

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

No Protest
Received

Date: MAY 16 1988

Person to Contact:

Telephone Number:

Refer Reply to:

7-12-

[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 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,


District Director

Enclosures: 3

Enclosure I
Reasons for proposed denial of exempt status

Information submitted with your application indicates that you were incorporated in the State of [REDACTED] on [REDACTED]. Your Articles of Incorporation state that your purpose is promoting the general welfare of the residence districts of the City of [REDACTED] by giving special attention to public improvements and all that relates to the betterment thereof and the convenience and comfort of the residents thereof; encouraging social intercourse among its members; encouraging business development, improvement and expansion; and doing any and all things necessary or incident thereto.

Your By-Laws provide that membership in your organization shall be made up of men and women who personally, professionally or otherwise serve in your organization in the following classes of membership:

Retail - A business which sells products or services directly to the general public and would benefit from your joint promotion and advertising plans (e.g., antique shops, apparel, bakeries, drug stores, restaurants, travel agencies, taverns, etc.). Membership dues is \$[REDACTED].

Business and Professional - Businesses or professionals who do not sell products directly to the general public and would not benefit from your joint promotion and advertising plans (e.g., accountants, attorneys, banks, dentists, dry cleaners, etc.). Membership dues is \$[REDACTED].

Downtown Residential - Individuals (apartment tenants and home owners) who make their primary place of residence within the designated territory. Membership dues is \$[REDACTED].

Associate Member - An individual who, or a business which, resides or has their primary business location outside the designated territory. Membership dues is \$[REDACTED].

Sustaining Member - An annual honorary membership open to any individual or company. Membership dues is \$[REDACTED].

Voting privileges, certain rights, powers and duties will be reserved for those individuals representing themselves or businesses whose primary place of business or residence is within the boundaries of the western edge of [REDACTED] to the eastern edge of [REDACTED] and including all of the [REDACTED] industrial park north of [REDACTED]. All properties touching the western edge of the [REDACTED] shall be considered as part of the defined territory.

Membership may also contain business or professional men and women who, while not having their place of business in the described territory, apply for membership in your organization, and who after investigation by the Membership Committee and the Board of Trustees, receive a unanimous vote of said Board of Trustees to be accepted as Associate members.

[REDACTED]

Associate and sustaining members do not have voting privileges. Your Promotions Committee plans all retail promotions and advertising to be submitted to the membership at a regular meeting for their approval. Your Business Relations Committee conducts a continuous study of the business needs of the community to give effect to the purpose of your organization. They work closely with the Promotions Committee in the promotion and stimulation of business for your members as well as membership. Promotional fees shall be paid quarterly by all regular members. This fee covers all advertising for a year's promotional expenses. Your By-Laws also indicate that you donate funds to members.

Information submitted with your application indicates that it is your goal to strengthen the existing commercial base in the heart of [REDACTED] and attract new and different supportive businesses for the emerging professional and service-oriented population. You stated that the purpose of your organization is threefold: a) to promote a positive image of the downtown; b) to strengthen the existing commercial base; and, c) to attract new and different supportive businesses into the downtown area. You distribute a monthly newsletter to all members (and prospective members) featuring special programs offered in the community, business "happenings" and upcoming events. A portion of the membership dues is put toward joint advertising for special events and retail sales promotions. Retail members with multiple locations must pay membership dues for each location. In addition to monthly business meetings, special programs are given periodically to help businesses in areas of special interest (signage, storefront improvements, window displays, etc.)

You have cooperated with [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and are providing a small business management instructor in the downtown. [REDACTED] businesses enrolled in the class and will receive instruction in small business management. This service is being provided to your members, free of charge, in hopes to strengthen business and increase the marketability of the downtown area.

You stated that much of your group advertising is limited to members because this is a part of their membership fee. However, most of the activities are to benefit the entire downtown area (to generate activity, positive image, etc.).

