[redacted]

PERSON TO CONTACT: [redacted]

CONTACT TELEPHONE NUMBER: [redacted]

IN REPLY REFER TO:
EP/EO:T

DATE: JAN 27 1995

CERTIFIED MAIL

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 and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that your organization was formed on [redacted]. Your Articles of Organization state that your association was formed exclusively for the purpose of promoting the amateur athletic organization of [redacted].

Your activities consist primarily of providing the means and opportunity for the [redacted] to attend and compete in United States Gymnastics Federation sanctioned meets, which include state, national and/or international competitions.

You wish to foster self confidence in team members and to encourage the team members to compete towards the United States Olympic competition.

In order to support the team financially and physically you will organize and coordinate USGF competitions, pay USGF meet fees, and offset the continuing high costs of transportation and other expenses related to the competitive season.

You are a membership organization and membership is available to parents of all team members upon paying a $5 membership fee.

Your application indicates that you intend to engage in a variety of fund raising activities to provide financial support for your purposes. Your major fund raisers will be the competitive meets which you will host and for which admission fees are charged. Attendance at home meets will be free of charge to members of the organization. You also intend to sell merchandise and operate concessions at the home meets.

[redacted]

The ruling states that when a group of individuals associate to provide cooperative services 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 their children to school. Thus the organization serves a private rather than public interest. Accordingly the organization did not qualify for exemption under section 501(c)(3) of the Code.

Your organization appears to be the type described in Revenue Ruling 69-175. You have been created and are controlled by parents who are providing a cooperative service to themselves in an effort to help pay the substantial costs of their children's amateur athletic activities. Although your activities may promote amateur athletics, the extent of the private benefit realized by the parent members is so substantial as to overcome the public purposes you serve. This must be contrasted with the holdings in Revenue Ruling 65-2. The organization described in this ruling offered benefits to all children in a particular community. You offer substantial monetary benefits only to dues paying members of your organization.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than private interest. Thus to meet 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 creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

In general, an organization which applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963) and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 203, 206, (8th Cir. 1963).

The inurement proscription contained in Regulations 1.501(c)(3)-1(c)(1) states that 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.

Inurement is likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individuals relationship with the organization, and without regard to the accomplishment of exempt purposes.

Inurement of income is strictly forbidden under section 501(c)(3) without regard to the amount involved. This proscription applies to persons who because of their particular relationship with an organization have an opportunity to control or influence its activities. Such persons are considered "insiders" for purposes of determining whether there is inurement of income. Generally, an organization's officers, directors, founders, and their families are considered "insiders".

The facts you have submitted indicate that the parent-members of your organization are in a position to exercise control over your organizations activities. Because of this ability to control the organization they are considered "insiders" and are subject to the inurement proscription.

Your By-Laws oblige each parent-member to participate in your fund-raising activities in specific amounts before sharing in the distribution of these funds. It is clear that these members expect and do receive a benefit in return for their participation in your organization. Your members receipt of benefits directly contingent upon their contribution to the organization is similar to a dividend distribution of your organizations assets to benefit a private interest. Your net earnings are, in fact, being used to directly pay for benefits to specific individuals who are considered "insiders". Accordingly you cannot be considered operated exclusively for one or more exempt purposes because your net earnings inure in whole or in part to the benefit of private individuals within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(2) of the regulations.

Regulations 1.501(c)(3)-1(c)(1) indicates that an organization will not be exempt under section 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, an organization whose operations result in private benefit that is more than insubstantial will not be considered as serving an exempt purpose.

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 a qualitative and quantitative sense, and the private benefit must be an unintentional and necessary consequence of the activity being undertaken.

The private benefit conferred upon parent-members of your organization through your dues and point system is not incidental but intentional. In fact, you indicate in your By-Laws "If points are not cleared by Aug 15, your membership in GUPA will be terminated and all benefits will cease." Because your parent -members expect and receive direct benefits that are more than insubstantial we conclude that you are not serving an exempt purpose.

Furthermore, Article III of your Articles of Organization fails to meet the organizational test of IRC 501(c)(3) in that it states that your organization will promote a specific organization ([redacted]) which has apparently not been granted tax-exempt status under IRC 501(c)(3).

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this

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Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust your administrative remedies. Section 7428(b)(2) of the Code provides, in part, that Section7428(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."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

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

Sincerely,

[redacted]

District Director

Enclosure: Publication 892
cc: State Attorney General ( )