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

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinn
DATE: [redacted]
SURNAME [redacted]

Date:
NOV 28 2001

Contact Person: [redacted]
Identification Number: [redacted]
Contact Number: [redacted]

[redacted]

Employer Identification Number: [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 incorporated under the laws of [redacted] on [redacted] You state that you will operate exclusively for the benefit of, or to carry out the purposes of [redacted] and (or) any one or more similar churches or ministries which also qualify as publicly supported organizations. It is anticipated that you will do so by distributing all of your net income to [redacted], an organization recognized as exempt from federal income tax under section 501(c)(3) of the code.

[redacted] and [redacted] have created the [redacted] and [redacted] in which they serve as general partners. It is anticipated that [redacted] will contribute to you a 96% limited partnership interest in the Partnership. Relevant parts of The Limited Partnership Agreement provide that:

> WHEREAS, the Partners desire to form a partnership (the "Partnership") , in order to provide a vehicle to manage certain investments and to conduct business activities:

The following are excerpts from the Partnership Agreement.:

5. Purposes.

The purposes of the Partnership shall be the ownership, investment, management and control of the Partnership's property, and the conduct of any business in which the Partnership may engage from time to time, including such related activities as may be necessary or appropriate in order to promote such purposes, it being agreed that each of the foregoing activities is an ordinary and necessary part of carrying out the Partnerships purposes.

[redacted]

7. Profits, Losses, Allocations and Distributions

(a) (1) The General Partner shall consent to and cause the partnership to timely make priority return distributions in the form of a cumulative annual return on each Partner's Capital Account, in amounts equal to two percent (2%) in respect of each of the first five fiscal years of the partnership and one percent (1%) in respect of each succeeding fiscal year... .

9. Compensation, Expenses and Agreements

(a) Compensation The Partnership shall pay reasonable compensation to the General Partner in respect of its services as such.

(b) Expenses The general partner may charge the Partnership for any reasonable expenses incurred by the general Partner in serving as such.

(c) Agreements The Partnership is authorized to enter into agreements, contracts and other arrangements with a General Partner and its affiliates, and is authorized to pay fees, commissions and other considerations to a General Partner and its affiliates. Any such agreements, contracts and other arrangements shall be stated in writing and shall be on terms not less favorable to the Partnership than those available from unrelated third parties.

14. Dissolution, Reconstitution and Winding Up of the Partnership

(a) Dissolution Except as provided in subsection(b) below, the Partnership shall be dissolved upon the earliest to occur of:

(1) [redacted]

(2) the written consent to the dissolution by all of the partners; or

(3) the death, insanity, bankruptcy or retirement of a General partner, or any other event of withdrawal of a General partner specified in the Act.

It is anticipated that over the next one to five years, [redacted] will contribute to the limited partnership real properties having an aggregate value of approximately One Million Five Hundred Thousand Dollars ($1,500,000). It is anticipated that those properties will generate approximately One Hundred Fifty Thousand Dollars ($150,000) per year in net rental income to the partnership.

Based upon the foregoing approximate figures, it is anticipated that the value of the 96% limited partners interest to be given to you will be $1,440,000 (i.e., 96% of $1,500,000) reduced

[redacted]

by the amounts of any valuation discounts determined by appraisal to be applicable in valuing the partnership interest, as opposed to the real properties themselves, for gift tax purposes

Also based upon these figures it is anticipated that as a 96% limited partner in the partnership, you will be entitled to $144,000 (i.e., 96% of $150,000), of the net rental income per year, plus 96% of any other annual net income of the partnership.

You state that the actual amounts of income distributed to the partners will be determined from time to time by the general partners, in their discretion, subject to any applicable fiduciary standards. However, the partnership agreement provides that there generally will be a minimum 2% annual distribution on capital during the first five years, and that there generally will be a minimum 1% annual distribution on capital thereafter. The partnership agreement also provides that the partnership will indemnify and hold you harmless from and against any unrelated business taxable income tax liability which you might be deemed to have as a result of being in the partnership.

You state that no general partner will be paid any management fee or other compensation relating to the transfer of any limited partner's interest to Nicene Church or to any other section 501(c)(3) charity.

Following any and each donation of any limited partner's interest to you or to any other 501(c)(3) charity, the charity will be given the opportunity to enter into an Option Agreement. The following is an exerpt from the Option Agreement.

RECITALS

Charity is the owner of a limited partner's interest in the Partnership, as set forth in Exhibit A attached hereto (the "interest").

