

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

Employer Identification Number: [REDACTED]  
Key District: [REDACTED]

Dear Applicant:

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.

You were organized on [REDACTED] as a [REDACTED] nonprofit corporation. Your President and sole initial director, [REDACTED], is an employee of [REDACTED] ([REDACTED]). Your other officer is outside counsel to [REDACTED]. You plan to recruit additional directors. The directors will elect themselves. You plan to have a non-voting membership, open to all interested individuals or organizations that pay a fee of an unspecified amount. You also have an advisory board of distinguished Hispanic individuals and former [REDACTED].

Your seed money will be provided by [REDACTED]. You will also solicit contributions from other major U.S. and Latin American corporations and Hispanic individuals. You request an advance ruling under sections 509(a)(1)/170(b)(1)(A)(vi) or 509(a)(2) of the Code.

Your articles of incorporation set forth purposes to sponsor cultural, educational, artistic, and civic activities within the Hispanic community in the U.S.; to contribute to the integration of Hispanics into American life while increasing general awareness of Hispanic contributions to American society; and to enhance the visibility of the Hispanic-American community nationally and internationally.

Your Form 1023 Application indicates that your primary activity, in terms of expenditures, will be working with other civic organizations and granting funds to send U.S. legislators

[REDACTED]

and Hispanic civic leaders to Latin America and the Caribbean, and leaders of the latter countries to the U.S., on study tours to help them learn about each other's government and culture. The study tours will be for groups of 20-30 individuals, and will include meetings, panels, discussion groups, and other educational activities. You may grant funds to unrelated 501(c)(3) organizations (e.g., the [REDACTED] and the [REDACTED]) for this purpose rather than spending the funds on travel expenses directly.

You will rely on representatives of [REDACTED] and other substantial contributors for handling the organizational and logistical aspects of study tours. Such representatives will be selected based on organizational skills and appropriate language abilities, and "will be barred" from acting to promote their employers' private interests during the trip.

"Civic organizations" working in cooperation with you will determine the legislators and civic leaders to attend the study trips. You will develop the study tour program. You represent that the objective of the study tours is not recreational, and that the programs will generally involve a full day of structured meetings and not much free time except before breakfast, after dinner, and on departure and arrival days.

Your other activities include holding an annual dinner to raise funds and honor Hispanic leaders, and organizing seminars on subjects of significance to Hispanics in North and South America (e.g., education, the media, international trade), to be held in the U.S. The seminars will be taught by experts and open to the public for a fee (to offset the related expenses).

We asked whether you are willing to adopt bylaws provisions that would require your board and committees to include a majority of disinterested persons (e.g., those who are not compensated by you and not associated with substantial contributors) and require directors, committee members, and officers to abstain from voting on transactions where a financial conflict of interest exists. You stated that you were not willing to adopt such bylaws provisions.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, or certain other 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(c)(1) of the Income Tax Regulations provides that an organization "operates exclusively" for 501(c)(3) purposes only if it engages primarily in activities that accomplish such purposes. It does not operate exclusively for 501(c)(3) purposes if more than an insubstantial part of its activities does not further such purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes under Section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Rev. Proc. 90-27, 1990-1 C.B. 514, section 5.02 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed.

Rev. Rul. 67-327, 1967-2 C.B. 187, held not exempt under section 501(c)(3) of the Code an organization formed to arrange group tours for students and faculty of a university to allow them to travel abroad. As agent for each group it collected the estimated pro rata share of the charter and administrative costs. The organization arranged for the transportation, paid the carrier, retained a sum to defray its expenses, and returned any balance to the group members. The Service reasoned that arranging group tours is not in itself educational.

Rev. Rul. 69-400, 1969-2 C.B. 114, held exempt as educational under section 501(c)(3) of the Code an organization that selected students and faculty members with a serious interest in a particular foreign history and culture, enrolled them in courses of study at foreign universities to obtain a better understanding of those matters, provided for their transportation, and arranged for on-site tours conducted by local scholars to complement classroom study in the particular country. A selection committee ascertained the bona fide nature of the reasons for individuals applying for participation in the organization's program. The organization was financed by fees, grants, and contributions.

