 *U.S. GOVERNMENT PRINTING OFFICE 1982-318-687

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NOV 0 8 1988

Dear Sir or Madam:

We have considered your application for recognition of exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information you presented shows that you were incorporated [redacted] under the laws of the State of [redacted]. A prior association was organized under [redacted] By Laws which were adopted [redacted]

Your purposes are:

"To act as a clearing house for genealogical and historical data pertaining to the [redacted] families whose descendents immigrated to the North American Continent and to promote and encourage study and understanding of the past history of the [redacted] family and the part it has played in the settlement and growth of the United States of America and Canada".

The activities of the organization began in [redacted] and consist of a general meeting of the membership every [redacted] years. A journal is mailed to all dues paying members. The organization has provided for a [redacted] library, located in [redacted], which has a loan procedure for records, genealogies, and other books. Several libraries are recipients of your journal "leDespencer".

Your By Laws describe the "[redacted]" as... "a means of transmitting news of general interest to the members of [redacted] such as noteworthy occurrences, meetings, elections, family data, inquiries and financial reports". The charge for published nonmember inquiries is $[redacted]. You submitted one copy of the [redacted] and two pages from another journal. Volume 11, Number 3 of [redacted] showed this particular issue consisted of a President's page; a library report, which discussed library donations from members, a [redacted] family book which is available for photocopy and its cost, recent library acquisitions, and additional information available for [redacted] members. The two pages of the journal was an information excerpt, from a members booklet.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[redacted]					
Surname		[redacted]					
Date		11/3/88					

[redacted]

Membership of the organization, described in the By laws, requires a membership application, and the appropriate dues and fees. Your Articles of Incorporation indicate there are 3 classes of membership; Life, Annual and Junior membership. The By laws indicate the U.S.A. and Canada membership is from $[redacted] to $[redacted] with renewal of $[redacted] to $[redacted]. It also provides for other countries membership from $[redacted] to $[redacted] with renewal $[redacted] to $[redacted]. Information submitted with the application indicate that membership..."shall be open to, but not limited to, any person born into the [redacted] family, past, present and future; to persons related by birth or marriage to this family; to others who descend from earlier generations of [redacted]; to persons with a legitimate interest in the history and genealogy of the [redacted] family". You record [redacted] members within [redacted]

The support of the organization comes from dues and assessments, contributions, gifts, grants and the sale of journals. The expenses consist of administrative expenditures.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

> "(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

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

> "(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

[redacted]

"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(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."

"(b)(1)(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). *** "

"(b)(1)(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). *** "

"(b)(1)(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes."

Regulations 1.501(c)(3)-1(b)(2) describe the term "articles" to include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

"(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."

[redacted]

"(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."

Regulations 1.508-1(a)(2)(i) provides in part,

"an organization seeking exemption under section 501(c)(3) must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023, Exemption Application.

Regulations 1.508-1(a)(3)(i)(b) provides in part, that the 15-month notice requirements is not applicable to the following organizations:

"any organization which is not a private foundation (as defined in section 509(a) and normally has gross receipts of not more than $5,000 in each year."

The Callaway Family Association, Inc. v. Commissioner, 71 Tax Court 340 (1978), held that a family association formed as a nonprofit organization to study immigration to and migration within the United States by focusing on its own family history and genealogy does not qualify for exemption under section 501(c)(3) of the Internal Revenue Code. See also Benjamin Price Genealogical Association v. United States, Civil No. 78-2117 (D.D.C., April 26, 1979).

Revenue Ruling 71-580, 1971-2 Cumulative Bulletin 235, holds that a non-profit organization formed by members of a particular family to complete genealogical research data on the family in order to perform religious ordinances of the religious denomination to which the family members belong is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 80-301, 1980-2 C.B. 180, holds that a genealogical society whose membership is open to all persons in a particular area and that provides instruction in genealogical research techniques is operated exclusively for educational purposes and qualifies for exemption under section 501(c)(3) of the Code.

