

Internal
Director

Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201

Date: APR 16 2001

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven Miller

Director, Exempt Organizations

Enclosures:
Attachment I
Publication 892
Form 6018

Enclosure I
Reasons for Denial of Exempt Status

[REDACTED]
[REDACTED]

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated pursuant to [REDACTED]. Your Articles of Incorporation do not provide that you are organized for charitable purposes within the meaning of Section 501(c)(3) of the Code. However, you have submitted a statement signed on [REDACTED] that you will amend your Articles to meet the organizational test under section 501(c)(3).

Your purpose provided in the Rider to your Articles of Incorporation is stated as follows:

To provide suitable and adequate meeting facilities primarily for [REDACTED] but also for [REDACTED], [REDACTED] and other pertinent meetings

Our letter dated [REDACTED], requested a detailed description of your past, present, and future activities. Your response dated [REDACTED] states:

[REDACTED] owns, holds, and operates the premise located at [REDACTED], [REDACTED] in [REDACTED]. The corporation is a subsidiary of the [REDACTED] and has since its inception exists to provide meeting space to [REDACTED] for its [REDACTED] business and community service activities. The Corporation will continue to serve the [REDACTED] and the community at large to provide for inexpensive meeting and facility space. The facility is rented to [REDACTED] at below market rates.

Our letter dated [REDACTED] requested a detailed description of your facility. Your response dated [REDACTED] states:

Our facility is a three story stone building that was previously a bank facility and we currently lease the first floor to [REDACTED]. We utilize the second floor for meeting spaces and rent it to various non-profit and civic community organizations to hold monthly meetings. The third floor is utilized as a computer lab, storage and meeting space.

Your sources of financial support will consist of rental income from [REDACTED], rental income from other organizations which are not necessarily described in section 501(c)(3) of the Code, fundraising activities consisting of socials, music concerts, sales of local artists crafts, and contributions from members of the [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a) of the Income Tax 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 for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b) of the Income Tax Regulations provides that an organization is organized exclusively for the required purposes only when its charter or other creating document authorizes it to carry on only activities that are in furtherance of those purposes. An organization is not organized exclusively for exempt purposes if its articles expressly empower it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is not broader than the purposes specified in section 501(c)(3). Also, an organization is not organized exclusively for the required purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(c) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it primarily engages in activities which accomplish exempt purposes.

Section 1.501(c)(3)-1(e) of the Income Tax Regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as

a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 69-572, 1969-2 C.B. 119, describes an organization that was created to construct and maintain a building to house member agencies of a community chest. Membership in the organization was composed of the board of directors of the community chest, and all of the agencies occupying the building were exempt under Internal Revenue Code Section 501(c)(3). Construction expenses for the building were financed by contributions from the general public and by issuance of non-interest bearing obligations to other charitable organizations. The building was located on city land requiring only nominal rental payment. The revenue ruling states that office space in the building was leased to member agencies at a rate that makes rental income equal total operating costs with no allowance for depreciation. The revenue ruling further states as a fact that the rental rate is substantially less than commercial rates for comparable facilities. Another given fact is that the building contains a large central meeting room for the free use of lessees and other interested community chest agencies.

Utilizing essentially a facts and circumstances approach, the revenue ruling concludes that the organization qualifies for exemption under Internal Revenue Code Section 501(c)(3). It is noted that the performance of a particular activity that is not inherently charitable may nonetheless further a charitable purpose. The following factors appear to be the basis on which a favorable result was reached:

1. The organization's operations materially aid its various tenants in the performance of their charitable functions.
2. All tenants receive a direct financial benefit in that rental charges made are substantially less than the general commercial rate for comparable facilities.
3. Providing housing for a number of member agencies at one convenient central place enables the agencies to make frequent use of volunteer labor on an efficient basis.

4. There is a close connection between the organization and the charitable functions of the tenant organizations.
5. Rental rates are substantially below their fair rental value.
6. The organization's operations result in amounts only sufficient to meet annual operating costs.

Based on all these considerations, the organization's purposes and activities indicated that it was not acting merely in the capacity of a passive landlord. Rather, the organization provided the general public with a unique combination of services and facilities not otherwise available through ordinary commercial channels. Also significant was the fact that the organization's rental charges were far below normal commercial rates and thus below the amount that tenant organizations would otherwise have to pay in order to obtain necessary office space elsewhere, thereby enabling the tenants to devote greater sums of money to their charitable activities.

