

Internal Revenue Service
Director, Exempt Organizations

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

Date: AUG 22 2001

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

Employer Identification Number:

[REDACTED]

Person to Contact - I.D. Number:

[REDACTED]

Contact Telephone Numbers:

[REDACTED] Phone
[REDACTED] FAX

Dear Applicant:

We have considered your application for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. [REDACTED]

The information submitted indicates that you are incorporated as a [REDACTED]

FACTS:

Your Articles of Incorporation state that the specific and primary purposes of your organization are "the encouragement of interest in aviation and the advancement of the knowledge of members in aeronautical and navigational subjects." Your articles further state that the general purposes and powers are "to bring to more people the social benefits and pleasures of flying and to disseminate information on home-built aircraft."

There are approximately [REDACTED] members in your organization. You conduct monthly member meetings in which you have a guest speaker, or movie, relating to aviation. You conduct a program called the [REDACTED] a couple times a year. This program is geared to enlighten children between the ages of 8-18 in the area of aviation. You have participated in public events in which you recruit and educate the public about your part in aviation. You maintain four classes of membership.

1. Voting membership - members who have paid their annual dues, and is a member or spouse of the [REDACTED]
2. Honorary membership - any person recommended by the Board of Directors and approved by the membership; they are not entitled to vote.
3. Associate Introductory membership - members are limited to a non-renewable 12-month period; they are not entitled to vote or hold office.
4. Special membership - members are nominated and elected annually by the Board of Directors; they are exempt from dues, they cannot vote or hold office. This

[REDACTED]

[REDACTED]

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ip is extended to any person who is financially unable to pay dues.

You provided several copies of your newsletter, "[REDACTED]". The newsletters discuss the various activities of your organization. The majority of articles in your newsletter concern the social and recreational activities of your organization. These include your monthly "fly-outs", trips to check on the progress of member's aircraft construction projects, airplane trips taken by your members, and potlucks and barbecues. The newsletter also discusses your "[REDACTED]" program which was held twice during [REDACTED].

In response to our request for additional information you provided a further explanation of your activities. You provided information regarding the new hangar you plan to construct at the [REDACTED] municipal airport. You state that the Hangar will be used by your organization to educate pilots and the general public about aircraft and aviation. You plan to conduct your regular meetings among your members and the public in the hangar. You state that the regular meetings will include a video display of safety issues, construction techniques of different materials, and technical information of aeronautics. You plan to allow members to use the hangar for their aircraft projects. You state the general public will be able to visit the hangar to view the aircraft projects. You will also use the Hangar to host the [REDACTED] rallies.

You submitted a newspaper article concerning the lease of the Hangar at the [REDACTED]. In the article your treasurer states that one hangar will serve as a clubhouse for your group and the other hangar will be devoted to aircraft storage. The article states that planes assembled by members will fit inside the hangar. The article also states that you plan to put on programs for the community.

The budget information you submitted shows that the majority of your income is from member dues, calendar sales and banquet receipts. The majority of your expenses are devoted to member activities.

LAW

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

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states that to be tax exempt, an organization must be both organized and operated exclusively for one or more exempt purposes specified in section 501(c)(3) of the Code. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 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 and operated exclusively for one or more exempt purpose unless it serves a public rather than private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as relating to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities or (b) the instruction of the public on subjects useful to the individual and beneficial to the community."

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations provides four examples of educational organizations:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example (3). An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example (4). Museums, zoos, libraries, symphony orchestras, and other similar organizations

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Syracuse Aero Club, Inc. v. Commissioner, 73 T.C. 717; 1980 U.S. Tax Ct., the Court held that an aviation club which rented its airplane at low cost to its members and neither provided aviation instruction nor supervision of its members' flights, was not organized and operated exclusively for charitable or educational purposes. Although the club was available for aerial assistance to the Syracuse National Guard, the Court held that the club's primary purposes were recreational.

Revenue Ruling 66-179, 1966-1 C.B. 139, discusses how a "garden club" whose membership consists primarily of amateurs and hobbyists, qualifies for exemption under section 501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(7) of the Code. The garden club qualifying for exemption under section 501(c)(3) is formed for the purposes of instructing the public on horticulture subjects and stimulating interest in the beautification of the geographic area. The organization maintains and operates a free library of materials on horticulture and allied subjects, instructs the public on correct gardening procedures by means of radio, television, and lecture programs, holds public flower shows, makes awards to children for achievements in gardening, and encourages roadside beautification projects. The organization qualifies for exemption under section 501(c)(3) as it has shown that it is organized and operated exclusively for charitable and educational purposes.

