

[Redacted]

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MAY 30 1995

CERTIFIED MAIL

Dear Applicant:

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

The information submitted indicates the organization was formed to support the [Redacted] through monies raised from fundraisers. According to the information describing your activities, the funds raised are used to purchase necessary materials and equipment for the chorus and also to help underwrite expense involved in attending chorus competitions and travel to and from chorus performance.

The organization's income is derived primarily from student fees (spring trip), fundraisings and student activity fees. The funds are expended to cover the spring trip, choral equipment, chorus activities, awards and plaques, music and uniforms.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of organizations which are organized and operated exclusively for charitable, religious, 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(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(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]					
Surname	[Redacted]	[Redacted]					
Date	[Redacted]	[Redacted]					

Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purpose if more than an insubstantial part of its activities serve a private interest.

"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, regardless of an established financial need.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was 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, because it was created and operated for the benefit of specified persons.

Likewise, in Revenue Ruling 57-449, published in Cumulative Bulletin 1957-2 on page 622, a trust set up to pay a certain sum of all individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust, because the beneficiaries were a group of identifiable individuals.

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious, or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d. 632, (7th Cir. 1963).

Revenue Ruling 67-367, 19672, C.B. p. 188, held that an organization which operated a "scholarship" plan for making payments to pre-selected, specifically named individuals did not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Our review of the information submitted indicates that your organization meets the organizational test required to be exempt under section 501(c)(3) however, you have not established that you are operated exclusively for charitable or other stated purposes under section 501(c)(3).

In your response to our request for additional information dated March 23, 1995, you indicated that, of the profits raised through fundraising, the monies were divided between the [redacted] general accounts and the individual student's accounts. You further stated that the monies deposited into student accounts are used solely for [redacted] as long as the students are in school. You also stated that, if a student graduates, the amount can be applied towards the account of a younger brother or sister, or distributed to a college the student attends.

You described your criteria for selecting recipients of your awards as being based upon the students involvement with [redacted], their leadership skills, their vocal abilities, attendance at rehearsals and their participation in [redacted], etc. While it is not mandatory for students to engage in fundraising in order to participate in [redacted], they must make contributions to their student accounts from other sources (i.e. parents, relatives, part-time jobs, etc.), or they are unable to attend trips.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

The "commensurate test" of Revenue Ruling 64-182, published in Cumulative Bulletin 1964-1 on page 186 requires that a charitable organization with fund raising (unrelated trade or business) income as its principal source of income must carry on a charitable program of grants and contributions commensurate with its financial resources.

The "commensurate test" requires that organizations have a charitable program that is both real and substantial. Moreover because you are organized to specifically benefit a pre-selected class of individuals, you are not considered operating exclusively for charity since more than an insubstantial part of your activities serve private interests. This is true even though your activities are in support of an educational purpose and by definition, may be considered charitable.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust 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."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

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

Sincerely

Paul A. Harrington

District Director

Enclosure: Publication 892

cc: [REDACTED]