TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200703039**
Release Date: 1/19/07
Date: October 26, 2006

Contact Person:

Identification Number:

Contact Number:

UIL 501.03-23

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). On December 17, 2004, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Although you did not file a written protest within that time period, we recently gave you an extension of time to file a written protest and right to request a conference by September 18, 2006, which was further orally extended to October 10, 2006. Since we have not received a written protest to date, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose,* and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 17, 2004

UIL 501.03-23

Contact Person:

ID Number:

Contact Number:

Employer Identification Number:

Legend:

M =
N=
O=

Newspaper A. =
Newspaper B =
Newspaper C =
Newspaper D =

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

In your exemption application, Item No. 5, you stated that you were incorporated in 1970, and in response to No. 10 you stated, "See copy of Articles of Incorporation attached." However, no such articles were attached, only the constitution and by-laws of N. Your by-laws and the description of your activities indicate that you operate a private school located in O. In response to Question 9a on Schedule B of your exemption application, you stated that you were formed or substantially expanded at the time of public school desegregation in O. In response to Question 10, you stated that you had been determined by a state or federal administrative agency or judicial body to be racially discriminatory. In 1971 you were recognized as tax-exempt under section 501(c)(3) of the Code. Effective January 1, 1988, your tax-exempt status was revoked because you failed to show that you operate in a racially nondiscriminatory manner, and you failed to meet the requirements of Revenue Procedure 75-50, 1975-2 C.B. 587.

On August 16, 2004, you revised your bylaws to include a statement of your facially nondiscriminatory policy. A statement of your nondiscriminatory policy appears in your 2003-2004 Student Handbook, in one of your brochures, and in a brochure for your counseling services that you submitted with your application. You have enclosed copies of notices of your nondiscriminatory policy and advertisements that include statements of such policy that have been published in the March 11, 2003 issue of A; the February 10, 2003 and March 24, 2003 issues of B; and the March 12, 19, and 26, 2003 issues of *C*. You have also submitted copies of other notices and advertisements appearing in various newspapers over a period of years, including a notice published in the March 26, 1992 issue of D.

During more than 30 years of operation, you have not enrolled any African-American students, nor have you employed any African-American faculty or administrators. In a letter dated May 15, 2004, you stated that during the 2002-2003 school year, an African-American student expressed interest in attending your school, but chose not to attend. In your May 15 letter, you stated that you have not established a scholarship program for students, but the idea has been and will be considered. You described your outreach efforts, including a Community Appreciation Reception in May 2003 and a Trip to the Past Reception in April 2004. Most recently, you held the M Retired Teachers Luncheon on September 30, 2004. All community members were invited to these events. In your May 15 letter, you described students' involvement in two well-known charitable organizations. These programs involve students from other schools and other communities.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

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, 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.

Revenue Ruling 71-447, 1971-2 C.B. 230, provides that a private school which does not have a racially nondiscriminatory policy as to students does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. It defines a racially nondiscriminatory policy as meaning that "the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs."

Revenue Procedure 75-50, supra, sets for the guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) of the Code or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy the school has operated in accordance therewith. Section 4.0329c) provides, in part, that whether a particular school follows a racially nondiscriminatory policy will

be determined on the basis of the facts and circumstances of each case.

In Green v. Connally, 330 F. Supp. 1150 (D. D.C. 1971), aff'd sub nom., Coit v. Green, 404 U.S. 997 (1971), and in the revised injunction orders issued on May 5 and June 2, 1980, the Internal Revenue Service is prohibited from:

> according…and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them, which: (1) have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs.
>
> (2) The existence of conditions set forth in paragraph (1) herein raises an inference of present discrimination against blacks. Such inference may be overcome by evidence which clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by such school's policies and practices. Such evidence might include, but is not limited to, proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of continued meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community concerning the school's nondiscrimination policies, and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

In Prince Edward School Foundation v. United States, 478 F. Supp. 107 (D. D.C. 1979), aff'd, D.C. Cir. June 30, 1980, cert. denied, 450 U.S. 944 (1981), the court held that private schools administering racially discriminatory admissions policies are excluded from tax-exempt status under section 501(c)(3) of the Code. The court further held that the foundation had failed to meet is burden of establishing its entitlement to exemption under section 501(c)(3) because the foundation's record was completely devoid of evidence that it was administering a nondiscriminatory admissions policy. The court also stated that the inference that the plaintiff administered a racially discriminatory policy may be drawn from the circumstances surrounding the school's establishment. Similar inferences as to the existence of a racially discriminatory policy based on facts surrounding a school's establishment and lack of minority enrollment have been drawn by other courts. See e.g. Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974) on remand from the Supreme Court, 413 U.S. 455 (1973) and Brumfield v. Dodd. 425 F. Supp. 528 (E.D. La. 1976).

