



NOV 07 1988

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses you were incorporated on [redacted] under the [redacted] Non-profit Corporation and Co-operative Association Act. Your purposes, as stated in your articles, are exclusively for charitable, educational and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954. You further expand in your articles that your purposes will include but not be limited to the following:

- (a) to inform the general public of the program to improve communicative skills of children with hearing or speech impaired handicaps;
- (b) to assist in creating and adopting successful communication methods within the educational/training programs nation-wide;
- (c) to provide necessary facilities, equipment, teaching aids, supplies, etc., to make successful educational programs.

You further state the purpose of [redacted] is to attract money to develop learning aids for the speech and hearing impaired and help develop learning aids that will take advantage of todays advanced technology and place these products or services in the hands of the handicapped at a price they can afford, or at least at a greatly reduced cost.

Your activities will consist of producing a documentary film examining the different schools of thought used to teach deaf individuals to speak. You will also be involved in the development and marketing of interactive videodisc instructional programs, how to instructional tapes and videodiscs, voice recognition instructional tapes and videodiscs, and learning modules for clinics and individual use. You state the various services or products will be produced by the best source whether such is a for-profit or non-profit organization. You further state these products and services will be marketed by a non-affiliated marketing firm.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[redacted]					
Surname		[redacted]					
Date		11-7-88					

[REDACTED]

You indicate the services of the organization will be free of charge, when possible, or for a nominal charge if necessary. You define "nominal charge" as the cost plus administrative expense. The administrative expense would be born by the recipient of the product or services at 10 to 15 percent above the cost.

You indicate other sources of income will be grants and donations from individuals, corporations, and trusts. Also, royalty payments for endorsement and support of specialized research programs with for-profit outside organizations will be a source of income.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) 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 test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(c)(1) Primary activities. 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]

(d)(5)(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc."

"(e)(1) An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or non existence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes."

In the case of Better Business Bureau v. U.S. (326 U.S. 279 (1945), Ct. D. 1650), it was held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

Revenue Ruling 65-1, 1965-1 C.B. 226 held that an organization conducting scientific research of a type ordinarily carried on as an incident to commercial or industrial operations such as inspection of products or designing of equipment did not qualify for exemption under section 501(c)(3) of the Code.

You state in your application and correspondence the purpose of your organization is to attract money to develop learning aids in light of today's advanced technology and to inform the public of the service. You state you will produce a documentary reviewing the different approaches in teaching deaf and hearing impaired individuals how to speak. But, you also describe various "research and development" projects, in the form of new products and services, to be developed through contracts with profit or non profit organizations. You indicate there will be a fee for these products and services. This fee will be the cost of the products plus an administrative fee. In essence, the total cost of the product or service to the user is 10 to 15 percent above cost. You further state these products or services will be marketed by a marketing firm.

The manner in which your organization operates is similar to a trade or business and cannot qualify for exemption because of section 1.501(c)(3)-1(e)(1) of the Regulations. Your activities of developing different products for the hearing impaired cannot be distinguished from section 1.501(c)(3)-1(d)(5)(i) and does not qualify for exemption. Your production of the documentary can be classified as an educational activity under section 501(c)(3) of the Code but it is an insubstantial part of your activities. As described in Better Business Bureau vs U.S., the existence of a substantial non exempt activity will preclude exemption under section 501(c)(3) regardless of the truly charitable or educational purpose.

[REDACTED]

Therefore, we conclude your organization does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Accordingly, contributions made to you are not tax deductible by donors under section 170 of the Code.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

You are required to file Federal income tax Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

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 judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, 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 this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:

Form 6018

Publication 892