

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Date 3-11-95

Signature

DEC 29 1994

E.I.N.: [REDACTED]  
K.D.O.: Los Angeles

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. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were incorporated under the laws of the state of [REDACTED] on [REDACTED]. Your purpose as stated in your articles is to assist community service organizations to finance their missions.

Your application indicates that your primary activities will be: (1) grant writing services and consultation for non profit organizations; (2) grant writing training; (3) think-tank meetings to develop a resource bank of information of fundraising ideas and philanthropic sources; and (4) discount merchant programs for nonprofit organizations.

Your primary source of income will be administrative fees and donations. The amount of your administrative fees will be negotiated with each nonprofit organization and will be minimal to cover travel and administrative costs.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

[REDACTED]

Section 513 of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant. It further provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization.

Rev. Rul. 72-369, 1972-2 C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code; Revenue Ruling 71-529 distinguished.

The organization was formed to provide managerial and consulting services for nonprofit organizations exempt from Federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs.

In B.S.W. Group, Inc. v. Comm., 70 T.C. 352 (1978), an organization's sole activity was to offer consulting services for a fee to non-profit, limited resource organizations engaged in various rural-related activities. The court held that the Group's primary purpose was commercial, and therefore, it did not qualify for exemption.

The court reasoned that under the operational test, the purpose towards which an organization's activities are directed and not the nature of the activities themselves, is ultimately



dispositive of the organization's right to be classified as a section 501(c)(3) organization exempt from tax under section 501(a)... Petitioner is engaged in one and only one activity, but it is possible for such an activity to be carried on for more than one purpose... The fact that petitioner's activity may constitute a trade or business does not, of itself, disqualify it from classification under section 501(c)(3), provided the activity furthers or accomplishes an exempt purpose... Rather, the critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for petitioners...

In order to qualify for exemption based on providing services to exempt organizations on a fee basis, you must distinguish your activities from those described in section 513 of the Code as unrelated trade or business, and you must also meet the guidelines set forth in Rev. Rul. 72-369, supra, and provide your services at substantially below cost solely to exempt organizations.

Like the organization in the ruling you plan to enter into agreements with unrelated nonprofit organizations to furnish grant writing services on a cost basis. However, providing these services on a regular basis for an administrative fee that covers the cost of materials and travel expenses is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Even if the services in this case were provided at cost and solely for exempt organizations, furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Thus, your services are still in the nature of a commercial activity conducted for the production of income. B.S.W., Inc. v. Comm., supra.

Because you have failed to establish that your services will be provided in a charitable manner solely to organizations exempt under section 501(c)(3), or that you will otherwise be operated exclusively for charitable or educational purposes within the meaning of section 501(c)(3) of the Code, we cannot recognize you as exempt under that section.

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

You are required to file federal income tax returns.

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You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice 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 United States Tax Court, the U.S. 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 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,

Chief, Exempt Organizations  
Technical Branch 3

cc: DD, Los Angeles  
Attn: EO Group

cc: w/Form 5998  
State officials of

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code							
Surname							
Date							