

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date:

Employer Identification Number:

Key District:

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 under the laws of [redacted] on [redacted]. Your articles of incorporation state that you are "organized exclusively for charitable, scientific and educational purposes" as those terms are defined in section 501(c)(3) of the Internal revenue Code.

Your Articles further provide that "Without limiting the generality of the foregoing, the purposes of this corporation shall include the following:

- a. to raise and distribute funds to other charitable organizations selected in the discretion of the Board of Directors; and
- b. to initiate, fund and administer a wide variety of charitable, educational, religious, scientific, and literary projects; ..."

Your proposed activities, as described, will consist solely of fundraising through direct solicitations of funds from the general public and through two (2) rebate programs more fully described below. You will make contributions of all of the funds that you receive, other than those used for administrative expenses, to other charitable organizations which qualify under section 501(c)(3) of the Code. You will make these contributions on regular, periodic intervals. You anticipate that you will pay for your own administrative expenses from funds paid to you by merchants who participate in the rebate programs.

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[REDACTED]

The rebate programs will consist of a general rebate program and a credit card rebate program.

The general rebate program will be operated as follows. The [REDACTED] ([REDACTED]), an unrelated for-profit organization, currently operates a loyalty card program in [REDACTED]. Pursuant to this loyalty card program, merchants participating in the program (the "Participating Merchants") issue loyalty cards to customers (the "Participating Customers") which allow such customers rebates at Participating Merchants in the area. Loyalty cards resemble credit cards in appearance, and contain an identification number which identifies the merchant who issued the card and the customer who holds the card.

Merchants pay [REDACTED] \$ [REDACTED] to print the loyalty card. In addition to the amounts paid by the Participating Merchants for the loyalty cards, the Participating Merchants will pay [REDACTED] an additional amount on each purchase roughly equivalent to the amount of the rebate to the Participating Customer. This amount serves as compensation for [REDACTED] for operating the program. For each purchase made by a Participating Customer at any Participating Merchant, the Participating Merchant who issued the card will receive an amount equal to [REDACTED] % of the rebate.

Merchants participate in the program primarily to encourage customers to be loyal to their business.

You state that you believe that you can use the rebate program to provide an attractive alternative to individuals who wish to donate funds to charities. Therefore, in order to encourage individuals to donate funds to charitable purposes, you intend to participate in [REDACTED] rebate program. Not unlike Participating Merchants, you will solicit members of the general public to participate in the program and will issue loyalty cards to each of these Participating Customers. You will purchase these cards from [REDACTED] at \$ [REDACTED] per card.

The loyalty cards will enable Participating Customers to receive rebates on goods and services at the listed Participating Merchants. When Participating Customers sign up for the rebate program, you will invite such Participating Customers to designate certain charities as beneficiaries of the amounts in their rebate accounts. You will notify Participating Customers that while you will donate these funds to organizations described in section 501(c)(3), you will be under no obligation to honor the particular designations of Participating Customers.



The rebates will be credited electronically to an account held by you in the name of the Participating Customer. [redacted] will set up the computer systems needed to run the rebate program. [redacted] will keep totals of these accounts, and notify each Participating Customer and you of the amount in their respective accounts annually.

Participating Customers have up to thirty days after a statement is mailed to them to notify you in writing of their intent to withdraw the funds held in their rebate accounts. If they do so notify you, the amount in their accounts will be forwarded to them. If they do not so notify you, these funds will be paid over to you. You will then pay over these amounts to charities designated by the Participating Customers when they signed up for the loyalty card, or to other organizations exempt under section 501(c)(3).

As with all purchases by holders of loyalty cards, Participating Merchants will pay an additional amount to Lenexa on each purchase which is roughly equivalent to the amount of the rebate to the customer. In addition, for any card issued by you, the Merchant will pay you an amount equal to 2% of the amount of the rebate. You state that you will use this amount to pay your administrative expenses.

While the credit card rebate program is not yet in place, and will not be put in place until after the general rebate program is operational, you describe its proposed operation as follows. Under the credit card rebate program, credit card companies will issue credit cards with your logo printed on the front. You state that at this time, you do not have a registered trademark. Regardless, you do not intend to enter into contracts with credit card companies whereby you would receive a fee or payment for the use of their logo or trademark.

