

INTERNAL REVENUE SERVICE  
District Director  
McCaslin Industrial Park  
2 Cupania Circle  
Monterey park, CA 91755

Department of the Treasury  
Western Key District

CERTIFIED MAIL

FEB 20 1998

Date: FEB 10 1998

Employer Identification Number:  
[REDACTED]

Case Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Refer Reply to:  
[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (Code). Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

FACTS:

The information submitted with your application shows that you were incorporated on [REDACTED]. You amended your articles of incorporation [REDACTED] to a non-profit corporation.

The purpose of your organization as stated in your amended articles of incorporation reads in part as follows:

"...The specific and primary purpose for which this corporation is formed is to engage in the solicitation, receipt and administration of property and from time to time, to disburse such property and income therefrom to (i) develop, improve and advance the economic, political, social, cultural, linguistic and educational interests and conditions of [REDACTED] workers and their families, (ii) provide non-profit, low cost legal services to [REDACTED] speaking immigrant workers and their families, (iii) establish and maintain a system of family oriented medical and related health care services, (iv) provide educational, recreational, social and vocational services, (v) gather, publish, disseminate and distribute educational material to the public, (vi) develop and operate low income housing projects or other charitable purposes in accordance with Section 501(c)(3) of the Internal Revenue Code."

Code	Initiator EP/EO:TB:REV: ___	Reviewer EP/EO:TB:REV	Reviewer EP/EO:TB	Reviewer EP/EO	Reviewer DD	Reviewer EP/EO:TB:REV ___
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1117 Correspondence Approval and Clearance Department of the Treasury/Internal Revenue Service

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The purposes of your organization according to your application, Form 1023 are:

- 1) prepare documents to assist persons to become U.S. citizens and instruct them in educational endeavors. These services are provided by both paid employees and volunteers;
- 2) complete forms and provide paralegal services to low income persons;
- 3) publish weekly newspaper;
- 4) conduct periodic health screenings and fairs free of charge to the public;
- 5) advocate improved housing;
- 6) organize seminars and meetings for professionals.

The above constitutes █% of the organization's activities. The other █% of the activities are management and administrative. The organization's support is from fees for services, government grant and contracts, advertising fees, donations and fundraising.

The organization's newspaper titled the ██████████ is published on a monthly basis rather than a weekly basis as stated in the application, Form 1023. The newspaper contains advertising. The income from advertising is an unrelated business activity. According to a letter from the organization the income from the newspaper was about \$ ██████████ for the period from ██████████ to ██████████ and \$ ██████████ for the period from ██████████ to ██████████. According to the figures shown in the application, Form 1023, the income from the newspaper is \$ ██████████ for the period of ██████████ to ██████████, or █% of the organization's income for that year, \$ ██████████ for the period ██████████ to ██████████ or █% of the organization's income for that year.

**ISSUE:**

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code (Code)?

**LAW:**

Section 501(c)(3) of the code describes certain organizations exempt from income tax under code section 501(a) and reads, in part as follows:

"... (3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur-sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence

legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (Regs) 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 one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The Supreme Court stated in Better Business Bureau v. United States, 326 U.S. 279, 66 CT. 112, 90 L. Ed 67 that "... the presence of a single (noncharitable) purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly (charitable) purposes."

#### ANALYSIS AND CONCLUSION:

The publishing of the newspaper, advocating improved housing and organizing meetings and seminars for professionals are not Code section 501(c)(3) activities, consequently, [redacted] percent of your activities are non Code section 501(c)(3) activities. You have received more than an insubstantial amount of income from a non-exempt activity in the form of advertising from the organization's newspaper. Although there is no definition of substantial or insubstantial stated in the Code or Regs, the term "substantial" has been used in 53.4942 of the Regs as 85% or more and Rev. Rul. 73-248, 1973-1 C.B. 295 has held that substantially all means 85% or more. Conversely, insubstantial would then be construed to mean 15% or less. For year ended [redacted] your income from a non-exempt activity was [redacted]%, for year ended [redacted] your income from a non-exempt activity was [redacted]% and for year ended [redacted] your income from a non-exempt activity was [redacted]%. Even though you distributed your newspaper for free, the newspaper itself is not an educational or charitable exempt activity.

Because you have a substantially noncharitable purpose of printing a newspaper and the majority of your income appears to be from advertising income, you are not "operated exclusively" for an exempt purpose pursuant to section 1.501(c)(3)-1(c)(i) and 1.501(c)(3)-1(d)(i)(ii) of the Regs. By failing to meet the operational test you are not exempt under section 501(c)(3) of the Code.

Based on the above, it is concluded that the organization has more than an insubstantial amount of non-exempt activities. Therefore, you are not operated exclusively for one or more exempt purposes within the meaning of section 1.501(c)(3)-1(c)(1) of the Regs.

Accordingly, we find that you do not qualify for exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on form 1120.



If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and 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 and will then become our final determination.

Section 7428(b)(2) of the Internal Revenue Code provides in part that, " 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."

Sincerely yours,

  
Steven Jensen  
District Director

Enclosures: Form 6018  
Publication 892