

Internal Revenue Service
Director, Exempt Organizations

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

Date: AUG 21 2001

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

Employer Identification Number:
[REDACTED]
Person to Contact - I.D. Number:
[REDACTED]
Contact Telephone Numbers:
[REDACTED] Phone
[REDACTED] FAX

Dear Sir or Madam:

We have considered your application [REDACTED] of exemption from Federal income tax under the provision [REDACTED] 501(c)(3) of the Internal Revenue Code of 1986 and its Regulations. Based on the available information, we have determined that you do not qualify for the exemption. 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.

[REDACTED]

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 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.

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 P. Miller

Director, Exempt Organizations

Enclosures:

Enclosure 1
Form 6018 (2)
Publication 892
Envelope

Enclosure I

FACTS:

The information submitted discloses that you were incorporated [REDACTED]

The Articles of Incorporation do not state the purpose of the organization.

The organization bylaws, Article I-Name, Purpose, indicate that the organization is organized exclusively for the purpose of [REDACTED]

The organization was formed by [REDACTED] to promote the incorporation of the city. An attorney has been hired to handle the legal aspects of the city incorporation process. A survey firm was retained to survey the area and provide the appropriate mapping and paperwork. The organization intends to incur expenses to secure an election bond to allow for an election so that the community may vote on the incorporation issue.

Various fundraisers such as a [REDACTED] and [REDACTED] have or will be held to raise funds for the organization. In addition, contributions have been solicited from individuals and businesses by officers and organization supporters.

The correspondence from the organization's [REDACTED] dated [REDACTED] indicates that once the city is incorporated, the organization will be dissolved and the remaining assets would be turned over to the city.

ISSUE:

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

LAW:

Section 501(c)(3) of the Internal Revenue 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), 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 distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Section 1.501(c)(3)-1(a)(1) 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 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.

Section 1.501(c)(3)-1(b)(1)(i) of the income tax 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 purpose.

Section 1.501(c)(3)-1(c)(1) of the income tax 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)(2) of the income tax Regulations defines the term "charitable". Although used in section 501(c)(3) in its generally accepted legal sense, the term charitable is broad and includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes or (i) to lessen neighborhood tensions, (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) combat community deterioration and juvenile delinquency.

Section 501(c)(3) of the Internal Revenue Code expressly limits the amount of lobbying an organization can do without jeopardizing exempt status, providing "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation..."

Section 1.501(c)(3)-1(c)(3) of the income tax Regulations provides that an organization is not operated exclusively for exempt purposes if it is an "action" organization. The term "action organization" describes both organizations that attempt to influence legislation and organizations that intervene in political campaigns.

Section 1.501(c)(3)-1(c)(3)(ii) provides that legislation includes "...action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."

The two kinds of legislative action organizations are: (1) An organization that attempts to influence legislation as a substantial part of its activities. Regulations section 1.501(c)(3)-1(c)(3)(ii) provides that an organization will be regarded as attempting to influence legislation if it contacts or urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or advocates the adoption or rejection of legislation. (2) An organization with its primary objective(s) that may be attained only by legislation or a defeat of proposed legislation; and it advocates, or campaigns for, the attainment of such main or primary objective(s) (Regulations section 1.501(c)(3)-1(c)(3)(iv).

ANALYSIS:

In order to qualify for exemption under section 501(c)(3) an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If any organization fails to meet either the organizational test or the operational test, it is not exempt per Regulation section 1.501(c)(3)-1(a)(1).

With regard to the organizational requirement under section 501(c)(3), Regulation section 1.501(c)(3)-1(b)(1)(i) states that the Articles of Organization will comply if it limits the purposes of such organization to one or more exempt purposes and does 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 purpose. The organization's Articles of Incorporation do not contain any exempt purpose for the organization. As such, the organization fails to meet the organizational requirement under section 501(c)(3) and is not tax exempt.

With regard to the organization's operations, all activity engaged in is for the objective of [REDACTED]. The organization hired an attorney to handle the legal aspects of incorporating the city, as well as retained a firm(s) to survey the area and provide mapping and other paperwork. Contribution solicitation and fundraisers have been engaged in to raise funds to pay the legal bills, services provided and to secure an election bond to allow for an election so that the community may vote on the incorporation issue. "Incorporating" a city is not considered a charitable exempt purpose within the definition (Regulations section 1.501(c)(3)-1(d)(2)). As such, the organization fails to meet the operational requirement of section 501(c)(3) and is not exempt per Regulation section 1.501(c)(3)-1(a)(1).

In addition, the organization's entire focus of activities on getting the vote for incorporation put in an election could be considered legislative activity, a substantial amount of which is prohibited in section 501(c)(3) organizations. The organization could be considered a legislative action organization under Regulation section 1.501(c)(3)-1(c)(3) that is not exempt under section 501(c)(3).

CONCLUSION:

It is the opinion of the Internal Revenue Service, based on the information submitted, that you do not meet the requirements for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code because you are not organized and operated exclusively for purposes within section 501(c)(3).

OMB No. 1545-0047
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

AUG 2, 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

Revocation of exemption, effective

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