Trustee desires to grant, and Charity desires to acquire, the exclusive right to sell the interest or any fraction or part thereof to Trustee, under the terms and conditions set forth in this Agreement.

The general partners of the Partnership shall consent to the proposed option under the terms and conditions in this Agreement and agree to be bound by the same.

1. Option. Trustee grants to Charity an Option to sell all of the interest or any fraction or part thereof to Trustee, on the terms and conditions set forth in this Agreement, including without limitation the establishment of the Purchase price under section 4 hereof and payment of the Purchase Price under section 5 hereof.

Section 4. of the Agreement provides in relevant part as follows:

4.1 Purchase Price. Unless Charity and Trustee otherwise agree in writing, the purchase price shall be the greater of the Stipulated Minimum, as set forth in Schedule 4.1 attached hereto, or the fair market value, of the interest or fraction or part thereof in question....

[redacted]

4.2 Offset to Purchase price. The Trustee shall be entitled to charge against any payment(s) for the Interest or fraction or part thereof in question, all costs and fees related to the exercise of the Option to purchase the Interest or fraction or part thereof in question, including without limitation, accounting costs and fees, appraiser and appraisal costs and fees, legal costs and fees, and including without limitation an opinion of counsel regarding the availability of any federal and state exemption from securities registration and opinions of counsel regarding other legal issues which Trustee may require, which opinions of counsel must be reasonably satisfactory to Trustee, and all other related costs and fees.

5. Exercise of Option and Payment of Purchase Price. Within five (5) days of receipt of a death certificate of the second to die of [redacted] and [redacted] Trustee shall provide to Charity and to the Partnership written notice of the same. Upon receipt of the written notice, Charity shall have the right to exercise its Option to sell the Interest or any fraction or part thereof to Trustee, by providing to Trustee the Exercise Notice within the Option term.

Exhibit 4.1 to Option Agreement, Stipulated Minimum provides as follows:

The Stipulated minimum Purchase Price shall be an amount equal to two hundred percent (200%) of the amount allowed to [redacted] and [redacted] as a charitable contribution deduction for federal income tax purposes in respect of their donation of the Interest to Charity.

It is anticipated that there will be few, if any, further contributions to you. There is no present or anticipated fundraising program.

The seven initial directors of the organization include a minority of three directors ([redacted] and their daughter [redacted] who are also the only members of the organization) elected by the members of the organization. The seven initial directors also include a majority of four directors who were elected by the class "a" members of [redacted] None of the four are members of the [redacted] family or is otherwise a disqualified person with respect to the organization. The three class "a" members who appoint these directors are [redacted] and [redacted]

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

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

Section 1.501(c)(3)-1(c)(1) of the 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) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. To meet this requirement, an organization must establish that

[redacted]

it is not organized or operated for the benefit of private interests such as the creator or his family, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3), although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513 of the Code. This section further provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 509(a) of the Code defines the term "private foundation" as a domestic or foreign organization described in section 501(c)(3) other than one described in sections 509(a)(1), (2) or (3).

Section 509(a)(3)(A) of the Code provides that a section 509(a)(3) organization must be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2).

Section 4946 of the Code defines "disqualified person," with respect to a private foundation, as including, among others:

1) a substantial contributor to the foundation;

2) a foundation manager;

3) an owner of more than 20% of (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust, which is a substantial contributor;

4) a member of the family of any individual described in subsections 1), 2) or 3);

5) a corporation in which persons described in subsections 1), 2), 3) or 4) own more than 35% of the total combined voting power;

6) a partnership in which persons described in subsections 1), 2), 3) or 4) own more than 35% of the profits interest;

7) a trust or estate in which persons described in subsections 1), 2), 3) or 4) hold

[redacted]

more than 35% of the beneficial interest.

Section 4946(d) defines the term "family" as including the spouse, ancestors, children, grandchildren, and great grandchildren.

Section 1.509(a)-4(f) of the regulations provides that ,in order to meet the relationship test of section 509(a)(3)(B) of the Code, a supporting organization must be "operated, supervised, or controlled by," "supervised or controlled in connection with," or "operated in connection with" one or more publicly supported organizations.

Section 1.509(a)-4(g)(1) of the regulations provides that an "operated, supervised, or controlled by" relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

Section 1.509(a)-4(h)(1) of the regulations provides that a "supervised or controlled in connection with" relationship involves control or management of the supporting organization by the same persons that control or manage the publicly supported organizations.

Section 1.509(a)-4(i)(1) of the regulations provides that to have an "operated in connection with" relationship, an organization must meet a "responsiveness test" and an "integral part test."

