



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

file

DATE: [REDACTED]

SURNAME: [REDACTED]

Date: APR 12 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.

According to your Form 1023 Application, you were organized on [REDACTED] as a [REDACTED] nonprofit corporation. Your articles of incorporation state a purpose to "advance the profession of soccer within the communities in the State of [REDACTED] and related purposes." You have acquired the franchise rights to the [REDACTED], an indoor professional soccer team affiliated with the [REDACTED]. You will provide entertaining, high-quality soccer in a family-oriented environment. Games will be played at the [REDACTED] in [REDACTED] (a Winter Olympic venue). The team will include players with Division I college experience, previous professional experience, and experience on the National team. In addition to the regular soccer league schedule, you will bring in teams from [REDACTED] and [REDACTED] for exhibition.

Your players and management will seek to generate interest in indoor soccer in the area through free clinics, school assemblies, involvement in programs for the disabled and disadvantaged, and public awareness programs. Player contracts will include community involvement clauses. You seek to make tickets affordable through corporate sponsorships. You also plan to distribute 3000 tickets per game to charitable groups and those serving disadvantaged groups. Corporate sponsorship income and ticket sales will be your primary sources of support.

You have no members and a board of four directors who elect themselves, including [REDACTED], [REDACTED], and [REDACTED]. You plan to create a community-based advisory board.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for religious, charitable, scientific, testing for

public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment); or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

Section 1.501(c)(3)-1(b)(1)(i)(a) of the Income Tax Regulations provides that an organization is "organized" exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization "operates exclusively" for 501(c)(3) purposes only if it engages primarily in activities that accomplish such purposes. It does not operate exclusively for 501(c)(3) purposes if more than an insubstantial part of its activities does not further such purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes under section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must 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 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) 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 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 by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (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 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.

Rev. Rul. 55-516, 1955-2 C.B. 260, held not exempt under section 501(c)(4) of the Code a nonprofit corporation that operated a semiprofessional baseball club as its principal activity. The corporation was organized to engage in and promote athletic contests, particularly the game of baseball, for the social entertainment and physical development of its members, to provide training for athletes and to provide exhibitions of the game of baseball. Its sole activity consisted of the operation of a semiprofessional baseball club. The income was derived from gate receipts, concessions and score cards. Approximately 95% of the net gate receipts was divided among the players as players' splits or shares pursuant to individual contracts entered into between the corporation and the players. The Service reasoned that the corporation expended almost all of its funds for the purpose of conducting a semiprofessional baseball club, which is ordinarily considered a commercial activity. There was no showing that it engaged in any other activity or that it expended any part of its funds for any other purpose. Although the corporation was not organized for profit and some of its purposes may have been beneficial to the community as a whole, it could not be said that the corporation was operated exclusively for the promotion of social welfare.

Rev. Rul. 68-118, 1968-1 C.B. 261, held that a nonprofit organization that stimulated the interest of youth in the community in organized sports qualified under section 501(c)(4) of the Code. The organization was formed by local citizens to initiate programs designed to stimulate the interest of youth in organized sports. The primary activity was the youth program. All boys and girls in the community 16 years of age and younger were invited to enroll in the program for a nominal charge. Free admission to several professional sports events was furnished to each of the youths upon enrollment. In addition, each was given the opportunity to enter various essay contests sponsored by the organization for which the winners were awarded prizes such as expense-paid trips to sports events in other cities and the chance to participate in the broadcast of sports programs by local radio and television stations. Membership was open to all adults in the community. The primary source of income was membership dues and fees charged for enrollment in the youth program. Tickets were contributed by the organizations conducting the sports events. Disbursements were for expenses incurred in connection with the administration of the program. The Service reasoned that the organization provided wholesome entertainment for the social improvement and welfare of the youths of the community.

Rev. Rul. 70-4, 1970-1 C.B. 126, held that an organization engaged in promoting and regulating a sport for amateurs was not exempt under section 501(c)(3) of the Code but was exempt under section 501(c)(4). The organization was formed for the stated purposes of promoting the health of the general public by encouraging all persons to improve their physical condition and of fostering by educational means public interest in a particular sport for amateurs. The organization's primary activities were directed toward reviving and promoting the sport by circulating printed material about the sport, by conducting exhibitions to introduce the sport to the public, by conducting tournaments, and by giving occasional instructive clinics. The organization also set the standards for the equipment to be used, established the official rules of the games, and prescribed the official size of the playing area. The Service reasoned that the organization's activities did not improve or develop the capabilities of the individual or instruct the public on subjects useful to the individual and beneficial to the community and thus were not educational, but that the activities did provide wholesome activity and entertainment for the

social improvement and welfare of the community, and thus promoted the common good and general welfare of the people of the community.

In Better Business Bureau v. United States, 316 U.S. 279 (1945), the Supreme Court held that an organization was not organized and operated exclusively for charitable purposes. The court stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes.

We find that you are not "organized" exclusively for exempt purposes. Your articles of incorporation fail to meet the 501(c)(3) organizational test because they do not specify exclusively charitable purposes. Mere incorporation on a nonprofit basis does not satisfy the organizational test. Neither is advancing the profession of soccer an exclusively charitable purpose.

We also find that you are not "operated" exclusively for exempt 501(c)(3) purposes, but for substantial non-exempt purposes. Your primary activity, operating a professional indoor soccer team, does not further exclusively exempt purposes. Similarly, the operation of a professional soccer team is your primary purpose under the facts and circumstances, and is not substantially related to the accomplishment of an exempt purpose. Thus, you are operated for the primary purpose of carrying on an unrelated trade or business.

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 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

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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 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
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,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED]