



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

U.I.L. – 501.03-23 No Third Party Contacts

Release Number: **201033039**

Release Date: 8/20/10

Date: May 28, 2010

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s): You failed to establish that you operated exclusively for exempt purposes described in section 501(c)(3) of the Code. You failed to demonstrate that you have taken sufficient steps to overcome inference of racial discrimination in your operation of a school.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow

the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

U.I.L. – 501.03-23 No Third Party Contacts

Release Number:
Release Date: 8/20/10
Date: May 28, 2010

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s): You failed to establish that you operated exclusively for exempt purposes described in section 501(c)(3) of the Code. You failed to demonstrate that you have taken sufficient steps to overcome inference of racial discrimination in your operation of a school.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow

the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 501.03-23 No Third Party Contacts

Date: April 15, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
School =
City =
County =
State =

Dear

This refers to your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a).

We have previously issued you a ruling recognizing you as exempt under section 501(c)(3) of the Code, which we subsequently revoked. You petitioned the court for the retention of your exempt status, which on Date 3, the Tax Court decided that you are not exempt under section 501(c)(3) retroactive to Date 2.

We have considered your re-application for recognition of exemption under section 501(c)(3) of the Code, which you filed on Date 4. Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

You were incorporated on Date 1 under the laws of the State for the purpose of operating one or more schools as nonprofit institutions of learning. You were formed a month after a court ordered desegregation of school districts in the County and other counties in State.

You operate School in the City within the County of State. The City's racial population is approximately 95% black and 5% white.

You began to operate School two months after your incorporation with 8 students enrolled in Grade 1. You expanded the operation of School the following school year in which you offered Grades 2 - 8 and after 4 years offered Grades 9 – 12. You currently offer grades K3 - 12.

You have operated School for almost 45 years but no information indicates that you have enrolled black students until the school year ending 2007. You indicated that you had 1 black student in your total student body of 195 for the school year ending 2007, 1 black student in your total student body of 183 for the 2008 school year and 3 black students in your total student body of 150 for the 2009 school year. The racial composition of the rest of the student body for each of those years was white except for 1 American Indian in 2008. You now indicate that the current school year ending _____ has a total student body of 163 consisting of 156 white and 7 black students. You also indicated that all but one of these black students was provided financial assistance for enrollment.

One month prior to the date of filing your exemption application on Date 4, you amended your Bylaws to include your adoption of a nondiscriminatory policy. That amendment states that any school you operate will "comply with all non-discriminatory policies as required under section 501(c)(3) of the Internal Revenue Code." You indicated that you changed the wording of the non-discriminatory policy to reflect the applicable statement to students. You state that the newly worded policy will be adopted by your Board in _____. The newly worded policy is as follows:

School admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admission policies, scholarship and loan programs, athletic and other school-administered programs.

This policy is included in your annual advertisements on newspapers in the County, your website, in student admission contracts and registration forms, and student handbooks.

You indicate that your main outreach for black enrollment is your annual newspaper advertisement. The submitted copies of newspaper advertisement do not include languages designed to attract black enrollment. Instead, one copy of such advertisements for school year _____ shows the date and time of "open house" registration for kindergarten classes, 50% tuition reduction on 1st semester for new students, certain school promotions described under the heading of "We Offer", and a statement of the nondiscriminatory policy. You indicated that you do not hold annual "open house" but have held a couple a few years ago. You indicated other outreach efforts to have included sending letters and having contacted and met with some black families within the community.

You have also advertised on radio. A submitted transcript of a 30-second radio advertisement did not include a statement of your nondiscriminatory policy. You stated, however, that the failure to include the nondiscriminatory policy in the radio commercial was a mistake.

School operates with no black person in its faculty or administrative staff. All members of its faculty and administrative staff are white. You indicated distributing applications to black teachers who inquire about vacancies but no black teachers have ever submitted applications for position at School. You stated that your difficulty in recruiting black teachers is because of the significant difference in compensation between the salaries of your teachers, which you indicated as approximately % of those in the State's public schools. However, you had 1 black teacher in school year ending 2009 and another 1 black teacher and 1 dual enrollment coordinator in school year ending . The black teachers and the coordinator were not part of your faculty nor were they staff members. Instead, they were provided and their salaries were paid by an unrelated school.

While lagging in enrollment of black students and employment of black teachers and administration staff, you did however, employ 3 black persons working separately as a maintenance worker, janitor and driver.

The State has a program established to provide for distribution and free loan of textbooks to students of any participating public, private and other nonpublic schools. Under the rules promulgated by the State Board of Education, an eligible school must have received accreditation status and documented that it operates in a non-discriminatory manner in its admission and enrollment practices. Notwithstanding the benefits of free textbook that the program will provide your students and the school, you indicated that you "very seldom participate" in that program and choosing instead to "order (books) directly from publishers for lower prices as well as having books that are not 'watered' down." It appears, however, that several years ago, you withdrew entirely from participation in the program.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for educational, charitable or other exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes unless it serves a public rather than a private interest.

