



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NO PROTEST RECEIVED  
Release to Manager, EO Determinations - Cincinnati

DATE: [REDACTED]  
SURNAME: [REDACTED]

Date: JUL 30 2001

[REDACTED]

Contact Person: [REDACTED]  
Identification Number: [REDACTED]  
Contact 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.

The information submitted indicates that you were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Your Articles of Incorporation state that your primary purpose is to apply the income and all or such part or parts of the capital for or toward the financial and related support of scientific and spiritual research to alleviate human ailments. In a document signed [REDACTED], you state that you do not have bylaws.

In your application, you state that you will raise funds for the hard scientific investigations of the Spirit in the human body and all associated aspects relating to the magnetic field and its effects on the physical body. You also state that you will seek out people doing research into the scientific (as opposed to the philosophical) investigations and research of the Spirit and assist in funding that work. You state that you do not actively work to attract members, but that private individuals or groups request a presentation be made where your purpose is explained. Members must have seen a six-hour informational presentation in person or have watched a particular videotape. Your founder, [REDACTED], makes the informational presentation, at any time for any size group when requested. The videotape, a presentation conducted by [REDACTED], consists of six hours of research history between [REDACTED] and the early [REDACTED] describing how [REDACTED] came to discover a new form of matter, ORME state of matter, and how, in [REDACTED], he filed U.S. and world-wide patents on matter in that form; and the research he conducted on where this new form of matter is found in nature. You state that neither you nor [REDACTED] charge a fee for the presentation, but that the owner of the videotape (unrelated to [REDACTED]) does charge a fee to anyone wishing to purchase the videotape. You state that you only require that a person see the presentation, not buy the videotape. You further state that you do not profit from the sale of the videotape, nor do you control its content of how it is sold.

[REDACTED]

You state that your members receive updated information in findings from the research conducted concerning the spirit and updates on research in progress. In your letter dated [REDACTED] you state that the results of research are made available to your members only by newsletter, and that some members elect to place this information on their Internet websites.

The financial information you submitted for the year ending [REDACTED] indicates that approximately 95% of your expenditures consisted of grants to [REDACTED] for research into naturally occurring elements and their effects on the human spirit and in relieving ailments. The information also indicates that you carry an outstanding loan to [REDACTED] in the amount of [REDACTED]. In your letter dated [REDACTED], you state that you funded the creation of [REDACTED] to construct the equipment to produce the high quality [REDACTED] product. You state this was necessitated because, to your knowledge, no one else in the world was aware of this material, no other person or group understood how to quantitatively separate the [REDACTED] product from a natural source, or able to produce it in high purity. You state that the understanding has been developed by [REDACTED] over the past twenty-six years of continuous work in chemical laboratories and paying for instrumental analysis and procedures ranging from atomic absorption to neutron activation analysis. You state that, to date, the prime objective of [REDACTED] was to have [REDACTED] material produced in a high purity form so that material could be provided to other researchers and institutions for specific philosophical, medicinal, magnetic, and electromagnetic as well as normal commercial evaluation. You state that the [REDACTED] product was initially patented by [REDACTED] in the U.S. and worldwide. After [REDACTED] however, the patent application was withdrawn and [REDACTED] has elected to treat this product as a proprietary material.

You state that the common board members between you and [REDACTED] are [REDACTED] and his wife, [REDACTED]. You also indicate that your organization, prior to your incorporation, had provided [REDACTED] with the majority of your funds since at least [REDACTED]. The Articles of Operation of [REDACTED] indicates that it was formed in [REDACTED] by [REDACTED] as Manager and as Trustee of the [REDACTED], created [REDACTED] as Member. In your letter dated [REDACTED], you state that [REDACTED] has only two partners, [REDACTED] and [REDACTED] and that [REDACTED] is a partnership which files Form 1065. You possess a lien against all real property owned by [REDACTED] pursuant to a promissory note dated [REDACTED] in the principal sum of \$ [REDACTED]. The lien document also states that all the rents, royalties, issues, profits, revenue, income, and other benefits of the property are absolutely, presently, and unconditionally assigned, transferred, conveyed, and set over to you to be applied by you in payment of the principal and interest, and all other sums payable on the note and of all other sums payable under the lien.

In your letter dated [REDACTED] regarding the research you funded, you stated that you would be conducting commercial fuel-cell evaluation with another research organization. In your letter dated [REDACTED], you state that you have little interest in commercial fuel cell evolution and that [REDACTED] is pursuing commercial fuel cell evolution in order to fund its for-profit activities. You also state that [REDACTED] experienced a chemical leak in [REDACTED] which led to an investigation by the Environmental Protection Agency, and eventual interruption of the production of [REDACTED] product at [REDACTED]'s facilities. You understand that this problem has been resolved by [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes so long as no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), CT. D. 1650, C.B. 1945, 375, the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any category of charitable purpose under section 501(c)(3) of the Code.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501 of the Code refer to persons having a personal and private interest in the activities of the organization.

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) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

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 engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of any exempt purpose.

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

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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 provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged, advancement of education or science, and promotion of social welfare by organizations designed to lessen neighborhood tensions or to eliminate prejudice and discrimination.

