are set up in the manner of an artist cooperative to exhibit and sell the works of your [REDACTED] artist members. Your activities serve a private benefit to your members, precluded under section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Accordingly, we are ruling that you do not qualify for exemption under section 501(c)(3) of the Code. You are required to file federal income tax returns. Donors may not deduct contributions to you under section 170 of the Code.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements. Please use the symbols: [REDACTED], in addressing your reply.

If you do not protest this proposed ruling 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 judgment 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 30 days, this ruling will become final and copies will be forwarded to the District Director, Baltimore, who is your key District Director for exempt organization matters. The appropriate State officials will be notified in accordance with section 6104(c) of the Code.

Sincerely yours,

Signed: [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch

cc: [REDACTED]  
[REDACTED]

cc: [REDACTED]