

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

SEP 21 1992

CERTIFIED MAIL

DEAR APPLICANT:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates your use to be incorporated under the laws of [REDACTED] or [REDACTED] for the following purposes:

- a. To provide contract services, employment for unemployed and underemployed professional, managerial and technical seniors, active or potential members for training, and to provide a broad-based research and research related services which will be provided to members and other persons of benefit to these seniors and to the community at large.
- b. To conduct active market research activities for identification and development of opportunities for productive employment of experienced professional seniors.
- c. To offer [REDACTED] and nearby community employers a rapidly responsive source for temporary technical, executive, and other professional support.
- d. To involve governmental, educational and other support groups in the corporation's activities, increasing community awareness and involvement for our members and seniors generally.
- e. To do all acts and everything necessary, suitable or proper for the accomplishment of the above purposes, alone or in association with others, not inconsistent with the laws of the State of [REDACTED] under which this corporation is organized.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[REDACTED]	[REDACTED]	[REDACTED]				
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	9/18/92	9/21/92	9/21/92				

On [REDACTED] the organization entered its articles of incorporation for the following purposes:

- A. To actively promote the skills, experience, and judgment of unemployed and underemployed professional, management and technical seniors through a not-for-profit, non-stock entity by providing: a clearinghouse through which these seniors may obtain contract service employment; conducting active market research activities for identification and development of opportunities for productive employment of experienced professional seniors; and educational, research and other services of benefit to these seniors and to the community at large.
- B. To offer employers a temporary source of temporary technical, executive, and other professional support.
- C. To involve governmental, educational and other support groups in the corporation's activities, increasing community awareness and involvement for our members and seniors generally.
- D. To do all acts and everything necessary, suitable or proper for the accomplishment of the above purposes, singly or in association with others, not inconsistent with the laws of the State of [REDACTED] under which this corporation is organized.

It is stated in Article V of your Bylaws that "Contracts with the employer and with members shall be part of the ordinary course of business of this organization. A standardized contract or memorandum of understanding with members will be adopted and used with each contract service provided."

Your activities, as stated in your application, include providing a clearinghouse through which its members may obtain contract service employment with local [REDACTED] area employers and others; conducting active market research activities for identification and development of opportunities for the productive employment of seniors; and providing educational, research and other community services of benefit to these seniors and to the community at large.

You state in the membership application that you are providing an opportunity for continuing employment in your field. You also state that "the organization meets the temporary professional staffing needs of employers."

You stated in your application that your organization is promoting the employment of professional seniors. In [REDACTED] you state that [REDACTED] % of the organization's total time is devoted to providing [REDACTED] % to community education, [REDACTED] % to research and [REDACTED] % to fundraising.

Income from your organization is expected from a percentage of the consulting fees paid to members, grants, membership dues and corporate gifts (in kind or in money).

[REDACTED]

Your financial data reflects that normal income and protected income available to be derived from services rendered, in fiscal year [REDACTED] of your income was derived from services rendered for fiscal years [REDACTED], and [REDACTED] your protected income reflects [REDACTED] and [REDACTED] respectively.

Expenditures are for salaries and wages, depreciation, maintenance, disbursement to or for the benefit of members, fringe benefits and operations.

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

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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.

Section 1.501(c)(3)-1(b) of the regulations provides that an organization is organized exclusively for exempt purposes only if its creating documents limits its purposes and powers to those which are within the scope of Section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides 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 exempt purposes 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides, in relevant part, that an organization is not organized or operated exclusively for charitable, scientific, or educational purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) 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 operations of such trade or business are 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 constituting the members of the phrase "exclusively for educational purposes" in Helver Business Bureau v. United States, 345 U. S. 629 (1953), 17-11, 1645 C. B. 155. The language used in the quoted statute says "This plainly means that the presence of a single noneducational purpose is substantial in nature. We'll describe the standard regardless of the number or importance of truly educational purposes." The position is used by the Supreme Court of the United States in the Helver Business Bureau case. Similar applies equally to any category of charitable purpose under section 501(c)(3) of the Code.

While you are organized on a nonprofit basis, nonprofit is not the same as exempt. The fact that you do not make a profit is not the controlling factor. See United States v. La Societe Francaise de Mich. 152 F. 2d 243 (9th Cir. 1945), cert. denied 329 U. S. 795 (1946); Bassett v. Associated Hospital Service Corporation, 125 F. 2d 811 (1st Cir. 1942), cert. denied 315 U. S. 672 (1942); Baltimore Health and Welfare Plan v. Commissioner, 59 T. C. 554 (1978); and H. S. W. Group, Inc. v. Commissioner 451 (1974).

Rev. Rul. 72-169, 1972 C. B. page 245, holds 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. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the operational test of the regulations 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. The organization was not exempt because it was carrying on a trade or business of the type ordinarily carried on for profit.

In Revenue Ruling 61-170, 1961-2 C. B. page 112, an association composed of professional private duty nurses and practical nurses which maintains an employment registry primarily for greater employment opportunities for its members is not entitled to exemption as a charitable organization.

The organization does not meet the organizational test required under section 501(c)(3) because its purposes are not exclusively within the intentment of section 501(c)(3).

In addition, you fail to meet the operational test required for exemption since your primary activities are assisting members in obtaining paid contract employment and providing a registry. These activities are primarily directed to serving the private interests of the members, in addition to, carrying on a trade or business of the type ordinarily carried on for profit.

Because you are neither organized nor operated exclusively for the purposes specified in section 501(c)(3) of the Internal Revenue Code, we conclude that you are not exempt from Federal income tax under section 501(c)(3) of the Code. You are, therefore, required to file Federal income tax return 1120.

[REDACTED]

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 592. Your appeal should give the facts, law, and any other information to support your position. If you wish 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 your regularly convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file power of attorney or tax information authorization with us.

In accordance with section 5145(a) of the Code, we are providing the appropriate state officials of this determination.

If you do not appeal this determination within 90 days from the date of this letter, as explained in Publication 592, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7424(b)(2) of the 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 all administrative remedies available to it with the Internal Revenue Service."

Sincerely yours

[REDACTED]

District Director

Enclosure: Publication 592

cc: [REDACTED]