

Internal Revenue Service  
District Director

Department of the Treasury

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: MAR 5 1998

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Employer Identification  
Number:

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 formed on [REDACTED]. The purposes for which the trust was formed are as follows:

[REDACTED] shares of [REDACTED] to be held in trust for the benefit of [REDACTED] or its successors. The net income of the Trust Fund, to be known as the [REDACTED], shall be paid annually to the [REDACTED] of [REDACTED] or its successors to be used by the governing board for general upkeep of the Cemetery in which the parents and grandparents of [REDACTED] are buried.

The information submitted with your Form 1023 application states that the net income of the trust is paid annually to [REDACTED] for general upkeep of the cemetery. In addition, the [REDACTED] is a public cemetery.

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(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 stated 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 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Revenue Ruling 59-190, 1959-1 C.B. 15 the IRC 170(c)(5) provides for the deduction for Federal income tax purposes of contributions to cemetery companies in IRC 501(c)(3). However, payments made to cemetery company as part of the purchase price of a burial lot or crypt, even through irrevocably dedicated to the perpetual care of the cemetery as a whole, are not deductible.

Revenue Ruling 65-6, 1965-1 C.B. 229 - hold an organization which owns, operates, and maintains a cemetery for the exclusive burial of lineal descendants of particular family and those who intermarry with those descendants, and which is supported by funds from the descendants, is not exempt from Federal income tax under either IRC 501(c)(3) or 501(c)(13).

Like the organizations described in Revenue Rulings 59-190 and 65-6, the donations from your trust to [REDACTED] for the general upkeep of this cemetery (similar to perpetual care of the cemetery) as a whole are not considered a tax-exempt purpose. Therefore, we have determined that you are not organized nor operated exclusively for exempt purposes as stated in section 501(c)(3) 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.

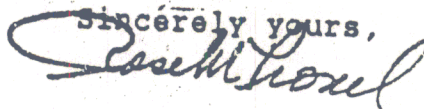
Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

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,



District Director

Enclosure: Publication 892