



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: OCT 6 2003

Contact Person:

NO PROTEST RECEIVED
Release to Manager, EC Determination

Identification Number:

[REDACTED]

DATE: 11/18/07

Contact Number:

SURNAME

[REDACTED]

Employer Identification Number

[REDACTED]

Dear Applicant,

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.

Article II, section 2.1 of your Bylaws states that you are a [REDACTED] organized under the [REDACTED] section 2.2 of your Bylaws, which were adopted by your Board of Directors ("Board") on January 17, 2002, in discussing your purposes and powers, further indicates that you are organized for the purposes described in the [REDACTED] and shall have and may exercise such powers in furtherance of your purposes as are now or may hereafter be set forth in the [REDACTED] law and any other applicable statutes, rules or regulations of the [REDACTED]. In Article II of your Bylaws your powers include, but are not limited to the following:

1. to exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the [REDACTED]
2. to contract for bond insurance, letters of credit, remarketing services and other forms of credit enhancement and liquidity support on your bonds, notes and other indebtedness and to enter into reimbursement agreements, and other ancillary contracts in connection therewith; and;
3. to authorize the disposition of any surplus property of the [REDACTED] at fair market value by any method determined by your Board; provided, however, that the Board may donate or sell, at less than fair market value, any surplus property to [REDACTED]

[REDACTED]

Article IV, section 4.1 of your Bylaws states your Board is the governing body of the [REDACTED]. Article IV, section 4.4 of your Bylaws provides that your Board shall consist of five (5) members, each of whom shall be a registered [REDACTED]. Part II, question 4c of your application indicates that your initial Board was appointed by the [REDACTED]. Article IV, section 4.1 of your Bylaws further provides [REDACTED] shall be exercised by or under the direction of your Board.

Article IV, section 4.5 of your Bylaws discusses elections and terms of office and states that your governing body is elected by voters. Article V, section 5.4 of your Bylaws indicates that your Board meetings are subject to the [REDACTED]. Finally, [REDACTED] which you have presented discloses that you are not separately organized but are a new public agency formed pursuant to the [REDACTED].

Section 501(c)(3) of the Internal Revenue Code ("the Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("the regulations") provides that in order for an organization to be exempt as one described in section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more exempt purposes. Under section 1.501(c)(3)-1(d)(1)(i)(b) of the regulations, an exempt purpose includes a charitable purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense. The promotion of health has long been regarded as a charitable purpose. See Restatement (Second) of Trusts, sections 368, 372 (1959); 4A Scott and Fratcher, The Law of Trusts, sections 368, 372 (4th ed. 1989); Rev. Rul. 69-545, 1969-2 C.B. 117.

Rev. Rul. 60-384, 1960-2 C.B. 172, in amplifying Rev. Rul. 55-319, 1955-1 C.B. 119, provides that a wholly-owned state or municipal instrumentality which is a separate entity and which is organized and operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3) of the Code. To qualify for exemption, however, a wholly-owned state or municipal instrumentality must establish that it is a separately organized entity.

The separately organized entity requirement is generally met if the instrumentality is incorporated under a state nonprofit corporation law. This is so because as a legal entity, created under state law, a corporation is regarded as having an existence separate and apart from that of its creators. Even if not incorporated under state law, an entity that is considered a corporation for federal tax purposes will be considered a separately organized entity.

Section 7701(a)(3) of the Code provides that the term corporation includes associations.

[REDACTED]

Section 301.7701-2 of the regulations lists six major characteristics that are ordinarily found in a pure corporation, which, taken together, distinguishes it from other organizations. Since some of these corporate characteristics are not relevant to unincorporated nonprofit bodies, they have been administratively adapted to cases involving classification of nonprofit organizations. As adapted, the characteristics are: (i) associates, (ii) an objective by the associates to carry on the activity for which the organization was formed, (iii) continuity of life, (iv) centralized management, (v) limited liability, and (vi) free transferability of interests. An instrumentality will be treated as an association if it has a sufficient number of the corporate characteristics such that the instrumentality more nearly resembles a corporation than a partnership, trust, or mere aggregation of individuals. If so, it will be considered a separately organized entity both for purposes of section 501(c)(3) and Rev. Rul. 60-384.

Rev. Rul. 62-66, 1962-1 C.B. 83, holds that a committee created by executive order of the governor of a state as an official agency thereof to commemorate United Nations Day and to conduct a continuing program through the state university and the state public school system for the education of the public with respect to the purposes and activities of the United Nations, is not entitled to exemption under section 501(c)(3) of the Code. In this situation, the Service held that a state or municipality itself does not qualify as an organization of the type described in section 501(c)(3) of the Code since its purposes are clearly not exclusively those described in that section. More important, as an official agency of the state, the committee is not required to file federal income tax returns.

The facts in your case show that you are not separately organized from the state government but are merely a new local government agency formed pursuant to [REDACTED]. This is evidenced by Article II, section 2.1 of your Bylaws which states that the [REDACTED] organized under the [REDACTED]. You are part and parcel of the state government. Additionally, you do not have major characteristics outlined in section 301.7701-2 of the regulations that the Service uses to help determine whether an organization is a corporation for federal tax purposes. Specifically, you have no associates, and since you have no associates logically there can be no objective by the associates to carry out the activity for which you were formed. Further, you cannot freely transfer interests in your organization.

Accordingly, since you are not a separately organized entity but are an integral part of a state government or a political subdivision, you do not qualify for exemption under section 501(c)(3) of the Code. However, while you do not qualify for exemption under section 501(c)(3), please note the following:

No provision of the Code imposes a tax on the income of governmental units (such as states and their political subdivisions). It has therefore been the position of the Service that income of governmental units is not generally subject to federal income taxation. If, however, an entity is not itself a governmental unit (or an "integral part" thereof), its income will be subject to tax unless an exclusion or exemption applies.

[REDACTED]

One exclusion is provided by section 115(1) of the Code, which excludes from gross income, income (A) derived from the exercise of any essential governmental function, and (B) accruing to a state or political subdivision.

Your income may not be subject to tax, either because you are a governmental unit (or an "integral part" thereof) or because your income is excluded under section 115 of the Code. In addition, you may also be eligible to receive charitable contributions which are deductible for federal income, estate, and gift tax purposes; and you are probably exempt from many federal excise taxes.

You may obtain (but are not required to) a letter ruling on your status under section 115 of the Code, following the procedures specified in Revenue Procedure 2003-1 or its successor (the first revenue procedure published each year). You must also pay a user fee as described in that revenue procedure.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling 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 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 United States Court of Federal 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 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]