

INTERNAL REVENUE SERVICE  
District Director

Department of the Treasury

c/o McCaslin Industrial Park  
2 Cupania Circle  
Monterey Park, CA 91755  
Attn: Review

Date: AUG 31 1993

Employer Identification Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

FACTS

The information submitted discloses that you were formed under a set of By-laws in the state of [REDACTED] in [REDACTED].

The purpose of your organization as stated in Article II of your By-laws is "to support the basic aims and ideals of Christian education; to encourage students to attend Christian colleges; and foster a spirit of friendship among the people who are [interested] in the development of spiritual values in education."

Your organization is composed of persons who attend the [REDACTED] and membership in your organization is open to church members interested in promoting the purposes of your organization and upon payment of dues. Article III of your By-laws.

You engage in various fundraisers during the year, the money of which is used to give scholarships to high school graduates who attend "pre-selected" Christian colleges.

Fundraisers consist of a pie sale at Thanksgiving, a "Progressive Dinner" where tickets are pre-sold for dinner and dessert, a garage sale in the summer, a breakfast in February at the [REDACTED] building, assistance with inventory at a local company, and recycling of aluminum cans and newspapers. These fundraising events are organized and staffed by your membership with each participating when they are available. No salaries are paid for their work at or for the fundraising events.

According to information submitted by your President [REDACTED], there is no selection criteria for the scholarships and neither is there an application form. High school graduates of the [REDACTED] who will be attending a Christian college

[REDACTED]

in the fall are identified in July. The money available for scholarships is simply divided among these students in August and are given as a gift to the students.

There is no follow-up procedure to ensure that all scholarship funds are used for its intended purpose. The scholarships are not publicized to the public; they are publicized through the [REDACTED] to its members and their children. You approximate the number of students who are aware of the scholarship to be twenty each year.

The selection committee for the scholarships was identified by you as being the members of your organization. However, as stated previously, there is no criteria for selecting one potential recipient over another.

In the year [REDACTED], scholarships were given [REDACTED] students, [REDACTED] of whom were children of members of your organization. Of the [REDACTED], at least [REDACTED] are children of current officers of your organization. In [REDACTED], [REDACTED] of the [REDACTED] scholarship recipients were children of members with [REDACTED] being children of current officers. In the year [REDACTED], [REDACTED] of the [REDACTED] scholarship recipients were children of members with [REDACTED] of the [REDACTED] being children of your current officers.

Recipients receive a scholarship for each year they attend a Christian college or university. Thus, they are eligible to receive a scholarship in more than one year.

Per a letter from [REDACTED], no procedures are followed to ensure that a selection committee member will derive any direct or indirect benefit if one potential grantee is selected instead of another.

#### ISSUE

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

#### LAW

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the

provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides 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 shareholder or individual.

Section 1.501(a)-1(c) of the Regulations defines "private shareholder or individual" as any individual having a personal and private interest in the activity of the organization.

Section 4945(g) requires that scholarship grants be awarded to individuals on an "objective and nondiscriminatory basis."

Regulations section 53.4945-4(b) presents several factors which must be considered:

First, the group of persons who are eligible for grants must be selected on the basis of criteria reasonably related to the purposes of the grant. In addition, the class of eligibles must be sufficiently broad to ensure that the giving of grants to those eligible would be in furtherance of an IRC 170(c)(2)(B) purpose.

Second, the selection of recipients of grants from the group of persons eligible must be made on the basis of criteria which are related to the overall purposes of the grant program. Some applicable criteria include prior academic performance, performance on tests designed to measure ability and aptitude, and financial need. A preference accorded to family members and relatives is not a criterion related to the purposes of an educational grant. See Revenue Ruling 85-175, 1985-2, C.B. 276.

Third, the Regulations state that the person or persons who actually select the individual recipients of grants should not be in a position to derive any direct or indirect private benefit as a result of the selection of grantees.

Human Engineering Institute, TC Memo 1978-145, Kenner, Williams v. Comm., (1963 CA7) 318 F2d 632, 63-2 USTC Section 9519, and Gondia Corp., TC Memo 1982-422 all affirm that an organization is not organized and 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.

[REDACTED]

In *Puritan Church of America v Comm.*, (1953, Dist Col) 209 F2d 306, 53-2 USTC section 9601, the court found that an organization is disqualified if it serves a private rather than a public interest. It must therefore establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled (directly or indirectly) by such private interests, and the accomplishment of the exempt purpose must not be accompanied by personal, private or selfish consideration.

Revenue Ruling 69-175, 1969-1 C.B. 149 denied exemption to a nonprofit organization formed by parents of pupils attending a private school that provides school bus transportation for its members' children. By providing bus transportation in this cooperative manner, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Internal Revenue Code.

#### ANALYSIS

In order to qualify for tax-exemption as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for charitable, etc. purposes as specified in that Code section. Furthermore, the statute and Regulations both provide that an organization will not be so recognized if its earnings inure to any person having a personal interest in the organization.

Your organization's activities consist exclusively of raising funds and providing scholarships to the children of members of the [REDACTED]. The majority of the recipients were children of members of your organization (■% in [REDACTED], ■% in [REDACTED], and ■% in [REDACTED]). Thus, your members and your officers stand to gain a direct benefit from their involvement in your fundraising efforts. Like the organization described in Revenue Ruling 69-175, this serves their private benefit and therefore, does not serve a public interest.

Furthermore, your scholarships are not awarded on an objective and nondiscriminatory basis as required by Internal Revenue Code section 4945(g) and the Regulations thereunder. For one, there is no selection criteria for your scholarships. The class of eligibles is limited to children affiliated with [REDACTED] and is thus not broad enough to ensure that the giving of grants to these individuals would be in furtherance of an IRC 170(c)(2)(B) purpose. The majority of the recipients are children of members of your organization and this is not criterion, like financial need and academic achievement, that is related to the purpose of an educational grant. Lastly, these members stand to

[REDACTED]

receive a direct private benefit as a result of their children receiving a scholarship grant.

Based on the information submitted, it is the position of the Internal Revenue Service that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code inasmuch as you are not organized and operated exclusively for any of the specified purposes within that section but are both organized and operated for the private benefit of your officers, members, and members of [REDACTED].

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement, Form 6018. Please note the instructions for signing on the reverse side of the form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and 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 and will then become our final determination.

Section 7428(b)(2) of the Internal Revenue Code provides in part that "declaratory judgement of 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."

Sincerely yours,

[REDACTED]

District Director

Enclosures:  
Form 6018  
Publication 892