

[REDACTED]

[REDACTED] in [REDACTED], [REDACTED]. You state that your productions will be marketed in a normal commercial manner based on costs plus what market rates will allow and that other items, such as video tapes, purchased for resale will be sold at market rates. Although no support has been given to date, you state that you plan to support Roman Catholic filmmakers with production funding. Your chief financial officer is paid \$[REDACTED] per year.

The projected budgets for [REDACTED] and [REDACTED] show expenditures of \$[REDACTED] and \$[REDACTED], respectively, for fund raising, salaries, interest, and rent, and \$[REDACTED] and \$[REDACTED], respectively, for expenses associated directly with film production. While these projections were not met in either year, they do indicate the categories for which expenditures were made and the importance placed on the various areas. Production Bonds in the amount of approximately \$[REDACTED] were sold (the prospectus amount is \$[REDACTED]). These are the type of bonds normally used in the film industry and are secured by all of your assets. You will also secure production funding through [REDACTED] financing, which has been used previously to fund several commercial films made in [REDACTED]. The [REDACTED] is your quarterly report and is sent free to all bond holders. Others who wish to subscribe pay \$10 per year (\$20 for foreign subscribers).

Section 501(a) of the Code, in part, provides for the exemption from federal income tax for organizations described in section 501(c).

Section 501(c)(3) of the Code, in part, provides for the exemption of organizations which are both organized and operated exclusively for charitable purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individual or shareholder.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations, in part, states that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states, in part, that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations states, in part, that the words private shareholder or individual refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary that the organization establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

Section 1.501(c)(3)-1(e)(1) of the regulations states 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. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes.

In Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945), it was held that a single non-exempt purpose, if substantial in nature, would preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

In Bill Wildt's Motorsport Advancement Crusade v. Commissioner, No. 22975-87X, T.C. Memo 1989-93 (March 9, 1989), 56 TCM 1989-93, the court found a substantial non-exempt purpose of promoting the competitive and commercial motorsport industry. It also found that because the creators has a significant involvement in the industry, controlled the organization as its trustees, were the primary salaried employees, and the bulk of the money budgeted for contracted equipment would go to one of these individuals for the use of his equipment, petitioners had not shown that there was no inurement of earnings to the benefit

of private individuals. For both of these reasons the court held that petitioners did not qualify for exemption under section 501(c)(3) of the Code.

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the court considered an organization which published investment information and periodical bulletins and sold them on a subscription basis for the claimed purpose of educating the public. It concluded that the organization was operated primarily for the purpose of carrying on a business, and was not exempt under section 501(c)(3) of the Code. The court stated that, although the existence of a profit was not conclusive of a business purpose, the overall circumstances and the fact that the organization was competing with commercial concerns did establish the primary business purpose.

Rev. Rul. 60-351, 1960-2 C.B. 169, describes an organization that publishes a foreign language magazine containing fiction, poetry, book reviews and articles alleged to be of a literary, scientific and educational character. The magazine is available to the general public through regular paid subscriptions. The Rev. Rul. states that consideration of the corporation's charter power, in the light of the actual operations, indicates that the corporation is organized for the primary purpose of publishing a magazine. It is true that there is language in the articles of incorporation which, standing alone, indicates charitable, scientific, literary and educational purposes. The corporation, however, has a specific power to publish a magazine, the use or distribution of which is not distinctly required to accomplish any of such purposes. This power, as construed and exercised by the corporation, shows that the corporate assets are not dedicated to charitable, scientific, literary or educational purposes and that they are not impressed with a trust which may be enforced for such purposes by the state in which it is incorporated or by an interested person. Materials may be selected and purchased for publication, and other operations in publishing and distributing the magazine may be undertaken, at the discretion of the corporate officers and without regard on their part to the fiduciary responsibilities that ordinarily attach to funds and assets definitely committed to charitable, scientific, literary or educational uses. In this case, the corporate activities, which presumably are within the charter powers, are, per se, business activities. They are devoted to publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices. The corporate assets are subjected to the usual business risks incident to such activities. Although the magazine is printed in a foreign language and may provide some materials unlike those in other magazines, there is no showing