Section 1.509(a)-4(i)(3)(i) of the regulations provides generally that a supporting organization will be considered to meet the "integral part test" if it maintains a significant involvement in the operations of one or more publicly supported organizations and such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. In order to meet this test, either section 1.509(a)-4(i)(3)(ii) or (iii) must be satisfied.

Section 1.509(a)-4(i)(3)(ii) of the regulations provides one "integral part" test: the activities engaged in for or on behalf of the publicly supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves.

Section 1.509(a)-4(i)(3)(iii)(a) of the regulations provides an alternative "integral part" test: the supporting organization makes payments of substantially all of its income to or for the use of one or more publicly supported organizations, and the amount of support received by one or more of such publicly supported organizations is sufficient to insure attentiveness of such organizations to the operations of the supporting organization. In addition, a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness requirement of section 1.509(a)-4(i)(3)(iii) with respect to such supporting organization. Except as provided in section 1.509(a)-4(i)(3)(iii)(b), the amount of support received by a publicly supported organization must represent a sufficient

[redacted]

part of the organization's total support so as to insure such attentiveness. In applying the preceding sentence, if such supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital or church, the total support of the department or school shall be substituted for the total support of the beneficiary organization.

Section 1.509(a)-4(i)(3)(iii)(b) of the regulations provides that even where the amount of support received by a publicly supported beneficiary organization does not represent a sufficient part of the beneficiary organization's total support, the amount of support received from a supporting organization may be sufficient to meet the requirements of this subdivision if it can be demonstrated that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. This may be the case whether either the supporting organization of the beneficiary organization earmarks the support received from the supporting organization for a particular program or activity, even if such program or activity is not the beneficiary organization's primary program or activity so long as such program or activity is a substantial one.

Section 1.509(a)-4(i)(3)(iii)(d) of the regulations provides that all pertinent factors, including the number of beneficiaries, the length and nature of the relationship between the beneficiary and supporting organization and the purpose to which the funds are put (as illustrated by sections 1.509(a)-4(i)(3)(iii)(b) and (c)), will be considered in determining whether the amount of support received is sufficient to insure the attentiveness of such organization to the operations of the supporting organization.

Section 1.509(a)-4(i)(3)(iii)(e) of the regulations provides that however, where none of the beneficiary organizations is dependent upon the supporting organization for a sufficient amount of the beneficiary organization's support within the meaning of section 1.509(a)-4(i)(3)(iii), the requirements of section 1.509(a)-4(i)(3) will not be satisfied, even though such beneficiary organizations have enforceable rights against such organization under State law.

Section 1.509(a)-4(j)(1) of the regulations provides that (1) In general. Under the provisions of section 509(a)(3)(C) a supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946). An organization will be considered "controlled," for purposes of section 509(a)(3)(C) of the Code, if the disqualified persons, by aggregating their votes or positions of authority, may require such organization to perform any act which significantly affects its operation or may prevent such organization from performing such act. This includes, but is not limited to, the right of any substantial contributor or his spouse to designate annually the recipients, from among the publicly supported organizations of the income attributable to his contribution to the supporting organization. Except as provided in section 1.509(a)-4(j)(2) of the regulations, a supporting organization will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of such persons is fifty percent or more of the total voting power of the organization's governing body or if one or more such persons has the right to exercise veto power over the actions of the organization. Thus, if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the organization, and no more than two trustees are at any time disqualified persons, such foundation will not be considered to be controlled directly or indirectly by one or more disqualified persons by reason

[redacted]

of this fact alone. However, all pertinent facts and circumstances including the nature, diversity, and income yield of an organization's holdings, the length of time voting rights with respect to stocks in which members of its governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization.

In Rev. Rul. 67-5, 1967-1 C.B. 123, a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of non-income-producing assets which prevented its carrying on a charitable program commensurate in scope with its financial resources. The ruling held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family, and therefore was not entitled to exemption under section 501(c)(3) of the Code.

In Rev. Rul. 73-164, 1973-1 C.B. 223, a church-controlled commercial printing corporation whose business earnings were paid periodically to the church, but which had no other significant charitable activity, was a feeder organization as described in section 502 of the Code and did not qualify for exemption under section 501(c)(3).

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau v. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

In order to qualify for exemption under section 501(c)(3) of the Code, you must establish that you are organized and operated exclusively for religious, charitable, or educational purposes and that no part of your net earnings inure to the benefit of a private individual or shareholder.

