



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: JAN 15 2002

[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.

You were incorporated in the state of [REDACTED] on [REDACTED]. Your primary activity is to receive donations of automobiles, boats and other tangible personal property from the general public and non-profit entities. The donated items will be sold at public auctions or to dealerships at wholesale prices. Cars will not be sold at retail due to [REDACTED] State law.

The proceeds from the auctions and the sale, after deducting expenses, will be donated to the charities in which you have contracted with. You will contract with non-profit entities using your Client Services Agreement ("Agreement"). The contracted parties will solicit and advertise for car donations on your behalf. All car titles will be assigned to you, and all donors will receive a tax-deductible receipt from you. You will charge a fee for the administration of services. You will charge for towing, and any informational expenses associated with the auction process to the contracted charities.

The Agreement requires the charity to pay a one-time undetermined setup fee. You have represented that the fee will be approximately \$[REDACTED] to \$[REDACTED]. It also provides a funding arrangement in which you will donate funds to the charity after the auction or sale of the items and after deducting expenses and fees based on the following schedule:

- [REDACTED] Fifty (50) percent of the net proceeds
- [REDACTED] Forty (40) percent of the net proceeds
- [REDACTED] Thirty-five (35) percent of the net proceeds
- [REDACTED] Thirty (30) percent of the net proceeds

You state, for example, that if a car were sold for more than \$[REDACTED] the charity would receive 70% of the net proceeds. The remaining 30% would be given to you to cover costs of administrative services and overhead.

Your Board of Directors includes the following members:

[REDACTED] [REDACTED]

Currently, you have not drafted a compensation agreement for [REDACTED]. However, you estimate the compensation to [REDACTED] to be no more than \$ [REDACTED] annum.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for, among others, charitable and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states 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. If an 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 engages 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)(1)(ii) of the regulations states that an organization must be engaged in activities furthering "public" purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who create it.

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. Such term includes the relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science.

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Your Articles of Incorporation are sufficient for satisfaction of the organizational test.

You, however, do not satisfy the operational test. Your primary activity is to receive donations of automobiles, boats and other tangible personal property from the general public and non-profit entities. You will auction off the donated good and distribute the proceeds, after expenses and fees, to a charity. The charity, according to the Agreement it has with you, will only receive a pro rated portion of the net proceeds based on the value of the auctioned good. The remaining percentage of the proceeds will be paid to you rather than to a charity, thereby serving your private interests.

We are not able to recognize your charitable purpose as indicated in section 1.501(c)(3)-1(d)(2) of the regulations. You conduct your operations like a for-profit business. You are organized for private rather than public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You cannot satisfy the basic requirements for exemption, in that you fail the operational test.

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.

[REDACTED]

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 877-829-6500 (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 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:4  
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) Gerald V. Sack

Gerald V. Sack  
Manager, Exempt Organizations  
Technical Group 4

[REDACTED] [REDACTED]