

APR 18 1988

Dear Applicant:

We have considered your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were organized on [REDACTED], under [REDACTED] law and [REDACTED]. You are an association whose membership consists of the students and faculty at [REDACTED].

According to Article I, section 2 of your Constitution, your purpose is:

[T]o provide all participating association members with recreational, educational, and additional morale enhancement activities, in association with other local organizations. Furthermore, this association will be bilingual, and will assist in the communication of activities between English and Spanish speaking personnel. Finally, this association will serve as a cultural integration center for members to better understand and appreciate the various lifestyles of people from different national origins of the American Continents.

Your Constitution provides that your assets will be disposed of as follows upon dissolution:

Section 2: If the organization is dissolved, all funds in the treasury at the time will be used to meet any outstanding debts, liabilities, or obligations. The balance of these assets will be disposed of as determined by the Executive Board and Arbitrator, subject to the approval by the Installation Commander.

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Possible dispositions are charitable donations, scholarships to support a student festivity, or purchasing recreational and educational equipment to benefit members.

You are an outgrowth of a group established in [REDACTED] in [REDACTED], where [REDACTED] was then located. That group provided custodian services, linen exchange, ironing equipment, barber sets, and other services for members. Students paid mandatory monthly fees according to rank, generating a fund that was transferred to you when the school moved to [REDACTED] in [REDACTED]. About \$[REDACTED] remains in the fund.

Your membership consists of all [REDACTED] and [REDACTED] students and cadre assigned or attached to [REDACTED]. You have approximately [REDACTED] instructor-members and from [REDACTED] student members. Dependents of active members and civilian personnel (and their dependents) assigned or attached to the school may become associate members. You do not charge dues, although they are authorized by your Constitution. You also charge user fees for rental activities and earn interest on the fund received from your predecessor.

Your primary activity is operating an emergency relief fund for members. The fund is available to members not covered by other emergency relief funds. You say that while government agencies provide emergency relief funds to U.S. personnel, no such services are available to [REDACTED] personnel. Funds may be loaned to a member in the event of the death or medical emergency of a family member, or for moving expenses. Loans are interest free and limited to [REDACTED]% of the member's expected income while at [REDACTED]; the [REDACTED]% limit may be waived in an emergency. Loans must be repaid before the member departs from the United States.

Your other activities are as follows:

1. Recreational activities for members: You provide athletic equipment for members, charging some rental fees. You sponsor special events such as athletic competitions, and provide small (e.g., \$[REDACTED]) awards. You also sponsor other recreational activities, such as picnics.
2. Donations to charitable organizations are authorized, not to exceed \$[REDACTED].
3. Video rental: You rent videotapes to members, for a fee.

Although you are located on a military installation and say you are therefore controlled by the [REDACTED], you are a separate organization.

Section 501(c)(3) of the Internal Revenue Code provides an exemption from federal income tax for organizations organized and

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operated exclusively for charitable, educational, and other purposes, including to foster national or international amateur sports competition (but only if no part of the organization's activities involves providing athletic facilities or equipment), if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 501(j) of the Code removes the prohibition on providing athletic facilities or equipment for a "qualified amateur sports organization." Section 501(j)(2) defines this organization as one "organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations says that to qualify for exemption under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in that section. If an organization fails either the organizational or the operational test, it is not exempt.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court discussed the meaning of the word "exclusively," as used in an exemption statute similar to section 501(c)(3). The Court held that an organization is not organized and operated exclusively for exempt purposes if it has a single substantial nonexempt purpose.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations says an organization is organized exclusively for exempt purposes under section 501(c)(3) only if its articles of organization (a) limit its purposes to exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that do not further one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations says an organization is not organized exclusively for exempt purposes under section 501(c)(3) if, by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the regulations says an organization is not organized exclusively for exempt purposes under section 501(c)(3) unless its assets are dedicated to exempt purposes. This includes the requirement that upon dissolution, an organization's assets must be distributed, due to a provision in its articles or by operation of law, for exempt purposes; to the Federal or a state or local government for a public purpose; or by a court to another organization to be used as the court judges will best accomplish the dissolved organization's exempt purposes.

