

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

DEPARTMENT OF THE TREASURY
Western Key District

CERTIFIED MAIL

Date:

FEB 17 1999

Employer Identification No:
[REDACTED]

Case Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Refer Reply :
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (Code).

FACTS

The information submitted discloses that you were incorporated under the nonprofit laws of [REDACTED]. Article III of your Articles of Incorporation states the purpose for which the corporation is organized as "organized exclusively for the charitable and educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code."

The application, Form 1023, indicates that all organization activities are fundraisers conducted by members of the organization. Fundraisers include: sales of food items, used clothing, wreaths, gymnasts photos, and sport pins, car washes, an auction and a coupon drive.

The [REDACTED] document states the following:

- Parents are automatically "active members" in the organization by virtue of having a child who is a [REDACTED] competitive Team Gymnast.
- The main function of the organization is "to help with financial assistance of all [REDACTED]"

FEB 1999

- There are approximately [REDACTED] competitive team members.
- An [REDACTED] system is in place. Each gymnast is responsible for their share of the annual budgeted meet fee per gymnast and the per gymnast coaches expenses for the meets. Payments are due trimester and credited to the gymnast's (travel) account.
- Members are expected to participate in the fundraisers.
= Funds raised go into the general account and reduce each gymnasts [REDACTED].
- If a member finds a business to sponsor their gymnast, [REDACTED] % goes into the general fund and [REDACTED] % gets credited to the gymnast's account [REDACTED].
- If a gymnast quits during the season, the [REDACTED] may not be able to be refunded as fees must be paid in advance to the meets. If the amount left over in the gymnast's account was fund-raised, the amount is not refundable and may be dispersed to the general fund or to another gymnast's account of choice.

The letter dated [REDACTED] states that contributions are unsolicited and from "recreational parents, grandparents and relatives." In addition, individuals have donated through United Way on the organization's behalf. Distribution of funds to the organization is pending Code section 501(c)(3) approval.

ISSUE

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code?

LAW

Section 501(c)(3) of the Code 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 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 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 statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the income tax Regulations (Regs), provides that in order to be exempt as an organization described in Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

1.501(c)(3)-1(b)(1)(i) of the Regs 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 in 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 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 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(c)(2) of the Regs provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals.

Regs section 1.501(a)-1(c) defines "private shareholders or individuals" as referring to persons having a personal or private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regs provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

ANALYSIS AND CONCLUSION:

The organization operates to provide financial assistance for the competitive team members of [REDACTED]. [REDACTED] is a for-profit entity which provides gymnastics lessons for a fee. Competitive team members (compete at gymnastics meets) are separately responsible for the fees

to attend meets as well as fees for meet coaching. Parents of team members are automatically members in the organization. The organization has instituted an [REDACTED] system to handle the collection of the fees and crediting to each gymnast's account. Each gymnast must pay their fees by the trimester. The organization intends to reduce the required fee payments by engaging in fund raising activities.

The Regs provide that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals. The organization's system of accounts with payments credited to individual gymnasts as well as gymnast control over the account indicates inurement of benefits. In addition, it has not been demonstrated that the organization is operated for public rather than private interests. On the contrary, parents of the gymnasts are automatically members of the organization and ultimately responsible for the meet and coaching fees. Any contributions received by the organization reduce their respective liabilities. It was stated that contributions are primarily from "recreational parents, grandparents and relatives."

Therefore, based on the information submitted, we have concluded that your organization is not entitled to exemption from Federal income tax as an organization described in Code section 501(c)(3). The organization is not operating exclusively for one or more exempt purposes as there exists inurement to individuals as well as the operation of the organization for a private rather than a public interest. Regs section 1.501(c)(3)-1(c)(2) requires that there is no inurement to the benefit of private shareholders or individuals and Regs section 1.501(c)(3)-1(d)(1)(ii) requires that the organization operate for a public rather than a private interest.

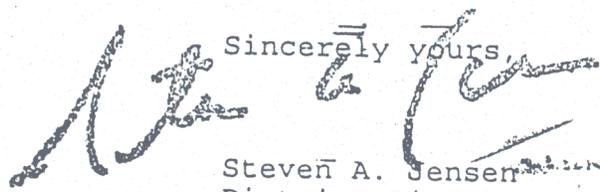
Until such time as you establish your exempt status for Federal income tax purposes, contributions made to you are not deductible under section 170 of the Code.

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, "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,
Steven A. Jensen
District Director

Enclosure(s):
Form 6018
Publication 892

Form 6018
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare In
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- Denial of exemption as an organization described in Internal Revenue Code Section 501(c)()
- Revocation of exemption, effective
- Modification of exempt status, from section 501(c)() to 501(c)(), effective
- Classification as a private foundation (section 509(a)), effective
- Classification as a non-operating foundation (section 4942(j)(3)), effective
- Classification as an organization described in section 509(a)(), effective
- Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date