[REDACTED]

that the operations fulfill a corporate role which in and of itself is exclusively charitable, scientific, literary or educational. The mere fact that the corporation is not organized for the profit of its members does not remove the necessity for the corporation to bear its burden of proof to a right to exemption. Accordingly, the conclusion is that the instant corporation is not an exempt charitable, scientific, literary or educational organization within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 66-104, 1966-1 C.B. 135, determined that a nonprofit organization which makes funds available to authors and editors for preparing teaching materials and writing textbooks does not qualify for exemption from federal income tax as a charitable, educational or literary organization under section 501(c)(3) of the Code. The organization makes funds available to authors and editors for preparing teaching materials and writing textbooks. The individuals are selected on the basis of their ability as scholars or educators. The organization contracts with commercial publishing firms for the publication of these materials which are used primarily by colleges and universities. The agreement between the organization and the editors and authors provides that the royalty income will first be applied to pay for the costs of preparing the materials for publication, including funds to authors and editors. The remaining royalty will be divided into specific percentages between the organization and the editors and authors. The organization receives funds from contributions, royalties from sales of publications, and loans. The conclusion was that although educational interests are served by the publication of better teaching materials, the facts in this case show only an enterprise conducted in an essentially commercial manner, in which all the participants expect to receive a monetary return.

You were created and are operated almost exclusively to produce motion picture films. Other than the fact that you will produce only films which promote the Roman Catholic viewpoint, you are operated in the same normal commercial manner as for profit filmmakers. The same rationale that applies to a publisher, otherwise operating in a normal commercial manner, who elects to limit his publications to educational and/or religious topics applies to a filmmaker limiting his productions to educational and/or religious topics. While limiting your activities to promoting religious subjects consistent with the teachings of the Roman Catholic Church, you are an enterprise conducted in an essentially normal commercial manner. Thus the rationale of Rev. Ruls. 60-351 and 66-104 applies to preclude your exemption.

Because you are operated primarily to carry on a business in a normal commercial manner, i.e., for the purpose of producing and distributing films, you are operating similarly to the organization denied exemption in American Institute for Economic Research, supra, and that rationale would also apply to you and preclude exemption to you. Because this would be considered an unrelated trade or business and would be your primary purpose, section 1.501(c)(3)-1(e)(1) of the regulations would operate to preclude exemption. In addition, because you are engaged primarily in nonexempt activities, your activities are not limited to one or more exempt purposes and, under the rationale of section 1.501(c)(3)-1(b)(1), you are not considered to be organized exclusively for exempt purposes and exemption would be denied. Because your whole purpose appears to be to conduct nonexempt activities, i.e., producing films, you have a substantial nonexempt purpose and would not be exempt under the rationale of Better Business Bureau, supra. This rationale would also apply to your plan to provide production funding to Roman Catholic filmmakers. They are not a charitable class and supporting them in their commercial endeavors would be a nonexempt activity which would contravene the intentment of exemption.

appears to have been the primary force in your creation. The timing of your creation along with the fact that initially all of your efforts will be directed to filming the work () which he wrote and sold to you appear to be a direct benefit to . He has a significant control and influence, as well as a personal interest, in both your operations and the actual filming of (he is one of your directors, your president and treasurer, and director of film production, for which he receives a substantial salary. Thus, it appears you are serving the private interests of and that your net earnings may be inuring to his benefit. Either the serving of a private benefit or the inurement of net earnings would preclude exemption. See sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii) of the regulations and Bill Wildt's Motorsport Advancement Crusade, supra.

In addition, the fact that all of your assets are at risk to secure the bonds financing the production of , a commercial venture, indicates that your assets are not dedicated to charitable, scientific, literary or educational purposes. Rather, they are subject to the usual business risks incident to commercial film production. Under the rationale of Rev. Rul. 60-351, supra, this would also operate to preclude exemption.

Therefore, we have concluded that you are neither organized nor operated exclusively for exempt purposes.

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Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and 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 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 copies will be forwarded to the Ohio EP/EO key district 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, EP/EO 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).

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: OP:E:EO:T:2, Room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

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

Sincerely,

(Signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: [REDACTED]
[REDACTED]
[REDACTED]
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OPERATIONS DEPT
[REDACTED]