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

Date: MAY 29 2002

Contact Person:
[redacted]
ID Number:
[redacted]
Telephone 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(c)(3) of the Internal Revenue Code.

The information submitted shows that you were incorporated on [redacted] pursuant to the nonprofit laws of the State of [redacted]. Your stated purpose in your Articles of Incorporation is to operate a public benefit corporation. You did not limit your purpose(s) to section 501(c)(3) purposes.

In your by-laws, your stated primary purpose is to provide therapeutic riding and other equine related activities to individuals with special physical, emotional, and cognitive needs. You are providing your equine riding program at [redacted] is 100% owned and managed by the [redacted] family through [redacted] and [redacted]. In a letter dated [redacted], you state that all the horses and employees of [redacted] will be transferred to you. You do not state how you will determine a fair market value for these assets. You did not submit a resolution of your Board of Directors that limits your use of the horses and employees to a charitable program within the meaning of section 501(c)(3)of the Code. Further, [redacted] will continue to own the real and personal property you will use in your program. You have indicated that you will lease this real and personal property for $[redacted] per year. A copy of this lease was not submitted with your [redacted] letter. You did not describe how you will be separating or sharing administrative services, telephones, accounting, secretarial, personnel and other services with [redacted]. Nor did you distinguish your program from the business currently conducted by [redacted].

You also stated in a letter dated [redacted] that you have expanded your Board of Directors to include community leaders. You did not state whether any of these new Board Members have any personal or financial interest in [redacted]. It appears, in addition, that your founder and her husband have veto power over your new Board of Directors. It is also not clear whether your founder and her husband will be voting on any transaction in which they have a financial interest. Your officers continue to be [redacted] and [redacted] all members of your creator's family. You plan to be supported by fees for services, contributions and government grants.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

[redacted]

Section 1.501(c)(3)-1(c) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of a purpose described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet these requirements, it is necessary for an organization to 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, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such terms includes: relief of the poor and distressed or the underprivileged; advancement of religion; advancement of education or science; erection or of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and to combat community deterioration and juvenile delinquency; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

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. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size of the trade or business which are in furtherance of one or more exempt purposes.

Section 513(a) of the Code defines the tem "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable educational, or other purpose or function forming the basis for its exemption under section 501.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), a nonprofit organization's regularly scheduled bingo games were held on the premises of a for-profit business which sold food and beverages, the games were conducted by the owners of the for-profit, and the directors of the for-profit controlled the nonprofit's board. Under these circumstances, the court held that the nonprofit had a substantial non-exempt purpose to enhance the profits of the for-profit.

The presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U. S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

In Housing Pioneers v. Commissioner, 65 T.C. M. (CCH) 2191 (1993), aff'd, 49 F.3d 1395), amended 58 F.3d 401 (9th Cir. 1995) ("housing Pioneers"), the Tax Court concluded that an organization did not qualify as a section 501(c)(3) organization because its activities performed as co-general partner in for-profit limited partnerships substantially furthered a non-exempt purpose, and serving that purpose caused the organization to serve private interests. The organization entered into partnerships as a one percent co-general partner of existing limited partnerships for the purpose of splitting the tax benefits with the for-profit partners. Under the management agreement, the organization's authority as co-general partner was narrowly circumscribed. It had no management responsibilities and could describe only a vague charitable function of surveying tenant needs.

[redacted]

In est of Hawaii v. Commissioner, 71 T. C. 1067 (1979), aff'd in unpublished opinion 647 F.2d 170 (9th Cir. 1981) ("est of Hawaii"), several for-profit est organizations exerted significant indirect control over est of Hawaii, a non-profit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the non-profit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion. Consequently, est of Hawaii did not qualify as an organization described in section 501(c)(3) of the Code.

Harding Hospital, Inc. v. United States, 505 F2d 1068(19[7]4), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operation test is a question of fact. In this situation the hospital was held not entitled to exemption under section 501(c)(3) of the Code because it limited its admissions and emergency room care substantially to a private group of patients.

In Old Dominion Box Co. v. United States, 477 F 2d. 344 (4th Cir.1973) cert. Denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In B.S.W. Group, Incorporated v. Commissioner, 70 T.C. 352, the court held that an organization which operated at a profit whose only role is that of a conduit linking individual researches with interested client organizations, both exempt and nonexempt, did not qualify for exemption under section 501(c)(3) of the Code. It was conducting a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

Rev. Rul. 66-104, 1966-1 C.B. 135 provides that a nonprofit organization which makes funds available to authors and editors for preparing teaching material and writing textbooks, and, under the terms of the contract with the publisher, receives royalties from sales of the published materials and then shares them with those individuals, does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. This revenue ruling held that the facts of the case shows that the enterprise was conducted in an essentially commercial manner.

An organization seeking recognition of its tax exempt status must establish that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, supra. In addition, activities which directly benefit private interests, if more than insubstantial, will preclude exemption. See Old Dominion Box Co. v. United States, supra.

The providing of therapeutic riding and other equine related activities to individuals with special physical, emotional and cognitive needs is a charitable activity under section 501(c)(3) of the Code. However, you are operating in connection with the for-profit organizations, [redacted] and [redacted], that are 100% owned and controlled by your founders and officers. All your officers are members of the [redacted] family. You did not show how you separated or are sharing administrative services, accounting, secretarial, personnel and other services with [redacted] and [redacted]. You did not state if any of your Board of Directors have any financial interest in your organization. You did not state why your founder and her husband continue to have veto power over the actions of your Board of Directors or whether any member of the [redacted] family will be voting on any transaction in which they have a financial interest.

During the application process, you have submitted several different plans for operating your therapeutic riding program but have adopted none of them. Your latest submission of [redacted] also leaves important details out. You did not submit a resolution of your Board of Directors (without any of the [redacted] family voting) that the horses and employees are being transferred to you and will be used

exclusively for section 501(c)(3) purposes. You did not submit a copy of your lease with [redacted] for payment of $10 per year for the use of the personal and real property or a listing and the value of the property that will be transferred. You did not submit current or proposed financial statements that reflect your new plan of operation. You have no significant connection with the local government.

Under the circumstances, you have not submitted sufficient information for us to conclude that your operations will satisfy the operational requirements for exemption under section 501(c)(3) of the Code. You have not established that your therapeutic riding program will be conducted in an exempt manner rather than a commercial manner. In addition, you have not established that your program will not be conducted for the non-exempt purpose of enhancing the profits of your creator and her family. Your operations are intimately connected to [redacted] and [redacted], for-profit organizations wholly owned and controlled by your creator and her family. See P.L.L. Scholarship Fund v. Commissioner, est of Hawaii v. Commissioner, Housing Pioneers v. Commissioner and Rev. Rul. 66-104, supra. Since these non-exempt purposes are substantial in nature, you have not established that you qualify for recognition of exemption from federal income taxes under section 501(c)(3) of the Code. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra.

Your Articles of Incorporation did not state a section 501(c)(3) exempt purpose nor do they limit your purposes to those describe in section 501(c)(3) of the Code. Accordingly, we also conclude that you are not organized for section 501(c)(3) purposes.

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 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 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:

Internal Revenue Service
[redacted] T:EO:RA:T:2
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[redacted]

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

Sincerely,

Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 2

cc: [redacted]

cc: [redacted]

[redacted]