



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201036024**
Release Date: 9/10/2010

Date: June 14, 2010

UIL: 501.03-23

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
ALL

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). Recently, 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. Since we did not receive a protest within the requisite 30 days, 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,

Robert Choi
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

April 21, 2010

UIL: 501.03-23

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Academy =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
County =
State =

Dear _____ :

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

You were incorporated on Date 1 under the laws of the State. You were formed a month after a court ordered desegregation of school districts in County and other counties in State.

Article V of your Charter of Incorporation provides that your purposes shall be exclusively charitable and educational and to accomplish such purposes, you shall exercise such rights and powers that include the following:

- establish, organize, own, administer and operate one or more kindergarten, primary secondary schools;

- select and employ such principals, teachers, professors, instructors and other employees as you may deem necessary and advisable, and provided that no person shall have a right to be employed or retained as a principal, teacher, professor, instructor, administrator or other employee, but any such employment or retention is solely at your will, pleasure and desire and may be denied or terminated at your will; and
- fix the curricula for the school and the standards and qualifications for admission of pupils and students and for their retention in the school, and to reject any applicant for admission, or to expel any person so enrolled and attending for any cause whatsoever. It being your intent and purposes that no person, making application or already enrolled, shall have a right to be admitted, but that any person so admitted or retained solely in accordance with your will and desires and not otherwise.

You operate a school in County of State and currently offering grades K3 - 12. Initially you offered Grades 1 - 12 during your first 10 years and since then have added K5, K4 and K3 after each 8 school years thereafter, respectively. County's population consists approximately % black, % white and % other minority groups.

You have been operating for more than 40 years providing academic and sports program to your students. In this regard, your letter dated December 1, 2009 states:

We have never had the opportunity to have a black student participate in our sports program ... because we cannot entice them to become students at (our school). It would please us very much to have black students, both in the academic program and sports program, but so far we have been unsuccessful in this endeavor. . . nothing would please us more than to have black students attend (our school), but we are at a loss as to how we can persuade them to become a part of our educational facility.

In addition, you stated the following as possible reasons for your lack of enrolled black students:

[T]hey (black students) prefer to go to a school where the test scores show that the school is failing ... where they are not be(ing) held accountable for making good grades, where they do not have to furnish their own transportation, where they are provided free lunches and where they do not have to pay any money to receive a good education. If we would change this, we would. We have a situation here where it is not that we do not want the blacks to attend school at (our school), but the blacks prefer to attend to a school where they are not expected to perform well. Maybe this is the fault of the State . . . and maybe this is the reason the state has so many schools that are not rated "failing", but we do not feel this is something that (our school) should suffer for.

In your prior letter dated July 15, 20 , you stated the following:

[T]he reason the blacks do not attend (our school) is not because they think they would be mistreated. They know they are welcome and they know they would be treated fairly and equitably. They simply do not want to pay for an education. The people who send their

children to (our school) do so because they know [this can be proven by public school test scores] that their children get a better education at (our school). This is sad, because all of us, both black and white, pay taxes to educate our children regardless of where they go to school. The people who go to (our school) pay taxes and pay tuition, but they feel this is justified by the quality of education they receive. The decision of whether or not to send your child to (our school) is most often not based on the financial ability to do so, but simply the they already pay taxes and the public school offers more opportunities that do not have to be paid for --- for example, free lunches, free transportation, etc.

Moreover, in your letter dated October 27, 20 , you stated:

...the history of the education process in ...County, you will find that even there was (our school) in the county... the black students went to one school and the white children went to another school. This was not MANDATORY, simply put IT WAS A MATTER OF CHOICE. The students were friends, they just simply wanted to go to the school of their choice (your emphasis). The black and white children of the public school and (our school) are friends. They interact with each other from an athletic standpoint . . . Many of the athletic teams that we play (football, basketball, softball) have black players. They will attest to the fact that they are welcomed to (our) campus, and treated just like the same as any white player. Their parents are welcomed as a spectator and are treated no different from anyone else.

Student enrollment data for school years 20 though 20 shows 1 black student enrollment in one year. The data show 3 non-black minority students in your total 170 enrollments in 20 , 1 black and 2 non-black minority students in your total 172 enrollment in 20 , and 3 non-black minority students in your total 170 enrollment in 20 . Also, in a letter dated January 5, 20 , you stated "beginning the new semester after the holidays, we have a new minority student registered and attending classes."

In your school operation, you do not have a black person on your faculty or administrative staff. The data on faculty staff for school year 2009 show a racial composition of 100% white of the total 16 faculty staff members.

In your letter dated December 1, 20 , you stated:

There has never been a black teacher to apply for a teaching job at (our school). If one should apply, we would use the same screening process that is used to hire any teacher. Our only concern in hiring teachers is to employ teachers who are the best qualified and who concentrate on the best means of teaching the students. Our emphasis is placed on the best possible environment possible for a student, regardless of his color or nationality, to learn.

Your prior letter dated October 27, 20 , on the subject stated the following:

(Our school) has never had a black applicant for a faculty or administrative position. Were this to happen, the person would be considered on the same standard as a white or

The State has a program established in providing for the distribution and free loan of textbooks to students of any participating public, private and other nonpublic schools. Under the rules promulgated by the State Board of Education, an eligible school must have received accreditation status and documented that it operates in a non-discriminatory manner in its admission and enrollment practices. Notwithstanding the benefits that the program will provide your students and the school, you indicated that you are not members of the textbook program stating "We have never participated and have never submitted an application for or requested participation."

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, charitable or other exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (regulations) provides 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(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes unless it serves a public rather than a private interest.

Rev. Rul. 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 to mean "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."

