

Internal Revenue Service  
District Director

Department of the Treasury

██████████  
401 W. Peachtree St. NW.  
Atlanta, GA 30365

Person to Contact:

██████████  
Contact Telephone Number:

██████████  
Date: FEB. 28 1996

██████████  
Certified Mail Return Receipt Requested

██████████  
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.

The information submitted disclosed that you were incorporated under the nonprofit laws of the State of ██████████ on ██████████. The specific purpose for which you were formed as provided in Article III of your Articles of Incorporation is to raise the necessary funds for the purchase of land on which you will construct a shelter for battered women and abused children. You state that in conjunction with the provision of safe housing you will also provide counseling services for the women as well as opportunities for them to obtain needed training and employment. You also propose to provide day care services for the children to enable their mothers to participate in your programs. You state that a sliding scale based on ability to pay will be used in setting rental fees, however, the other services will be provided at no additional cost.

The information submitted reflects that your organization to date is still in the planning stages and that your primary activity since inception has been fund raising. Your primary fund raising activity has been telephone solicitations to the public performed by contract labor. When making calls, the telephone solicitors identify your organization and state that you are conducting a drive to raise funds to provide battered women and abused children with transitional housing. The solicitors also advise that rather than asking for direct contributions the organization will provide gifts such as trash bags, first aid kits or pepper spray which is its way of saying thank you for their support. The gifts are then delivered personally by the contract labor.

You also entered into an agreement with a professional fund raiser for the conduct of carnivals from which you were to receive a percentage of gross sales. You have stated in correspondence that you never received any funds from this joint venture, however, some carnival receipts were included in the financial statements submitted.

You have submitted several sets of financial statements for years ended ██████████, ██████████ and ██████████ which are inconsistent with regard to the amounts of your receipts and expenditures. You have provided no

reconciliation or clarification for these inconsistencies in response to our inquiries. It is clear, however, that no funds were reserved for or distributed for your proposed tax exempt purpose. Substantially all of your funds have been expended to cover your cost of operations which include donor gifts, compensation, expense reimbursements, supplies, telephone, rent, printing, bank charges, contract labor, list costs, taxes and licenses.

You have stated in addition to your fund raising activities that you have conducted a referral service for battered women. You have not, however, substantiated that this activity was conducted to more than an insubstantial degree. It appears that you may have received random calls through your telephone listing.

You have stated in response to our inquiries that your organization does not lease any property, however, you have submitted rental agreements for [REDACTED], [REDACTED], and [REDACTED] and your financial statements for those years reflect rental expense. You have further stated in your correspondence that at no time will any person other than battered women and abused children be living in your facility nor will your facility be used for any reason other than your tax exempt purpose. It is noted that your rental agreement is in the name of [REDACTED] and the use of the premises as stated thereon is for the operation of a telephone solicitation business.

Section 501(c)(3) of the Code provides for the exemption from taxation of organizations which are organized and operated exclusively for religious, charitable, literary or educational purposes, no part of the net earnings of which may inure to the benefit of any individual.

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.

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test" the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for any purpose specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit or private holders of the organization or persons controlled directly or indirectly by such private interest.

Section 1.501(c)(3)-1(e) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) 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 or purposes 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. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the activities which are in furtherance of one or more exempt purposes.

In Better Business Bureau v. United States, 326 U.S. 279 (1945) the Court stated that the presence of single non exempt purpose, if substantial in nature would destroy section 501(c)(3) exempt status.

The information submitted indicates that your primary activity since inception has been the conduct of fund raising activities. Fund raising activities absent substantial distributions for charitable purposes does not constitute qualifying charitable activities within the meaning of section 501(c)(3) but rather the conduct of an unrelated trade or business. You have solicited funds from the public in the guise that they would be used for charitable purposes, however, little if any were used accordingly. Thus your activities reflect the presence of a substantial non exempt purpose.

Further, the private use of your office space by your president and founder as his personal residence reflects that you are operating for the private interest of your creator rather than for public purposes. Accordingly we conclude that you do not meet the "operational test" of section 501(c)(3) of the Code and that you do not qualify for tax exempt status thereunder. Contributions to you are not deductible under section 170 of the Code and you are required to file Federal income tax returns on Forms 1120.

If you do not agree with our determination, you may request that the Office of Regional Director of Appeals consider the matter. 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 we will contact you to arrange a date. The hearing may be held at the regional office, or, if you request at any mutually convenient district office. If someone will represent you who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you don't appeal this determination within the time provided, we will not consider you to have exhausted available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment of 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 States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely,

[Redacted Signature]  
District Director

Enclosure:  
Publication 892

cc: State Attorney General