

Internal Revenue Service  
District Director

Department of the Treasury

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: NOV 16 1997

Person to Contact:  
[REDACTED]

Contact Telephone Number:  
[REDACTED]

Refer Reply to:  
[REDACTED]

Employer Identification Number:  
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated in [REDACTED]. The organization was formed for the purposes of spreading the Catholic faith through the sale of religious literature and artifacts (i.e. statues, plaques, banners, rosaries, etc.).

[REDACTED] primary activity is to operate a religious book store. It will sell books and other items at 100% mark up over the cost. The book store will be staffed by volunteers. All the income will be given to two exempt organizations to support their efforts to feed and shelter the homeless. In addition, the corporation will support prayer groups, and work with the catholic school system to distribute literature and a newsletter.

The corporation will receive income form the gross receipts from the books store, the newsletter and donations.

The expenditures which the organization will incur will be for gifts paid to the two charities, salaries, advertising, insurance, displays, cost of goods sold, etc.

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, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(b)(1) of the Regulations provides that an organization will meet this test if its governing instrument limits its purposes to those provided in section 501(c)(3) of the Code and do not expressly empower the organization to engage in activities which do not it self further one or more of the purposes specified in Section 501(c)(3) of the Code.

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, for example, if, upon dissolution, such assets would by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State 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 purposes organization was organized.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court state that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all its profits are payable to one or more organizations from taxation under section 501.

Section 1.502-1(a) of the Regulations states that for the purposes of section 502 as applied to organizations described in Section 501(c)(3) in determining the primary purpose for which an organization is operated, consideration is to be given to the relative size and extent of the trade or business activities of the organization and to whether it has any significant

charitable activities other than the required payment of all of its profits over to one or more other charitable organizations that are exempt under section 501(c)(3).

Section 509(a)(3) of the Code excludes from the definition of a "private foundation" an organization which:

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2).

In Revenue Ruling 54-305, 1954-2 C. B. 127 a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of its otherwise unrelated members who are exempt from Federal income tax as charitable organizations, is engaged in business activities which would be unrelated activities if carried on by any one of the tax-exempt organizations served. Therefore, the corporation is not entitled to exemption.

In Revenue Ruling 55-449, 1955-2 C.B. 599, the construction and sale of 80 houses by a charitable foundation, over a period of 18 months for the sole purpose of raising funds for the support of a church constitute an unrelated trade or business. Such activity was the primary activity of the foundation, is not entitled to exemption..

In Revenue Ruling 73-164, 1973-1 C.B. 223, described a church-controlled commercial printing corporation whose business earnings are paid periodically to the church, but which has no other significant charitable activity, is a feeder organization as described in section 502 of the Code and does not qualify for exemption under section 501(c)(3). The organization was formed by the church to promote and provide financial support for the charitable programs of the church through the performance of certain printing functions for the church and production of income for the church use.

Similar to the organizations described in the above revenue rulings, your primary activity is to operate a bookstore for the sale of religious materials is considered to be an ordinary trade or business carried on for profit; eventhough, profits from such activity is distributed to exempt organizations. Such an entity is described as a feeder organization and does not qualify for exemption under 501(c)(3) of the Code.

Also, your organization fails to qualify as an organization described under 509(a)(3) of the Code, since, you do not meet any of the relationship tests described under section 509(a)(3).

The Articles of Incorporation of the [REDACTED] does not limit its purposes to those described under section 501(c)(3) of the Code, including a dissolution provision dedicating assets to an exempt purpose. Therefore, the organization fails to meet the organizational test requirements of Section 1.501(c)(3)-1(b).

An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplishes one or more exempt purposes specified in section 501(c)(3). Your organizations principal income is derived from a trade or business. Therefore, the [REDACTED] fails to meet the operational test requirements of section 1.501(c)(3)-1(c).

It has been concluded that your organization fails to meet both the organizational and operational tests required to receive exempt status under section 501(c)(3) of the Code. Also, we have concluded that you ate a feeder organization as described in section 502 of the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

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."

Sincerely yours,

*Harold J. Hoff*  
District Director

Enclosure: Publication 892