Your activities, as described, are indistinguishable from those of the organization discussed in Rev. Rul. 67-5, cited above. Your primary purpose is to participate in a family limited partnership whose purpose is to provide a vehicle for management of the Trustee's real estate investments , a major portion of which are donated to you with attendant agreements providing for the subsequent resale to the Trustee at some later time at appreciated values. At no time are these assets out of the dominion and control of the Trustee or his family through their roles as general partners. The Option to sell can only be exercised at the death of the last to die of the general partners, or in the year 2070, at which time you will exercise your Option to permit the Trustee to repurchase these assets at the appreciated value with a stepped-up basis, but at a discounted price based on difficulty of marketability of these types of closely held assets.

Therefore, it appears that a substantial, if not primary, purpose for your formation was to hold a limited partner's interest in partnership assets to permit the appreciation of partnership

[redacted]

assets free of capital gains tax and to permit retention and control of the assets by the family for the life of the partners or of the partnership. While you have a 96% interest in the partnership property and a corresponding interest in the net investment income of the property, you will only receive 1 or 2% of such revenue in your general partner's sole discretion. Because of the one 1 or 2% annual distribution to you, which presumably you will use to conduct your stated activity of providing funds to the [redacted] you cannot be said to be conducting a program of charitable giving commensurate in scope with your financial resources. The remaining 96 to 98% of the net income to which you are entitled is at the discretionary disposal of the General Partner who has no mandate to further exclusively charitable purposes. Since this income is not being used to further exclusively charitable purposes, we must conclude that it is being used for non-charitable purposes. This is a substantial non-exempt purpose for which you are organized and are being operated which causes you not to qualify for exemption under section 501(c)(3), regardless of the number or importance of charitable purposes that may be attributable to the [redacted] See section 1.501(c)(3)-1(c)(1); of the regulations and Better Business Bureau, both cited above.

As a limited partner, you have no control over the operation or management of the family partnership in which you participate. The partnership agreement does not limit the activities of the partnership to those described in section 501(c)(3) of the Code. Thus your participation in activities intended to further private interests precludes your qualification as an exempt organization described in section 501(c)(3) of the code since the activity is not related to any exempt purpose. This conclusion is further supported by Article 8(k) of the Limited Partnership Agreement' which indemnifies you for any unrelated business income that may be recognized from this transaction. In addition, because the assets never left the dominion and control of the Donor/Trustee/General Partner, the question may be raised as to whether there was ever a donation or gift to you.

Your sole function will be distributing income to the [redacted] Section 502 of the Code provides that exemption is not allowed if you are operated for the primary purpose of carrying on a trade or business for profit and paying over your profits to an exempt organization.. The purpose of the partnership is managing family assets for efficient estate planning and maximizing profits from the operation of such family businesses. You have failed to establish that you were created for any purpose other than holding a majority limited partnership interest in family assets for the ultimate purpose of eventually re-selling those discounted assets back to the trustee tax-exempt and free of capital gains, and free of any costs related to the exercise of the Option. Any appreciation in value in the assets is still held and controlled by the Trustee/General Partner. This is an impermissible use of a section 501(c)(3) organization which must be organized and operated exclusively for exempt purposes.

Because you have failed to establish that you are not organized and operated for the private benefit of your creators and their family as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations, we cannot recognize you as exempt under section 501(c)(3) of the Code.

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.

[redacted]

A determination on whether you qualify as a supporting organization described in section 509(a)(3) of the Code would ordinarily be made after it is determined that you have qualified for exemption under section 501(c)(3) by establishing that you are both organized and operated exclusively for one or more charitable or educational or religious purposes.

Because you are directly controlled by your general partner, a disqualified person, you would not be recognized as a supporting organization described in section 509(a)(3) of the Code. "Controlled", for purposes of section 509(a)(3) means that your general partner/disqualified person has the right to designate the publicly supported organization who will receive the income attributable to their contribution to you. In addition, the general partner, the disqualified person has the right to exercise veto power over your actions or to disregard them altogether as limited partners have no say in management decisions of the partnership. In addition Ellsworth E. McIntyre controls the deciding vote on appointments of majority members to the Board thereby indirectly controlling your operations. Finally, taking into consideration the projected income yield of your holdings, the length of the partnership term, and the amount of distributions to you, and your extremely limited options in this situation, we conclude that you are both directly and indirectly controlled by disqualified persons. See section 1.509(a)-4(j)(1) and (2) of the regulations.

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 to this office, 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 judgement 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).

[redacted]

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

Internal Revenue Service
[redacted]T:EO:RA:T:3
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,

(signed) Robert C Harper, Jr.
Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

cc: [redacted]