

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

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cind

DATE: [REDACTED]
SURNAME: [REDACTED]

Date: MAY - 3 2001

[REDACTED]

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(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 original articles of incorporation do not meet the requirements of the organizational test set forth in section 501(c)(3) of the Code. You have however indicated that you are willing to amend your articles if it is determined that you are otherwise qualified for exemption under that section.

You applied for, and you were granted a "Certificate of Authority to Transact Business" as a foreign corporation by the State of [REDACTED].

You indicate that your creation was the brainchild of [REDACTED] and was co-founded by [REDACTED], [REDACTED], and [REDACTED]. In [REDACTED] for the purposes stated in your mission statement.

Your original membership consisted of five persons each of which was/is required to complete a ten week course on [REDACTED] world history, indigenous [REDACTED] American history, and antigitous (sic) history of the [REDACTED] as well as an introduction to [REDACTED] science in the form of Astrology, numerology, and Geometry. The purpose of this course is to ensure that members are knowledgeable as to what it means to be a [REDACTED]. They will be able to translate this knowledge to humanity through the arts.

[REDACTED]

Your mission statement provides as follows:

To contribute the [REDACTED] founded by [REDACTED] of uplifting fallen humanity by resurrecting [REDACTED] Culture. This includes the areas of Science and Technology, History, Law, Fashion, Music, Language, Cuisine, Art, Thought, Architecture, and self defense.

The mission of [REDACTED] is to uplift and enlighten the immediate community and mushroom into the international community by exposing the populace to the indigenous [REDACTED] arts and thought. The [REDACTED] artistic perspective reconciles Art and Science into a cohesive whole thus allowing the individual to reorient oneself into a disciplined yet creative mindset. This mindset allows the individual to be prepared to thrive in this technological age and prosper in the cyber economy. It is our mission to form partnerships with other progressive organizations that share similar approaches and goals.

You state that you are society of artists missioned to retrieve and share with the world at large the magnificence of indigenous [REDACTED] culture via the arts. You Also seek to sponsor community and youth oriented programs and institutions that are in harmony with your mission statement.

You state that to further your purposes, you host weekly poetry readings to showcase the talents of your members and bring awareness to your purposes. You charge an admission fee to these events at which your members display and vend their wares. The member contributes 10% of such earnings to you and keeps 90% for him/herself.

You indicate there is no written agreements with any parties on matters relating to your activities.

You state that your sources of financial support will be from dues paid by members, proceeds amassed by functions that you will sponsor such as art shows, music shows, book signings, etc, all of which will be relevant to spreading the awareness of Indigenous Moorish American history and culture. The bulk of your support is anticipated to be from governmental and private grants.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" as persons having a personal and private interest in the

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activities of the organization.

Section 1.501(c)(3)-1(d)(3)(ii), Examples (2) and (4) of the regulations provides that the term "educational organization" includes organizations whose activities consists of presenting public discussion groups, forums, panels, lectures, or similar programs, and, museums, zoos, planetariums, symphony orchestras, and other similar organizations.

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 of the Code. This section further provides that 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, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

In Rev. Rul. 66-178, 1966-1 C.B. 138, an organization exhibited the works of unknown artists to the public. There was no selling at the exhibits. It was held that the organization was operated exclusively for educational and charitable purposes.

Similarly, in Rev. Rul. 75-471, 1975-2 C.B. 207, a nonprofit organization formed to promote the art of filmmaking by conducting annual festivals to provide unknown filmmakers with opportunities to display their films and to sponsor symposiums on filmmaking was held to be promoting and developing the art of filmmaking and thus furthering a charitable and educational purpose.

Rev. Rul. 76-152, 1976-1 C.B. 151, held that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery did not qualify for exemption.

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), affg. 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.

[REDACTED]

United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

In Founding Church of Scientology v. United States, 412 F.2d 1197 (Cl. Ct. 1969), cert. denied, 397 U.S. 1009 (1970), the Claims Court held that a private party's ability to dictate the amount of its compensation may be unreasonable private benefit in and of itself, even when the private party pays itself a reasonable amount.

In order to qualify for exemption under section 501(c)(3) of the Code, you must establish that you are organized and operated exclusively for religious, charitable, or educational purposes and that no part of your net earnings inure to the benefit of a private individual or shareholder.

While there is nothing in section 501(c)(3) of the Code to prohibit all dealings between a charitable organization and its founder or with those in controlling positions, when the interests of charity are sacrificed to the private interests of the founder or of those in control, exemption is precluded because the organization is being made to serve private interests.

Sponsoring art exhibits, conducting public discussion forums and otherwise promoting the arts, have been held to be educational pursuits when conducted within the scope of section 501(c)(3) of the Code. See Rev. Ruls. 66-178, and 75-471, both cited above. Unlike those organizations, your activities will be conducted in much the same way as the organization discussed in Rev. Rul. 76-152 which exhibited and sold art works of local artists. You exhibit and sell your members' work and that of outside artists if they seek participation in one of your presentations and are willing to donate a piece of art. Your members will select the artist who participate. The works are not selected by a panel of independent expert judges and are not gratuitously displayed, as discussed in Rev. Rul. 66-178, cited above.

In response to a request for supplemental information to clarify your activities, you restated that your members' works would still be sold to support your activities. You discussed an oral financial agreement between you and your members under which members will now donate their art work to you for sale to support your activities. You also stated that "as funding is procured, assistance will be meted out to members to ease the expenses of supplies". This sale of your member's art work is indistinguishable from the sales activity described in Rev. Rul. 76-152, cited above. This activity benefits your members in that they will be subsidized in their purchase of art supplies, their talents and reputations as socially aware artists are enhanced, and it also fosters future business for the members. This is a substantial private benefit to your member/artists, much like the benefits derived by the artists discussed in Rev. Rul. 76-152.

You also discussed an oral agreement with the band [REDACTED] of which your founder is bandleader and several of your members are band members. This band

[REDACTED]

[REDACTED]

was previously compensated for performing at your affairs. After performing at two such affairs you noted that profits derived from the events were minimal after compensating the band. Pursuant to a new oral agreement, the band will now provide services for your events for free until such time as your funding is increased at which time fees acceptable to both parties will be determined. Such agreements, whether oral or written, in which founders, members and others considered insiders within the meaning of section 1.501(a)-1(c) of the regulations, share in the earnings of an exempt organization, results in the organization's earnings inuring to the benefit of such insiders. See Founding Church of Scientology, cited above

Accordingly, because your primary activity, the exhibition, promotion and sale of your members' art works results in substantial private benefit to your members and other contributing artists, and because your net earnings inure to the benefit of your founder and members, 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 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 a copy 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).

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Reliance to Manager, EO Determinations - Cincinnati

DATE: [REDACTED]
SIGNATURE: [REDACTED]

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:3
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) Robert C Harper, Jr.
Robert C. Harper, Jr.
Chief, Exempt Organizations
Technical Group 3

[REDACTED]