

Internal Revenue Service

Department of the Treasury

District Director

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:  
EP/EO

Employer Identification Number:

Date: AUG 15 1997

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 Regulations. rmined  
I.

that you do  
Consideration of other subsection that you do

*Certified letter was returned undeliverable by Post Office. Re-mailed per 9/9/97 phone*

As your organization tax, it will on Form 1041 or an unincorporated deductible u

*call with [redacted] New response date - 10/10/97*

If you are interested in return one comment.

[redacted] IRS Review and Adverse

You have the right to protest this proposed determination if you believe that 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. under  
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IF YOU WANT THIS PROCEEDING TO BE HELD IN COURT, YOU MUST FILE A PETITION WITHIN 90 DAYS OF THE DATE OF THIS NOTICE.

[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 yours,

[REDACTED]

District Director

[REDACTED]

Enclosures: 3

Enclosure I

[REDACTED]

You were incorporated on [REDACTED] with the state of [REDACTED].

Your purpose is to create a Community Center in the city of [REDACTED], [REDACTED] where the organization may provide educational services and programs for members of the community.

Your Amended Articles of Incorporation were filed with the [REDACTED] Secretary of State's office on [REDACTED].

The purpose was amended to state:

"The Organization is being formed exclusively for proactive Community Relations Programs for charitable, educational, and academic training, amateur athletic events, after school tutoring and counseling, audio visual learning, musical and scientific purposes, including for purposes such as, the making of distributions to other organizations that qualify under 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of any future United States Internal Revenue Law)."

The Dissolution clause was amended to state that:

"[REDACTED] inserts this provision insuring it's assets will be permanently dedicated to an exempt purpose, meaning that at the time of dissolution, the organization's assets will be in event it (The Organization) should dissolve, distribute for exempt purpose within the meaning of Section 501(c)(3), and as described by the Federal Government, distribute it's assets to a State or local government for public purpose. With the exception of the dividend accounts which shall be as follows:

- a. [REDACTED] percent of the Charitable Trust Account shall be transferred to the Trust/scholar Account and remain in the account and divided equally amongst all names within the account list, and disbursed accordingly as each child successfully graduates. Those who drop-out will be withdrawn.
- b. [REDACTED] percent of the Charitable Trust Account shall be distributed as the Federal, State or local government see fit, so long as the same is used for any community that needs it.
- c. [REDACTED] percent of the Charitable Trust Account shall be transferred to the Organization's account for the Trustees to distribute among themselves, or for any other reason deemed necessary and proper within the meaning of these Articles and the Organization's bylaws."

Enclosure I, continued

[REDACTED]

Your application for exemption described the organization as a membership organization. The organization's By Laws adopted [REDACTED] described the membership as parents and children who are poor, underprivileged, low-income, and of poverty status in society. Members are required to participate in Community Learning Center activities and any given Fund Raising Drive.

Your sources of financial support will consist of contributions, and proceeds from Fund Raising Drives. Proceeds are to be deposited into three accounts:

1. The Student Scholar/Trust account is to receive [REDACTED]% of the total contributions. This account is for the educational and employment purposes of the members. Members are limited to grants in the amount of \$[REDACTED].
2. The Community Charitable Trust account is to receive [REDACTED]% of the contributions. This account is for the benefit of the parent/guardian members. Awards of not more than \$[REDACTED] are made upon the satisfaction of obtaining educational and employment requirements.
3. The Organization Account will receive [REDACTED]% of the proceeds for the purpose of funding projects and programs.

The By Laws stipulates that if a child terminates their membership under "good cause" the parents maintain the right to select a child who may be eligible to replace his or her child. The amount is to be withdrawn from the Student/Scholar Trust account and is limited to \$[REDACTED].

In your letter dated [REDACTED], to clarify the purpose of the accounts and the refund policy, it was stated that:

"Because the Parents and children will be engaging in Fundraising Drive (FRD) activities as opposed to relying upon the government for support; The child (student) will receive only the amount of funds turned in for that FRD period minus interest from the SS/T Trust upon a good cause or bad faith termination."

Section 501(c)(3) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or other specified exempt purposes, no part of which inures to the benefit of any private shareholder or individual.

Enclosure I, continued

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that qualification under IRC 501(c)(3) is not available for organizations operated for the benefit of designated individuals or for persons who created the organization.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization does not meet the organizational test if its articles provide that its assets would, upon dissolution be distributed to its members.

In Carrie L. Maxwell Trust, Pasadena Methodist Foundation vs. Commissioner, 2 TCM 905 (1943) It has been held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust.

A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable.

The requirement that each member participate in the fundraising activities in return for cash awards is a direct benefit to the members. Inurement of income is strictly forbidden under section 501(c)(3) of the Code.

In addition, the Amended Articles of Incorporation under the plan for dissolution provides that █% of the proceeds be distributed among the Trustees. Therefore, you do not meet the organizational test requirements of section 1.501(c)(3)-1(b) of the regulations.

Based upon the above facts and upon applicable law your organization is not organized and operated exclusively within the meaning of section 501(c)(3) of the Code. Because of the private benefit in the Articles of Incorporation and the fundraising activities you do not meet the organizational and operational tests to qualify for exemption.