

*Default letter is final*



*D-9095*

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
2 Cupania Circle  
Monterey Park, CA 91755-7406

DEPARTMENT OF THE TREASURY

Date: OCT 14 1994



Employer Identification Number:



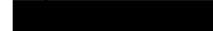
Case Number:



Person to Contact:



Telephone Number:



Refer Reply To:

EP/EO:Review

Dear Applicant:

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.

FACTS

The information submitted discloses that you were formed as an unincorporated association in the State of [REDACTED] on [REDACTED]. The Second article of your Articles of Association states that your purpose is "to proactively support the development of new programs, and assist in the implementation of existing programs of community promotion, commerce attraction, retention, expansion, creation, and job skill enhancement."

Your application Form 1023 and supplemental information indicates that your organization was created "to assist with business attraction and enhancement, scholarships and tourism for the [REDACTED] County area." Your activities are as follows:

- (1) BUSINESS: assistance, attraction, enhancement, program administration assistance, commerce attraction
- (2) TOURISM: program administration and assistance, program research and development, promotion, marketing
- (3) EDUCATION: program development and assistance, scholarships
- (4) SUPPORT OF SPECIAL EVENTS, PROGRAMS & PROJECTS:  
agriculture organizations, community events, community leadership, cultural arts, film commission, government agencies (drug awareness, community clean-up, etc.), recreation

Your "commerce attraction" program consists of identifying those types of businesses that meet the [REDACTED] County "criteria and restraints." You will meet with business owners who are interested in moving to [REDACTED] County and "direct them to various entities that will provide them with the information they need in order to make the decision about locating [in [REDACTED] County]." It appears that your marketing efforts will indicate that [REDACTED] County needs businesses that are willing to hire and train the disadvantaged ("minority and/or low to moderate income"). Your tourism program will involve assisting the [REDACTED] County Chamber of Commerce with development in areas not yet attempted by the Chamber of Commerce. Your educational program consists of the awarding of scholarships, the production

[REDACTED]

of an educational tape and map that identifies various historical trails within [REDACTED] County, the production of a community demographic profile, and the creation of brochures and videos that provide community information and detail services available in [REDACTED] County.

Your letter of [REDACTED] states that your time and funds will be spent in equal amounts on each of the four areas on which you will concentrate: business, tourism, education, and support of special events, programs and projects.

ISSUE

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986?

LAW

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

"(3) Corporation, 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), and political campaign on behalf of (or in opposition to) any candidate for public office."

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

Section 1.501(c)(3)-1(c) of the Regulations defines the operational test. It 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 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(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), 1945 C.B. 375, the Supreme Court determined that while some of the activities of the organization under consideration were educational, a substantial purpose of the organization was to promote business, and thus the organization was not operating exclusively for

educational purposes. The Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption, regardless of the number or importance of truly exempt purposes.

Rev. Rul. 74-587, 1974-2 C.B. 162, held that an organization whose programs stimulated economic development in economically depressed areas inhabited mainly by low-income minority and other disadvantaged groups qualified for exemption under IRC 501(c)(3). The organization made loans and purchased equity interests in businesses that could not obtain funds from conventional sources because of financial risks associated with their location and/or because of being owned by members of a minority or other disadvantaged group.

Rev. Rul. 76-419, 1976-2 C.B. 146, held that an organization that purchased blighted land in an economically depressed community, converted the land into an industrial park, and induced industrial enterprises to locate new facilities in the park through favorable lease terms that required employment and training opportunities for unemployed and underemployed residents of the area was operated exclusively for charitable purposes under IRC 501(c)(3).

Rev. Rul. 77-111, 1977-1 C.B. 144, held that two different organizations formed to promote economic development in deteriorated areas did not qualify for exemption under IRC 501(c)(3). In Situation 1, the organization's purpose was to increase business patronage in a depressed area inhabited mainly by minority groups. The organization accomplished its purpose by presenting advertisements describing the advantages of shopping in the area; by the creation of a speakers group composed of local businessmen who discussed the shopping environment with various groups; by providing information to prospective shoppers on transportation and accommodations in the area; and by informing the news media on the area's problems and potential. In Situation 2, the organization's purpose was to revive retail sales in an area suffering from economic decline. The organization proposed to curtail further decline in retail sales by constructing a retail center with a department store and a shopping mall. The city rented the land to the organization and to a private developer who constructed and leased out the project. The city required that minorities be utilized in both the construction and operation of the project and the stores located within the project were required to employ a certain percentage of minority groups.

