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

Date:

MAR 13 2000

Contact Person:

[REDACTED]
ID Number:

[REDACTED]
Telephone Number:

[REDACTED]
Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Code.

The information submitted shows that you were incorporated on [REDACTED] pursuant to the nonprofit laws of the State of [REDACTED].

Your stated primary purpose is to provide financial support for various charitable organizations that are recognized as exempt from federal income tax under section 501(c)(3) of the Code that are providing for the general welfare and benefit of animals. You stated that you will be solely supported from the donation of cars.

A prospective donor first calls your organization. You request information from the donor and fill out a "pickup request" form. This information includes the vehicle make, model, mileage, running condition and other relevant information. The "pickup request" form is then faxed to a tow truck company. You listed five towing companies that you use. The towing company picks up the car and returns the "pickup request" with any change or added information. The towler takes title to the vehicle at the time of the pickup. You then give the donor a pickup memo that is entitled a "temporary donation receipt". Upon the completion and returned by the donor of the pickup memo, you then give the donor an official tax receipt that include the Kelley Blue Book trade in value based on the condition of the vehicle and refer the donor to IRS Publication 526. You negotiate the payment for each vehicle from the respective towing company.

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 and educational purposes, no part of the net earnings of which inures to the benefit of any individual.

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

Section 1.501(c)(3)-1(c) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of a purpose described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet these requirements, 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 states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such terms includes: relief of the poor and distressed or the underprivileged; advancement of religion; advancement of education or science; erection or of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and to combat community deterioration and juvenile delinquency; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.


Section 1.501(c)(3) -1(e)(1) 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 of the trade or business which are in furtherance of one or more exempt purposes.

Section 513(a) of the Code defines the term "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 forming the basis for its exemption under section 501.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), a nonprofit organization's regularly scheduled bingo games were held on the premises of a for-profit business which sold food and beverages, the games were conducted by the owners of the for-profit, and the directors of the for-profit controlled the nonprofit's board. Under these circumstances, the court held that the nonprofit had a substantial non-exempt purpose to enhance the profits of the for-profit.

The presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U. S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

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 operation test is a question of fact. In this situation the hospital was held not entitled to exemption under section 501(c)(3) of the Code because it limited its admissions and emergency room care substantially to a private group of patients.


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 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.

Rev. Rul. 66-104, 1966-1 C.B. 135 provides that a nonprofit organization which makes funds available to authors and editors for preparing teaching material and writing textbooks, and, under the terms of the contract with the publisher, receives royalties from sales of the published materials and then shares them with those individuals, does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. This revenue ruling held that the facts of the case shows that the enterprise was conducted in an essentially commercial manner.

It is incumbent upon an organization seeking recognition of its tax exempt status to carry the burden of proving that it satisfied 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 directly benefit private interests, if more than insubstantial, will preclude exemption. See Old Dominion Box Co. v. United States, *supra*.

The donating of funds to other section 501(c)(3) organizations is a recognized charitable activity under section 501(c)(3) of the Code. However, you are raising your funds from the donation of cars. The various towing companies pickup the cars, receive the title to the cars, repair the cars and do all the preparation to sell the cars. You only receive the initial information from the donor, prepare an official tax receipt and negotiate the price the towing company pays to you for the donation. Under these circumstances we conclude that your donation of car activity is being conducted in essentially a commercial manner. See P.L.L. Scholarship Fund v. Commissioner and Rev. Rul. 66-104, *supra*. Since this activity is substantial in nature, it would preclude you from qualifying for recognition of exemption from federal income taxes under section 501(c)(3) of the Code. See Better Business Bureau of Washington, D.C., Inc. v. United States, *supra*.

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.

[REDACTED]

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
[REDACTED] T:EO:RA:T:2, Rm. 6539
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) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2

cc: [REDACTED]

[REDACTED]

[REDACTED]