

Internal Revenue Service

Department of the Treasury
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Washington, DC 20224

Date 5/22/96

Person to Contact:

Surname [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to:

CP:E:EO:T:2

Date: FEB 26 1996

Employer Identification Number: [REDACTED]
Key District: Midstates (Dallas)

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 under the laws of [REDACTED] on [REDACTED], [REDACTED]. Your board of directors is comprised of two pairs of related individuals.

You were created for the purpose of operating bingo and pulltabs and donating the proceeds to qualifying nonprofit organizations in the [REDACTED] area. The bingo and pulltab operation will be conducted five evenings a week with the use of volunteers.

You sublease the bingo hall from one of your directors, [REDACTED] for \$ [REDACTED] per month. [REDACTED] rents the building from an unrelated party, [REDACTED], for \$ [REDACTED] per month. You represent that [REDACTED] borrowed \$ [REDACTED] to make repairs, improvements and modifications to the building. The completed work includes electrical rewiring, installing a fire sprinkler system and a water line from the City line to the building, installing handicapped restrooms, making plumbing repairs, and painting the inside of the facility. Prior to these improvements, the building had been vacant for a considerable time and was uninhabitable, so that the City of [REDACTED] would not issue an occupancy permit. The rent that you pay to [REDACTED] is set at a level to cover his debt service payments on his loan, pay utilities and insurance, pay for janitorial staff that have been hired by [REDACTED], and to cover his rent payment to [REDACTED]. You are the only organization using the building.

[REDACTED] also operates a concession during bingo games. He owns the equipment and hires his own employees.

[REDACTED]

You donate the net profits from bingo to local charities, including [REDACTED], [REDACTED], and [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations 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(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement 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 creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 67-149, 1967-1 C.B. 133, holds that an organization whose purpose is to provide financial assistance to several different types of organizations and whose only activity is to receive donations and make distributions of income to exempt organizations, qualifies for exemption under section 501(c)(3).

In Texas Trade School v. Commissioner, 30 T.C. 642 (1968), *aff'd* 272 F.2d 168 (5th Cir. 1959), the Tax Court held that an organization operating a school did not qualify for exemption under section 501(c)(3) where its officers leased property to the school and caused it to erect expensive improvements which would benefit them individually when the lease expired. The rent paid by the organization to its officers for the school property covered the entire cost of the improvements, and was found by the Court to be excessive and unreasonable.

In People of God Community v. Commissioner, 75 T.C. 127 (1980), the Tax Court stated that section 501(c)(3) denies exempt status to an organization whose founders or controlling members have a personal stake in the organization's receipts. Such arrangements constitute inurement to a private shareholder or individual.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under

section 501(c)(3) of the Code, regardless of the number or importance of its exempt purposes.

Like the organization in Rev. Rul. 67-149, supra, you donate your net bingo and pulltab revenue to charitable organizations and thus, to some extent, your purposes and activities further charitable purposes. However, much of your bingo income goes towards rental payments to [REDACTED] to reimburse all of his costs associated with the loan he obtained to make improvements to the bingo hall that neither you nor [REDACTED] own. By making and paying for these extensive improvements, you have turned an uninhabitable building into a more valuable property at no cost to its owner, [REDACTED]. Despite the fact that your only activity of conducting bingo and pulltabs may incidentally benefit particular charities, the primary beneficiary is [REDACTED]. Because your bingo operation substantially benefits the private interests of [REDACTED], you are not organized exclusively for a public purpose within the meaning of Section 501(c)(3) of the Code and Section 1.501(c)(3)-1(d)(ii) of the regulations.

[REDACTED] also benefits from this arrangement through your paying all of the interest on his loan. By arranging for substantial construction that you will ultimately pay for, [REDACTED] has created a situation that is like that of the organization in Texas Trade School, supra. Like the organization in that case, you have paid for extensive improvements on property owned by private parties, resulting in your paying excessive and unreasonable rent. Further, the arrangement gives [REDACTED], a controlling member of your organization, a personal stake in your receipts, like the founder of the organization in People of God Community, supra. As such, your net earnings inure to the benefit of private interests as prohibited by section 1.501(c)(3)-1(d)(ii) of the regulations.

Thus, despite the fact that some of your bingo income may go to support charitable causes, your substantial non-exempt purpose of benefiting private interests precludes your qualifying for exemption under section 501(c)(3), pursuant to Better Business Bureau, supra.

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, 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 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 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 copies will be forwarded to your key district office. 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 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
Attn: [CP:E:EO:T:2, Room 6138]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Signed [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 2

cc: DD, Midstates Key District Office
Attn: EO Group

CP: E: EO: T: 2 CP: E: EO: T: 2

[REDACTED]
Feb 26, 1996

[REDACTED]
2-26-96