Revenue Ruling 67-139, 1967-1 CB 129, describes an organization whose membership consists of amateurs and hobbyists interested in geological, mineralogical and lapidary activities. The ruling describes the activities of a club that qualifies for exemption under either section 501(c)(3) or 501(c)(7). The organization that qualifies for exemption under section 501(c)(3) holds monthly lectures at which qualified experts discuss topics pertaining to gems and minerals, the experts give instruction on lapidary techniques. They also sponsor field trips to collect and study various kinds of rocks and minerals; they issue a bulletin containing educational material pertaining to rock and minerals; they maintain a reference library; they display their members collections at a local museum; and they conduct an annual show for the general public at which members and nonmembers display their collections. The general public is invited to attend all club functions and participate in its programs on substantially the same basis as their members.

The ruling holds that this type of organization qualifies for exemption under section 501(c)(3) as its lectures, field trips and shows are considered "educational" under section 501(c)(3) of the Code and regulations.

The ruling also describes an organization that qualifies for exemption under section 501(c)(7) of the Code. This club was formed by individuals interested in mineralogy and lapidary subjects. The organization promotes their application so that greater pleasure may be derived from these activities and to promote good fellowship among its members. The club holds monthly social meetings at which the members discuss their hobby and sell, purchase, or exchange rock and mineral specimens. They issue a bulletin containing news of their member's social activities and their collections, and the members display their collections at an annual show open to the general public. The ruling holds that this type of club, which is organized and operated exclusively for pleasure, recreation and other nonprofitable purposes qualifies for exemption under section 501(c)(7) of the Code. This is based on the fact the club provides a meeting place for its members so they can associate with each other and become more proficient in their hobbies and that it is operated primarily to accommodate its members in their recreational pursuits.

ANALYSIS:

All of the preceding Code sections, regulation sections, case law, and Revenue Rulings described the criteria under which an organization may be exempt under section 501(c)(3) of the

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Code. The Revenue Rulings describe the differences between an organization qualifying under section 501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(7) of the Code.

Our analysis of your application indicates that although you are conducting educational activities with children, such as the [REDACTED]'s program, and you plan to open your meetings and events to the general public, the basic premise of your organization is that of social and recreational activities. The primary activities of your organization are your monthly meetings and your fly-outs. Your members are banded together through their mutual interests in the construction of their own airplanes and getting together monthly for fly-outs to local airports. The Hangar that you plan to construct at the [REDACTED] airport will be used as a hangar where members can construct and/or store their aircraft. You state you plan to encourage the public to attend your meetings and that you plan to offer educational speakers and videos for the benefit of your members and the public. While these may be considered "educational", they will not be the primary purpose of your organization. The primary purpose of the Hangar will be for members to meet and discuss their aircraft hobby. Members will be allowed to use the hangar for their own recreational use a majority of the time as opposed to the limited amount of time in which you plan to conduct educational activities.

Your organization can be distinguished from the organization discussed in the above revenue rulings, in that your primary purpose is not educating the general public. The primary purpose of your organization is the promotion of the recreational interests of your members.

Your organization can be compared to the social club exempt under section 501(c)(7) of the Code, in that you provide a meeting place for your members so they can associate with each other and become more proficient in their aircraft hobby.

Your organization can be compared to the organization described in the Syrang Aero Club in that although you plan to carry on a few educational programs, your primary activity is the promotion of the recreational flying activities of your members.

In addition, your Articles of Incorporation state that the general purposes and powers of your organization are to "bring to more people the social benefits and pleasures of flying and to Disseminate information on home-built aircraft. As your articles do not state that you are organized for charitable, educational, religious, or other exempt purposes, you do not meet the organizational test of section 501(c)(3) of the Code.

CONCLUSION:

To be considered for tax exempt status under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that Code section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization. Based on the information submitted, it is the position of the Internal Revenue Service, that you do not qualify for exemption under section 501(c)(3) of the Code inasmuch as

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you are not organized and operated exclusively for any of the specified purposes within that section.

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 our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

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 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 Court of Claims, 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 6014(c) of the Code.

Sincerely yours,



Steven T. Miller
Director, Exempt Organizations

Enclosures:
Publication 892
Form 6018

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

AUG 22 1991

Name and Address of Organization

[REDACTED]

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 under section 501(c)(3) of the Internal Revenue Code

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