[redacted]

Revenue Ruling 80-302, 1980-2 C.B. 182, holds that an organization that (1) limits its membership to descendents of a particular family, (2) compiles family genealogical research data for use by its family members for the reason other than to conform to the religious percepts of the family's denomination, (3) presents the data to designated libraries, (4) publishes volumes of family history, and (5) promotes social activities among family members does not qualify for exemption under section 501(c)(3) of the Code.

We have also considered your application under section 501(c)(4) and 501(c)(7), although you did not submit the required Form 1024.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

> "(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."
>
> "(a)(2)(i) 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 betterments and social improvements *** The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.***"

<u>Erie Endowment v. United States, 316 F. 2d 151 (1963)</u>, holds that the concept of social welfare suggests benefits affecting the whole community of people rather than a private group of citizens. For example, a non-profit corporation formed to acquire and operate a low-cost housing cooperative was held not to be a civic league or social welfare organization because it did not offer a program or service to benefit the community-at-large.

<u>Commissioner v. Lake Forest, Inc., 305 F2d [814] (1962)</u>, held that its contribution was not of a "public" character. Instead, it was a private cooperative undertaking for the benefit of its members, enabling them to save for a home, to satisfy their own material ambitions.

[redacted]

Revenue Ruling 74-99, supra, holds that the concept of "community" bears a reasonable recognizable relation to an area ordinarily identified as governmental.

Section 501(c)(7) of the Internal Revenue Code provides exemption for:

> "Clubs organized for pleasure, recreation and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder."

Revenue Ruling 67-8, C.B. 1967-1 142, holds that an organization formed to bring the members of a particular family in to closer association through social activities revolving around matters of common historical and genealogical interests to the members as a group qualifies as an exempt organization under section 501(c)(7) of the Code.

Revenue Ruling 69-635, 1969-2 C.B. 126 implies the existence of personal contacts, commingling, and fellowship among members. Generally, the lack of commingling of members is a indication that the basic purpose of the organization is only to provide personal services and goods to the membership in a manner similar to commercial counterparts.

Information submitted shows that the organization has provided a copy of the Certificate of Amendment, issued on [redacted]. The attachment to this document was titled [redacted] BY-LAWS: Purpose, Restrictions, and Dissolution. Article VII corresponds with the numbering of the By Laws and not that of the corporate charter. Therefore, consideration was given to the requirements notice of section 508(a). Financial data also submitted shows that the association met the exception by normally having receipts of not more than $5,000 in each tax year. The association met section 508(a) for the period of [redacted] the date of filing Form 1023. By filing the revised By Laws, dated [redacted] the association has met the organizational test of the Regulations.

Accordingly, the organizational test cannot be met after [redacted] by reference to any document that is not the creating document. In the case of a corporation, the by laws cannot remedy a defect in the corporate charter. A charter can be amended only in accordance with State laws.

In order to qualify under section 501(c)(3), an organization must be both "organized and operated" exclusively for one or more purposes specified in that section. Your organization has failed to show that it has met the organizational test, for the period from [redacted] to present, nor the operational test for the entire period, from [redacted] to present.

[redacted]

Like the organization described in the Callaway and Price cases, the association does not conduct research for its members but does focus its activities on one family. The genealogical data is not developed for the express purpose of conforming to the religious precepts of family members like Revenue Ruling 71-580.

The journal shows that compilation, publication, preservation, and distribution of genealogical data has some educational value to the individual members. However, when the focus is limited to one family the activities do not advance education to benefit the public interest. Therefore, the organization's activities are in futherance of the members private interest and is not for the futherance of an exempt purpose under section 501(c)(3) of the Code.

In consideration of section 501(c)(4), the organization does not meet the requirements of "community" by bearing a resonable relationship to a governmental unit. It is also operated for the benefit of its members.

Although, your organization does hold social meetings, they are scheduled every 2 years. Your organization is nationwide and international, this would not provide the opportunities for the constant commingling and fellowship requirements of section 501(c)(7) of the Code.

Therefore, we conclude that you do not meet the requirements of sections 501(c)(3), 501(c)(4) or 501(c)(7) of the Code, and you are required to file 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 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.

[redacted]

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]
District Director

Enclosure:
Publication 892
Form 6018