

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

DAFASO
11/14/84

SEP 27 1984

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated under the nonprofit corporation laws of the State of [REDACTED] on [REDACTED].

Your bylaws state that you are a nonprofit corporation comprised of practicing, professional artists associated for the purpose of establishing an art gallery and providing a facility that enhances the [REDACTED] community through creative and educational opportunities.

Your Bylaws also state that every artist member is entitled to representation of his or her work in the organization's gallery. Member artists will be included in one-person or group exhibitions on a regular basis to be determined by the Board. By "representation" you mean the active promotion of the work of the artist members, and within the limitations of space, the exhibition of artists' works within the gallery. Artist Members of the organization may exhibit in, but cannot be represented commercially by any other art gallery in the [REDACTED] area.

You presently have [REDACTED] gallery members. Members are invited to join based on quality of work. Membership costs are initial payment of \$[REDACTED] upon joining and monthly dues of \$[REDACTED]. Members serve on committees and perform specific duties, including gallery sitting.

You exhibit and sell the work of both members and non-members. From the sales of members, the gallery retains [REDACTED]% and the artist receives [REDACTED]%. Until a year ago the arrangement was the same for non-members. A new policy states that a non-member may elect either to retain [REDACTED]% and pay a share of the announcement printing cost (\$[REDACTED] to \$[REDACTED]) or retain [REDACTED]% without responsibility for printing costs.

On the average of three times yearly the [REDACTED] responds to requests to hold shows at museums and educational institutions, which activity

| | Initiator | Reviewer | Reviewer | Reviewer | Reviewer | Reviewer | Reviewer |
|--------|------------|------------|------------|------------|------------|----------|----------|
| date | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | | |
| urname | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | | |
| ate | 1/1/84 | 9/2/84 | 9/11/84 | | | | |

educational activities take place at the gallery. There are gallery talks by exhibiting artists and studio visits to view work in process. Tours and class visits are welcome. The gallery has also delivered works to shows outside the [redacted] area, such as the [redacted] and Sun River Art Competition.

During the past year the gallery has had rental income from the following groups:

1. [redacted] - a musical group sponsored by the [redacted]
2. Experiential dance workshop by [redacted]
3. [redacted] life drawing class
4. [redacted] (monthly readings)
5. [redacted] Arts Commission lecture
6. Annual Festival of the [redacted] Poetry Association
7. [redacted] [redacted] class in wine tasting with gallery tour.

In addition, the following groups have used the gallery rent free as a public service:

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted]

As regards your sources of financial support, your commissions from the sales of art work is by far the greatest source of income. For the most recent preceding year (fiscal year ending [redacted]), your gross receipts from sales commissions was by far the largest source of income.

Section 501(c)(3) of the Code provides for the exemption of organizations which are organized and operated exclusively for religious, charitable, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) states: the words "private shareholder or individuals" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization cannot be considered exempt unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(a)(2) of the Income Tax 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 that section. If any organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-178, 1966-1 C.B. 138, holds that an organization that sponsors and develops the arts by sponsoring a art exhibit at which works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

Revenue Ruling 71-395, 1971-2 C.B. 128, on the other hand, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify under section 501(c)(3) of the Code, because it is a vehicle for advancing the artists' careers and promoting the sale of their work.

Revenue Ruling 76-112, 1976-1 C.B. 151, states that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code. The private interests of the artists whose works are displayed for sale are being promoted.

As in the case of Revenue Rulings 70-152 and 71-395 cited above, the individual artists who exhibit and sell their works in your gallery benefit directly from your services.

Thus, your major activity is serving the private interests of those whose works are displayed for sale. Since your activities inure to the benefit of individual artists, it is held that you are not organized and operated exclusively for educational purposes, as required by section 1.501(c)(3)-1(a)(1) of the regulations.

Your Articles of Incorporation do not meet the organizational test for an organization that seeks exemption under Code section 501(c)(2) in that your purposes do not state that you are organized exclusively for educational and charitable purposes within the meaning of IR Code section 501(c)(3). However, even if this deficiency were corrected, you would not meet the requirements of this Code section based on your actual operations.

Accordingly, we have determined that you are not entitled to recognition or exemption from Federal income tax under section 501(c)(3) of the Code. You are required to file income tax returns on Form 1120.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

As provided by section 6104(c) of the Internal Revenue Code of 1954 and the applicable regulations, the appropriate State officials are being notified of our determination.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and 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 and will then become our final

[REDACTED]

determination. 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 Court of Claims, 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."

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018

cc: [REDACTED]

[REDACTED]