

No protest received. Case close by in review by [redacted] 5/3/93

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: MAR 23 1993

Employer Identification Number:
[redacted]

Person to Contact:
[redacted]

Telephone Number:
[redacted]



Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient

2/2/93

3/17/93

3/22/93

[REDACTED]

District Office. 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 our Conference and Practice Requirements as set forth in Section 601.502 of the -Statement of Procedural Rules. See Treasury Department Circular No. 230.

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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosures: 3

Enclosure I
Reasons for proposed denial of exempt status

Information submitted with your application shows that you were incorporated on [REDACTED]. Your Articles of Incorporation state that your purposes include, in part:

To further educational, cultural and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, more specifically by producing educational events and programs.

To receive contributions and to make donations to, dispense contributions through, and otherwise aid and support those organizations qualified for exemption from federal income tax under the Internal Revenue Code of 1986, that are organized and operated exclusively for charitable purposes.

On your application you stated that you would provide comprehensive mental health services to families, businesses, and organizations and that your services will include, but not be limited to, workshops, forums, lectures and discussion groups. You stated that these workshops, forums, lectures and discussion groups would be directed towards child development, effective parenting and/or the development and administration of effective educational programs and strategies for implementing appropriate intervention and organizational techniques. The agendas of the workshops, forums, lectures and discussion groups depend on the format requested by the agency requesting your services.

Additional information submitted in support of your Form 1023 reveals that your organization is a group of independent mental health professionals. Your group consists of nine consultants whose professional and clinical experience include working with families, businesses and organizations conducting workshops, forums, lectures and discussion groups.

You stated that the public is made aware of the services you provide via introductory letters, bids, and proposals you send to businesses and organizations who have advertised a request for proposals.

In response to our request that you describe the specific types of fundraising activities you plan to conduct, you stated that the only type of fundraiser activity that may be considered is one you plan to conduct as normal business fare. You stated that it is conceivable that you would conduct a workshop that would be of interest to the general public but that a registration fee would be charged to cover the costs of materials, facilities rental and to generate a profit for the organization to facilitate possible low cost or free services to nonprofit organizations that would need them.

[REDACTED]

Your organization operates out of the office of the Chairman of the Board, [REDACTED]. You stated that the planning of workshops takes place at his office, but that workshops will more probably occur in staff members' homes and/or other locations that are more convenient to them. Activities conducted will be provided at the site selected by the business or organization requesting the service.

Fees you charge are determined by the prevailing rate for the type of service provided. You stated that your fees are significantly lower than those charged by for profit consulting firms. The fee schedule you submitted showing your fees compared to fees charged by for profit groups is as follows:

| | [REDACTED] | <u>For profit</u> |
|---------------------------|---------------|-------------------|
| Full day plus expenses | \$ [REDACTED] | \$ [REDACTED] |
| Half day plus expenses | [REDACTED] | [REDACTED] |
| Hourly rate plus expenses | [REDACTED] | [REDACTED] |

We asked that you explain how you determined the amount you charge for your services. You stated that after conferring with other consultants who provide similar services for profit, it was arbitrarily decided to set your fees at approximately [REDACTED] of what for profit consultants would charge. You also stated that your only criteria was your best guess as to what would be a suitable amount to charge for your services that would both cover the cost of providing the service yet generate enough revenue to enable you to continue to provide services.

Compensation for your consultants will be based on the amount of actual involvement in the provision of a particular activity. [REDACTED] percent of the revenues received for services rendered will be divided among those involved in the provision of that activity. There is a \$ [REDACTED] cap on the compensation to be paid to an individual for a single workshop and that workshops rarely will be scheduled for more than two days in length.

We asked whether you provide any services for anyone at less than cost or free. You responded that it is readily conceivable that on occasion you would provide your services at less than cost or free for a non profit agency, but that this would of course have to be a rare occurrence and decided on a case-by-case basis.

You have not yet provided any services to anyone.

You have not submitted any grant applications requesting funding from other agencies or organizations.

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 or educational 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 Regulations states that in order to be exempt as an organization described in 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 test or the operational test, it is not exempt.


Section 1.501(c)(3)-1(c)(1) of the Regulations states 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 of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Revenue Ruling 72-369, 1972-2 C.B. 245, describes an organization that was formed to provide managerial and consulting services for nonprofit organizations exempt from Federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization entered into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The services consisted of writing job descriptions and training manuals, recruiting personnel, constructing organizational charts, and advising organizations on specific methods of operation. Receipts of the organization were from services rendered. Disbursements were for operating expenses.

In Revenue Ruling 72-369 the Internal Revenue Service determined:

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test" 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 and the applicable regulations.

Providing managerial and consulting services on a regular basis for a fee is 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.

Accordingly, it is held that the organization's activities are not charitable and therefore the organization does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Based on the information submitted, it is our opinion that your organization is similar to the organization described in Revenue Ruling 72-369. Therefore, we have determined that your activities are not charitable and that you are not operated for exclusively charitable purposes within the meaning of section 501(c)(3) of the Code. You do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code. We are also of the opinion that you do not qualify under any other section of the Code.