

Internal Revenue Service

Department of the Treasury

District
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

CERTIFIED MAIL

APR 10 1980

Dear Applicant:

We have completed our review of your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The evidence submitted indicates that you were incorporated [REDACTED], under the laws of [REDACTED]. Article II of your Articles of Incorporation state that "the Corporation is organized for charitable, literary, artistic and educational purposes and to produce and distribute radio, film, and video programming that seeks to educate and inform the general public about subjects of social and political import, to sponsor communications workshops and seminars that are open to the public-at-large, to sponsor film and video festivals that showcase independent productions, to provide fiscal management representation for radio, film and video producers who are in need of non-profit sponsorship of a non-profit organization to receive funding from an organization, company or agency that will only release funds to a qualified organization tax exempt entity. You state that your organization will select the projects for sponsorship and the fiscal manager will then review the proposal and budget and assess a fiscal handling fee to the agency providing funds. This handling fee will range from [REDACTED]% of the funding request which will be returned to your organization. You state that your fiscal management fee is based on what similar organizations are charging and that a [REDACTED]% profit is anticipated for your organization for providing this service.

Other activities of your organization include managing day to day business and fiscal affairs, overseeing fiscal management services, fundraising and proposal writing, advertising your services in trade magazines and art/media publications and selling radio programming to National Public Radio Stations that are nonprofit. The charge to each station for these services is "what the market will bear."

You also state that your organization expects to provide information that is "politically important" to the arts and media such as sponsoring programs that concern proposed legislation affecting the arts, or the right of the government to withhold funds, grants and other subsidies when a controversial issue is involved.

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You also state in your application that, to date, the only program sponsored by your organization is ██████████ which was written and produced by your president. This individual also makes the preliminary decision on whether to accept or reject a project and all rights to projects sponsored by your organization remain with the artist/producer rather than with your nonprofit organization. You also state that your Board of Directors, which includes your President, determines the salaries paid to the President and Secretary of your organization.

Income to your organization is expected from grants, █%, fiscal management services, █%, station fees, sale of transcripts and registrations from workshops █% and contributions █%.

Expenses are shown for salaries, rent, utilities, printing and advertising.

Section 501(c)(3) provides for exemption from federal income tax of organizations organized and operated exclusively for religious, educational, charitable, scientific and other stated purposes.

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

Regulations section 1.501(c)(3)-1(b)(1) specifies that 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.

Section 1.501(c)(3)-1(b)(1)(iv) of the Income Tax Regulations states that an organization will not be considered organized exclusively for one or more exempt purposes, if by the terms of its articles, the purposes for which the organization is created are broader than those specified in section 501(c)(3).

Regulations section 1.501(c)(3)-1(c)(1) stipulates that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish any of the activities 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.

Regulations section 1.501(c)(3)-1(d)(1)(ii) specifies that an organization is not organized or operated exclusively for exempt purposes unless it serves public rather than private interests.

In Better Business Bureau v. United States, 326 U.S. 279, 283 (1945); the Supreme Court stated that in order to fall within the claimed exemption, an organization must be devoted exclusively to a purpose specified in section 501(c)(3). This means that the presence of a single-non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational or other exempt purposes.

In Revenue Ruling 72-369, 1972-2, C.B. 245, an exemption was denied to an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations on the ground that it was not "operated exclusively" for exempt purposes under section 501(c)(3). This ruling states, in part, that "...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 in this case 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."

In B.S.W. Group, Inc. v. Commissioner of Internal Revenue, 70 T.C. 352, 357 (1978), the court provides some guidelines regarding whether an organization conducting a trade or business could qualify for exemption. The court stated in this case that in examining whether an organization is exempt, the critical inquiry is whether the primary purpose is an exempt purpose or whether the primary purpose is one of operating a commercial business producing net profits for the organization. Several factors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence that the organization is not charitable and educational but commercial. American Institute for Economic Research v. United States, 302 F.2d at 938.

To qualify for exemption under section 501(c)(3), the applicant organization has the burden of showing (1) that it was organized and operated exclusively for charitable, educational or other stated purposes (2) that no part of its net earnings inured to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consisted of dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity, National Association American Churches versus Commissioner, 82 TC 18 (1984).

Our review of the application submitted indicates that your stated purposes are to educate and inform the general public about subjects of social and political import. You also provide fiscal management representation for radio, film, and video producers who are in need of non-profit sponsorship to receive funding from corporations and public agencies. These purposes, as described in your application, are broader than those contemplated by section 501(c)(3) since they are not exclusively charitable and educational. Therefore, your present articles of incorporation do not meet the organizational test required to be exempt under this section.

You state in your application that one of your major activities will be to provide fiscal management services for a fee and you have estimated that the fees will be calculated at █% of the total funding budget for each project. You have also stated that your fiscal management fee charged to the funding agency is based on what similar organizations are charging for the same services and that you anticipate a █% profit for these services which will be used to fund future projects sponsored by your organization.

You also show that approximately █% of your projected income will come from the fiscal management services, █% from a proposed grant, █% from sales of transcripts and fees charged radio stations, and █% from direct contributions. The evidence submitted indicates that all of the services you expect to provide are priced to return a profit for your organization. These activities, as stated, are indistinguishable from an ordinary business carried on for profit. In addition, it is also noted that a relatively insignificant amount of your funding (█%), will come directly from contributions. Based on this information, we have concluded that your activities are primarily commercial and that you are operated for a substantial non-exempt commercial purpose.

We have also reviewed the methods used by your organization to select projects to sponsor and have determined that your president maintains sole control over the projects to be sponsored and that the rights to the projects remain with the individual artist/producer rather than your non-profit organization. It is also noted that your Board of Directors, which includes your president, maintains complete control over the salaries and other compensation paid to your officers. This control by those in charge of your organization indicates that your organization serves a substantial private purpose of the founder and creator rather than required public interests.

Therefore, based on the information submitted, we have determined that you fail both the organizational and operational test required to be exempt under section 501(c)(3). You do not meet the organizational test of this section, since your purposes are broader than those required by section 501(c)(3). You also fail the operational test since you are operated for a substantial non-exempt commercial purpose and for the private interest of your founder and creator rather than for public purposes. Therefore, you are not entitled to exemption under section 501(c)(3) and are a taxable entity. You are required to file federal income tax returns on Form 1120.

[REDACTED]

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

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 you request, at any mutually convenient district office. If you will be represented by someone 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 do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this will become our final determination in this matter. In accordance with section 6104(c) of the Code, we are notifying the appropriate state officials of this determination. Further, if you do not appeal this determination within the time provided, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7420(b)(2) 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,

[REDACTED]

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]