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Section 1.501(c)(3)-1(b)(2) of the regulations defines "articles of organization" or "articles" to mean a written instrument by which an organization is created.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations says an organization is not organized or operated exclusively for exempt purposes under section 501(c)(3) of the Code unless it serves a public rather than a private interest.

In Rev. Rul. 69-175, the Service ruled that a mutual benefit organization did not qualify for exemption under section 501(c)(3) of the Code where it served the private interests of its members. The organization provided bus transportation to and from school for members' children. The ruling reasoned that when a group of individuals associates to provide a cooperative service, the organization serves the private interest of its members.

In Rev. Rul. 56-403, a foundation awarded educational scholarships solely to undergraduate members of a fraternity. The ruling held that although the scholarships were limited to a particular group, the organization was not precluded from exemption as an educational organization under section 501(c)(3) of the Code. The ruling emphasized that there was no specific designation of persons eligible for scholarships; and said "the purposes of the foundation are not so personal, private, or selfish in nature as to lack the elements of public usefulness and benefit" required for exemption under section 501(c)(3).

Section 501(c)(3)-1(d)(2) of the regulations says the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is not limited by the enumeration in that section of other tax exempt purposes. The term includes relief of the poor and distressed or of the underprivileged; advancement of education; and lessening the burdens of government.

Section 501(c)(3)-1(d)(3)(i) of the regulations says the term "educational" in section 501(c)(3) refers to (a) the instruction or training of the individual to improve or develop his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

The criteria the Service uses to determine if an organization's activities further the charitable purpose of lessening the burdens of government are delineated in Rev. Rul. 85-1, 1985-1 C.B. 141; and Rev. Rul. 85-2, 1985-1 C.B. 141. Those criteria are, first, whether a governmental unit considers the organization's activities to be its burden; and second, whether the activities actually lessen the burden. Rev. Rul. 85-1 says an activity is a burden of government if a governmental unit objectively manifests that it considers the organization's activities to be its burdens.

[REDACTED]

In Rev. Rul. 77-365, 1977-1 C.B. 192, an organization instructed persons of all ages and skill levels in a particular sport, conducting clinics, workshops, lessons, and seminars. Its program was open to anyone in the community. The Service held the organization was organized and operated for charitable purposes under section 501(c)(3) of the Code.

In Rev. Rul. 65-2, 1965-1 C.B. 227, an organization that taught a particular sport to children was ruled exempt. The ruling concluded that the organization operated to further educational purposes under section 1.501(c)(3)-1(d)(3) of the regulations.

In Mitchinson Baseball Enterprises, 73 T.C. 144 (1979), aff'd, 696 F.2d 107 (10th Cir. 1982), non-acq. 1980-2 C.B. 2, the Tax Court held that an organization that promoted recreational and amateur sports was exempt as a "charitable" organization under section 501(c)(3) of the Code. The organization undertook numerous activities to promote the sport of baseball; and the court found that the purpose of promoting sports predominated over subsidiary purposes, such as members' recreational or social benefit.

In North American Sequential Sweepstakes, 77 T.C. 1087 (1981), an organization was formed to promote a particular form of sky diving. The court examined all the facts and circumstances of the case in finding that the purpose of promoting the sport was subsidiary to promoting the recreational and private interests of its members. Accordingly, the organization did not qualify for exemption under section 501(c)(3).

In The Media Sports League, Inc., T.C. Memo 1986-568, the Tax Court ruled that an organization that sponsored sports competitions for adults in the community was not exempt under section 501(c)(3) of the Code. The court found that the organization had the substantial nonexempt purpose of promoting the social and recreational interests of its members.

