

4-1100

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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[REDACTED]

Person to Contact:

Date

Telephone Number:

Signature

Refer Reply to:

CP:E:EO:T:3

Date:

DEC 16 1996

E.I.N.: [REDACTED]

K.D.O.: Northeast (Brooklyn)

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.

You were incorporated on [REDACTED], under the laws of [REDACTED]. Your articles of incorporation were amended on [REDACTED] to include the requisite language to satisfy the organizational test of section 501(c)(3) of the Code. Your stated purposes also include: "...[T]he education of the public regarding [REDACTED], and the intervention in matters before [REDACTED] to protect the interests of [REDACTED] against unnecessary rate escalation."

In your application, you described your activities as follows:

The primary activities of the corporation involve intervening in matters [REDACTED] and educating the public regarding [REDACTED] and promoting public awareness of [REDACTED]

The corporation, by way of legal counsel, has intervened in matters and appealed decisions made by the [REDACTED] on behalf of the interests of individual consumers and small businesses in [REDACTED] and [REDACTED]

The corporation publishes newsletters and participates in panel discussions to inform the public of [REDACTED] which affect [REDACTED] in this state, and to inform the public of [REDACTED] nationwide.

The purpose of the corporation's activities is to

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[REDACTED]

promote a collective interest in protecting against unnecessary [REDACTED] and consumer abuses.

You have also stated that you intend to provide information to the general public and your members regarding [REDACTED] which affect them, specifically information on the regulation of [REDACTED] and how those regulations affect them. It is expected that as a result, some of the individuals and members may be inclined to correspond with their state legislators to influence legislation in this respect. However, you are not intended to form a lobbying group. Members will not be actively encouraged to contact state legislators or any other political figure, group, or entity.

You state that you do not intend to devote more than [REDACTED] ([REDACTED] %) of your funds and resources to educating the public in this manner. The majority of your resources will be used for appealing agency decisions and intervening in matters on behalf of [REDACTED].

Financial information submitted with your application reveals that for [REDACTED], you expended approximately [REDACTED] percent ([REDACTED] %) of your total revenue, and projected [REDACTED] and [REDACTED] ([REDACTED] and [REDACTED] %) respectively for [REDACTED] and [REDACTED], as salary to [REDACTED], your attorney, for legal services rendered consisting of litigating matters before the [REDACTED].

In response to a request for additional information, you stated that your activities consisted substantially of educating the public on [REDACTED] affecting them including [REDACTED] and in intervening in matters before the [REDACTED] ("[REDACTED]"), which functions as an administrative body. You stated that no substantial part of your activities consisted of lobbying activities, or attempting to influence legislation, and that your activities were confined to appealing decisions made by the [REDACTED] and educating the public on these issues. You further stated that your activities are primarily before [REDACTED] court system and are less likely to impact the legislative process.

You also stated that you were selected to participate in the [REDACTED] as an advisory counsel member. You state there were numerous meetings with the [REDACTED] throughout [REDACTED], and that you have also given testimony before the [REDACTED] on various [REDACTED] issues.

Your primary sources of support will be donations from individuals and corporations interested in furthering your purposes.

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

Section 1.501(c)(3)-1(d)(3)(i)(b) of the Income Tax Regulations defines the term "educational" as including the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivision (ii), which provides that:

An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

- (a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- (b) Advocates the adoption or rejection of legislation.

Section 1.501(c)(3)-1(c)(3)(iv) of the regulations also describes one special kind of "action" organization. Such an organization has a main or primary objective that may be attained only by legislation and advocates the attainment of that main objective as distinguished from engaging in non-partisan analysis, study, or research.

Rev. Rul. 62-71, 1962-1 C.B. 85, held that an organization which, as its primary objective, advocated the adoption of a doctrine or theory which could become effective only by the enactment of legislation was not entitled to exemption under section 501(a) of the Code, since it was an "action" organization and thus was not operated exclusively for educational purposes within the meaning of section 501(c)(3).

[REDACTED]

In Rev. Rul. 80-278, 1980-2 C.B. 175, it was held that an organization that instituted and maintained environmental litigation as party plaintiff, was operated exclusively for charitable purposes and qualified for exemption under section 501(c)(3) of the Code. Its activities included educational activities within the meaning of section 501(c)(3). Its principal activity, however, was instituting litigation as a party plaintiff under state and federal environmental legislation.

