



EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: APR 22 2002

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 the purposes for which you are organized are (1) for the continuation of dissemination via Web and pamphlets to educate the public on the historical and architectural significance of the [REDACTED] (2) to fund ongoing maintenance, repairs, preserve the architectural structure of the building, and (3) to fund ongoing maintenance, repairs, preserve and enhance the architecturally significant furniture and office décor originally designed by the Architect.

Your bylaws state that you are organized exclusively for charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, and that such purposes include establishment of an organization to promote, preserve, enhance, recognize, and educate the public as to the historic, architectural significance of the building known as the [REDACTED]. Your bylaws continue that these purposes shall include; but shall not be limited to, preservation and conservation of the documentary heritage of the [REDACTED], as well as preservation and conservation of the architectural integrity of the [REDACTED] building, and promotion of the historical significance of the building's architecture. Your bylaws state that, in addition, the [REDACTED] will be used as a base for accessible, modern, technologically advanced [REDACTED] programs for [REDACTED]

In your application, you state that you were formed as an auxiliary of the [REDACTED] and that your purpose is to administer, coordinate, and oversee the design and construction of an addition to a public building that has been determined to be of architectural significance. You state that you will protect and preserve the current [REDACTED] an

[REDACTED]
award-winning design by [REDACTED] of [REDACTED] a prominent [REDACTED] architectural firm. You state that because the [REDACTED] requires extraordinary rehabilitation through expansion to create a technologically current facility, you have been created in order to ensure the continuation of the architecturally significant [REDACTED] building as a viable [REDACTED] for the [REDACTED] and as a focus for [REDACTED] in the [REDACTED] in [REDACTED]. You state that you will:

- Review proposed architectural design and feasibility for a planned addition and extension of the [REDACTED];
- Review and approve any and all architectural designs;
- Support and enhance fund-raising activities to provide funds for construction of the new building addition;
- Provide oversight during the construction process;
- Disseminate information to the public regarding the purpose of the building and utilization of the building by the [REDACTED] and for public purposes;
- Provide a description of the management organization that will oversee the operation and maintenance of the building when it is completed;
- Designate a committee or responsible person to oversee the construction phase;
- Designate and monitor the person or responsible committee who will institute a fund-raising program for the construction of the building, and maintenance and operation of the building when it is completed; and
- Provide oversight of the various committees formed to address design, architectural integrity, and archives of the [REDACTED].

You also state that the ongoing objective of your management will be to operate and maintain the building, and to provide access and utilization for the [REDACTED] and members of the public. You will concentrate on coordinating fundraising activities to facilitate expansion and enhancement of the [REDACTED] building as an educational facility for the [REDACTED] and the [REDACTED].

You state that the [REDACTED] was completed to serve as home to the [REDACTED] [REDACTED] in [REDACTED]. The building overlooks [REDACTED].

In your letter dated [REDACTED], you explain that the [REDACTED] is not a public building, but is owned and operated by the [REDACTED] a private, not-for-profit corporation. You state that in the past, and currently, the building has been used for invitation-only public educational functions and you fully intend to continue this practice, to the extent feasible, given building limitations. You state that you have hosted the following:

- Every summer the local junior college brings their [REDACTED] to the building for a tour and luncheon;

- The Mayor's International Visitors Office routinely contacts the [REDACTED] to bring visitors from around the world to the [REDACTED] for luncheons and meetings with [REDACTED].
- [REDACTED] utilize the meeting function space for [REDACTED].
- [REDACTED] education activities, and [REDACTED] youth educational programs have utilized the space, including the [REDACTED] library, in their experiential learning activities;
- [REDACTED] alumni association meets at [REDACTED] and
- Staff is allowed to utilize the meeting facilities for personal meeting space for investment clubs, books, clubs, etc.

You state that while the [REDACTED] is located in the [REDACTED] which is an historic district, the [REDACTED] is not listed on the [REDACTED]. You state that you are currently in discussions with the [REDACTED] Department of Economic Development, City of [REDACTED] and the [REDACTED] to determine historical status due to the significance of the architect who designed the building, and the building itself. You have been informed, however, that it is rare for the [REDACTED] to approve a building as historically significant before the building is 50 years old. The [REDACTED] is 36 years old.

You state that to insure perpetual preservation and reasonable visual access of the renovated [REDACTED] or the public, access will be made through application for tours of the building. You state that as a functioning place of business, the daily routine must be preserved, but that reasonable accommodation would be made, as it has in the past, to provide ready access to groups interested in studying the architecture, design, and function space.

You state that the current structure of the [REDACTED] sits on the front half of the lot, facing the [REDACTED]. Your current conceptual plans contemplate construction of a "duplicate" of the original building and connect it to the original building with a glass transom area or atria. This would be built on the rear of the building and would not obstruct the current view from the [REDACTED] or the original [REDACTED] entrance. Original portions of the [REDACTED] would remain virtually untouched architecturally, except for necessary upgrades in plumbing, heating, electrical, and lighting. You are working closely with the architects and designers to ensure that the original concept of the building is maintained and enhanced.

