

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JUN 03 1993

CERTIFIED MAIL

We have completed our review of the application for recognition of exemption from Federal income tax which you recently filed.

The information submitted indicates that you were formed under a trust agreement dated [REDACTED].

Your stated purposes are:

The trust has been created in honor of [REDACTED], to provide a scholarship to one or more students with a learning disability, whether physically or mentally challenged, who are graduating or have graduated from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The activities of the organization are to raise funds for the scholarship trust. A limited edition print of a local landmark by [REDACTED] is sold by [REDACTED]. The print can be purchased for \$ [REDACTED] unframed and \$ [REDACTED] framed. Of these amounts \$ [REDACTED] is paid to the artist, \$ [REDACTED] to the Trust fund and the remaining balances to the Gallery.

Section 501(c)(3) of the Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable, educational, religious, and scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order for an organization to be exempt under section 501(c)(3) of the Code it must be organized and operated exclusively for one or more purposes specified in such section.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	5/29/93	6/2/93	6/5/93				

Section 1.501(c)(3)-1(c)(1) of the regulations provides 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 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 states 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 the requirement of this subparagraph, 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 serves a private interest.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may be exempt although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Supreme Court of the United States held that a better business bureau was not exclusively educational since its activities were aimed in part at promoting the prosperity and standing of the business community, and that a single non-exempt purpose, if substantial in nature, is sufficient to preclude exemption under 501(c)(3) regardless of the number of educational activities.

Revenue Ruling 66-178, Cumulative Bulletin 1966-1, page 138 held that sponsoring art exhibits was an educational pursuit when an organization exhibited works of unknown artists to the public. There was no selling at the exhibits. Membership in the organization is not required to exhibit.

[REDACTED]

Revenue Ruling 71-395, Cumulative Bulletin, 1971-2, page 228, describes a cooperative art gallery formed and operated by a group of member artists for the purpose of exhibiting and selling the members' works of art. The gallery was open six days of the week and a sales commission was retained to cover costs of the operation. This gallery was held not to be exempt as it served the private purposes of its members, even though the exhibition and sale of paintings might have been educational activities in other respects.

The "commensurate test" of Revenue Ruling 64-182, 1964-1 C.B. 186 requires that a charitable organization with fund raising (unrelated trade or business) income as its principal source of income must carry on a charitable program of grants and contributions commensurate with its financial resources.

The "commensurate test" requires that organizations have a charitable program that is both real and, taking the organization's circumstances and financial resources into account, substantial. Therefore, an organization that raises funds for charitable purposes but consistently uses virtually all its income for administrative and promotional expenses with little or no distribution to charity cannot reasonably argue that its distributions are commensurate with its financial resources and capabilities.

Your fundraising activities are operated primarily for the benefit of [REDACTED], the artist and [REDACTED]. Your organization does not meet the "commensurate test," nor is it operated for a substantial public purpose. Ten percent of the organization's income is donated to charity, the remaining ninety percent is divided between the artist and the gallery.

The artist whose works are sold benefits directly by the exhibition and sale of his/her works, with the result being that a primary activity of the applicant is serving the private benefit of the artist whose work is displayed for sale. It is well established that a purpose or use is not charitable unless it is directed to the public benefit.

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.

[REDACTED]

The sale of original art work, where the exhibit or shares in the proceeds, is not necessary to the achievement of charitable or educational purposes.

It is therefore concluded that the primary purpose of your organization is to serve the interests of the artist and the gallery. Since you are serving the private interests of these individuals you do not meet the requirement of being organized and operated exclusively for the purposes as listed in section 501(c)(3) of the Code.

By paying the artist a portion of the sales price you are conferring a prohibited direct economic benefit upon the individual artist.

Your fundraising activities are substantial in nature and scope. The sale of prints is an activity which serves the private interests of the artist and the gallery. Therefore we cannot conclude that only an insubstantial part of your activities are in furthermore of non-exempt purposes.

Contributions to your organization are not deductible under sections 170 of the Code.

You are required to file federal income tax returns on Form 1041.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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 your request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, he or she will need to file a power of attorney or tax information authorization with us.

If we don't hear from you within 30 days of the date of this letter, this determination will become final. A copy of this letter will then be furnished to the appropriate State officials as provided by section 6104(c) of the code.

[REDACTED]

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 Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
Acting District Director

Enclosure: Publication 892

cc: [REDACTED]
State Attorney General [REDACTED]