Section 1.501(c)(3)-1(d)(5) of the regulations provides that a "scientific" organization must be organized and operated in the public interest and carry on scientific research in the

public interest. For research to be "scientific", within the meaning of section 501(c)(3) of the Code, it must be carried on in furtherance of a "scientific" purpose. Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc. Scientific research will be regarded as carried on in the public interest if the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis.

Rev. Rul. 65-1, 1965-1 C.B. 226, holds that an organization which promotes and fosters the development and design of machinery in connection with a commercial operation, and in connection therewith has the power to sell, assign, and grant licenses with respect to copyrights, trademarks, trade names, or patent rights is not engaged in "scientific research" within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations and does not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 69-266, 1969-1 C.B. 151, holds that an organization formed and controlled by a doctor of medicine, "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code. The revenue ruling concludes that the organization is operated by its creator essentially as an attempt to reduce his personal federal income tax liability while still enjoying the benefits of his earnings. Thus, the organization's primary function is to serve the private interest of its creator rather than a public interest.

Rev. Rul. 69-632, 1969-2 C.B. 120, holds that a nonprofit organization composed of members of a particular industry to develop new and improved uses for existing products of the industry is not exempt under section 501(c)(3) of the Code as a scientific research organization. In this case, the organization itself conducts no research, but contracts with various research organizations, institutes, and universities for specific research projects selected by a committee of technical experts chosen from the organization's membership. The revenue ruling concludes that the organization's research projects may result in new products and processes that benefit the public, but such benefit is secondary to that derived by the organization's members. The organization's members select research projects in order to increase their sales by creating new uses and markets for their product, and therefore the primary purpose of the research is to serve the private interest of its creators, rather than the public interest. Accordingly, the organization does not qualify for exemption under section 501(c)(3).

Rev. Rul. 76-296, 1976-2 C.B. 142, holds that for purposes of scientific research within the meaning of section 501(c)(3) of the Code, the "publication" test under section 1.501(c)(3)-1(d)(5) of the regulations is satisfied when the results of the projects, including all relevant information, are generally published in such form as to be available to the interest public either currently, as developments in the project warrant, or within a reasonably short time after completion of the project. If patent rights are involved, publication may be delayed pending reasonable opportunity to establish such rights.

In Washington Research Foundation v. Commissioner, 50 TCM 1457, Dec. 42,492 (M) 1985), the Tax Court held that an organization formed to assist the transfer of technology from

[REDACTED]

research departments of universities and nonprofit research institutions to industry, by obtaining patent, copyright, and other rights from researchers and licensing them to third parties, was not entitled to tax exempt status. Although the organization planned to sponsor seminars and act as an information clearinghouse, it was not operated exclusively for charitable, scientific, or educational purposes because its main activity of proving patenting and licensing services was commercial in nature. Its major goal was to provide the universities with the maximum return on the patents and its activities did not promote scientific research.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held 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).

It is clear that [REDACTED] is a proprietary organization. There is no indication that it publishes any of its scientific research. While [REDACTED] apparently communicates some or most of the results of research performed by [REDACTED], which you fund, he does so only to your members and not to the general public within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations. It is not sufficient that some of your members may, or may not, publish information they receive, such publication is a requirement upon scientific research organizations described in section 501(c)(3) of the Code as discussed in Rev. Rul. 76-296, supra. It is clear that you do not perform any scientific research yourself, but rather have only funded the projects of [REDACTED], a for-profit partnership comprised solely of and wholly owned by your creator and his wife, irrespective of whether the projects are in the public interest or in [REDACTED]'s for-profit interest.

Your sole activity since your incorporation is the funding of [REDACTED]. This is also an activity that was carried on by your predecessor organization, prior to your incorporation. The research being conducted by [REDACTED] is commercial in nature, or to provide commercial venues for the results of the research, rather than solely for scientific purposes as discussed in section 1.501(c)(3)-1(d)(5) of the regulations. Thus, your funds are not being used exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. You are more like the organization described in Rev. Rul. 65-1, and Washington Research Foundation v. Commissioner, both supra. You do not conduct scientific research yourself, but rather you are funding research that is set up and owned by your creator and his wife on a form of matter that had been under a patent application prior to 1993. [REDACTED] withdrew the patent application and elected to treat the matter as a proprietary material. Therefore, your sole activity is the funding of private research into the uses of a proprietary material under the sole control of your creator and his wife. In this manner, you are benefiting the private purposes of your creator, in the same manner as the organizations discussed in Rev. Ruls. 69-266 and 69-632, both supra, which precludes exemption under section 501(c)(3) as discussed in section 1.501(c)(3)-1(d)(1)(ii).

Accordingly, we have concluded that you are not operated exclusively for public interests or exempt purposes and are not entitled to exemption under section 501(c)(3) of the Code. Your purposes and activities are not in direct furtherance of exempt purposes. Therefore, you

[REDACTED]

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 Tax Exempt and Government Entities (TE/GE) 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, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
T:EO:RA:T:2 - [REDACTED]  
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 yours,

(signed) Terrell M. Berkovsky  
Terrell M. Berkovsky  
Manager, Exempt Organizations  
Technical Group 2

[REDACTED]

[REDACTED]