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

Date 09.23.99

Surname [REDACTED]

000

Date: AUG 13 1999

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

[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.

Your organization was incorporated [REDACTED] under the non-profit laws of the [REDACTED]. The annual accounting period ends December 31.

You have stated: [REDACTED] and a [REDACTED]. The [REDACTED] Degree can be earned in the same time frame as the M.D. Degree through contemporaneous enrollment in the [REDACTED] program of [REDACTED]. This program is taught partly as a distance education program and, therefore, falls within the ED distance education regulations. As such, only a maximum of 50% of the program (24 of 48 semester hours required for the [REDACTED] degree) can be supported by Title IV Stafford funds. However, since it is a graduate level program, full graduate level Title IV loan limits can cover part-time enrollment (and part-time tuition) and full costs of living either in [REDACTED] or [REDACTED]. Further, based on [REDACTED] interpretation of the 50% rule only four terms can be supported with living expenses and the fifth term can only support tuition. Students enrolled in [REDACTED] attend five terms in [REDACTED], and the remaining five terms in [REDACTED] approved clinical rotations in the U.S. or in approved clinical training programs in the United Kingdom. [REDACTED] students would receive Title IV loans for M.H.S.A. program arrangement with [REDACTED] has been approved by the regional ([REDACTED] accrediting body that recognizes [REDACTED] and was formally cleared through the U.S. Department of Education."

You have also indicated that this organization has another branch of its organization which is [REDACTED] (non-profit corp.), [REDACTED]

Your foundation has been engaged in the organization of the student loan program for the [REDACTED]. Your stated purpose is to provide "scholarships" (this word is misused, as the foundation does not award scholarships, only the processing of applications for student loans) to medical students. Your foundation will facilitate the

processing of applications for students through the financial aid department of the college mentioned above. Only student loans will be made available. The interest rates are determined at the Treasury Bill rate plus 2.5%-2.85% with several repayment options.

Your Foundation has one activity. Your sole purpose is to administrate student loan funds received from United States financial institutions for [REDACTED]

[REDACTED] fund a USA lending institution the US student loan program. Applications provided by [REDACTED] are completed by the students and approved by [REDACTED]. The funds flow through the foundation to the students. Students receive checks for the amount of the loan. The only contracts entered into are the contracts with the students for financial aid and a contract with [REDACTED].

You have stated that [REDACTED] is the only employee and is the controller for both the [REDACTED] and the [REDACTED]. She maintains the checking account where the electronic fund transfers (EFT) are received. She matches monies received with approved loan documents and forwards the checks to the appropriate student. She spends approximately six hours per week on your accounting records.

You have stated that your foundation is of common ownership with [REDACTED]. Its decision making body is the same. Its accounting staff is the same. It provides services only for the college. The college in [REDACTED] is a non-exempt [REDACTED]. Funds provided by [REDACTED] are remitted directly to the students. Remittance reports are reconciled by student in the Department of Financial Aid at the college. Final loan documents are give to the student with their checks.

[REDACTED] is a lending institution that is completely separate from the college and foundation. There is no selection committee. All students can apply with the bank. Each student receives a financial aid packet.

Your organization, from your description, has no control or discretion over the use or distribution of the funds. Your organization cannot limit the distribution of funds, your stated purpose is only to administrate. There is no "significant involvement" in obtaining the student loans by your organization. From the information supplied by you to the Service, a student can obtain the loan packet, apply for the loan, and receive disbursements from [REDACTED] just by calling an 800 number. Further, it is indicated from your submission, that a student could apply through [REDACTED].

Your foundation's source of financial support will be from contributions by the [REDACTED]. You have stated that there are three directors who are also the directors of [REDACTED]. They are; [REDACTED], M.D.; [REDACTED], (honorary director); and [REDACTED].

The supported organization is [REDACTED]. It is organized as a [REDACTED]. As a [REDACTED] it does not qualify for the U.S.

Student Loan Program. The [REDACTED] was organized to provide the "scholarship" program to U.S. student loan program.

A student loan is to cover tuition, which is approximately \$ [REDACTED] (\$ [REDACTED] per term) per student. The financial aid department of the college publicizes availability.

Section 501(a) of the Code states, "[a]n organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle [Subtitle A ~~is~~ income taxes], unless such exemption is denied under section 501 or 503."

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d) of the regulations state in general an organization may be exempt as an organization described in section 501(c)(3) if it is organized for one or more of the following purposes: (a) Religious, (b) Charitable, (c) Scientific, (d) Testing for public safety, (e) Literary, (f) Educational, (g) Prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, 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, shareholders, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "*charitable*" as used in section 501(c)(3) in its generally accepted legal sense. Such terms includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "*educational*" as used in section 501(c)(3) to include:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public of subject useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations states that an organization may be exempt under section 501(c)(3) even though 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 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 facts and 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 business is not exempt under section 501(c)(3).

Section 509(a)(1) of the Code defines the term private foundation to mean any domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(3)(B) provides that the organization must be operated, supervised and controlled by or in connection with one or more organizations described in IRC 509(a)(1) and (2).

Section 513 of the Code defines the term "any trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organizations for income or funds or the use it makes of the profits derived) to the exercise or performance by an organization of the purposes or functions constituting the basis for its exemption under section 501.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income); and that it is "substantially related," for purposes of section 513 of the Code, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business to be substantially related to purposes for which exemption is granted, the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Rev. Rul. 68-489, 1968-2 C.B. 210, holds that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

Rev. Rul. 72-369, 1972-2 C.B. 245, holds that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test" the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Rev. Proc. 86-43, 1986-2 C.B. 729 holds that the method used by an organization in advocating its position, rather than the position itself, is the standard for determining whether an organization has educational purposes. It is used in all situations where the educational purposes of an organization that advocates a particular viewpoint or position are in question.

*Harding Hospital, Inc. v. United States*, 505 F.2d 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. See, also, *Christian Stewardship Assistance, Inc. v. Commissioner*, 69 T.C. 1037, 1042 (1978).

*Better Business Bureau v. United States*, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). 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 purposes.

*B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), holds that an organization that planned to offer consulting services for a fee to a class of nonprofit (but not all tax-exempt) organizations did not qualify as a charitable entity but was taxable as a business.

The facts and circumstances here indicate that your organization is not giving either scholarships or grants to students. You are merely serving as an administrator for student loan funds. These loans which may be obtained are not directed at minority or disadvantaged students. They are available to all on an open market by [REDACTED]. Your organization has no oversight, granting authority, or selection authority for these loans.

Your specific business activity, as you have indicated in your Application to the Service, manifests a frequency and continuity, and is pursued in a manner that is comparable to any commercial activity that performs these same types of services. Further, it is conducted and oriented in a commercial manner. Your organizational purpose is neither necessary nor indispensable to any tax-exempt organization.

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 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 EP/EO key district office. Thereafter, any questions about your federal

[REDACTED]

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  
[REDACTED], OP:E:EO:T:4, Room 6238  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

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

Sincerely,

(Signed) G. V. Sack

Gerald Sack  
Chief, Exempt Organizations  
Technical Branch 4

OP:3:EO:1:4  
[REDACTED]  
[REDACTED]

OP:6:EO:T:4  
[REDACTED]  
[REDACTED]  
[REDACTED]