

Internal Revenue Service

Department of the Treasury

District
Director

10 MetroTech Center
625 Fulton Street
Brooklyn, NY 11201

Date: **NOV 5 1993**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in the State of [REDACTED].

The purposes for which your organization was formed are as follows:

"This corporation is formed under and pursuant to the provisions of Article 2 of the Cooperative Corporations Law, and its objects and purposes are such as are authorized under such Law, to wit: To assist its members or any of them, by performing services connected with the purchasing of food products, supplies and articles of common use including food products, family or other household and personal supplies to be used or consumed by the members, their families or guests, or any or more of the kind of service specified in this section, or for performing such service as agent for non-members."

Your Form 1023 application states that your activities consist of distributing food to the poor at greatly reduced prices to qualifying recipients.

The revenue of the organization is stated as membership fees and private donations in your application. Your application did not indicate the amount of revenue generated through product sales. The major expenses for your organization are the purchase of food, salaries, rent and utilities.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or

educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3) of the Regulation provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Regulations 1.501(c)(3)-1(d)(1) provides, that an organization is not organized or operated exclusively for Section 501(c)(3) purposes unless it serves a public rather than a private interest. Thus to meet the requirements of the 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.

Based upon the evidence presented we have concluded that the sales of commonly used products are not designed to educate the public on subjects useful to the individual and beneficial to the community. Any educational qualities that can be attributed to your activities are incidental to the commercial purposes served.

The major focus of the organization's activities fails to show that it is organized and operated for a public purpose and not the private interests of its participating members.

Your certificate of incorporation clearly states in paragraph 8... "The property rights and interest of each member in, and to, the property of the corporation shall be upon the basis of and in proportion to the supplies purchased through the corporation

[REDACTED]

by the members, and such determination of property rights for each member shall be made at least once during each fiscal year for that year in a manner and at a time to be provided in the by-laws of the corporation."

Additionally your by-laws state in Article XI-Dissolution, Section 1..."Holders of membership in the association shall then be paid an amount equal to the membership fee which they paid in order to acquire membership in the association."

Since the organization upon dissolution will distribute to its members an amount equal to the membership fee paid, it fails to meet the requirements of Regulations 1.501(c)(3)-1(b)(4).

Since the organization is serving a private rather than a public benefit, the organization fails to meet the requirements of Regulations 1.501(c)(3)-1(d)(1).

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P. O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

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

[REDACTED]

States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosure: Publication 892