

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EG
Date: JUN 16 1987

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.

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[REDACTED]

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

[REDACTED]

Your application does not indicate the date you were formed nor does it indicate the type of organizational document you have. Your application indicates:

This organization is formed by different parents of seniors each year. We are all volunteers to put on the [REDACTED] after the senior prom. We have a bake sale, steak fry or spaghetti dinner to raise money to put on a Las Vegas nite which is our big money maker. A letter from IRS is required by the City of [REDACTED] in order for us to put on a Las Vegas nite. All money made is used for the [REDACTED] party.

Your application includes an untitled document which states the name of your organization and the purpose and dissolution clauses required of section 501(c)(3) organizations in order to meet the organizational test. This document was signed by [REDACTED] and [REDACTED] on [REDACTED].

You stated that no financial support is solicited other than from parents of seniors or donations of goods for bake sales.

You listed [REDACTED] and [REDACTED] as the members of your governing body. You stated that they receive no compensation and that the members of your governing body are all volunteers and are different each year.

You submitted a statement that you do not have By-Laws.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of corporations, and any community chest, fund, or foundation 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(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)(2) of the Regulations states that the term "articles of organization" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

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)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term "charitable" is to be used in "its generally accepted legal sense." Charity includes only those things that fall within the legal definition of charity. Even though an organization may operate for nonprofit, it must also operate for charitable purposes.

Section 501(c)(3) covers only corporations, community chests, funds and foundations. As provided in the case Irispe v. Commissioner, Tax Court Memorandum Opinion, entered July 25, 1950, a formless aggregation of individuals without some organizing instrument, governing rules, and regularly chosen officers would not be a "corporation, community

chest, fund, or foundation* for purposes of section 501(c)(3) of the Code. However, the typical nonprofit association formed under a constitution or bylaws, with elective officers empowered to act for it, would be treated as a corporation for purposes of section 501(c)(3) of the Code as provided by Morey v. Riddell, 205 F. Supp. 918 (S.D. Cal. 1962).

The organizational test cannot be met by reference to any document that is not the creating document. The untitled sheet of paper you submitted is not a proper organizing document. Since you do not have an organizing document, you do not meet the organizational test.

You do not meet the operational test because you are operated to more than an insubstantial extent, to further the private interests of your members. Providing a prom party for the children of your members is not a charitable activity. Your activities benefit your members in that they are relieved of paying the expenses of a prom party for their children. Since you are operated for the benefit of private interests you do not serve a public interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. The resources of organizations described in section 501(c)(3) must be devoted to a public purpose.

Accordingly, it is held that you are not entitled to recognition of exemption from Federal income tax under section 501(c)(3) of the Code.