

Person of Contact:

Telephone Number:

Date:

APR 6 1998

CERTIFIED MAIL

Employer Identification Number:

Dear Sir or Madam:

This is a final adverse determination with respect to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination is made for the following reasons:

You are not operated exclusively for exempt purposes within the meaning of I.R.C. § 501(c)(3). You are not operated for educational or charitable purposes within the meaning of Treas. Reg. § 1.501(c)(3)-1(d). You do not lessen the burdens of governments. You have a substantial non-exempt commercial purpose. You are operated for private, not public benefit. Your earnings inure to the benefits of private individuals.

Contributions made to your organization are not deductible under Section 170 of the Internal Revenue Code.

You are required to file federal income tax returns with the Ogden Service Center for taxable years for which the filing date of the appropriate return has passed. These returns should be filed within 90 days of the date of this letter, unless a request for extension of time is granted. Please attach a copy of this letter to your returns and address any request for time extensions to the Service Center. Processing of an income tax return and assessing any taxes due will not be delayed because a petition for a declaratory judgment has been filed under section 7428 of the Internal Revenue Code.

We will notify the appropriate State officials of this action, as required by Code section 6104(C).

If you decide to contest this determination in court, a petition for a declaratory judgment proceeding in the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this determination was mailed to you.

The enclosed Publication 892 provides information about filing suit in these courts.

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

Thank you for your cooperation.

Sincerely yours,

Associate Chief, Appeals

Enclosure:
Publication 892

Internal Revenue Service
District Director

Department of the Treasury
Quality Review Staff
P.O. Box 13163
Baltimore, MD 21203

Person to Contact:

Telephone Number:

Date:

SEP 05 1996

CERTIFIED MAIL - RECEIPT REQUESTED

Dear Applicant:

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

You were incorporated in the state of [REDACTED]. Your purpose is to act as an intermediary organization between State and Federal government and [REDACTED]. You will be acting as a sponsor for the Child and Adult Care Food Program (CACFP) administered by the [REDACTED] State Department of Education and the United States Department of Agriculture (USDA).

You provide breakfast, lunch and an afternoon snack to the children attending [REDACTED]. These services are conducted on site at [REDACTED]. The funds to provide such services are from the CACFP program. You do not sponsor any other day care centers or day care homes.

You have five board members, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] are related. You have [REDACTED] employees, [REDACTED] and [REDACTED]. It appears that all employees are related to or are members of your Board of Directors. [REDACTED] and [REDACTED] are also shareholders and employees of [REDACTED].

The State of [REDACTED] requires that meals and snacks be provided to children in licensed day care centers. The meals and snacks must meet the nutritional guidelines as established by the USDA Child Care Food Program. Therefore, for-profit centers are required by law to provide the same nutritional meals and snacks that are provided by the CACFP/USDA food program.

You also indicate that you give periodic classes to the children and their parents if they desire on nutrition. These classes are restricted to the children and their parents attending [REDACTED]. They are infrequent in nature.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations which are organized and operated exclusively for religious, charitable and 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(d)(1)(ii) of the Income Tax Regulations states that an organization which serves private interests rather than public purposes does not qualify for exempt status. To meet this requirement, an organization must establish that it is not organized or operated for the benefit of private interests. It must not be operated for the benefit of designated entities or an organization who created it.

Revenue Ruling 68-373, 1968-2 C.B. 206 describes an organization engaged in clinical testing of drugs for commercial pharmaceutical firms. It was not considered exempt since clinical testing is ordinarily a part of a pharmaceutical company's marketing operations. Performing the testing outside of the company relieved the company from making such expenditures and constituted prohibited private benefit to the company.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the Better Business Bureau was not exclusively educational or charitable and therefore not exempt. Its activities were aimed at promoting the business community, even though there was also benefit to the public.

Revenue Ruling 65-1, 1965-1 C.B. 226 describes an organization whose principal activity was making research grants for the development of new machinery to be used in a particular commercial operation. The organization licensed certain manufacturers to produce the new products, frequently on an exclusive basis. It was not exempt since it served the private purposes of the manufacturers.

Revenue Ruling 70-585, 1970-2 C.B. 115 discusses various housing organizations which aid low and moderate income families. The ruling reads in part:

"The fact that an organization receives public funds under State or Federal programs for housing is not determinative; qualification is based on whether or not the organizations is charitable within the meaning of section 501(c)(3)."

Your organization is set up to provide assistance, financial and otherwise to a for-profit day care center. You were created by the for-profit day care center [redacted] and are operating closely with that Center. The for-profit day care center is receiving private benefit from you by you providing meal services it is required to provide under state law. This private benefit furnished to a for-profit entity will prohibit exemption.

Accordingly, you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or under any related paragraph of the Internal Revenue Code. Contributions to you are not deductible under section 170. You must file Federal income tax returns.

If you do not agree with our proposed denial, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are to be represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney or tax information authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office.

If you do not protest this 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 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 our final determination on this matter. Also, appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

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

Sincerely,

District Director

Enclosure:
Pub. 892