

Re: [REDACTED]

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As indicated above, you were selected by the [REDACTED] to be the sole agent to promote and operate the [REDACTED]. In a submission you provided us from [REDACTED], which is described as the world's leading environmental daily [REDACTED] is described as being aimed [REDACTED].

[REDACTED] In other contracts or agreements you indicate that your responsibilities under this contract were to promote the Forum internationally. Your activities included paying for transportation costs for [REDACTED]. You have also stated that you were the sole organizer of the international elements of the Forum.

In order to accomplish your goals you subcontracted with a private company which [REDACTED] your one time president is currently the president of, to operate the Forum. [REDACTED] your secretary/treasurer is [REDACTED].

Your original [REDACTED] contract called for you to pay [REDACTED] percent of all contributions to the forum. The financial information you submitted initially indicated that you estimated that almost [REDACTED] percent of your anticipated receipts were to be paid to [REDACTED]. In your letter of [REDACTED], you indicate that the final contract with [REDACTED] reduced this amount to a sponsorship commission of [REDACTED] percent of the collected fees. However, because of your current funding situation, you have indicated that they received less than [REDACTED] percent of the funds raised from international corporations. In your letter of [REDACTED], you state that you do not intend to continue to ask [REDACTED] to conduct activities on your behalf.

Your responsibilities included publishing the conference materials to be used at the conference, host arrangements for participants and their guests and pay for the travel [REDACTED].

It appears from the information you have submitted that your primary responsibility was to promote the Forum on an international basis. In your letter of [REDACTED] you indicate that any fees you will charge were established to cover your costs, at a minimum, and excess funds would contribute to your future programs. You also expect to be involved in post-conference and legislative staffing work after the conference. Other activities involving the Forum included hosting arrangements for Forum participants and guests, booking rooms at the hotel, arranging special lunches and dinners.

Under your contract you solicited various for-profit corporations and others to sponsor the Forum. In return for sponsoring the Forum a corporation became an advisor in the [REDACTED].

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development of the Forum agenda, was permitted to be a co-lead with a [REDACTED] of one of the whole day topical panels, entitled to have a display of its environmental technology, had a high visibility displayed corporate logo on all conference materials, were acknowledged on media promotions, were part of the official board of advisors regarding the post-Forum work and offered your services in assisting with facilitating corporate activities in [REDACTED] for either [REDACTED] (the period varies with the amount by the sponsoring corporation). A review of the Workshop Summaries and Agendas establishes that your sponsors not only co-lead programs but also were entitled to present at length what their companies had to offer [REDACTED]. Furthermore, under your contract [REDACTED] was to promote the conference and accept sponsored environmental documentaries and announcements for broadcast. You also state that you arranged meetings between [REDACTED] during the Forum. These meetings were designed to link appropriate parties in real talks about the environment.

Your current activity involves a contractual arrangement with [REDACTED] and for profit companies. This arrangement was apparently requested by [REDACTED] which is described as a [REDACTED] interested in environmentally sensitive development. Other initiating or participating partners include a [REDACTED] specializing in urban planning, [REDACTED], and the [REDACTED]. The project is intended to integrate conservation with compatible economic development. Under the [REDACTED] of [REDACTED] regarding this project, your obligations are to advise and assist [REDACTED] with government and political coordination including hosting of cooperative activities and appropriate introductions to key government and non-government contacts in [REDACTED]. For these services you are to receive \$[REDACTED] plus expenses.

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

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) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term charitable is used in its generally accepted legal sense. The term includes, among other activities, organizations established to assist in the advancement of education, promotion of health and the promotion of social welfare.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 1.501-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

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In Old Dominion Box Co. v. United States, 477 F 2d. 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a non-profit entity. The Tax Court concluded that the for-profits were able to use the non-profit as an "instrument" to further their for-profit purposes; the fact that the for-profits had no structural control over the organization did not affect the court's conclusion.

In B.S.W. Group, Incorporated v Commissioner, 70 T.C. 352, the court held that an organization which operated at a profit whose only role is that of a conduit linking individual researchers with interested client organizations, both exempt and nonexempt, did not qualify for exemption under section 501(c) (3) of the Code. It was conducting a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit and not engaging in a recognized section 501(c) (3) exempt activity.

It is incumbent upon an organization seeking a ruling recognizing its tax exempt status to carry the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, supra. In addition, activities which benefit private interests either directly, see Old Dominion Box Co. v. United States, supra or indirectly, see est of Hawaii v. Commissioner, supra will preclude exemption. Although, section 1.501-1(e) of the regulations provides that an organization may meet the requirements of section 501(c) (3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes, where the business activities do not directly further the exempt section 501(c) (3) purposes, exemption will be denied. See B.S.W. Group, Incorporated v Commissioner, supra.

The information you have submitted establishes that you apparently both directly and indirectly, through the subcontract with [REDACTED], conducted an environmental forum in [REDACTED]. You and [REDACTED] were responsible for both setting up the Forum and paying for certain of the [REDACTED]. [REDACTED] you were compensated for this endeavor through the sponsorship agreements you had entered into with various international for-

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profit corporations. The sponsorship agreements required you to provide various services to the sponsoring companies and assist them in making business contacts and advertising the business services they could provide. A review of the workshops and similar presentations shows how extensive these business opportunities were and the use the for-profit corporations made of the Forum. Furthermore, exposure on nationwide television in [REDACTED] provided them with additional advertising. These activities were not required in order to accomplish what might otherwise be an educational endeavor. Similarly under your contract with the [REDACTED] you appear to be providing services to the various commercial corporations currently participating in that development project and any future partners who may join by providing the necessary contacts and consulting services to enable them to enter into contracts and develop the area. As stated in the [REDACTED] you entered into this contract to "[REDACTED]"

Your activities during the Forum clearly benefited the private interests of the sponsoring companies in carrying out their own business initiatives and you were compensated for these services. Furthermore, by subcontracting with [REDACTED] it appears that you were also operating for his private benefit. Similarly, your contact with [REDACTED] appears to be merely another commercial endeavor which will directly benefit the for-profit partners in this economic development project. We recognize that your activities involve conservation, however the presence of more than an insubstantial amount of noncharitable activities can preclude exemption. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra. Here the submitted information establishes that you are carrying on commercial activities and benefitting private interests to more than an insubstantial degree.

Accordingly, we have concluded that you do not qualify for recognition of exemption under section 501(c)(3) of the Code because you are operating in a manner similar to a for-profit consulting firm. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

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 principal officers, must be submitted within 30 days from the date of this letter. You also

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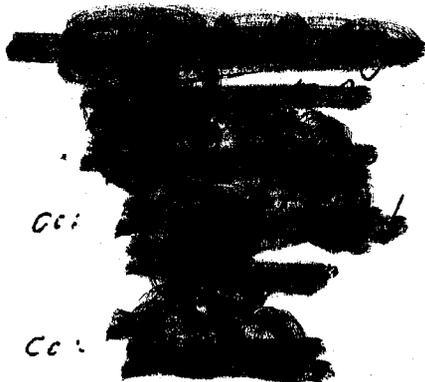
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have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the 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 United States Tax Court, the U.S. 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.

Sincerely yours,




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