

[Redacted]

Person to Contact: [Redacted]
Telephone Number: [Redacted]
Refer Reply to: [Redacted]

[Redacted]

Date: AUG 26 1988

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

Your organization was formed on [Redacted] the date your Articles of Organization were adopted.

According to your Articles of Organization the association is organized exclusively for educational purposes, specifically to provide cultural exchange; to provide education concerning, and give recognition to innovative and progressive artists exploring different media techniques and subject matter; to provide educational opportunities in the art field through the University of [Redacted] facilities and faculty; to publish literary works on artists of merit; ..."

According to your 1983 application the organization is made up of a gallery and a craft shop, and you are seeking exemption only for the operation of the gallery. You plan to have "evening parties" every one or two months so that individuals can view the artwork. The art will also be displayed during normal store hours. Your organization will sell the art on consignment from the artist at the retail fair market value of the item and retain [Redacted] % of the sales price. This is the only source of income you expect for your organization to receive in [Redacted] and [Redacted]. Your organization is an unincorporated enterprise which is owned and controlled by one person, [Redacted]. [Redacted] is the only officer, director, or member of the association.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Surname	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Date	8/24/88	8/24/88	8/24/88	8/24/88	8/24/88	8/26/88	

Section 1.501(c)(3) of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) 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. (2) The term "exempt purposes or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(b) Operational test. (1) Primary activities. 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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Method of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals...."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides 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). 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 Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(b)(2) of the Income Tax Regulations provides that the term "articles of organization" or "articles" include the trust instrument, the corporate charter, the articles of association, or other written instrument by which an organization is created.

Revenue Ruling 76-152, 1976-1 S.B. 19) 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 and retaining a commission on sales does not qualify for exemption under IRC 501(c)(3).

In Hewitt v. Commissioner, TCM Memo. 1957-112, the court concluded that there is no provision for allowing exemption to an individual enterprise.

Your organization is a sole proprietorship which is operating a frame shop and art gallery. You have only one officer, director, and member, [redacted], your founder and owner. You are not a corporation, trust, or association of persons. As stated in the above mentioned court case, there is no provision in the law that allows exemption for the activities of an individual.

In addition, based on the description of your operations that has been provided, you are operating similar to the organization mentioned in Revenue Ruling 76-152. Your gallery will be exhibiting and selling art work from local artists on consignment. The amount you are planning to retain from the sale of the art is equal to [redacted] of the gross sales price. The sales price will be equal to the fair retail value of the work. You are serving the private interests of the artists whose works are displayed for sale. You are thus serving private rather than public interests.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal income tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for a civic, religious, or other exempt purposes within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

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

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 607, Except Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as if you have no available administrative remedies. Section 522(a)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or writ under this section shall not be issued in any proceeding before the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determining that the organization has a right to any administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in a safe permanent location.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 90 days from the date of this letter, this determination will become final. In accordance with this Section 522(a), we will notify the appropriate State officials of this action.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 592
Form 6018