

INTERNAL REVENUE SERVICE

Department of the Treasury

Southwest Region

Date: APR 09 1990

Person to Contact:

Telephone Number:

Employer Identification Number:

CERTIFIED MAIL

Dear Applicant:

This is a final adverse determination with respect to your exempt status under Section 501(c)(3) of the Internal Revenue Code.

You are not classified or operated exclusively as an educational organization. Specifically your articles of incorporation are broader than allowed by section 501(c)(3) and the food sales operation that you conduct is more than insubstantial in scope.

Contributions made to your organization are not deductible under Section 170 of the Internal Revenue Code.

You are required to file Federal Income Tax returns with the Austin Service Center for taxable years for which the filing date of the appropriate return has passed. These returns should be filed within 30 days of the date of this letter, unless a request for extension of the time is granted. Please send them to the attention of the EP/EO Division. attach a copy of this letter, and address any requests for time extensions to the EP/EO Division, attach a copy of this letter, and address any requests for time extensions to the EP/EO Division at the Service Center. Processing of an income tax return and assessing any taxes due will not be delayed because a petition for a declaratory judgment has been filed under Section 7428 of the Internal Revenue Code.

We will notify the appropriate State officials, as required by Section 6104(c) of the Code, that based on the information we have available, we are unable to recognize you as an organization described in Section 501(c)(3) of the Internal Revenue Code.

If you decide to contest this determination in court, a petition for a declaratory judgment proceeding in the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgment.

[REDACTED]

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

Thank you for your cooperation

Sincerely yours,

[REDACTED]
[REDACTED]
Associate Chief, Appeals

Enclosure: As Stated

Internal Revenue Service

Department of the Treasury

District
Director

[REDACTED]

Person to Contact

Telephone Number

Refer Reply to

Date

SEP 8 1988

Dear Sir or Madam:

We have completed our consideration of your application for recognition of tax-exempt status under section 501(c)(3) and section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you were formed on [REDACTED], as a non-profit corporation under the laws of the State of [REDACTED]. According to your Articles of Incorporation, your purposes are: to increase consumer awareness of the production and distribution of food products, and to promote sound nutritional practices in the establishment and maintenance of good health.

You are a membership organization, and membership is contingent upon payment of a lifetime membership fee of \$[REDACTED] per family and \$[REDACTED] per single person. Your sources of financial support are from membership dues, outlined above, as well as income from the sale of food to members. The food, which is sold to members, is purchased by the organization in wholesale quantity and at wholesale price. The selling price to members include the wholesale purchase price, plus any expense you incur in handling, such as repackaging, rent, repairs to equipment and packaging supplies, and a mark-up of from [REDACTED]% to [REDACTED]% over cost for your support.

At present, all work is volunteer and you have no paid employees. You purchase the food inventory, based upon response to requests from your members. The requests are compiled and orders are placed with several food distributors for delivery a week before the week-end members make their purchases. This provides you: time to package, price and place the orders on the shelf for pickup.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational 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(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

"(A) Limit the purposes of such organization to one or more exempt purposes; and

(B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(c)(1) Primary activities. 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."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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."

"(d)(3)(i) In General. The term "educational", as used in section 501(c)(3), relates to -

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

[REDACTED]

Your purposes as stated in your Articles of Incorporation are broader than those permitted for qualification under section 501(c)(3) of the Code. Therefore, you fail to meet the organizational test as provided by section 1.501(c)(3)-1(b)(1) of the regulations.

You also do not meet the operational test of section 501(c)(3) in that you are operated primarily for the private benefit of your members. Your cooperative food buying program is neither charitable nor educational and merely serves to provide favorable prices on certain foods for your members. Serving the private interest of individuals precludes exemption under section 501(c)(3) of the Code.

Accordingly, even though you may provide some educational services through your newsletter, it is held that you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code.

It follows therefore, that contributions to you are not deductible by donors under section 170 of the Code.

We also considered your application for exemption under section 501(c)(4) of the Code.

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

Revenue Ruling 78-132, 1978-1 C.B. 157, holds that an organization, which is a community cooperative organization formed to facilitate the exchange of personal services among members, and which is operated primarily for the private benefit of its members, is not exempt from tax as a social welfare organization under IRC 501(c)(4).

Revenue Ruling 73-349, 1973-2 C.B. 179, holds that an organization formed to purchase groceries for its membership at the lowest possible price on a cooperative basis is not exempt under 501(c)(4) because it is operated for the economic benefit of its members rather than operated to bring about civic and social improvements.

[REDACTED]

You operate in a manner similar to the organizations described in Revenue Rulings 73-349 and 78-132. Since you are operated for the primary purpose of providing an economic benefit to your members rather than to improve the general welfare of the community, you are not entitled to exemption under section 501(c)(4) of the Code.

You should file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination 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 Internal Revenue 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 Court of 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 this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

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

Sincerely,

[REDACTED]

[REDACTED]

District Director

Enclosures:
Form 6018
Publication 892