All individuals will have the opportunity to apply for a credit card. Applicants who have satisfied the general criteria of the credit card company will receive cards. The credit card company will grant customers who purchase items with the card a rebate. They will credit this rebate amount to an account which you maintain for the cardholder. You will handle these funds in the same general way as funds in the general rebate program.

You state that a majority of your operations, as much as 95% or more, will consist of organizing and operating the rebate programs and making grants to various charities.



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

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax 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, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides a definition of the term "charitable." It is used in its generally accepted legal sense and includes relief of the poor and distressed and promotion of social welfare through charitable activities.

Section 1.501(c)(3)-1(e)(1) of the 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 of the Code.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of every organization described in sections 401(a) and 501(c).

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant. It further provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of

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income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identify as a trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

Rev. Rul. 66-151, 1966-1 C.B. 152, held that the management of health and welfare plans for a fee by a business league exempt under section 501(c)(6) of the Code was an unrelated business within the meaning of section 513 of the Code.

Rev. Rul. 76-442, 1976-2 C.B. 148, held that a nonprofit organization whose primary activity was the offering of free legal services for personal tax and estate planning to individuals who wished to make current and deferred gifts to charity as part of their overall tax and estate planning did not qualify for exemption under section 501(c)(3) of the Code.

The primary objective of a customer in these arrangements is to make a purchase from a Participating Merchant for the sake of the rebate based on loyalty. In order for a solicited individual (Participating Customer) to eventually give you a contribution, you must first be instrumental in getting the individual to become a customer of a Participating Merchant. This serves the private interests of both the Participating Customer and the Participating Merchant.

Like the organization discussed in Rev. Rul. 76-442, you are not affiliated with any particular charitable organization but rather encourage the Participating Customer to patronize a Participating Merchant which may or may not result in a benefit to a public charity. On the other hand, the benefit to the Merchant

[REDACTED]

and the Customer are both immediate and certain in the form of sales and rebates. Because you are providing these services to the Merchant and the Customer for a fee, your activities can be likened to those of the organization discussed in Rev. Rul. 66-151, and like that organization would therefore be unrelated to any exempt function resulting in unrelated business income to you.

Accordingly, your management of the custodial accounts on behalf of customers/potential donors solely for the income or funds that the activity generates constitutes the conduct of an unrelated trade or business within the meaning of section 513 of the Code. See Rev. Rul. 66-151 cited above.

Although some funds may ultimately be made available to charity as a result of your activities, the potential benefits to the public are tenuous in view of the predominantly private purposes being served by facilitating the interaction between Participating Customers and Participating Merchants. The fact that potential gifts to charity are contemplated in the arrangements do not convert the arrangement into a charitable activity or one that promotes social welfare within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

Your activity thus serves the private interests of (1) the Participating Merchant making the sale who in turn financially rewards (2) the customer with a rebate, (3) Lenexa with a rebate, and finally, you, with a rebate and the potential to claim the amount in the customer's custodial rebate account maintained by you. Yours therefore, is a contingent interest based on the decision of the customer to either receive his rebate himself or relinquish the rebate to you for your purposes. Accordingly, the interests of any charitable donees as beneficiaries of your activities are contingent or potential interests. This potential benefit to charity is far outweighed by the actual benefits accruing to the Participating Merchants, Lenexa, the customer, and to you as agent for any of these. Operating for the benefit of private parties who are not members of a charitable class precludes exemption under section 501(c)(3). See, Old Dominion Box Co., v. United States, cited above.

Because we believe that your operations will result in substantial private benefit to the Participating Merchant, to Lenexa, and to the customer/potential donor, and, because your primary activity is an activity unrelated to any exempt purpose, and, because you have not otherwise established that you meet the requirements for exemption under section 501(c)(3), we have concluded that you are not operated exclusively for charitable,

[REDACTED]

educational or religious purposes and we therefore cannot recognize you as an organization exempt under that section.

You must file federal income tax returns.

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

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:

[REDACTED]

4/10/02

[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]

[Redacted]

Chief, Exempt Organizations

[Redacted]

cc:

[Redacted]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[Redacted]	[Redacted]					
Surname	[Redacted]	[Redacted]					
Date	[Redacted]	[Redacted]					

Department of the Treasury Internal Revenue Service