Rev. Rul. 77-111 held that although the two organizations' activities might contribute to achieving IRC 501(c)(3) purposes, the organizations overall thrust was to promote business as an end in itself rather than to accomplish exclusively exempt purposes. Rev. Rul. 77-111 distinguished itself from Rev. Rul. 74-587 by stating that unlike the organization in Rev. Rul. 74-587, the organizations in Situations 1 and 2 did not limit their assistance to businesses located in a deteriorated area that could not obtain conventional financing. The organization described in Situation 1 did not limit its activities to businesses similar to those assisted in Rev. Rul. 74-587, but also to businesses which were not owned by minority groups and which were not experiencing difficulty because of the fact that they were located in a depressed area. The activities of the organization described in Situation 2 resulted in major benefits accruing to the stores located within the shopping center. The organization did not limit its assistance to businesses that were owned by minority group members or to businesses that would only locate within the area because of the existence of the center. The end result was that the organization's activities were directed to benefit the businesses in the shopping center rather than exclusively to accomplish IRC 501(c)(3) purposes.

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ANALYSIS AND CONCLUSION

According to the above cited Revenue Rulings, in order to conclude that an organization is primarily accomplishing charitable purposes, despite the presence of private benefit, the organization must demonstrate that its assistance is targeted (1) to aid an economically depressed or blighted area; (2) to benefit a disadvantaged group, such as minorities, the unemployed or underemployed; AND (3) to aid businesses that have actually experienced difficulty in obtaining conventional financing (a) because of the depressed nature of the area in which they were or would be located or (b) because of their minority composition, or to aid businesses that would locate or remain in the economically depressed area and provide jobs and training to the unemployed or underemployed from such area only if the economic development corporation's assistance was available. Your organization's activities are not (1) to aid an economically depressed or blighted area; (2) to benefit a disadvantaged group; AND (3) to aid businesses that have actually experienced difficulty in obtaining conventional financing. You were unable to provide any Federal, state or local designations or studies showing that the area which your organization is targeting, ██████████ County, is one which is economically depressed or blighted. In fact, in your response dated ██████████, you stated that your organization was "not specifically addressing a designated depressed to [sic] blighted area." Consequently, your organization's business and tourism activities are directed to benefiting the private interests of the for-profit businesses that you are encouraging to locate in ██████████. Although your organization will award scholarships and produce educational brochures and videos, these activities appear to be incidental to your primary activity of assisting the private interests of for-profit businesses. You have not established that your organization is not organized or operated for the benefit of private interests.

Because you have a substantial non-exempt purpose of assisting the private interests of for-profit businesses, rather than the public interest, you are not "operated exclusively" for an exempt purpose pursuant to section 1.501(c)(3)-1(c)(i) and 1.501(c)(3)-1(d)(i)(ii) of the Regulations. See also Better Business Bureau. Since you are not "operated exclusively" for one or more exempt purposes, you fail to meet the operational test. By failing to meet the operational test for exemption, you are not exempt under section 501(c)(3) of the Internal Revenue Code of 1986.

Accordingly, you are required to file income tax returns, Form 1120, U.S. Corporate Income Tax Return, annually with your respective Service Center.

Donations to you are not deductible by donors under section 170 of the Code.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018, Consent to Proposed Adverse Action. Please note the instructions for signing on the reverse side of the Form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District Office.

[REDACTED]

If we do not hear from you within 30 days from the date of this letter, and 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 and will then become our final determination. Section 7428(b)(2) of the Internal Revenue 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 Court of 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 you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]  
District Director

Enclosures: Form 6018  
Publication 892

Form 6018  
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service  
**Consent to Proposed Adverse Action**  
(All references are to the Internal Revenue Code)

Prepare In  
Duplicate

Case Number

[REDACTED]

Date of Latest Determination Letter

Employer Identification Number

[REDACTED]

Date of Proposed Adverse Action Letter

OCT 14 1994

Name and Address of Organization

[REDACTED]

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action

NATURE OF ADVERSE ACTION

- Denial of exemption under section 501(c)(3) of the Internal Revenue Code
- Revocation of exemption, effective
- Modification of exempt status from section 501(c)( ) to 501(c)( ), effective
- Classification as a private foundation (section 509(a)), effective
- Classification as a non-operating foundation (section 4942(j)(3)), effective
- Classification as an organization described in section 509(a)( ), effective
- Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date