

INTERNAL REVENUE SERVICE
District Director

DEPARTMENT OF THE TREASURY

[REDACTED]
McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755

Person to Contact:

[REDACTED]
#: [REDACTED]
Telephone Number:

[REDACTED]
DLN:

[REDACTED]
EIN:

Date: OCT 07 1999

[REDACTED]
[REDACTED]
[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (IRC). For the reasons stated below, we conclude that you do not qualify for tax exemption under this section. Your protest rights are also explained below.

FACTS:

You were incorporated [REDACTED] in the state of [REDACTED]. You filed your Form 1023, Application for Recognition of Exemption, on [REDACTED].

Your Articles of Incorporation state your initial business as: "Said corporation is organized to promote and protect the best interests of the residents of [REDACTED]."

You state on the Form 1023 that your primary activity is to improve and protect the [REDACTED] the residents live on. In a letter to the Revenue Agent, you stated there are no dues and all work done is on a volunteer basis. You go on and state that: "The money and time spent is for the improvements on roads, community meetings, free library and so on. We have a [REDACTED] that was donated on a [REDACTED] acre parcel that was also donated. A lot of the donations have gone to repair and improve the [REDACTED]."

You also received a \$[REDACTED] donation from [REDACTED] [REDACTED] which adjoins the [REDACTED] [REDACTED] with the money being used on the [REDACTED] only. You also stated that the [REDACTED] [REDACTED] informed you they could not deduct the donation from their income tax return and suggested the [REDACTED] [REDACTED] receive exemption in order for [REDACTED] to donate more money.

You stated: "[REDACTED] seemed interested in helping us with the roads such as maybe donating a grader which we need very much. We have a lot of people who have to be able to get to their work place. All of our roads are dirt and after a heavy rain the roads are very bad. All of our roads are not maintained except the one going to [REDACTED]"

In a second letter to the Revenue Agent, you stated: "We have decided that we would like the 501(c)(3) status. I ... hope this information will help us to accept large donations so the roads may be maintained regularly."

LAW:

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

"(3) Corporations, and any community chest, fund, or 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 involve the provision of athletic facilities or equipment), 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 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(a)(1) of the Income Tax Regulations (Regulations) provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated

exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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 one or more of such 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

In *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Revenue Ruling 72-102, 1972-1 C.B. 149, holds that certain nonprofit organizations of a type usually called homeowner's associations, which are formed to administer and enforce covenants for preserving the architecture and appearance of a residential development and to maintain streets, sidewalks, and other non-residential, non-commercial properties in the development of the type normally owned and maintained by a municipal government, may qualify for exemption under section 501(c)(4) of the IRC.

ANALYSIS:

Our analysis of your case indicates that your [REDACTED] is located in an area which needs, or could use, improvements to roadways. Your correspondence to the Revenue Agent indicated as much. This is a direct benefit to those who are members and residents of the Association.

Your purposes and activities are similar to those of the organization described in Revenue Ruling 72-102. Therefore, you do not qualify for exemption as an organization described in section 501(c)(3) of the IRC.

CONCLUSION:

We have concluded you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the IRC. Accordingly, you are required to file income tax returns on Form 1120 annually with your District Director.

Contributions to you are not deductible under section 170 of the IRC.

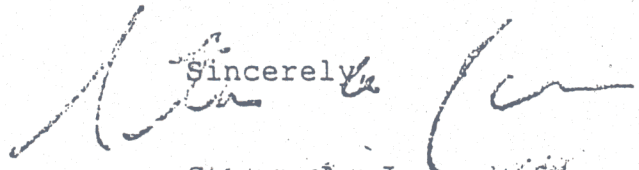
If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing.

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 the 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 IRC 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."

Sincerely,



Steven A. Jensen
District Director

Enclosures: Form 6018
Publication 892
Notice 1214