You state that the main reason for the expansion is to accommodate the [REDACTED] and the expanding [REDACTED] education courses. You state that any proposed use of the building would need to conform to criteria established by you in cooperation with the [REDACTED] staff and officers. The [REDACTED] will maintain control of the ownership and daily workings of the [REDACTED] but you would be consulted if any additional alterations, repairs, redesigns, or construction would be undertaken in the future. You would be responsible for maintaining historical and archival records relevant to the [REDACTED] building, its construction, design, and architectural significance. You would also, in cooperation with the [REDACTED] produce public information materials, design, update, and maintain an Internet Website with regularly updated information on the building and events.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, 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(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(b)(1)(i) of the regulations provides that, in general, 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, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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(d)(2) of the regulations provides, in part, 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 advancement of education or science, and erection or maintenance of public buildings, monuments, or works.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that, in general, the term "educational," as used in section 501(c)(3) of the Code, relates to the instruction or training of the individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 75-196, 1975-1 C.B. 155, holds that an organization operating a library whose rules limit access and use to members, or their designees, composed of substantially all of the members of [redacted] in the municipality, qualifies for exemption under section 501(c)(3) of the Code as educational in nature. The revenue ruling concludes that the library facilities are available to a significant number of people, and restrictions are placed on the use of the library primarily because of the limited size and scope of the facilities. The fact that [redacted] who use the [redacted] may derive personal benefit in the

[REDACTED]

practice of their profession from the information garnered thereby is incidental to this purpose and is, in most instances, a logical by-product of an educational process. Therefore, in this case, the limitation of the use of the facilities is reasonable and does not prejudice the exclusively educational nature and purpose of the facility.

Rev. Rul. 75-470, 1975-2 C.B. 207, holds that an organization formed for the purpose of promoting an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical and/or architectural significance may qualify for exemption under section 501(c)(3) of the Code. The revenue ruling states that the organization consults with governmental agencies and local historical societies to locate those structures which are deserving of restoration and preservation, and, after a building is restored, opens it to the general public. The revenue ruling concludes that by operating in this manner, the organization is carrying on activities similar to those of a museum and is therefore educational and charitable within the meaning of section 501(c)(3).

Rev. Rul. 88-49, 1986-1 C.B. 243, recognizes that preserving the historic or architectural character of a community through acquiring and occasionally restoring historically or architecturally significant properties can serve to prevent community deterioration within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. The organization set up a revolving fund to acquire and resell these properties subject to restrictive covenants, to preserve the historic or architectural character of the community. The organization's manner of operations achieved its charitable purpose without serving private interests because:

- (a) it confined acquisitions to significant properties that met strict criteria, including listing in the [REDACTED] or located in a registered historic district and certified by the Secretary of the Interior as significant to the district;
- (b) purchases were made at arm's length for fair market value;
- (c) all resales were subject to restrictive covenants that insure perpetual preservation and reasonable visual access for the public;
- (d) resales were made at fair market value; and
- (e) the organization would not resell a property to the person or a relative of the person who sold or contributed the property to the organization.

You do not meet the organizational test under section 1.501(c)(3)-1(b) of the regulations because your Articles of Incorporation do not provide that you are organized exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Code. The three purposes stated in your Articles are not purposes that necessarily fall within the purposes stated in section 501(c)(3), and are broader than the purposes of section 501(c)(3). The fact that your bylaws state that you are organized exclusively for charitable, scientific, literary, or educational purposes within the meaning of section 501(c)(3) is not sufficient for purposes of section 1.501(c)(3)-1(b), which refers specifically to articles of organization rather than bylaws.

From the information you have provided, it is clear that your overriding purpose is to build an addition to and maintain a facility that is owned and operated by a private, not-for-profit corporation, the [REDACTED]. The facility, the [REDACTED], is and will primarily be used by the members of the [REDACTED] to carry on their own individual businesses.

[REDACTED]

You are not similar to the organization described in Rev. Rul. 75-196, supra, because your purposes and proposed activities are not considered to be of an exclusively educational nature. Although you will maintain a library in the building, this is only an insubstantial portion of your activities, which are primarily intended to provide accommodation to the [REDACTED] membership. The fact that you intend to expand the [REDACTED] is not sufficient to overcome your overriding purpose and activity, which is to provide and maintain a functioning place of business for the members of the [REDACTED] rather than have a facility of an exclusively educational nature. As provided in Better Business Bureau of Washington, D.C., Inc., supra, a single non-educational purpose will destroy exemption regardless of the number or importance of truly educational purposes.

Although you intend to host a number of educational activities at the [REDACTED], it is clear that, as stated above, the primary use of the [REDACTED] will be as a functioning place of business, with daily business routines having priority. Making "reasonable accommodation" to provide ready access to groups interested in studying architecture and design is insufficient to show that you are exclusively carrying on educational activities similar to those of a museum, such as are discussed in Rev. Rul. 75-470, supra.

While the [REDACTED] building is located in the [REDACTED] which is an historic district, you do not meet the standards set out in Rev. Rul. 86-49, supra, for preserving the historic or architectural character of a community. The [REDACTED] is not listed on the [REDACTED] nor is it certified by the Secretary of the Interior as significant to the district. By your own statement, the [REDACTED] would probably not even be considered for approval as an historically significant building for a minimum of 14 years. Because the [REDACTED] is owned and operated by the [REDACTED], you cannot guarantee restrictive covenants to insure perpetual preservation, even though you would be consulted.

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 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

[REDACTED]
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 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]
1111 Constitution Avenue, N.W.
(1750 Pennsylvania Avenue)
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,

[REDACTED]

[REDACTED]
Manager, Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]