

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - RM 7008
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination 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 Internal Revenue 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 Claims Court, 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 the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

[REDACTED]

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: (2)

[REDACTED]

Enclosure I

The information discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED]

You were formed to provide an independent study program for home educating families. You provide a structured support system for those families who have chosen to home school their children while preserving the independence as a parent/educator.

Membership as stated in your bylaws shall consist of two forms known as enrolled student and associate student. An enrolled student is defined as a student enrolled in your private school that will be represented by the organization on all affidavits, legal filing and record keeping. An associate student is not enrolled in your school and is not represented on affidavits, legal filings or record keeping but may participate in all other school events and activities that are offered.

Your by laws indicate further that your board of directors shall have full powers to do all things necessary and proper to operate the organization and it shall consist of parents that have at least one enrolled student. The board of directors shall consist of at least five (5) and not more than nine (9) individuals with one vote per person.

The activities of the organization as described in your application are field trips to [REDACTED]

[REDACTED] These activities are conducted [REDACTED] % of the time, which fulfills the purpose of providing educational opportunities for each member. Learning classes are taught [REDACTED] % of the time where a variety of subjects are taught by volunteer members and regular quarterly meetings are held [REDACTED] % of the time at the director/principal's home.

When asked in a letter dated [REDACTED] if your activities are for home school students?

Your responding letter of [REDACTED] stated that the organization is a private school consisting of many home-schooled families. Activities include annual events such as beginning of the year party, school pictures, SAT testing, holiday social gathering, graduation, and teacher's meetings. You further stated that the school is responsible for holding the student's school records for those who have entered as enrolled students. Associate students are students who associate with the school but are not enrolled and you do not hold school records for these students. Other activities will vary from year to year depending upon the interest of the students and the involvement of each family.

In a letter dated [REDACTED] you were advised in detail of the service's position and given the opportunity to provide any additional information you felt would establish your organization within the guidelines of Section 501(c)(3) of the Code.

[REDACTED]

In your responding letter of [REDACTED] you provide a list of additional activities that include in part offering seminars to the public for those interest in finding out about homes schooling, providing a list of other home schooling schools and support group in the area, participating in the [REDACTED] Conferences, offering scholarships to those who want to join your school but are financially unable, and supplying test taking preparation information and administration of tests to both the students of your school and those outside of your school who are in need of these services.

Your sole source of financial support is membership fees. Membership dues are \$ [REDACTED] per family plus \$ [REDACTED] per student. The expenses of the organization are academic events, administrative costs, insurance, special meetings, and yearbook printing.

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

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of the organizations described in Section 501(c)(3). It is quoted, in part, as follows: "(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), and organization must be 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. (2) The term " exempt purpose or purposes", as used in this section means any purpose or purposes specified in Section 501(c)(3)..."

The organizational test is met where the creating document of the organization limits its purpose to those specified above and permanently dedicate its assets upon dissolution to the exempt purpose of Section 501(c)(3), or to the Federal government, or to a State or local government, or distributed by a court to another organization to be used in such a manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

"(c) Operational tests. (1) Primary activities. 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. (2) Distribution of Earnings. 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..."

The operational test is met through the activities. They must demonstrate that the organization is carrying out one or more of the purposes specified above. The activities must demonstrate that they are furthering public purposes rather than private interest. It

[REDACTED]

must not be operated for the benefit of designated individuals or the persons who created it, and no part of the net earning may inure to any private shareholder or individual.

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 that accomplish one or more 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. Thus, if the operations of your organization result in a private benefit to individuals that are more than insubstantial, you cannot be considered as serving a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations defines education as (a) "the institution or training of the individual for the purpose of improving or developing his capabilities." (b) "the instruction of the public on subjects useful to the individual and beneficial to the community."

Section 170(b)(1)(A)(ii) of the Code define a school as an organization that presents formal instruction, maintains a regular faculty, maintains a curriculum, and normally has a regularly enrolled body of pupils in attendance at the place where the organization regularly carries on its educational activities.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements 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 creators, or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 76-384, 1976-2 C.B. 57, held an organization that operates a tutoring service for students on a one-to-one basis in their homes, maintains a small center to test students to determine their need for individual tutoring, and employs tutors on a part-time basis is not an educational organization of the type described in section 170(B)(1)(A)(ii).

Revenue Ruling 69-175, 1969-1 C. B. 149, describes an organization formed by the parents of pupils attending a private school exempt under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children whose parents belong to the organization.

The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting

[REDACTED]

their children to school. Thus, the organization serves private rather than public interest. Accordingly, the organization does not qualify for exemption under Section 501(c)(3).

To determine whether a private benefit from a particular activity is insubstantial, it is necessary to balance the public and private interests being served. Any private benefit from a particular activity must be incidental in both qualitative and quantitative sense to the overall exempt purposes to be achieved. To be incidental in a qualitative sense, the private benefit must be unintentional and a necessary consequence of the activity being undertaken.

The information you have submitted clearly indicates that the parents of your organization receive a benefit in return for their participation in the activities of your organization. Also, because of their positions of control, they are considered "insiders" within the meaning of Section 1.501(c)(3)-1(c) of the regulations and are thus, subject to the inurement proscription. Your net earnings are being used directly and specifically to pay for benefits to the home school children.

The private benefit conferred upon the parent-members of your organization, through your membership dues and requirement is not incidental it is intentional. Because your parent-members expects and receive direct benefits from your organization, we conclude that you are serving a private interest rather than public interests and are not operated exclusively for exempt purposes within the meaning of Section 501(c)(3)-1(c)(1) of the regulations.

You appear to be the type of organization described in Revenue Rulings 76-384 and Revenue Ruling 69-175. You have been created and are controlled by parents who are providing a cooperative service of providing home school to their children, which serves the private interest of the parents. Although your organization allows for the participation in various activities by students who associate with your school but are not enrolled in your school this is not the primary activity of the organization or the purpose for which your organization was created. The extent of the private benefit realized by the parent-members is so substantial as to overcome the public purposes you also, serve. This must be contrasted with the holdings in Revenue Ruling 69-175 which offers substantial benefits to the children of dues paying members of your organization.

Based on the information received we conclude that you are not operated exclusively for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code. Your primary activities result in private benefit being served to your members. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

Please keep this determination letter in your permanent records.

If, you agree with this determination, please sign and return the enclosed Form 6018.