

Internal Revenue Service
District Director

Department of the Treasury
Box 36001, HS: SF-4446
San Francisco, CA 94102

Person to Contact:

Telephone Number:

Refer Reply to:

EIN:

Date: DEC 24 1991

Dear Sir or Madam:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were formed as an association on [REDACTED].

Your articles of association state that you are formed, in part, "...to develop and promote the arts for residents and visitors of [REDACTED] and the surrounding areas of [REDACTED] and [REDACTED]."

You are a membership organization; becoming a member enables an artist or craftsman to exhibit and sell his or her own artwork in your annual art shows.

Your activities consist, in part, of holding workshops and seminars to promote the understanding and appreciation of art in the community. You also sponsor a Summer Arts and Crafts Program for the children of the [REDACTED] and a minimum of two annual art shows, a spring show and a winter show, which are open to the public, with art works of your members on display.

Art shows are voluntarily staffed by your members. You do not have your own facilities, so exhibits are on display at no cost in the lounge of the [REDACTED]. A commission of [REDACTED]% is collected from artists on all sales of art sold during your annual art exhibits. Artists receive [REDACTED]% of the sale price.

Proceeds from the sale of artwork and membership fees are used to purchase supplies for children's workshops, to support community organizations, and to pay your operating expenses.

Section 501(c) of the Code describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states that 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.

Section 1.501(c)(3)-1(c)(2) of the Regulations 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 a private shareholder or individual.

Section 1.501(a)-1(c) of the Regulations states that the words "private shareholder or individual" in section 501 refer to persons having a personal private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than private interest.

[REDACTED]

In translating the meaning of the phrase "exclusively for educational purposes" in *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945), Ct.D.1650, C.B. 1945, 375, the Supreme Court of the United States said: "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any purpose under section 501(c)(3).

While you are organized for charitable and educational purposes, you are not operated exclusively for exempt purposes within the meaning of 501(c)(3) of the Code. You are also a vehicle for advancing your members' careers and promoting the sale of their work. Thus, you serve the private interests of your members. Such direct benefits are substantial and not merely incidental to your other purposes and activities. The sale of artwork at your annual shows for a commission is more than an insubstantial nonexempt purpose.

Because more than an insubstantial part of your activities is not in furtherance of one or more exempt purpose specified in section 501(c)(3) of the Code and because you are operated for the private benefit of your members as opposed to the general public, we have concluded that you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code

You agreed to this determination by signing Form 6018, Consent to Proposed Adverse Action, on [REDACTED].

You are required to file Federal income tax returns annually with your district director.

Contributions to you are not deductible under section 170 of the Code.

As provided by section 6104(c) of the Code and the applicable regulations, the appropriate State officials are being notified of our determination.

Sincerely yours,

[REDACTED]
District Director