



receipt of purchase from buyer, and without the written consent of Artist."

Section 501(c)(3) 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 legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

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 exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Rev. Rul. 71-395, 1971-2 C.B. 228, describes a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works. The gallery was open to the public six days a week. No admission was charged. Works of member artists were exhibited and offered for sale. The gallery retained a commission from sales and rentals sufficient to cover the cost of operating the gallery. This gallery was engaged in showing and selling only the works of its own members and was a vehicle for advancing their careers and promoting the sale of their work. It thus served the private purposes of its members, even though the exhibition and sale of printings may be an educational activity in other respects. It did not qualify for tax exemption under IRC 501(c)(3).

Rev. Rul. 76-152, 1976-1 C.B. 151, also described an art gallery open to the public. It was organized by a group of art patrons and not members. The organization selected modern art work of local artists for exhibit at its gallery and for possible sale, the artist setting the sales price. The artists had no control over the organization or its selection process. The organization retained a ten percent commission on sales which were substantially less than customary commercial charges and not sufficient to recover the cost of operating the gallery. This organization was also denied

tax-exemption as a 501(c)(3) organization as the major activity of the organization was serving the private interests of those artists whose works were displayed for sale. Since ninety percent of all sales proceeds were turned over to the individual artists, such direct benefits were deemed substantial and not incidental. This was the case even when the artists themselves did not control the organization.

Better Business Bureau v. United States, 326 U.S. 279 (1945), held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the nature or importance of statutorily exempt purposes.

All of the preceding Code section, Regulation section, Revenue Rulings and court case describe the criteria under which an organization may be exempt under section 501(c)(3) of the Internal Revenue Code. They also describe the basis for which organizations were denied exemption because of private benefit to either members or other third parties.

Based on the above and the information in the case file we conclude that you are engaged in activities which are financially beneficial to private interests other than incidentally.

[redacted], you are operating for the private interests of individuals, the operation of which is prohibited by Regs. Section 1.501(c)(3)-1(d)(1)(ii). As such you do not qualify for tax exemption as an organization described in section 501(c)(3) of the Code.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instruction 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 a date 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

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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."

Sincerely yours,

[REDACTED]