

Internal Revenue Service

Northeast Region

Date: APR 17 1996

Department of the Treasury

Address any reply to:
Cincinnati Appeals Office
P.O. Box 2026
Cincinnati, Ohio 45201

Employer Identification Number:

Form Number:

1023

Key District:

Cincinnati

Person to Contact:

Contact Telephone Number:

Fax Number:

Re: Application for Recognition of Exemption Under
Section 501(c)(3) of the Internal Revenue Code

Dear [REDACTED]:

This is our final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

You are not organized or operated exclusively for one or more tax exempt purpose as defined in §501(c)(3) of the Code. More than an insubstantial part of your activities are not in furtherance of an exempt purpose. You serve a private rather than a public interest and are operated for the benefit of private shareholders, individuals or the persons by whom you were created. Accordingly you do not qualify for exemption under §501(c)(3) of the Code.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on form 1120 for any years which are still open under the statute of limitations. Based on the information you furnished, it appears that returns should be filed beginning with the year 1992. You should file these returns with the key district director, EP/EO division with 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns will not be delayed because you have filed a petition for a declaratory judgement under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgement provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgement.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

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]
Associate Chief, Appeals

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

██████████
Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: FEB 28 1995

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of our principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and other wise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

2/23/95

2/23/95

2/27/95



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 judgement or 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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,
C. Ashley Bullard
C. Ashley Bullard
District Director

Enclosures: 3

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██████████

You were formed pursuant to the provisions of the ██████████ Nonprofit Corporation Act on ██████████. Your stated purposes were that you were organized exclusively for charitable, religious, educational, scientific and literary purposes, including for such purposes the making of distribution to organizations which qualify as exempt organizations under 501(c)(3) of the Internal Revenue Code.

Your original Articles of Incorporation dissolution had a provision that upon dissolution all assets of difficult to determine value, such as patent rights, shall be returned to whence they came. You amended your Articles of Incorporated with the state of ██████████ on ██████████. Your dissolution provision was changed to show that all assets restricted by donor(s) from retransfer to others shall be returned to the donor(s).

On ██████████, your Articles of Incorporation were amended to show that the assets of the corporation will be disposed of in accordance with the bylaws and exclusively for the purposes of the corporation. There was no provision to return any assets to any donor(s) or others.

Your activities consist of fostering research and development of alternative energy systems, processes and methods for America. You stated these are variants of radio-TV electronics. Your research and development consist of alternative energy use, recycling of electricity and other energy improvement.

Most of your present research activities has been conducted by ██████████ ██████████, your President and one of your Directors. When funds are available you expect qualified universities and independent scientist/engineers will also do the research and development. You have contacted three colleges and some independent registered engineers in regards to this matter. Most of the current research has been conducted in ██████████. You have used the library, computers, laboratory testing and correspondence with other researchers to aide in your research. You have also submitted paper and attended New Energy Symposiums in connection with your research.

Your future activities are expected to be in conjunction with ██████████ ██████████ and ██████████ (two related organizations). These activities will be expanded, as allowed by law, to include support of and advancement in the U.S.A. of:

Child Care, Health Research, Low and Moderate Income Housing, Alternative energy use for homes, churches, and vehicles, and Recycling of electricity and other energy improvements.

In order to create jobs and prevent the withholding of energy advancements from America, you and your two related organizations jointly licensed a new company named ██████████ (hereinafter ██████████) to make and market energy advancements. ██████████ gave stock in exchange for the licenses. Each of the three related organizations (you, ██████████ and ██████████) would receive 1/6 each of the stock. When the stock becomes listed on a stock market, the three organizations would each retain no less than 1/9 of ██████████ stocks.

██████████

You maintain that the three separate organizations (each of which has filed separate Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) were formed to (1) Make easier future branching of the public benefit works into multiple (but well focused) areas such as for Child Care and Low and Moderate income housing, (2) Make easier controlled growth of the three organizations, (3) Make easier accounting in the future (4) Limit the █████ stock ownership by any organization or group of investors (and limit the pressure that organization or group could apply on █████). And (5) Limit the potential for "disqualified persons" becoming involved.

One of your directors will be a nominee for contract matters with █████. This director would also vote your share of stock at █████ stockholders meetings. The director nominee will also be a Director of █████. None of your other directors or members will deal with █████. You maintain that your future nominee regarding the license contract or for voting of █████ stock is not likely to be any of your directors.

You maintain that you will not become involved with manufacturing or marketing/selling of any products. You have made a license contract with █████ for them to manufacture and market products which have or may result from your intended research. This will allow you to remain at arms length and not be involved in manufacturing, or marketing of any products that you may research and partially develop.

Your anticipated sources of funds are to be from donations, grants and stock dividends. You have no planned fund-raising. There will be no written solicitation until you can assure donors of deductibility of their contributions.

The six officers, directors, trustees shown on your application all have the last name of █████. In order to eliminate the potential for inurement you were advised to add outsiders to the board of directors or create a review board that would establish your compensation guidelines. We requested the names of the individuals that were selected. This information was not provided.

You maintain that you were a membership organization. We requested the names of the other members of your organization. This information was not provided.

You maintained that your application was filed to obtain IRS Recognition Determination Letter and to be able to assure donors in advance of deductibility. You have stated that you would be willing to be classified as either a public charity or a private foundation.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax organizations that are organized and operated exclusively for charitable, religious or educational purposes, no part 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 in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the 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) of the Code. 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 operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(5)(i) states a "scientific" organization must be organized and operated in the public interest. . . Research when taken along is a word with various meanings; it is not synonymous with "scientific". . . For research to be "scientific" within the meaning of section 501(c)(3) it must be carried on in furtherance of a "scientific" purpose.

Section 1.501(c)(3)-1(d)(5)(ii) states that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as for examples the ordinary testing or inspection of materials or products or the design or construction of equipment, buildings, etc.

Revenue Ruling 65-1, 1965-1 C.B. 226, provided that an organization which promotes and fosters the development and design of machinery in connection with a commercial operation and in connection therewith has the power to sell, assign and grant licenses with respect to its copyrights, trademarks, trade name or patent rights, does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 68-373, 1968-2 C.B. 206, provided that a nonprofit organization primarily engaged in testing drugs for commercial pharmaceutical companies does not qualify for exemption.

Based upon the information submitted you intend to have a licensed contract with [redacted] to manufacture and market products which may result from your research. Therefore your research will be conducted for a for profit entity and not the general public. You also will not be operating exclusively for an exempt purpose under section 501(c)(3) of the Code as you will be serving a private interest instead of a public interest. In addition, you do not qualify as a scientific organization as you are not organized and operated in the public interest. Based upon this information you do not qualify for exemption under section 501(c)(3) of the Code as you do not meet the requirement of being operated for the exclusive benefit of the public. Therefore, it is our conclusion that you are neither organized or operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code.