The rationale for this holding was based on the fact that the promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit. See, e.g., the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 (1976). See also Rev. Rul. 76-204, 1976-1 C.B. 152, and the authorities cited therein. Thus, the organization's overall purpose was charitable.

This ruling also discussed the three situations in which the Service has previously recognized organizations that engaged in litigation as being described in section 501(c)(3): (1) legal aid societies providing legal assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) organizations operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) public interest law firms providing legal representation on issues of significant public interest (Rev. Rul. 75-74, 1975-1 C.B. 152, Rev. Rul. 75-75, 1975-1 C.B. 154, Rev. Rul. 75-76, 1975-1 C.B. 154, Rev. Rul. 76-5, 1976-1 C.B. 146, Rev. Proc. 71-39, 1971-2 C.B. 575, and Rev. Proc. 75-13, 1975-1 C.B. 662). These types of organizations generally had staff attorneys providing legal representation to outside clients or groups, as distinguished from the organization itself being the plaintiff in litigation. (Rev. Ruls. 75-74, 75-75, and 75-76 were respectively modified, revoked, and amplified by Rev. Proc. 92-59, 1992-2 C.B. 411, which also modified and superseded Rev. Procs. 71-39 and 75-13).

You do not have a staff of attorneys used to provide legal representation to outside clients or groups. Instead, your attorney(s) will litigate on your behalf in those instances that you choose to intervene in matters before [REDACTED]. You do not litigate in direct support of state or federal legislation. Unlike the organization in the ruling, your litigation will primarily involve issues of [REDACTED]. This type of litigation is not an activity described in section 501(c)(3), nor is it the type discussed in Rev. Rul. 80-278, *supra*. Therefore, we conclude that unlike the organizations discussed in the ruling: (1) You are not a legal aid society providing legal

[REDACTED]

assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) you are not an organization operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) you are not a public interest law firm as described in Rev. Rul. 80-278 and Rev. Proc. 92-59, and therefore, your advocacy and subsequent litigation on behalf of [REDACTED] cannot be said to further a purpose described in section 501(c)(3) of the Code.

The representative copy of your [REDACTED] Newsletter ([REDACTED]), carried a "Message From The President" in which he stated "[REDACTED] members have written to their state legislative representatives in both the [REDACTED] and the [REDACTED] regarding our opposition of [REDACTED]" Also in that issue was a chart comparing two bills, one which was acceptable to you, and the other, you found objectionable. We don't believe that this represented a non-partisan analysis, study, or research in which you made the results available to the public. Instead, in your newsletter, you provided the comparison chart and suggested to your members that they compare, consider several questions presented by you, and ask those same questions of their legislative representatives. This is the type of activity described in, and proscribed by, section 1.501(c)(3)-1(c)(3)(i) and (ii) of the regulations.

Furthermore, because you advocate the adoption or rejection of legislation affecting the [REDACTED] as a substantial part of your overall activities, through litigation to pursue that end, you are an "action" organization as described in section 1.501(c)(3)-1(b)(3)(ii) of the regulations. Such an organization is not described in section 501(c)(3) of the Code. See also Rev. Rul. 62-71, *supra*.

Accordingly, because you do not qualify as a public interest law firm, and because we believe that you are an "action" organization as described in section 1.501(c)(3)-1(b)(3)(ii) of the regulations, and because you have not otherwise established that your activities are either exclusively charitable or educational within the meaning of section 501(c)(3) of the Code, we cannot recognize you as exempt under that section.

You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

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[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, 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 judgement 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 copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

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

Internal Revenue Service
Attn: CP:E:EO:T:3 [REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

761000

[Redacted]

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Records Office to District

Date 1-27-97

[Redacted]

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

Sincerely,

~~Edward K. Karcher~~
Edward K. Karcher
Chief, Exempt Organizations
Technical Branch 3

cc: DD, Northeast (Brooklyn)
Attn: EO Group

cc: [Redacted]

cc: [Redacted]

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	1/26/97	CP/E/EO/T.3	[Redacted]				
Surname	[Redacted]	[Redacted]	[Redacted]				
Date	[Redacted]	[Redacted]					