

INTERNAL REVENUE SERVICE  
District Director

Department of the Treasury

[REDACTED]

Date: JUL 09 1993

VIA CERTIFIED MAIL

[REDACTED]

Person To Contact:

[REDACTED]

Telephone Number:

[REDACTED]

In Reply Refer To:

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

FACTS

The information submitted discloses that you were incorporated under the Nonprofit Mutual Benefit Laws of the State of [REDACTED] on [REDACTED].

Article II of your articles of incorporation ("articles") states that your specific purpose is to "operate a farmers market in the city of [REDACTED]."

Your application Form 1023 states that the farmer's market ("market") is held weekly, on Wednesday evenings, in downtown [REDACTED]. It is a certified market where the public is able to purchase goods and produce supplied by local growers from [REDACTED], merchants, and independent vendors from the [REDACTED] area and the [REDACTED] and [REDACTED] Valleys.

Besides providing local growers a "venue" for sale of their produce directly to the community, the market is operated to attract people to downtown [REDACTED] to boost retail sales in that area.

You also offer the opportunity for community organizations to do fundraising and community awareness programs by allowing them to utilize booths.

In furtherance of the planning and operation of the farmer's market, you produce a promotional calendar that advertises the events and seasonal specials of the market.

Farmer vendors are required to pay a percentage of their gross sales for participating in the market. Non-farmer vendors are

required to pay a rental fee for a booth. These two sources together comprised [redacted] percent of your total gross receipts for the period [redacted] to [redacted], with the remainder from donations. This percentage is projected to be [redacted] percent in [redacted] and [redacted].

Your expenses are as follows: salaries, occupancy, entertainment for the market, fundraising and other administrative and overhead expenses (supplies, insurance, repairs, etc.)

LAW

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

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve 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 (or in opposition to) any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that 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.

Section 1.501(c)(3)-1(b) of the Regulations defines the organizational test. It states that an organization will meet this test only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Regulations section 1.501(c)(3)-1(b)(2) defines the term "articles of organization" or "articles" to include the trust instrument, corporate charter, articles of association or any other written instrument by which the organization is created.

Section 1.501(c)(3)-1(c) of the Regulations defines the

operational test. It 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 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.

In Presbyterian & Reformed Publishing Co. v. C.I.R., 79 T.C. 1070 (1982), the Tax Court found that the manner in which the organization conducted its activities revealed a nonexempt commercial purpose that was substantial in nature. In making this determination, the court noted that whether an organization satisfies the operational test is essentially a question of fact. The court noted that where a non exempt purpose is not an expressed goal of the organization, courts have nonetheless focused on the manner in which the organization conducts its activities, implicitly reasoning that an end can be inferred from the means chosen to attain it. If, for example, an organization's management decisions replicate those of commercial enterprises, it is fair to infer that at least one purpose of the organization is commercial.

#### ANALYSIS

In order to comply with the requirements of the organizational test set forth in Regulations section 1.501(c)(3)-1(b), an organization's purpose(s) as stated in its creating document cannot be broader than the purposes set forth in section 501(c)(3) of the Code. Since your purpose, as stated in your articles of incorporation, are not "exclusively" limited to those purposes specified in section 501(c)(3) of the Code, you fail to meet the organizational test.

Your organization's activities consist of the operation of the farmer's market. The market is organized and operated to serve local growers from [REDACTED], merchants, and independent vendors from the [REDACTED] area and the [REDACTED] and [REDACTED] Valleys as a convenience and economy in the conduct of their businesses. By conducting the market you provide publicity as well as selling opportunities for growers and merchants.

These activities are not defined as charitable within the meaning of section 501(c)(3) of the Code as cited above. As you are not primarily engaged in an activity specified in section 501(c)(3) of the Code, you fail to meet the operational test. That is, you are not operated exclusively for one or more exempt purposes as required by Regulations section 1.501(c)(3)-1(c).

As you do not meet either the organizational or operational tests, you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

Consideration was also given to you for tax-exemption as an

organization described in section 501(c)(6) of the Code. The facts remain the same.

LAW

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

"(6) Business leagues, chamber of commerce, real-estate boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Income Tax Regulations provides, in part, as follows:

"A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

Revenue Ruling 58-224, 224 C.B. 1958-2, states that an organization which operated a trade show did not qualify for exemption under Code section 501(c)(6) as it rendered particular services to individual persons by conducting the show, providing publicity and advertising campaigns, and providing selling opportunities for participants.

ANALYSIS

Although one of your stated purposes is to boost retail sales in downtown [REDACTED], your primary purpose is to operate the farmer's market. Similar to the organization described in Revenue Ruling 58-224, you provide particular services for growers, merchants, and vendors who participate by providing advertising, publicity, and a place for them to conduct their businesses. Furthermore, your organization is not composed of persons in a particular line of business having a common business interest. Thus you do not qualify for Federal tax-exemption as an organization described in section 501(c)(6) of the Internal Revenue Code.

As provided by section 6104(c) of the Internal Revenue Code of 1986 and the applicable regulations, the appropriate State officials are being notified of our determination.

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Until such time as you establish your exempt status for Federal income tax purpose, contributions made to you are not deductible by the donors on their individual tax returns.

If you are in agreement with this determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and 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 and will then become our final determination. 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."

Sincerely Yours,

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District Director

Enclosures:  
Publication 892  
Form 6018  
Envelope