Rev. Rul. 77-366, 1977-2 C.B. 192, held not exempt under section 501(c)(3) of the Code an organization that regularly

arranged and conducted 14-day winter-time ocean cruises on chartered ships which provided for extensive social and recreational activities as well as religious and educational activities. The organization's stated purpose was to provide a continuing educational program in an atmosphere conducive to spiritual renewal for ministers, members of churches, and their families. In addition to the usual cruise activities, the programs conducted on each cruise included lectures, discussion groups, and special interest workshops on religious topics for four hours per day, at which attendance was not required. The cruises were only advertised in periodicals published by religious denominations. Clergy normally accounted for about one-fourth of passengers. A day was spent at each of five different ports of call where arrangements were made for general sightseeing tours and shopping opportunities. At three of the ports of call, the cruise-sponsored programs also enabled the participants to spend minor portions of their time ashore meeting with local church leaders, attending worship services, and/or visiting mission projects. The Service reasoned that the circumstances demonstrated a substantial social/recreational purpose for the cruises.

Rev. Rul. 77-430, 1977-2 C.B. 194, held exempt under section 501(c)(3) of the Code a religious retreat organization. The organization conducted weekend retreats, open to individuals of diverse Christian denominations, at a rural lakeshore site donated to it by its founder at which the participants could enjoy the recreational facilities in their limited amount of free time. The retreats were conducted by clergy of the various denominations. The activities engaged in at the retreats were group and individual prayer, lectures, reading, and meditation. Such activities were generally scheduled on an hourly basis throughout the day. Although no recreational activities were scheduled, there was a limited amount of free time in which the participants could relax and enjoy the facilities. The organization published a newsletter publicizing upcoming retreats, soliciting financial support, and discussing religious topics. No fees were charged for the retreats, but participants were encouraged to contribute to the organization to the extent possible. The organization was supported by contributions from the retreat participants and the general public. The Service reasoned that the organization advanced religion, and that the recreational activities were incidental.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court upheld a determination by the Service that an organization was not exempt under the section 501(c)(3) predecessor statute. The court

stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes.

Your primary activity, in terms of expenditures, will be funding the trips of U.S. legislators and Hispanic civic leaders to Latin America and the Caribbean, and leaders of the latter countries to the U.S. You plan to send representatives of substantial contributors (e.g., [REDACTED]) along on such trips. To do so would allow your substantial contributors the opportunity to lobby the legislators and leaders in a captive (albeit friendly) setting. There is no evidence that the representatives will not serve as effective lobbyists on behalf of their employers, and no explanation how such representatives could be effectively barred from doing so.

We are also concerned that your proposed trips, in addition to educating the participating legislators and leaders, could also provide substantial recreational benefits to them (as in Rev. Rul. 77-366). The provision of recreational benefits would help your substantial contributors curry favor with the participating legislators. Although you represent that the trips will consist primarily of full days of structured meetings, there is little indication of the substantive nature of the meetings, or that the meetings will not take place primarily in recreational settings, such as beaches, yachts, or national parks. You have not clearly demonstrated that the recreational aspects will be minor and incidental.

It is foreseeable that you would have little will to "bar" the lobbying of participating legislators, or to establish travel programs without substantial recreational aspects. The study trips will be funded largely by [REDACTED]. Your board is currently controlled by a [REDACTED] employee, and you are not willing to cede control of the board to a group of disinterested persons, who would be inclined to prevent abuses. Your advisory board has no power to control your affairs. You are not willing to bar substantial contributor representatives from participating in the study trips. You reserve the right to plan the study tour programs. Since you may fund the study trips directly, there is no indication how the cooperating civic organizations can control the study trips or otherwise effectively deter abuses. There is also no assurance that the cooperating organizations will be limited to 501(c)(3) organizations. Under these circumstances, we cannot determine that you clearly meet the requirements for exemption under section 501(c)(3) and that you will not be operated substantially for the non-exempt purpose of serving the private interests of your corporate sponsor or sponsors.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and 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 copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. 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:

[REDACTED]

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

Sincerely,

[REDACTED]  
[REDACTED]  
Chief, Exempt Organizations  
[REDACTED]

initiator      reviewer

[REDACTED]  
[REDACTED]  
[REDACTED]