In Syrang Aero Club, 73 T.C. 717 (1980), the Tax Court ruled that an organization that rented an airplane to members, providing no instruction, was not exempt under section 501(c)(3) of the Code. The court found that any educational purpose was incidental to substantial recreational purposes the organization served; and that it furthered the private interests of the members.

You are neither organized nor operated exclusively for exempt purposes under section 501(c)(3) of the Code. Your recreational activities described above (e.g., athletic activities and equipment, picnics, and video rentals) - do not further any purpose considered exempt under section 501(c)(3). Instead, like the organizations in the North American Sequential Sweepstakes, Media Sports League, and Syrang Aero Club cases considered above, you further the substantial nonexempt purpose of promoting the recreational and social interests of your members. This nonexempt purpose is, by itself, sufficient to disqualify

[REDACTED]

you from exemption under the rationale of the Better Business Bureau decision.

In addition, these recreational activities do not further an exempt purpose. They are not educational because you do not provide any program of instruction or training, as did the organizations in Rev. Rul. 77-365, Rev. Rul. 65-2, and the Hutchinson Baseball Enterprises case. Nor is information provided to the public under section 1.501(c)(3)-1(d)(3)(i)(b) of the regulations.

Your recreational activities also do not foster national or international amateur sports competition because you provide facilities or equipment to participant/members. Section 501(j) of the Code does not excuse you from meeting this limitation; you are not a "qualified amateur sports organization" under section 501(j)(2) since your purposes and activities are not "exclusively" or "primarily" to promote international or national sports competition. Finally, these activities are not "charitable" under the rationale of the Hutchinson Baseball Enterprises decision because they do not promote amateur sports or sports competition, but rather serve the recreational and social interests of your members.

In addition, your welfare fund does not further an exempt purpose under section 501(c)(3). Assistance is limited to your members and does not further the exempt purpose of "relief of the poor or distressed or of the underprivileged" under section 1.501(c)(3)-1(d)(2) of the regulations.

Finally, your activities do not lessen the burdens of government, because the United States government has not manifested that it considers your activities to be its burden. Instead, [REDACTED] has always allowed this activity to be carried on privately, indicating that it considers this a private burden. Thus, you do not satisfy the first criterion under Rev. Rul. 85-1 and Rev. Rul. 85-2.

Your recreational and welfare benefit activities also further the substantial nonexempt purpose of furthering the private interests of your members, under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Like the organizations in Rev. Rul. 69-175 and the Syrang Aero Club, North American Sequential Sweepstakes, and Media Sports League cases, you provide cooperative services for your members, which benefits your members without countervailing public interest. You differ from the organization in Rev. Rul. 56-403, because your activities lack the countervailing public benefit provided by granting scholarships and because you more resemble a cooperative than the foundation in the revenue ruling.

In addition, you fail the organizational test in a number of respects. First, your dissolution clause does not satisfy the requirement of section 1.501(c)(3)-1(b)(4) of the regulations that assets be dedicated

[REDACTED]

to exempt purposes. Second, your articles of organization do not satisfy requirements that (1) your purposes be limited to one or more exempt purposes, section 1.501(c)(3)-1(b)(1)(i)(a); (2) your articles not expressly empower you to engage in non-exempt activities, section 1.501(c)(3)-1(b)(1)(ii)(b); and (3) your purposes not be broader than section 501(c)(3) purposes, section 1.501(c)(3)-1(b)(iv).

Accordingly, you do not qualify for exemption from federal income tax under 501(c)(3) of the Internal Revenue Code. Contributions to you are not deductible under section 170 of the Code. You must file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. 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 otherwise qualify under the Conference and Practice Requirements.

If you do not protest this ruling 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 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."

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District Director, Atlanta, Georgia, which is your key district for exempt organization matters. Thereafter, any questions about your federal tax status or the filing of returns should be addressed to that office. Also, the appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

(signed) [REDACTED]

Chief, Exempt Organizations
Rulings Branch

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DOB: [Redacted]

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Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]					
Surname	[Redacted]	[Redacted]					
Date	4/16/98	4/16/98					

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