

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 6419
Cincinnati, Ohio 45201

FEB 19 2002

Employer Identification Number:
[REDACTED]

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

Contact Telephone Numbers:
[REDACTED]
[REDACTED]

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 Attachment 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 Miller

Director, Exempt Organizations

Enclosures: Attachment I

You were incorporated on [REDACTED]. Your sole incorporator (hereinafter referred to as "president") also serves as president, treasurer and secretary of this corporation; there are no other officers.

The purposes for which the corporation was formed, according to your articles of incorporation, are "To help raise funds for improvement, expansion and operation of [REDACTED] c. and to help educate the general public about animals and their importance in today's world."

Your organization plans to raise funds to support [REDACTED] (to be referred to as "Park"). You will do this through the solicitation of grants and contributions, fund-raising events to be held at the Park, and the sale of memberships. Members will receive unlimited annual admission to the Park in return for membership fees.

[REDACTED] is a for profit entity that is owned and operated by your [REDACTED]. The president also owns a for-profit gift and souvenir shop operating on the grounds of the Park.

In your response to our letter dated April 9, 2001, you state that funds that you hope to receive through memberships and grants would be used to build additional facilities at the Park, and to expand and maintain the Park. It is your contention that use of your funds to improve and maintain the Park benefits the general public by providing a "fun and educational experience" to Park visitors. You further state that you are located in a rural area without other zoos. You state that the Park owner would "... only benefit indirectly from the expansion of the Park by seeing increased attendance to the zoo (more admissions charged to non-members and more gifts and souvenirs sold)".

Section 501(c)(3) of the Code provides, in part for the exemption from Federal Income Tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations state that if more than an insubstantial part of an organization's activities are not in furtherance of exempt purposes, the organization will not be regarded as exempt from income taxes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

This is further illustrated by the following court cases and revenue rulings:

In *P.L.L. Scholarship Fund v. Comm.*, 82 T.C. 196 (1984), the Tax Court considered the qualification for exemption of an organization which conducted bingo games in a bar owned by two of its directors. Net income from bingo operations was to be used for charitable purposes. The Tax Court concluded that more than an insubstantial purpose of this activity was to attract patrons to the bar and therefore benefit private interests.

Similarly, in *KJ's Fund Raisers v. Comm.*, TCM 1997-424, exemption was denied to an organization that sold lottery tickets as a charitable fund-raiser in a bar owned by its creators. The court concluded that the organization served to increase patronage of the bar and thereby benefit private interests.

Revenue Ruling 71-395, 1971-2 C.B. 228 concludes that a cooperative gallery formed and operated by a group of artists for the purpose of exhibiting, renting, and selling their works serves the private interest of its members, even though the exhibition and sale of paintings may be educational in other respects.

Revenue Ruling 76-206, 1976-1 CB 154 describes an organization formed for the purpose of promoting, maintaining, and enhancing the broadcast of classical music in a particular community. It was formed in response to an announcement by a local for-profit radio station that the station intended to cease broadcasting classical music because of financial difficulty. The organization accomplishes its purpose by engaging in a variety of activities designed to stimulate public interest in the classical music programs of the for-profit station, and thereby enable the station to continue broadcasting such music.

The organization's activities include seeking business sponsors for the station, encouraging existing sponsors to continue their contracts with the station, and urging the public to patronize the business establishments of the station's sponsors. In addition, the organization solicits subscriptions to the station's program guide, and prints and distributes pamphlets and bumper stickers encouraging the public to listen to the station's classical music programs. Further, the organization conducts listener surveys, the results of which are presented to the for-profit station to indicate the extent of public support for the classical music programs. The organization's board of directors represents the community at large and does not include any representatives of the for-profit radio station. The organization receives most of its support from the general public.

The organization's activities in the above revenue ruling are deemed to constitute a public relations campaign designed to enable the station to continue to broadcast classical music. The increase in the listening audience that may occur as a result of the organization's activities serves to increase the value of the airtime that the station makes available for sale to sponsors. The organization's activities are held to benefit the for-profit radio station in more than an incidental way. The organization is considered to serve a private rather than a public interest and therefore does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The fact that promotion of classical music serves educational purposes is acknowledged in the above ruling. However, the ruling states that where an organization is serving both private and public interests, the private benefit must be clearly incidental to the overriding public interest.

Like the organizations in the above-cited cases and rulings, the activities of your organization serve to benefit for-profit entities (the Park and gift shop) by enhancing their value and increasing sales and admissions revenue. Benefits inure to a private individual, the owner of the for-profit entities. The fact that you are controlled by the owner of these for-profit enterprises further supports the conclusion that you will serve private interests.

Thus, to a substantial degree, you are operated for private interests as opposed to public interests in contravention of section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. We therefore conclude that you are not operated exclusively for those purposes described in Code section 501(c)(3) and are not entitled to exemption from Federal income tax under that section of the Code.

We have also determined that you fail to qualify for exempt status under any other subsection of Internal Revenue Code section 501(c).