

NO PROTEST RECEIVED
Release copies to District

Date 9/25/96

Surname [REDACTED]

CP:E:EO:T:2

APR - 2 1996

[REDACTED]

EIN: [REDACTED]

Key District: Northeast (Brooklyn, NY)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated [REDACTED]. You state that your purpose is to raise money for local civic and charitable organizations by conducting bingo and pull tabs.

You conduct bingo on Friday and Saturday nights with a 20 game format from 6:15 to 9:45. Each game has a \$ [REDACTED] admission charge. Fridays average [REDACTED] players with a payout of \$ [REDACTED] per game and a \$ [REDACTED] jackpot. Saturdays average [REDACTED] players with a payout of \$ [REDACTED] per game and a \$ [REDACTED] jackpot. You have provided no information on your pull-tab receipts or outlays.

You have a [REDACTED] person board of directors. The board includes your treasurer, her father, sister and brother-in-law.

You have provided no financial records. You state that all records were either lost in a fire or taken by an accountant.

You have made limited donations to other organizations. Your charitable contributions have totaled only \$ [REDACTED].

You currently lease a building on a month to month basis from an unrelated party for \$ [REDACTED] each weekend. You plan to obtain a long term lease for Fridays and Saturdays during the summer months.

Exempt status was previously denied to you in a letter dated [REDACTED].

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations which are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described 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 is engaged 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)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, 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, shareholders, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e) of the regulations states that an organization may be exempt under section 501(c)(3) even though 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 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 facts and 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. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Section 513(f) of the Code provides that the term "unrelated trade or business" does not include the conduct of certain bingo games. Section 1.513-5(f) of the regulations states that section 513(f) of the Code and the regulations thereunder apply to taxable years beginning after December 31, 1979. House Report

No. 95-1608 2nd Session, 1978-2 C.B. 395 (397) states in pertinent part:

The Committee does not intend that the carrying on of bingo games should be treated as an exempt function of a . . . tax exempt organization except to the extent it would be considered as an exempt function under present law. Also, the committee does not intend to revise the rules of present law which indicate that if conducting bingo is a primary activity of an organization, the organization may not qualify for tax exemption.

Thus, although section 513(f) of the Code excludes income from certain bingo games from the computation of unrelated business taxable income, as indicated by the legislative history of this provision, section 513(f) was not intended to result in exemption for organizations whose primary activity is the conduct of bingo. Bingo remains an activity unrelated to exempt purposes and alone cannot support exemption under section 501(c)(3).

Rev. Rul. 64-182, 1964-1 C.B. 186, (Part 1), describes an organization that derived its income principally from the rental of space in a large commercial office building that it owned, maintained, and operated. The revenue ruling holds that the organization meets the primary purpose test of section 1.501(c)(3)-1(e) of the regulations because its charitable contributions are commensurate in scope with its financial resources and are in furtherance of its exempt function.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds 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).

The conduct of bingo games on a regular basis is not, in itself, an exempt activity as the term is defined by the Income Tax Regulations. Your only activity is the operation of a regularly carried on business. In order to establish that you are not operated for the primary purpose of carrying on a trade or business or a social program, you must demonstrate that you are carrying on a substantial charitable program through the payment of grants and contributions for charitable purposes.

Your sole source of gross receipts is from a fixed charge or donation assessed against each player for the use of bingo cards and from the sale of pull-tabs. However, it appears that you collect approximately \$[redacted] for your weekend bingo while you pay out \$[redacted] for the two nights. You have provided no financial

information regarding your pull-tab operation. You have itemized only \$[REDACTED] in contributions. You only pay \$[REDACTED] each weekend for rent.

Based upon the information submitted, it is our conclusion that you have failed to establish that you are organized and operated for charitable purposes. It appears that your exempt activities are minimal and merely incidental to your commercial conduct of gambling activities. Further, the fact that you have identified no distributions to charitable organizations indicates that you do not operate a "real and substantial" charitable program.

Due to your lack of a definitive charitable program, your failure to account for the net proceeds of your activity, and the fact that your Board primarily consists of individuals related to each other, you have failed to establish that you are operated exclusively for charitable purposes rather than the private benefit of your creators. You have therefore not met the requirement of section 1.501(c)(3)-1(d)(ii) of the regulations.

Accordingly, we have concluded that you are not operated exclusively for exempt purposes and are not entitled to exemption under section 501(c)(3) of the Code.

Donors may not deduct contributions to you under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, 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 the 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 proposed 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 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.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,
Signed [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 2

INITIATOR:

(P. E. FO. T. 2)

4/1/96

CP: E: FO: T: 2

[REDACTED]
4-2-96