

Date: FEB 7 1997

Person to Contact:

Telephone Contact Telephone Number:

Refer Reply to:

EO: Employer Identification Number:

**CERTIFIED MAIL**

Dear Applicant:

Thank you for using Return Receipt Service

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

Consult postmaster for fee.

4a. Article Number	<input type="checkbox"/> Certified
4b. Service Type	<input type="checkbox"/> Insured
<input type="checkbox"/> Registered	<input type="checkbox"/> COD
<input type="checkbox"/> Express Mail	
<input type="checkbox"/> Return Receipt for Merchandise	
7. Date of Delivery	
8. Addressee's Address (Only if requested and fee is paid)	

**SENDER:**  
 Complete items 1 and/or 2 for additional services.  
 Complete items 3, 4a, and 4b.  
 Print your name and address on the reverse of this form so that we can return this card to you.  
 Attach this form to the front of the mailpiece, or on the back if space does not permit.  
 Write "Return Receipt Requested" on the mailpiece below the article number.  
 The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:  
 5. Received By: (Print Name)  
 6. Signature: (Addressee or Agent)

**Domestic Return Receipt**

PS Form 3811, December 1994

application for tax-exempt status under Internal Revenue Code.

disclosed that the organization was under the [redacted] any Act on [redacted]

information describes the organization's

[redacted] is to engage in activity for which [redacted]

(a) rendering "professional services" as and (b) transacting the business of an a surety or indemnity company. Except as the foregoing statement is not intended to any manner the exercise of all powers [redacted] by the Act.

proposed activities will be retaining a advisor who will invest the funds received in either an equity or debt portfolio of market account, or a combination of these conducted by the church members.

churches and affiliated organizations that [redacted] are eligible to become members.

Presently the organization has no [redacted] members. The organization expects to admit [redacted] members upon receiving notification from the Internal Revenue Service that it qualified as a 501(c)(3) organization.

Pursuant to Sections 5.2.C. and 5.2.D. of the organization's Operating Agreement, the [redacted] members will have no rights in management of funds, vote on any matter concerning the fund, bind the fund, and either directly or indirectly nominate elect or remove a manager to or from the board of managers. Section 5.2. e. stipulates that each member church must maintain a minimum investment of [redacted] or lose its membership, and section 14.3 stipulates that each member irrevocably waives any right that it may have to maintain any action for participation with respect to the property of the fund.

The organization will be controlled by a board of managers who are members of the member [redacted]

The organization will be supported by [redacted] income. Its disbursements will be for [redacted] management fees, custodian fees, legal fees, auditing fees, consulting fees and amortization of organization costs. The organization will neither seek nor receive financial support. The fees charged to the organization by the registered investment advisor and the custodian are determined by contract in accordance with market rates. These fees will be allocated to the member churches on a pro-rated basis in accordance with their respective investment account balances.

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.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Section 1.501(c)(3)-1(d)(5) of the Regulations defines a "scientific" organization as one carrying on scientific research in the public interest; this includes research carried on the purpose of discovering a cure for a disease, research for the purpose of aiding in the scientific education of college or university students, and research for the purpose of obtaining scientific information to be published.

Section 1.501(c)(3)-1(d)(5)(iii) of the Regulations states that "scientific research will be regarded as carried on in the public interest (a) if the results of such research (including any patents, copyrights, processes, or formulae resulting from such research are made available to the public on a nondiscriminatory basis; (b) if such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or (c) if such research is directed toward benefitting the public."

Section 1.501(c)(3)-1(b)(4) of the Regulations states 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 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, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 69-528, C.B. 1969-2, 127, holds that an organization regularly carrying on an investment service business that would be unrelated trade or business if carried on by any of the exempt organizations on whose behalf it operates, is not exempt under section 501(a) of the Code. The organization receives funds from the participating exempt organizations, invests in common stock, reinvests income and realized appreciation, and upon request liquidates a participant's interest and distributes the proceeds to the participant. The organization is free from control of the participants and has the absolute and uncontrolled discretion in management of funds, vote on any matter concerning the funds, bind the fund, etc. In addition, a participant's ownership interest in the property does not entitle such participant to the right to call for a partition, division, etc. of the property. It was held that providing investment service on a regular basis for a fee is trade or business ordinarily carried on for profit. Further, if the services were regularly provided by one tax-exempt organization for other tax-exempt organizations, such activity would constitute unrelated trade or business.

Revenue Ruling 71-529, C.B. 1971-2, 234 holds that a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code. The organization receives capital from the participating exempt organizations, which capital is then placed in one or more common funds in the custody of various banks. The funds are invested upon advice of independent investment counsel retained by the organization. Most of the operating expenses of the organization, including the costs of the services of the investment counselors and the custodian banks, are paid for by grants from independent charitable organizations. The participating exempt organizations pay only a nominal fee for the services performed. These fees represent less than fifteen percent of the total cost of operation. It was held that by performing this function for the participating exempt organizations for a charge that is substantially below cost, the organization is performing a charitable activity within the meaning of section 501(c)(3) of the Code.

Providing [redacted] services on a regular basis for a fee is a trade or business ordinary carried on for profit. The fact that the services are provided solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3) of the Code. Furthermore, if the services were regularly provided by one tax-exempt organization for other tax-exempt organizations, such activity would constitute unrelated trade or business. Therefore, like the organization in Revenue Ruling 69-528, the instant organization is not exempt under section 501(c)(3) of the Code since it is regularly carrying on the [redacted] of providing [redacted] services that would be unrelated trade or business if carried on by any of the tax-exempt organizations on whose behalf it operates.

In addition, to satisfy the "operational test" the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations. Therefore, unlike the organization in Revenue Ruling 71-529 which provided its services at rates substantially below cost, the instant organization will provide its services at market rates. Consequently, the instant organization's activities are not exclusively charitable within meaning of section 501(c)(3) of the Code because furnishing [REDACTED] services at market price lacks the donative element necessary to establish this activity as charitable.

It is further determined that your formation as a [REDACTED] fails to meet the organizational test as required pursuant to Federal Income Tax Regulations section 1.501(c)(3)-1(b)(1).

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, [REDACTED].

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. Kuff*

District Director

cc: [REDACTED]

Enclosure: Publication 892