

Internal Revenue Service  
District Director

Department of the Treasury

[REDACTED]

Date: SEP 23 1992

[REDACTED]

Person to Contact:

[REDACTED]

Contact Telephone Number:

[REDACTED]

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated in the State of [REDACTED] on [REDACTED].

The purposes for which the corporation was formed are to provide hockey refereeing services to organized youth hockey programs in the northern geographic section of the state and to other hockey groups when deemed acceptable.

[REDACTED] will provide and schedule referees as requested and as needed to youth hockey groups, elementary and secondary schools and adult leagues. The organization will also maintain, develop and improve the skills of its referees by providing seminars and training sessions.

Your sources of financial support consist of fees charged for officiating hockey games and membership fees. The financial information submitted with your application reflects that a large portion of your income is derived from the fees charged for officiating games. A schedule of the fees charged list fees ranging from \$ [REDACTED] to \$ [REDACTED].

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

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.508-1(a)(2)(i) of the Income Tax Regulations states that an organization seeking exemption under section 501(c)(3) must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023, exemption application, with the District Director.

Revenue Ruling 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. The ruling emphasizes that an organization is not charitable merely because its operations are not conducted for the purpose of producing a profit. Further, providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

An organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

The organization's certificate of incorporation does not limit its purposes to those within the purview of section 501(c)(3) of the Code. In addition, the certificate did not contain a dissolution provision dedicating your assets to an exempt purpose. Therefore, the certificate of incorporation of the [REDACTED] fails to meet the organizational test requirements of section 1.501(1)(c)(3)-1(b) of the Regulations.

The organization's Form 1023, exemption application, was filed more than 15 months from the end of the month in which your organization was formed. Your organization failed to meet the filing requirements in section 1.508-1(a)(2)(i) of the Income Tax Regulations. Based on the facts and circumstances presented in your request for relief under section 1.9100-1 of the Income Tax Regulations, an extension of the filing period by section 1.508-1(a)(2) of the regulations has not been granted.

Your primary activity is similar to the activities of those described in Revenue Ruling 72-369 in that you are essentially engaged in the business of providing referee services for hockey games. As stated in Revenue Ruling 72-369, the provision of such services for a fee at no more than cost is not an exempt activity under section 501(c)(3) of the Code. You are conducting an activity indistinguishable from an ordinary commercial enterprise.

In addition, your certificate of incorporation expressly empowers you to engage in commercial activities which are not in furtherance of an exempt purpose. To reiterate, the certificate provides, in part, that you will provide hockey refereeing services.

In light of the above, we hold that you are not entitled to exemption under section 501(c)(3) of the Code because you are not organized or operated exclusively for charitable purposes.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

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 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 yours,

A solid black rectangular redaction box covering the signature of the District Director.

District Director

Enclosure: Publication 892