You are financially supported by membership dues, fund-raisers, and auctions. You sponsor fund-raising activities to generate income and to increase activity in the downtown area, such as annual concerts in the municipal auditorium featuring top entertainers; a downtown open-house and auction; trolley track sales (a refurbished section of [REDACTED]); and [REDACTED] cruises. You also have sidewalk sales. Tickets for the concerts are sold by your members in their places of business. During your open-house and auction, some of your members' businesses remain open and offer "Open House" specialties. You advertise these participating businesses.

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 qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states 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, otherwise 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)(ii) and (iv) of the Regulations states that in meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes as stated in section 501(c)(3). 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 organization is created are broader than the purposes specified in section 501(c)(3).

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 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.

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.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in its generally accepted legal sense and includes lessening the burdens of government as well as relieving the poor and distressed or the underprivileged and combating community deterioration and lessening neighborhood tensions.

Revenue Ruling 76-419, 1976-2 C.B. 146, provides that a nonprofit organization that purchases blighted land in an economically depressed community, converts the land into an industrial park, and encourages industrial enterprises to locate new facilities in the park in order to provide employment opportunities for low income residents of the area, is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code. That revenue ruling stated that pursuant to the terms of Public Law 90-222, the area in which the organization is active has been identified as such an area by appropriate governmental authorities. It has a high ratio of unemployed and underemployed low-income people and is an area of urban blight consisting primarily of junk yards and vacant land with little industry. Tenants are required by their leases with the organization to hire a significant number of presently unemployed persons in the area and to train them in needed skills. The training opportunities and hiring of the underemployed would not only relieve poverty but to lessen neighborhood tensions arising from the lack of local job opportunities. Further, the creation of an industrial park in a blighted area combats community deterioration.

In Revenue Ruling 77-111, 1977-1 C.B. 144, an organization whose purpose was to revive retail sales in an area of economic decline by constructing a shopping center did not qualify for exemption under section 501(c)(3) of the Code. It was ruled that where an organization benefits the private interests of businessmen in increasing business patronage rather than accomplishing section 501(c)(3) purposes by promoting business activity in economically deteriorated areas, it is not exempt. The organization's activities were found to benefit the businessmen without a counterbalancing benefit to, e.g., minority groups traditionally excluded from management or ownership of business enterprises or without bringing in businesses that would only enter that particular area because of the availability of the shopping center.

Enclosure I con't

[REDACTED]

You do not appear to alleviate any of the conditions mentioned in the above cited revenue rulings, which show how, in certain limited cases, assisting commercial or industrial organizations may primarily serve "charitable" purposes. Accordingly, you neither relieve the poor, distressed or the underprivileged, nor do you combat community deterioration or lessen neighborhood tensions within the meaning of section 501(c)(3) of the Code.

Your activities are personal in nature and are directed to the economic advancement of your members. Any benefit that extends to the general public is incidental. Your activities are not strictly within the scope of charitable activities within the meaning of the above cited regulations. You promote the business enterprises of your members who stand to profit from the promotion of their businesses. You provide joint promotion and advertising for your members. You study the business needs of your members and work to promote and stimulate business for them. Your activities constitute the performance of particular services for your members.

The language in your governing instrument, cited above, which defines your purpose and powers, provides for purposes broader than those contemplated in section 501(c)(3) of the Code. Section 501(c)(3) purposes do not include promoting the general welfare of residence districts by making public improvements for the convenience and comfort of residents nor do they include encouraging social intercourse. Therefore, you are not organized exclusively for one or more purposes specified in section 501(c)(3) of the Code and you do not meet the organizational test.

Accordingly, based on the information submitted, we have concluded that your purposes and activities do not fulfill any charitable activities of the type described in section 501(c)(3) of the Code. You have not shown that (a) benefits are restricted to the poor and the unemployed and (b) the geographic areas of concern is a "blighted" area. Thus, you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code because you are neither organized nor operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Stimulating the economy in order to improve business conditions is not a charitable purpose nor a charitable activity. Therefore, you are not entitled to be recognized as exempt 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.