

20044002 E

Internal Revenue Service
Director, Exempt Organizations

Department of Treasury
P.O. Box 2508 - Room 7008
Cincinnati, OH 45201

Date: JAN 07 2004

UIL 501.00-00

Employer Identification Number:

Contact Persons Name - ID#:

Contact Persons Telephone Number:
Office
Fax

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 Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe 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 Un-agreed 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.

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 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.

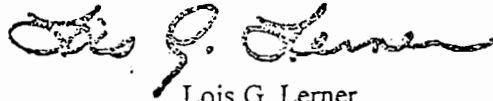
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If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lois G. Lerner". The signature is fluid and cursive, with a large initial "L" and "G".

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Form 6018

Publication 892

Enclosure I

Facts

You were incorporated under the _____ domestic Nonprofit Corporation Act on _____, _____. This information was taken from your business entity status report. You did not submit a complete copy of your articles of incorporation.

Your organization is an outgrowth of the _____

The purposes of your organization as stated in your bylaws is “_____”

_____”. Your by-laws do not give a statement regarding your dedication of assets upon dissolution.

The activities of your organization will be strictly fund-raising activities including, but not limited to games of chance and charity sporting events. This will be the organizations sole source of income.

The application 1023, page 2, further states that the purpose of said (fundraising) activities will be to benefit, through financial assistance, the surviving dependents and widows of deceased _____

In response to our request for further information, you stated that the intent of organization is to principally benefit the survivors and widows of deceased _____, but certainly not exclusively. You stated that you hope to be able to benefit dependents of _____ as well as lend your support to other charitable organizations by providing benefits to any needy or deserving child or dependant through the form of a scholarship fund for higher education costs. In response to our question concerning the circumstances surrounding the death of the _____ you stated, “_____”

Law

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

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to a State or local government, for a public purpose, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to

another organization to be used in such manner as in the judgement of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization will not be considered as operating exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more charitable purposes unless it serves a public rather than a private interest. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes aiding the poor and distressed and lessening the burdens of government.

Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. The concepts of "social welfare" and "charity" are not necessarily exclusive of each other. The promotion of social welfare incorporates the concepts of community benefit and the common good as opposed to the benefit of private group of citizens. Thus, organizations recognized Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization will not be considered as exempt under section 501(c)(4) may in certain circumstances, also e recognized under section 501(c)(3) and vice versa. For this reason it is useful to examine precedents under both sections.

Revenue Rule 81-58, 1981-1 C.B. 331 provides that a nonprofit association of municipal police officers primarily engaged in providing retirement benefits to members and death benefits to beneficiaries of members (funded through public contributions and fundraiser events) does not qualify for exemption under section 501(c)(4) of the Code. The benefits of the organization were limited to its members, with only incidental benefit to the community, and were supplemental to the civil service benefit provided by the political subdivision in which the police officers were employed.

Revenue Rule 85-2, 1985-1 C..B. 178, provide that a determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burden, and whether such activities actually lessen such governmental burden.

Revenue Rule 87-126, 1987-2 C.B. 150, concludes the an organization that provides firefighters with retirement benefits, which are funded by government sources and which are the exclusive retirement benefits provided to these firefighters, qualifies for exemption as a social welfare organization described in section 501(c)(4) of the Code. The association's funding, financing, and eligibility requirements were governed by an act of the state legislature. The local government was represented on the associations board of directors, retained the ultimate authority to approve changes in the association's benefit plan,

participated in the association's investment decisions, and was required to approve all significant expenditures of the association.

Analysis and Conclusion

An analysis of your operations shows that your primary purpose is to provide benefits to surviving dependents and widows of the deceased . You are similar to the organization described in Revenue Rule 81-58, supra. That organization provided supplementary benefits to funded through public contributions and fund-raiser events. The organization's benefits were limited to its members in a manner similar to any mutual benefit type of organization. Because the private benefit to the members of this type of organization is substantial and the community benefit, if any clearly incidental, the Service concluded that the organization was not operated exclusively for promotion of social welfare and did not qualify for exemption under section 501(c)(4) of the Code. The conclusion that the organization served the private interest of its members would also have defeated exemption under section 501(c)(3) of the Code. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

You also operate in a manner similar to the organization described in in this case the court concluded that organizations providing supplemental benefits to members, in the absence of a state statutory scheme did not qualify for exemption under section 501(c)(3) or 501(c)(4). The organizations primarily served the private interests of their members. Although the community may benefit incidentally for the activities of the organization, such benefit is insubstantial in light of the private interests being served. Your operations do not further an exempt purpose. Your activities confer economic benefits on your members. Therefore you do not satisfy the operational test of section 501(c)(3) of the Code.

In addition, your By-laws state a purpose that is not charitable, educational, religious, or scientific. Your By-laws also, fail to permanently dedicate your assets to charity upon dissolution. does not have a statute that satisfies the provisions of section 1.501(C)(3)-1(b)(4) of the regulations. Accordingly, you do not satisfy the "organizational" test.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

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Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter
JAN 07 2004

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

Denial of exemption

Revocation of exemption, effective.

Modification of exemption from section 501(c)() to section 501(), effective

Classification as a private foundation described in section 509(a), effective ****

Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

Classification as an organization described in section 509(a)(), effective

Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date

Form 6018 Instructions

Do not use this consent if the organization is subject to the declaratory provisions of section 7428 and has submitted a protest of adverse action.

This consent should be signed by hand (do not type, stamp or print) with the name of the organization, followed by the signature(s) and titles(s) of the person(s) authorized to sign on behalf of the organization. An attorney or agent may sign provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.