

Internal Revenue Service

Department of the Treasury

District
Director
31 Hopkins Plaza
Baltimore, MD 21201

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply To: [REDACTED]

Date: DEC 14 1996

> [REDACTED]
CERTIFIED MAIL

Dear Applicant:

We have completed our consideration of your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. We have concluded that you do not qualify for recognition of exemption from federal income tax under that section. The reasons for our conclusion are explained below.

You were incorporated as a Domestic Non-Stock, Non-Profit Corporation under the laws of the State of [REDACTED] on [REDACTED]. Your purpose as stated in the Articles of Incorporation is to engage in any lawful act or activity for which non-profit corporations may be organized under the General Corporation Law of [REDACTED]. Said corporation is organized exclusively for charitable, religious, education, and scientific purposes, including, for purpose, the making of distribution to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of any future United States Internal Revenue Law).

Your application states that your primary purpose is to operate a state-wide electronic network which will provide a variety of information. This network will be made available to all [REDACTED] for \$[REDACTED] per month or \$[REDACTED] a year. There will be no charge for people with disabilities. Agencies or businesses who wish to advertise their service on-line will be charged between \$[REDACTED] and \$[REDACTED] per year. Money generated from the network will be used to purchase and donate computer equipment to people with disabilities who cannot afford it.

Your letter dated [REDACTED] states that [REDACTED] of your time and effort is spent in providing computer equipment to people with disabilities and [REDACTED] is spent carrying on the network activity.

By selling access to the network to the general public, you can provide a strong financial base for your programs and make them less dependent on grants and public contributions.

You indicate [REDACTED] of your time is fund-raising and marketing. You do presentations to various groups who have interest in using the network and

also those who have the potential to provide funding. You also design and print brochures, fliers, business cards, stationary and other printed material used to inform the public of your mission.

Your formation was initiated by [REDACTED].

Currently there are no paying positions in the corporation. Once an adequate level of funding is reached, a director's position and an administrative position will be funded. However, you will continue to rely heavily on volunteers. Many of your volunteers come from people you have served.

Projected Revenue:

Unusual grants [REDACTED]
Gifts, grants, etc. [REDACTED]

Projected Expenses:

Fund-raising [REDACTED]
Occupancy [REDACTED]

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which 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 as an organization described in section 501(c)(3), an organization must be both organized and operated for one or more of the purposes specified in the section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the Regulations states, "An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business", or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations provides that in no case shall an organization be considered to be organized exclusively for one

or more exempt purposes if, by the terms of its articles, the purposes for which such an organization is created are broader than the purposes specified in section 501(c)(3). In addition, that regulation provides that an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Your Articles of Incorporation state that your purpose is to engage in any lawful act or activity for which non-profit corporations may be organized under the General Corporation Law of [REDACTED]. Engaging in any lawful act or activity for which non-profit corporations may be organized under the General Corporation Law of [REDACTED] is inconsistent with being organized exclusively for one or more exempt purposes. You, therefore, do not meet the organizational test requirements of section 1.501(c)(3) of the Income Tax Regulations.

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 primarily engages in activities which accomplish exempt purposes. 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)(2) of the Regulations defines the terms "charitable" to include relief of the poor and distressed or of the underprivileged.

Revenue Ruling 70-535, 1970-2 C.B. 117, provides that a non-profit organization formed to manage low and moderate income housing projects for a fee does not qualify for exemption under section 501(c)(4) of the Code. The organization operated in a manner similar to those providing such management services for profit. The fact that these services were being performed for tax-exempt corporations did not change the business nature of the activity.

Revenue Ruling 72-369, 1972-2 C.B. 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. 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.

You state that [REDACTED] is basically a big electronic bulletin board, similar to CompuServe or Prodigy but on a much smaller scale.

In the Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) the court held that "the presence of a single noncharitable purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly charitable purposes."

The majority of Projected Income comes from Information Fees and User Fees to individuals who are not disabled. This is considered substantial.

The network services offered by your corporation are those commonly associated with a commercial enterprise:

- [REDACTED] percent of time will be spent advertising and marketing.
- The Network is a Bulletin Board similar to CompuServe and Prodigy for profit corporations.
- Commercial business who wish to advertise a service will be charged.
- Your organization plans to seek commercial accounts to advertise on the network.
- You indicate that by selling access to the network to the general public, the organization could provide a strong financial base for its programs and make them much less dependent on grants and public contributions.

Revenue Ruling 68-26, 1968-1 C.B. 272 ruled that a non-profit organization controlled by a church to print and sell educational and religious material to the church's parochial school systems is not a feeder organization defined in section 502 of the Internal Revenue Code of 1954 when it sells the material at a profit which is returned annually to the parochial school system. Thus, it may be exempt from Federal income tax under section 501(c)(3) of the Code. This ruling was based on the fact that in printing material which has been prepared by the parochial school system, the organization is carrying out an integral part of the activities of the church, the parent organization. Accordingly, it qualifies for exemption because it is operated as an integral part of the exempt activities of the parent. Furthermore, since the sole source of its profits is the sales made to a component of its parent organization, the profits are essentially a matter of accounting among the organizations involved and thus, it is not a feeder described in section 502 of the Code.

You can be distinguished from the organization described in Revenue Ruling 68-26. That organization is operated as an integral part of the exempt activities of the parent.

Your organization is engaged in operation of a computer network providing access to the public, containing commercial advertising activities which are commonly associated with a commercial enterprise, and such activity is substantial and not incidental to your educational purposes and activities. The fact that your profits will be used for charitable or educational purposes does not qualify you for exemption under section 501(c)(3) of the Code.

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 and operated exclusively for charitable purposes.

You are required to file income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code. In accordance with the provisions of section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you do not agree with our determination, you may request that the Office of Regional Director of Appeals consider the matter. 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 we will contact you to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone will represent you 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 don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you don't appeal this determination within the time provided, we will not consider you to have exhausted 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."

If you agree with the determination, please sign and return the enclosed Form 6018 as soon as possible.

Sincerely yours,



District Director

Enclosures:
Form 6018
Publication 892
Envelope