

INTERNAL REVENUE SERVICE

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Dear xxxxxx:

This letter is in response to your request for information concerning the effect of non-substantive changes to xxxxxx's organizing documents on its tax-exempt status.

The Internal Revenue Service issued a determination letter to xxxxxxxx xxxxxx xxxxxxxxxx (EIN xx-xxxxxxx) on xxxxxxxx xx, 19xx. This letter stated the organization was exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Xxxxxx's exemption was confirmed in a letter from the Service dated xxxx x, 19xx.

In 1990 xxxxxx amended and restated its corporate charter. The 1990 amendment stated that the tax-exempt purposes of the organization were those permitted in section 501(c)(6) rather than section 501(c)(3) of the Code. The amendment also stated that upon dissolution of the organization all assets of the corporation would be distributed "to an organization or organizations described in Section 501(c) of the Internal Revenue Code of 1986 and which have purposes consistent with and similar to the purposes for which this corporation is organized." The actual operation, character, and purposes of the organization were unaffected by the amendment.

Xxxxxx determined that the 1990 amendment was poorly drafted and inappropriate and attempted to cure these defects by revising its corporate charter. The 2001 revision replaced the words "Section 501(c)(6)" with "Section 501(c)(3)," restating that the "organization [is] described in Section 501(c)(3) of the Internal Revenue Code of 1986." This revision neglected to correct the dissolution clause to dedicate all assets remaining on dissolution to 501(c)(3) purposes.

In 2002 another amended and restated charter was drafted and adopted by the xxxxxx board that cured the technical errors introduced in 1990. xxxxxxxx xxxxxx xxxxxxxxxxxx requests information to help it determine whether the 1990 technical errors caused the 19xx determination of 501(c)(3) tax-exempt status to no longer be in effect.

Section 501(c)(3) of the Internal Revenue Code provides exemption from federal income tax for organizations organized and operated exclusively for charitable, educational and other purposes specified therein.

Section 1.501(c)(3)-1(a)(2) of the Income Tax Regulations states that an organization is not exempt under section 501(c)(3) if it fails to meet either the organizational test or the operational test. The operational test relates to an organization's activities. The organizational test requires that certain provisions be present in the organization's creating document.

Section 1.501(c)(3)-1(b) of the regulations states that in order to satisfy the organizational test, an exempt organization's creating document must limit the purposes of the organization to one or more of the exempt purposes specified in section 501(c)(3), not expressly empower the organization to engage in activities not in furtherance of those purposes, and dedicate the organization's assets remaining upon dissolution to exempt purposes.

Rev. Proc. 84-46, 1984-1 C.B. 541, section 13.01 states that

A ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption....If a non-substantive amendment [to its enabling instrument] is made, exemption will ordinarily be recognized as of the date of formation. Examples of non-substantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the ruling or determination are consistent with the requirements for exemption.

Rev. Proc. 84-47, 1984-1 C.B. 545, section 2.03 states that "[i]t is the administrative practice of the Service to recognize exemption from the date of formation in situations where non-substantive amendments to an enabling document are subsequently made."

Xxxxxxxx xxxxxx xxxxxxxxxxxx was originally granted tax-exempt status under

section 501(c)(3) in 19xx. Later amendments to the organizing document contained clerical errors and omissions that were corrected in subsequent amendments filed with the State of xxxxxxxx. Rev. Proc. 84-46, cited above, includes the correction of clerical errors or the addition of a dissolution clause as non-substantive amendments when there is no evidence of a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

Since the errors and subsequent amendments to the organization's charter appear to be of a non-substantive nature and there has been no material change in the organization's operations, the technically erroneous non-substantive changes to its organizing documents that have now been corrected should have no effect on xxxxxx's tax-exempt status.

In accordance with section 3.06 of Rev. Proc. 2002-4, 2002-1 I.R.B. at 127, this information letter is advisory only and has no binding effect on the Internal Revenue Service. The information provided herein cannot be relied upon as a ruling on the matters discussed. If you have any questions regarding this discussion or we can be of further assistance, please feel free to call me at xxx-xxx-xxxx or xxxxxxxx xxxxxxxxxx at xxx-xxx-xxxx.

Sincerely,
Xxxxxx xxxxxxxxxx
Manager, Exempt Organizations
Technical Group x