

Go back 4 pages  
3-19-92

Internal Revenue Service  
North Atlantic Region

Department of the Treasury

Address reply to:

[REDACTED]

FEB 19 1992

[REDACTED]

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply to:

[REDACTED]

Dear Madam:

This is a Final Adverse Determination/Ruling Letter concerning your organization's request for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

The evidence presented indicates that your organization was organized under the of the State of [REDACTED] under a Trust Indenture established under the Last Will and Testament of the late [REDACTED] on [REDACTED].

Your purposes, as provided in your Trust Agreement, is to establish a scholarship for the biological and legally adopted descendants of [REDACTED].

Section 501(c)(3) of the Internal Revenue Code exempts from Federal income taxes organizations that are organized and operated exclusively for charitable, educational, etc. purposes, in which no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt under 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 or operational tests it is not exempt.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides 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 purposes if they would be distributed by a court to another organization to be used in such manner as in the judgement of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(2) of the Regulations provide that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in Section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(a)-1(c) of the Regulations provides that the term "private shareholder or individual" used in Section 501 refers to persons having a personal and private interest in the activities of the organization.

In Rev. Rul. 67-367 1967-2 C.B. 188, the Service held that a nonprofit organization whose sole activity is the operation of a "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under Section 501(c)(3) of the Code.

The Service's finding is based upon the fact that where the organization pays "scholarships" to pre-selected, specifically named individuals designated by subscribers, the organization is serving private interests rather than public charitable and educational interests contemplated under Section 501(c)(3) of the Code.

In Rev. Rul. 85-175 1985-2 C.B. 276, the Service held that a private foundation [trust] which awards scholarships on a preferential basis to family members and relatives of the trust's grantor does not award such scholarships on an objective and nondiscriminatory basis as required by Section 4945(g) of the Internal Revenue Code.

The Service's finding is based upon its finding that any part of the trust's grant program that gives preference to family members and relatives of the trust's grantor is not consistent with exempt status under Section 501(c)(3) of the Code because it serves a private purpose of the grantor rather than a public purpose. If this program were a substantial part of its activities, the trust would not be described in Section 501(c)(3) of the Code.

In Local Union 712, I.B.E.W. Scholarship Trust Fund v. Commissioner, 45 TCM 675 (1983), the Tax Court held that the organization, established under a collectively bargained agreement, which awarded scholarships to children of union members failed to qualify for tax exempt status under Section 501(c)(3) of the Code.

Like the organization's described in Rev. Rul.'s 67-367 (supra) and 85-175 (supra) and Local Union 712 (supra), by limiting the people eligible to apply for the scholarships, your organization is operated for the private benefit of the [REDACTED] family. You therefore, fail to meet the operational test required under Section 501(c)(3) of the Code and applicable regulations.

In addition, your Trust Indenture fails to provide for the distribution of your assets upon dissolution. Therefore, your

organization fails to meet the organizational test required under Section 501(c)(3) of the Code and applicable regulations.

In conclusion, we have determined that you are not organized nor operated exclusively for charitable purposes. Accordingly, your organization does not qualify for tax exempt status under Section 501(c)(3) of the Internal Revenue Code. Therefore, you are required to file Federal income tax returns on Form 1041.

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

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

As provided in Section 6104(c) of the Internal Revenue Code of 1986 and applicable regulations, the appropriate state officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

[REDACTED]  
Commissioner

By: [REDACTED]

Associate Chief  
Boston Appeals Office

cc: [REDACTED]

Internal Revenue Service  
District Director

Department of the Treasury

[REDACTED]

Date:

[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 formed on [REDACTED] in the State of [REDACTED] as stated in your Trust Indenture.

The purpose for which the organization was formed is to provide scholarship grants to the natural biological or legally adopted descendants of [REDACTED].

[REDACTED] was established pursuant to the terms of the will of [REDACTED]. The scholarship fund will be distributed to individuals who are the natural biological or legally adopted descendants of [REDACTED], of [REDACTED]. The maximum amount of the scholarship for any one person in any one calendar year shall be \$[REDACTED]. Recipients must be 25 years of age or less when they apply for a scholarship.

The Scholarship was funded with approximately \$[REDACTED] from the estate of [REDACTED] to obtain support in the future from friends and relatives of the deceased.

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.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

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 an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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



In Benjamin Price Genealogical Association v. Commissioner, 44 AFTR 2d 79-5024 (D.O.C. 1979), the court held that a nonprofit organization formed for the purpose of conducting genealogical research on the history of the ancestors and descendants and maritally related persons connected with Benjamin Price, did not qualify as a section 501(c)(3) organization because it was not created and operating exclusively for educational purposes and its activities substantially served private interests. See also, The Callaway Family Association, Inc. v. Commissioner, 71 T.C. 340 (1978).

Like the organization in Benjamin Price, your organization is serving private interests rather than public charitable and educational interests contemplated under section 501(c)(3) of the Code.

In Revenue Ruling 67-346, 1967-2 C.B. 188, a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to preselected, specifically named individuals does not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Like the organization described in the ruling above, your organization awards scholarships on a predetermined basis since the eligible recipients are limited to descendants of [REDACTED].

Revenue Ruling 85-175, 1985-2 C.B. 276 states that a trust formed which awards scholarships to family members and relatives of the trust's grantor does not award such scholarships on an objective and nondiscriminatory basis as required by section 4945(g) of the Internal Revenue Code.

Like the organization described above your organization selects recipients for scholarship awards who are family members. Such scholarships are not awarded on an objective and nondiscriminatory basis. The awarding of the scholarships to the creators family and relatives is not consistent with exempt status under section 501(c)(3) of the Code because it serves a private purpose of the grantor rather than a public purpose. Since the scholarship program is a substantial part of your activities, the trust is not described in section 501(c)(3).

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


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,

  
District Director

cc: 

Enclosure: Publication 892