

Internal Revenue Service

Department of the Treasury

NO PROTEST RECEIVED
Release copies to District

Washington, DC 20224

Date 1-12-92

Person to Contact:

Surname [REDACTED]

Telephone Number:

Refer Reply to:

Date:

NOV 10 1992

Employer Identification Number: [REDACTED]
Key District Office: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were incorporated under the laws of the State of [REDACTED] on [REDACTED]. You submitted your application for exemption on [REDACTED]. You state that your purpose is to develop educational and cultural activities substantially within the Village of [REDACTED] and its environs. You state that such development shall be promulgated by the sponsorship, promotion, production and presentation of musical, theatrical, and other endeavors of performing arts which will be of aid and benefit to the cultural development of the citizenry of the Village of [REDACTED].

Your activities have included replacing the facade of the theater you own, hosting a [REDACTED] theater group which puts on a play about the history of labor, and showing numerous children's films. You also rent your theater to local groups for special performances. You retain total control over the cultural productions to whom you rent. You state that if an organization cannot afford to put on a production, you will help that organization to get assistance from local civic groups. You have a standard rate for all groups who wish to use your theater with a few exceptions. Tickets for most productions cost between [REDACTED] dollars and [REDACTED] dollars.

In your application you state that, the actual operations continue as under the predecessor for-profit corporation. You show movies on weekends and when live theater productions are not scheduled. The submitted information also establishes that you show movies that are currently shown in commercial theaters. You indicate that in [REDACTED] you sold [REDACTED] movie tickets. You advertise the movies you are showing in the local newspaper. You state that

you put on at least two live productions per year and the children's theater has one performance per year. You also lease the facility to allow the local high school to put on performances, to scout meetings, to church productions and for other community oriented activities.

Your bylaws provide for different levels of membership. Membership includes movie discounts, and season passes. You state that you spend approximately twenty-five percent of your time on getting commercial movies for the theater. The prices for movies are based on what is affordable for the average family.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, includes (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that museums, zoos, planetariums, symphony orchestras, and other similar organizations are educational if they otherwise meet the requirements of section 501(c)(3) of the Code.

In construing the meaning of the phrase "exclusively for educational purpose" in Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct. D. 1650, C.B. 1945, 375, the Supreme Court of the United States said, "this plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Rev. Rul. 64-174, 1964-1 C.B. 183, states that a foundation formed to create interest in the development of the American

theatre in areas other than New York City by aiding local communities to establish their own charitable and educational repertory theatres is exempt under section 501(c)(3) of the Code.

Rev. Rul. 64-175, 1964-1 C.B. 185, states that an organization that is formed to stimulate, promote, and develop the interest of the American public in the dramatic arts and which operates a permanent repertory theatre in furtherance thereof, is exempt under section 501(c)(3) of the Code.

Rev. Rul. 71-504, 1971-1 C.B. 231, concerns a medical society whose activities include: a patient referral service; a grievance committee; a legislative committee; meetings concerned with matters affecting those practicing medicine; and, a public relations program. The revenue ruling holds that these activities are directed primarily at the promotion of the medical profession and constitute a substantial portion of the organization's activities. Since the society has substantial noncharitable and noneducational activities, it is held not to be a charitable organization within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 71-505, 1971-1 C.B. 232, concerns a city bar association whose activities include: establishing and promulgating minimum fee schedules; preparing papers on the economic of running an efficient law office; proposing and advocating that lawyers in the armed forces be paid on a basis comparable to the bases for doctors and dentists; preparing and publishing studies of incorporation as a tax-saving device for lawyers; directing other programs toward making the practice of law more profitable in the state; establishing and enforcing standards of conduct for members; and sponsoring for its members an annual christmas party, golf tournaments, membership dinners, opera nights, group overseas travel plans, and a Junior Bar Association with a full schedule of periodic dinners, cocktail parties, and dances. Since the organization has a substantial amount of activities that are primarily directed at the promotion of the legal profession, the organization may not be classified as an educational or charitable organization exempt under section 501(c)(3) of the Code.

Rev. Rul. 71-506, 1971-1 C.B. 233, concerned an engineering society formed to engage in scientific research in the areas of heating, ventilating, and air conditioning for the benefit of the general public. The society has no financial interest in the scientific information it develops and all such information is made freely available to the public. The society does not engage in any public relations activities, nor does it have any activities primarily aimed at developing good will or fellowship among its members. The organization has no social or recreational activities and does not engage in any activity designed to influence legislation. The society is instructing the public on subjects

useful to the individual and beneficial to the community and was held exempt under section 501(c)(3) of the Code.

Rev. Rul. 73-45, 1973-1 C.B. 220, states that an organization created to foster the development in a community of an appreciation for drama and musical arts by sponsoring professional presentations qualifies for exemption under section 501(c)(3) of the Code.

Cultural organizations devoted to the promotion of the arts may qualify for exemption as being educational or charitable in character. See Rev. Ruls. 64-174 and 64-175. You state that you are promoting the arts by bringing professional theatrical productions to the community and thus would be similar to the organization described in Rev. rul. 65-271, supra. However, in order to qualify for exemption under section 501(c)(3) of the Code, an organization must establish that it is both organized and operated exclusively for charitable or educational purposes. The presence of a single nonexempt purpose, if more than insubstantial, will destroy section 501(c)(3) tax exempt status. See Better Business Bureau, supra. It is not a charitable activity to rent out a facility for social or community events. You are merely acting as a landlord and this is not a charitable activity.

Additionally, there is nothing in the file to establish that the aspect of your operations involving the showing of movies which are also available in the commercial market is being offered in other than a commercial manner. You advertise your theater in a commercial manner, show commercially available movies and sell your tickets for a reasonable price. In addition, merely limiting the movies shown to those which have a PG rating is not a charitable or educational endeavor. Thus, your activity of showing commercial movies is indistinguishable from that of a commercial operation and is not considered to be educational or charitable within the meaning of section 501(c)(3) of the Code and thus is not an exempt purpose within section 501(c)(3), see Rev. Ruls. 71-504 and 71-505, supra, and compare Rev. Ruls. 71-506, and 73-45 supra.

Based on the foregoing, we hold that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Therefore, contributions to you are not deductible under section 170. You are required to file federal income tax returns on Form 1120. In this letter we have not considered whether the outstanding debt you assumed from your for-profit predecessor exceeded the value of the assets you received.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from today and must be signed by one of your principal officers. When sending a protest or other

YELLOW

[REDACTED], page five

correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case, but rather to its location.

You also have the right to a conference in this office after your protest statement is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling 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 Code provides, in part, that, a declaratory judgment or decree under this section shall not be issued in any proceedings 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 30 days, this ruling will become final and copies will be forwarded to the District Director, Chicago, Illinois, which is your key district for exempt organization matters. Thereafter, any questions about your federal income tax status should be addressed to your District Director. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 4

cc: DD, Chicago
Attn: EO Group

cc: State Officials

[REDACTED]
1-12-93