Rev. Proc. 75-50, 1975-2 C.B. 587, sets forth 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 4.03 provides that a school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. A school may demonstrate that it follows a racially nondiscriminatory policy by showing enrollment of student of racial minority groups in meaningful numbers and whether that is satisfied will be determined on the basis of facts and circumstances of each case. Actual enrollment, however, is a meaningful indication of a racially nondiscriminatory policy in the case in which schools become subject to desegregation orders of a federal court or otherwise

expressly became obligated to implement a desegregation plan under the terms of any written contracts or other commitment to which any Federal agency was a party.

Section 4.07 of Rev. Proc. 75-50 also provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students.

In Green v. Connally, 330 F. Supp. 1150(D. D.C. 1971), *aff'd sub nom.*, Coit v. Green, 404 U.S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (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 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 Sch. Found. v. Commissioner, 478 F. Supp. 107 (D. D.C. 1979), *aff'd*, D.C. Cir. June 30, 1980, *cert. denied*, 450 U.S. 944, 101 S. Ct. 1408, 67 L. Ed. 2d 376 (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 its 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.

In Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974) on remand from the Supreme Court, 413 U.S. 455, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973) and Brumfield v. Dodd, 425 F. Supp. 528 (E.D. La. 1976), the courts held that a prima facie case of racial discrimination arises

from proof (a) 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.

In Bob Jones University v. United States, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (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 and concluded that the school did not qualify for exemption under section 501(c)(3) of the Code. 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 also noted the following:

Petitioner places great emphasis on its teacher and students of Oriental descent, labeling this evidence "perhaps the most telling." Petitioner has hired and continued to employ a Japanese-American teacher, who has been subjected to no discriminatory practices since his hiring. Petitioner has also admitted some American-Oriental students. Nonetheless, that petitioner does not discriminate against those of Oriental descent, which we assume to be true for present purposes, implies nothing about petitioner's policy toward blacks. Petitioner concedes that the largest nonwhite racial group in the local community is the black population. Petitioner's argument that American-Orientals are "more of a minority than blacks," while certainly true for (its) County, is totally without significance here. We decline to embrace the notion, grounded in an erroneous application of a fortiori logic, that acceptance of a given minority group implies acceptance of all larger minority groups.

An organization applying for exemption under section 501(c)(3) must establish that it is organized and operated exclusively for an exempt purpose and in the case of a school must include establishing that it has a racially nondiscriminatory policy as to students consistent with the guidelines set forth in Rev. Proc 75-50 and findings by the courts.

The information submitted indicates that you were formed around the time the court handed the desegregation of schools in the county where you operate a private school. As such, the strict mandate in Green v. Connally, 330 F. Supp. 1150 (D. D.C. 1971), applies to you in prohibiting us of according tax exempt status unless you clearly and convincingly demonstrate overcoming the inference of racial discrimination against black students. In this regard, we find that while you have operated a school for more than years since the court-ordered desegregation, you only decided in the last years of your existence and operation to adopt a racially discriminatory policy. You have included the statement of your nondiscriminatory policy in your advertisements on local newspapers, your website, student handbooks and brochures and flyers. Also, during the last years, you decided creating an outreach committee, which was tasked to inform the area minorities of the existence of your nondiscriminatory policy and pursue minority enrollment and participation in all your programs.

While you have adopted a racially nondiscriminatory policy and even created an outreach committee, your school operation, however, failed to show enrollment of black students in which you stated that the failure to "entice" them to become students at your school as not yours. Instead, you suggested putting the blame on the black students themselves and their parents --- black students do not want your offered good education; they prefer schools where they are not held accountable for making good grades, and that it provided free lunches, transportation and where they do not have to pay. You even suggested that it is a traditional choice in the area that black students go to one school and the white students go to another school. We believe, however, that the lack of black students, and also that of teachers and administrative staff, in your school is because of your failure to make intensive, comprehensive and good faith efforts to reach the black community for their enrollment and employment. You have not provided us sufficient evidence supporting any such efforts in your submitted materials. Moreover, we think it is suffice with you to interact with the blacks only outside of your classroom, like in participation in sports with them. However, such interaction is unavoidable and does not prove that you have implemented your nondiscrimination policy. The relevant criteria deal here is with restrictions on those who may become insiders, i.e. students at your school. See Calhoun, 94 T.C. 284 (1990).

Furthermore, Rev. Proc 75-50, at section 4.07, provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. To date, even with years of existence and operation, you have not employed any black teacher or administrative staff. Instead all your teachers and administrative staff member are whites. In this regard, you stated that your only concern in hiring teachers is to employ teachers who are the best qualified and who concentrate on the best means of teaching the students. Also, you indicated that your emphasis is placed on the best possible environment possible for a student, regardless of his color or nationality, to learn.

Therefore, although you have adopted a policy of nondiscrimination and made created an outreach committee, it appears that your adoption of a nondiscriminatory policy and creation of an outreach committee are merely done for compliance in form purposes and not in good faith. Also, any efforts toward outreach to the black community are minimal.

We have also considered your admission of a few non-blacks as students in your school. We think, however, that your admission of these non-blacks implies nothing about your policy toward blacks. See Calhoun, 94 T.C. 284 (1990). Moreover, we think that the presence of your school discriminatory policy is evident in your decision not to participate in or become a member of the State's free textbook program because of its strict requirement that participating schools must be documented to be operating in a non-discriminatory manner in its admission and enrollment practices.

Based on the foregoing, we conclude that you failed to demonstrate that you have taken sufficient steps to overcome inference of racial discrimination sets forth in the court cases cited herein. As a school without a nondiscriminatory policy to students, as such term is defined in Rev. Rul. 71-447, you are not considered operated exclusively for exempt purposes under section 501(c)(3) of the Code.

Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

You must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T:2

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements