

Internal Revenue Service

Department of the Treasury

District Director Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

[REDACTED]

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

IN REPLY REFER TO:

DATE: JUL 16 1987

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition or exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The organization incorporated in [REDACTED] to supply money, goods or services to the poor, provide gifts, grants or loans to other organizations and provide non financial services or facilities to other organizations.

The governing body of the organization is [REDACTED]

Income will be derived from "contributions" in the form of [REDACTED] and expended for contributions/grants.

You stated that the purpose of the organization is: " to promote alternative trade and to use the proceeds to help the poor, help fund educational projects, and implement programs which foster an attitude towards advancing world cultures. Alternative trade is the practice of socially responsible exchanges that benefit the producers. Alternative trade seeks to preserve and nurture our environment by firmly encouraging farmers to use organic methods, spread freedom throughout the world by instituting democratic practices; create fair and honorable trade by connecting the farmer directly to the consumer. With the partnership formed through alternative trade, farmers gain knowledge about international business, the market place, promotion and finance. From the alternative trade premiums of [REDACTED] farmers eat better and have health care, homes, education, improve their community, and they can dream about a better future. The Foundation will give alternatively [REDACTED] to its donors in order to spread this concept throughout the United States".

... coffee to

[REDACTED]

In this scenario, their donations would not be tax deductible as they would be receiving \$ [REDACTED], but the producers of [REDACTED] would be supported, and we should be able to fund other non profits [REDACTED] a pound involved in education as we get [REDACTED] at a special rate of \$ [REDACTED] a pound through a special arrangement we have with [REDACTED] in the United States." "We largest [REDACTED] advocate for alternative trade by spreading [REDACTED] throughout the United States by giving it away in exchange for [REDACTED] throughout the United States by giving it away in exchange for [REDACTED] charitable donations to our sponsor donors/companies. It is our hope that through this kind of giving, people will become acquainted with alternative trade as our donors use [REDACTED] throughout their offices and or in consumer products they offer to the public".

[REDACTED] we give to our donors after they give us a donation represents sales for the farmers. As the farmer experiences higher sales, the farmer is able to invest more and more in the community, roads, etc. In addition, the farmer also benefits in that more and more people will be able to realize that farmers need assistance with their daily meals and day to day living as well".

The organization will offer "competitive prices" in that [REDACTED] cost as much as \$ [REDACTED] to \$ [REDACTED] a pound. But you will sell it to your donors for \$ [REDACTED] a pound with a purchase price from, your supplier, of \$ [REDACTED] a pound.

Subsequent information revealed that [REDACTED] may make donations to the [REDACTED] from time to time. Producers will receive bonus funds if they produce organically. The bonus will be [REDACTED] to better their community; an extra [REDACTED] if they grow organically and an [REDACTED] sold will be given to the coffee producers.

You anticipate receipts will be from companies who sell [REDACTED] purchase of [REDACTED] to the United States. Your budgeted expenses will be the trade. [REDACTED] from suppliers who agree to participate in alternative

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for 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 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).

[REDACTED]

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's assets will be considered dedicated to an exempt purpose 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 the Federal government, or to a State or local government, for a public purpose.

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. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations 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 purposes, if more than an insubstantial part of its activities serve private interests.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operations of such trade or business are in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of activities which are in furtherance of one or more exempt purposes.

[REDACTED]

In Ralph H. Eaton Foundation v Commissioner, 55-1 USTC, 24, the court determined that an organization that engaged in commercial sales activities and donated its profits to charitable organizations was not exempt under section 501(c)(3). The courts held that: "while the second purpose of the organization was charitable, the first purpose did not meet the organized and operated exclusively for charitable purposes requirements". The organization did not qualify for exemption under section 501(c)(3) of the Code.

In Randall Foundation v Riddell, F. 2d 803, (8th Cir. 1957), an organization was established to operate as a nonprofit charitable foundation. Income to the organization came primarily from the sales of shares of stock donated by the foundation creator. The court held that this organization was primarily engaged in operating a commercial investment business and also stated that "a corporation which in its inception engages in trade, business or speculation and has a vague charitable design, does not come within the terms of the statute".

Revenue Ruling 67-325, published in cumulative Bulletin 1967-2, page 115, citing a legal principle discussed in Evans v Newton, 382 US 296 at 308-309, states in part that: "..... a trust to benefit the well being of members of the community may be deemed charitable if it is created for the benefit of the members of the community generally and not merely for the benefit of a class of person". A trust is considered charitable because it related to all inhabitants of a particular community and not to any classification of such inhabitants or any group by distinction of race, creed, social rank, wealth, poverty, occupation or business". Restatement Trusts, Sec. 1375 comments A and C (1935); Restatement (second) Trusts, Sec 3 TS comments A (1956).

Based upon the facts presented, we have determined that your organization does not qualify for exemption.

You have referred to [REDACTED] as "[REDACTED]", although the company you have an "arrangement" with is the [REDACTED], farming is a trade or business and the individuals you have targeted are/will receive substantial private benefit through your promotion of their businesses and by increasing their personal wealth. Reg. 1.501(c)(3)-1(d)(1)(ii) and Revenue Ruling 67-325.

Although you stated that your purpose is charitable, as in Ralph H. Eaton and The Randall Foundation, you are engaged in the commercial sales of a business carried on for profit. In fact, your "contribution" is not as such, as you clearly stated in your letter dated December 27, 1996, the value of the product sold exceeds the purchase value thereby nullifying the "contribution". The true purpose of the organization is to [REDACTED]

[REDACTED]

[REDACTED]

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

Our review of your application indicates that your Articles of Incorporation do not meet the organizational test required to be recognized as tax exempt under Section 501(c)(3) since you have not made any provision for the distribution of your assets to qualified section 501(c)(3) organization in the event your organization dissolves.

You have also failed the operational test required under this section of the Code because your activities primarily serves the private interest of designated individuals, in addition, to being a commercial business.

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 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."

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

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

Sincerely,

Paul M. Harrington  
District Director

Enclosure: Publication 892

cc: [REDACTED]