In Norwood v. Harrison and in Brumfield v. Dodd, the courts analyzed whether private schools were racially discriminatory. The courts held that a prima facie case of racial discrimination arises from proof 9a) that the schools' existence began close upon the heels of

the massive desegregation of public schools within its locale, and (b) that no blacks are or have been in attendance as students and none is or has ever been employed as a teacher or administrator at the private school. The actual enrollment of one African-American student was deemed not determinative in the case of West End Academy, which was addressed by the court in Brumfield v. Dodd, supra. The enrollment of one African-American students is not enough to rebut the inference of discrimination.

In Bob Jones University v. United States, 461 U.S. 574 (1983), the Supreme Court found that petitioner, a nonprofit private school that prescribes and enforces racially discriminatory admissions standards on the basis of religious doctrine, did not qualify as a tax-exempt organization under section 501(c)(3) of the Code. The court held that racially discriminatory private schools violate a fundamental public policy and cannot be viewed as conferring a public benefit within the meaning of common law standards of charity and congressional intent underlying section 501(c)(3).

In Calhoun Academy v. Commissioner, 94 T.C. 284 (1990), the Tax Court held that a private school failed to show that it operated in good faith in accordance with a nondiscriminatory policy toward black students. The school was formed at the time of desegregation of the public schools, and never enrolled a black student or employed a black teacher. The school and its students participate in some educational and vocational programs and other school-sponsored activities that directly involved blacks. The court noted:

In today's world, interaction with persons of another race in interscholastic and community activities is unavoidable by all but the most reclusive or isolated groups. Petitioner's burden is not met by showing that it interacts with outsiders. The relevant criteria deal with restrictions on those who may become insiders, i.e. students at the school.

The court concluded that the school did not qualify for exemption under section 501(c)(3) of the Code.

All facts and circumstances must be considered in determining whether a private school has shown that it has overcome an inference of racial discrimination. Relevant factors include the following: actual enrollment of African-American students; active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students; adoption of a policy of racial nondiscrimination; effective communication of such policy to members of the African-American community, including publication of the policy; meaningful contact with members of the African-American community; and, public disavowal or repudiation of previous statements that are inconsistent with a policy of nondiscrimination

The information submitted indicates that you were formed at the time of desegregation of the public school district in which you are located, and operated for a lengthy period of time without enrolling any African-American students or employing any African-American faculty or administrators. Furthermore, you operated for a substantial period of time without the adoption or publication of a facially nondiscriminatory policy. The foregoing information raises an inference of present discrimination against blacks as set forth in the above cited court decisions.

In order to be exempt from federal income tax, a private school subject to an inference of discrimination must provide clean and convincing evidence that it now operates in a good faith racially nondiscriminatory manner. Furthermore, such a school must provide persuasive evidence that the absence of black enrollment is not attributable to the continuation of the school's past policies. Mere adoption of a nondiscriminatory policy and publication of such a policy is insufficient for such a school to demonstrate that it is operating in a bona fide nondiscriminatory manner in accordance with Rev. Proc. 75-50 supra.

As noted above, on August 16, 2004, you revised your bylaws to include a statement of your racially nondiscriminatory policy. A statement of your nondiscriminatory policy appears in your Student Handbook and brochure, and your brochure for counseling services. You have also submitted copies of notices of your nondiscriminatory policy and statements of such policy appearing in various newspapers over a period of years. However, the information submitted contains no evidence of actions such as active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students, or non-going communication with members of the African-American community. We acknowledge that you have taken some positive steps in reaching out to the African-American community such as the receptions mentioned previously. Nevertheless, the facts and circumstances do not show that you have made an intensive and comprehensive effort at outreach directed specifically to the African-American community which could possibly result in the enrollment of black students and current employment of black teachers and administrators. Like the school described in Calhoun Academy v. Commissioner, supra, your interaction with black persons in the community is insufficient to demonstrate that you operate in a bona fide racially nondiscriminatory manner with respect to the enrollment of students and hiring of faculty and administrators.

All of the pertinent facts and circumstances lead us to conclude that you have failed to demonstrate that you have taken sufficient steps to overcome the inference of discrimination set forth in the above mentioned court cases. Thus, you have failed to establish that you operate in a bona fide racially nondiscriminatory manner.

Accordingly, you are not operated exclusively for exempt purposes under section 501(c)(3) of the Code, and thus you do not qualify for recognition of exemption as an organization described in section 501(c)(3). You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

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, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this 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 proceeding unless the Tax Court, the United States Court of Federal Claims, 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 a copy will be forwarded to the Ohio Tax-Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
SE:T:EO:RA:TPU

1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437