Revenue Ruling 71-529, 1971-2 C.B. 234, describes an organization formed to aid organizations exempt under Internal Revenue Code section 501(c)(3) by assisting them to manage more effectively their endowment or investment funds, including the making of arrangements for more effective handling of their funds, and by obtaining contributions to cover all or part of the costs of the management of such funds. Only colleges and universities exempt under Internal Revenue Code 501(c)(3) could become members in the organization whose board of directors consisted of representatives of the member organizations. These member organizations provided capital to the organization, which placed these amounts in one or more common funds in the custody of various banks. The common funds were controlled and managed by the organization, which sought the advice of independent investment counsel in investing the funds. The organization's operating expenses were paid for by grants from independent charitable organizations. The member organizations paid only a nominal fee for the services performed. The revenue ruling states as a fact that these fees represent less than 15 percent of the total costs of operation.

The revenue ruling concludes that the organization qualifies for exemption under Internal Revenue Code Section 501(c)(3), and notes that the organization performs an essential function for charitable organizations, and that by performing this function for a charge that is substantially below cost the organization is

performing a charitable activity. By operating in the manner described, the organization was performing a function for charitable organizations by providing essential services, i.e., investment management, to organizations described in Internal Revenue Code Section 501(c)(3) at no cost to the organization or at a cost substantially below the ordinary cost of procuring such services.

Revenue Ruling 72-369, 1972-2, C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. The ruling emphasizes that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. Further, providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

You can be distinguished from the organization described in Revenue Ruling 69-572. You do not lease your facility exclusively to 501(c)(3) organizations. You lease the first floor of your facility to [REDACTED]. In addition, your listing of activities and events held at your facility include meetings of social clubs, political forums, as well as, birthday and graduation parties. You do not provide a direct financial benefit to your lessees by providing rental charges substantially less than the general commercial rate for comparable facilities. You lease the first floor of your facility to [REDACTED] per month. You lease meeting rooms to other non-profit and civic organizations for \$ [REDACTED] per meeting.

You can be distinguished from the organization described in Revenue Ruling 71-529. You do not provide your services exclusively for organizations exempt under section 501(c)(3) of the Code. The organization in Revenue Ruling 71-529 performs an essential function for charitable organizations, by performing a function, for a charge that was substantially below the cost of procuring such services. Revenue Ruling 71-529 states that fees represent less than 15% of the total costs of operation. You lease meeting rooms to other non-profit and civic organizations for \$ [REDACTED] per meeting. Lease rates would have to be \$ [REDACTED] per meeting for your rate of \$ [REDACTED] to be considered substantially below cost. You do not perform a charitable activity by providing meeting space, to non-profit and civic

organizations and commercial businesses at a cost substantially below the ordinary cost of procuring such leasing services.

Your primary activity is similar to the activities of the organization described in Revenue Ruling 72-369 in that you are essentially acting in the capacity of a passive landlord. You are engaged in the business of providing leased space even though you are organized on a non-profit basis. As stated in Revenue Ruling 72-369, the provision of managerial and consulting services for a fee at no more than cost is not an exempt activity under section 501(c)(3) of the Code. Although the services you provide may be beneficial to the community and are undertaken on a nonprofit basis, they cannot be regarded as conferring a charitable benefit on the community unless they directly accomplish one of the established categories of charitable purposes.

In conclusion, the leasing of your facility is similar to the services provided at cost by the organization described in Revenue Ruling 72-369. Unlike the organization described in Revenue Ruling 71-529, you do not lease your facility at substantially below cost. The substantially below cost concept can best be described as an exception to the general rule that organizations providing commercial services to exempt organizations do not qualify for exemption under IRC 501(c)(3). You are not like the organization described in Revenue Ruling 69-572 because you do not exclusively lease to IRC 501(c)(3) organizations.

In addition, we considered your application for exemption under section 501(c)(2) of the Code.

Internal Revenue Code section 501(c)(2) exempts from Federal income tax corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization described in Internal Revenue Code section 501(a).

Your response dated [REDACTED] to our letter dated [REDACTED], states:

All accumulated earnings are retained by the [REDACTED]

You do not meet the requirements of Internal Revenue Code section 501(c)(2) because you are not operated for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization described in Internal Revenue Code section 501(a).

Form 6018
(Rev. Aug. 1983)

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

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

APR 16 2001

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements 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

APR 16 2001

Revocation of exemption, effective.

Modification of exemption from section 501(c)() to section 501(), effective

Classification as a private foundation described in section 509(a), effective

Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

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 judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date