

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: DEC 26 1989

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

NO PROTEST RECEIVED.
CASE CLOSED BY TECH
STAFF 1-26-90

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.

12/19/89

[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 judgement 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]

Information submitted with your application indicates that you were incorporated [REDACTED] in the State of [REDACTED]. Your Articles of Incorporation state:

Corporation is organized exclusively for charitable and educational purposes. Such purposes are to assist government in providing cost-effective solutions to human service needs, including employment and training and criminal justice, by providing training, technical assistance, and management support services to state and local governments, and non-profit organizations, which provide services to meet such need.

You indicate that your activities will include the following:

Education - Helping local units of governments, particularly counties, develop local criminal justice and community corrections plans as required by the State of [REDACTED]. Such educational activities will be in the form of reports and analyses concerning sentencing and jailing trends of the local jurisdictions.

Training - Providing specific information about a particular problem to the party requesting the assistance. For example, you provided training to [REDACTED] on jail classification at the request of the National Institute of Corrections so that they could develop a system to better sort out the types of prisoners in their jail.

Technical assistance - Helping counties in [REDACTED] develop local criminal justice and community corrections plans that are required by the State of [REDACTED]. You have entered into contracts with [REDACTED] and [REDACTED] to provide this type of service. You are helping [REDACTED] to analyze their community corrections and jail problem. In [REDACTED], you provided [REDACTED] with a Jail Inmate Classification System. Your contract with [REDACTED] dated [REDACTED], shows that the County requested your services in assessing and analyzing the data collected from this system. You are providing technical assistance and management support to the County Board of Commissioners, its staff, and the court system in order to help them determine how to better manage their jail population and how to avoid costs of jail construction. Copies of your contracts with these [REDACTED] counties show that you were paid \$[REDACTED] per day multiplied by the number of staff persons who performed the services, plus reimbursement for mileage, meals, and room and board for overnight stay.

Technology transfer - Providing jail inmate classification and data base management systems for jails. You use a jail classification system and help jurisdictions adopt technology in their particular jail. You also help jails, county commissioners, and county managers to adopt and implement management information systems that help provide them with the data needed to make decisions on jail operations and construction.

[REDACTED]

An officer or director of your organization may be a consultant for your organization. As a consultant, an officer or director may be compensated for time spent providing consulting services.

You plan to conduct conferences but you have none planned for the present. These conferences would consist of your providing training and educational conferences for criminal justice and human services professionals who are employees of local governmental units such as local probation officers or pre-trial services workers. You stated that it is likely that the State of [REDACTED] may award you a grant to provide the training and educational conferences described above. It appears that what you refer to as a grant would actually be a contract to provide services.

On your application, you stated that the rates you charge for your services are typical rates charged by organizations under contract to units of government, and per typical rates allowed by governmental organizations for technical assistance purposes. Your expenses are charged to the agencies you contract with at actual costs (as best as you can project them). When asked how your organization differed from Revenue Ruling 72-369, 1972-2 C.B. 245 in regards to your providing consulting and managerial services at cost, you stated you will be providing services to other non-profit organizations at less than cost because there is money available through state agencies. You stated that the amount you would charge below cost would be dependent on the amount of funding available on each particular contract and will most likely vary. You stated that cost is equal to the per diem paid to a consultant plus travel, meals, lodging and administrative overhead charge. Your letter dated [REDACTED], indicates that the funding from state agencies you referred to would include your performing a service for the funds you might receive. Therefore, this funding would not be considered as a contribution to your organization which would reduce the cost of the services you provide. The information submitted in support of your request for exemption does not demonstrate that your services would be provided at less than cost. You stated that efforts to raise money from uninterested parties (those you will not provide services for) is one of low priority for you because your type of program is a low priority for foundations.

Your primary source of income will be revenue received from your consulting services. Funds will be expended for utilities, supplies, advertising, travel, miscellaneous operating costs and for making payments to your consultants.

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. You provide consulting services tailored to the specific needs of a particular agency or organization. When asked why you believe your provision of services to others under contract for a fee was a section 501(c)(3) activity, you stated that many of the governmental units you serve do not provide services directly to clients but instead hire non-profit organizations to conduct these services for them in a professional and cost effective manner. Thus, in providing your services for a fee to a non-profit organization, you feel your doing so makes you an agent of the governmental unit you happen to be serving.

As stated in Revenue Ruling 72-369, furnishing managerial and consulting services at cost lacks the donative element necessary to establish this type of activity as charitable. Since you have not demonstrated that your services are provided at less than cost, pursuant to Revenue Ruling 72-369, we have determined that your activities are not charitable and that your primary purpose and activity is carrying on a trade or business ordinarily carried on for profit. Accordingly, 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 because you do not meet the operational test as required by section 1.501(c)(3)-1(c)(1) of the Regulations. We are also of the opinion that you do not qualify under any other section of the Code.