

Internal Revenue Service  
Northeast Region

Date: MAY 16 1997

Department of the Treasury  
Appeals Office  
P.O. Box 99189  
Cleveland, Ohio 44199  
Employer Identification Number:

Form Number:

Tax Years:

Key District:

Person to Contact:

Telephone Number:

Dear Sir or Madam:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

It has not been established that [REDACTED] has been organized and will be operated exclusively for exempt purposes described in Code section 501(c)(3) and that a part of your earnings will not inure to the benefit of private shareholders and individuals.

If [REDACTED] purchased food and other items from the Food Bank and then distributed them to residents in Adult Foster Care Facilities, it would be benefiting or providing prohibited inurement to the Adult Foster Care Facilities or their owners.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on form 1120 if you operated and carried on any financial transactions in 1995 and subsequent years. You should file these returns with your key District Director, EO/EP Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgement under Code section 7428. You should file returns for later years with the appropriate service center shown in the instructions for those returns.


If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date

this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

  
Associate Chief  
Appeals Office

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: Sep 12 1995

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 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. 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.

8/11/95

8/13/95

9/7/95

9/7/95

[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]

District Director

Enclosures: 3

cc: [REDACTED]

Enclosure I

[REDACTED]

Facts

Information submitted with your application indicates that you were incorporated on [REDACTED] under the laws of the state of [REDACTED]. The Articles of Incorporation do not contain any guidelines governing how you conduct your internal affairs. You state that you do not have any bylaws.

Your stated purpose is to distribute food and other products such as non-prescription medications, adult diapers, and toiletries, etc. to state licensed facilities which provide adult foster care. Currently there are [REDACTED] adult foster care providers (herein referred to as "Providers") being served by you. These providers are for profit entrepreneurs.

By purchasing cooperatively, Providers are able to obtain food and products at a savings of 50 to 58 percent compared to purchasing same at standard retail stores. Each Provider pays you a charge for the cost of distribution (use of computers and telephones, mileage, etc.). Members' checks to purchase the food and products are made to the food bank. The distribution of food and products is conducted by [REDACTED], the only trustee and one of the [REDACTED] Providers. [REDACTED] is reimbursed mileage at the rate of 27.5 cents per mile. He does not receive any other remuneration from you or the Providers.

Food and products are purchased at [REDACTED]. You indicate that in order to purchase at this place, the purchaser must be an organization exempt under section 501(c)(3) of the Code. The food bank is unrelated to you or [REDACTED].

Per letter from [REDACTED], Power of Attorney, [REDACTED] will become the sole trustee when you receive exempt status under section 501(c)(3) of the Code.

Law

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax of those organizations that are organized and operated exclusively for charitable, educational, or religious 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 Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, 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 or 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). 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(c)(2) of the Regulations states that 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(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 private interests.

Section 1.501(a)(1)-1(c) of the Regulations states that the words "private shareholder or individual" mean an individual having a personal and private interest in the activities of the organization.

#### Application of Law

In Revenue Ruling 73-349, 1973-2 C.B. 179, the organization was formed for the purpose of purchasing groceries for its membership at the lowest possible prices. It receives orders from its members, consolidates them, and purchases the food in quantity. Each member pays for the cost of his food. In addition, each member is assessed an equal monthly service charge by the governing board of trustees for the monthly operating costs of the organization. Membership is open to all individuals in a particular community. The Service ruled that the organization is a private cooperative enterprise for the economic benefit or convenience of the members and not exempt from Federal income tax.

You have represented that you differ from the situation described in Revenue Ruling 73-349 in that your activities benefit the adults who

[REDACTED]

are placed in the Providers' facilities. It is true that the adults who are placed in the Providers' facilities are a charitable class of individuals. However, your activities result in substantial cost savings to the Providers, who are not a class of charitable class of individuals.

The adult individuals pay certain fees (via the state or its designees) to the Providers to care for them. Since the Providers are operated for profit, any cost savings result in an increase in profit for them. There is no evidence that the Providers are passing on the savings to the charitable class of individuals.

You have also represented that you are different from the situation in Revenue Ruling 73-349 because you are licensed and regulated by the State. The licensing by the State relates to whether a Provider's facilities, care, and personnel meet State requirements to provide services as a for-profit adult foster care facility. This licensing is distinguishable from an exempt organization being formed under the auspices of the State. Where services are provided to a charitable class of individuals, government involvement or sponsorship is not indispensable to the exempt status but it is certainly a course of consideration. No State or local authority has proclaimed a need to adopt the activity you seek to be exempted. There are no requirements, statutorily or administratively, that would compel you to translate your cost savings and then profit into a charitable endeavor.

The following revenue ruling and court case reiterate the tenet common to all organizations exempt under section 501(c)(3) of the Code: that such an organization must be operated for a public purpose and not for private benefit.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization formed by the parents of pupils attending a private school exempt under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children whose parents belong to the organization. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves private rather than public interests. Accordingly, the organization does not qualify for exemption under section 501(c)(4) of the Code.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), it was held that a corporation that provided housing on a cooperative

[REDACTED]

basis lacked the necessary requirements of an organization described in section 501(c)(4) of the Code. In securing living quarters for its members, the activities of the organization benefit members and, therefore, not public in their nature. The Court held the operation to be a private self-help enterprise with only an incidental benefit to the community as a whole.

Conclusion

Based on the information submitted, you do not offer any service or program for the betterment or relief for a charitable class of individuals. Rather, the activities you engage in are for the purpose of increasing the profit for the trustee and other members of this cooperative comprised of for profit entities.

Accordingly, you are in violation of the proscriptions in sections 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(c)(2), and 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.