Rev. Rul. 71-447, 1971-2 C.B. 230, provides that a private school which does not have a racially nondiscriminatory policy as to students does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. It defines a racially nondiscriminatory policy to mean "the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not

discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs."

Rev. Proc. 75-50, 1975-2 C.B. 587, sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) of the Code or are presently recognized as exempt from tax have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy the school has operated in accordance therewith. Section 4.03 provides that a school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. A school may demonstrate that it follows a racially nondiscriminatory policy by showing enrollment of student of racial minority groups in meaningful numbers and whether that is satisfied will be determined on the basis of facts and circumstances of each case. Actual enrollment, however, is a meaningful indication of a racially nondiscriminatory policy in the case in which schools become subject to desegregation orders of a federal court or otherwise expressly became obligated to implement a desegregation plan under the terms of any written contracts or other commitment to which any Federal agency was a party.

Section 4.07 of Rev. Proc. 75-50 also provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students.

In Green v. Connally, 330 F. Supp. 1150(D. D.C. 1971), aff'd sub nom., Coit v. Green, 404 U.S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971), and in the revised injunction orders issued on May 5 and June 2, 1980, the Internal Revenue Service is prohibited from:

according . . . and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them, which: (1) have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs. (2) The existence of conditions set forth in paragraph (1) herein raises an inference of present discrimination against blacks. Such inference may be overcome by evidence which clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by such school's policies and practices. Such evidence might include, but is not limited to, proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of continued meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community concerning the school's nondiscrimination policies, and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

In Prince Edward Sch. Found. v. Commissioner, 478 F. Supp. 107 (D. D.C. 1979), aff'd, D.C. Cir. June 30, 1980, cert. denied, 450 U.S. 944, 101 S. Ct. 1408, 67 L. Ed. 2d 376 (1981), the court held that private schools administering racially discriminatory admissions policies are excluded from tax-exempt status under section 501(c)(3) of the Code. The court further held that the foundation had failed to meet its burden of establishing its entitlement to exemption under section 501(c)(3) because the foundation's record was completely devoid of evidence that it was administering a nondiscriminatory admissions policy. The court also stated that the inference that the plaintiff administered a racially discriminatory policy may be drawn from the circumstances surrounding the school's establishment. Similar inferences as to the existence of a racially discriminatory policy based on facts surrounding a school's establishment and lack of minority enrollment have been drawn by other courts.

In Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974) on remand from the Supreme Court, 413 U.S. 455, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973) and Brumfield v. Dodd, 425 F. Supp. 528 (E.D. La. 1976), the courts held that a prima facie case of racial discrimination arises from proof (a) that the schools' existence began close upon the heels of the massive desegregation of public schools within its locale, and (b) that no blacks are or have been in attendance as students and none is or has ever been employed as a teacher or administrator at the private school.

In Bob Jones University v. United States, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983), the Supreme Court found that petitioner, a nonprofit private school that prescribes and enforces racially discriminatory admissions standards on the basis of religious doctrine, did not qualify as a tax-exempt organization under section 501(c)(3) of the Code. The court held that racially discriminatory private schools violate a fundamental public policy and cannot be viewed as conferring a public benefit within the meaning of common law standards of charity and congressional intent underlying section 501(c)(3).

In Calhoun Academy v. Commissioner, 94 T.C. 284 (1990), the Tax Court held that a private school failed to show that it operated in good faith in accordance with a nondiscriminatory policy toward black students and concluded that the school did not qualify for exemption under section 501(c)(3) of the Code. The school was formed at the time of desegregation of the public schools, and never enrolled a black student or employed a black teacher. The school and its students participate in some educational and vocational programs and other school-sponsored activities that directly involved blacks.

An organization applying for exemption under section 501(c)(3) must establish that it is organized and operated exclusively for an exempt purpose and in the case of a school must include establishing that it has a racially nondiscriminatory policy as to students consistent with the guidelines set forth in Rev. Proc 75-50 and findings by the courts.

The information submitted indicates that you were formed around the time the court handed the desegregation of schools in the county where you operate a private school. Also, in the past, you have been determined in adversary or administrative proceedings to be racially discriminatory. As such, the strict mandate in Green v. Connally, 330 F. Supp. 1150(D. D.C.

1971), applies to you in prohibiting us from according tax exempt status unless you clearly and convincingly demonstrate and overcome the inference of racial discrimination against black students. In this regard, we find that while you have operated a school for almost 45 years since the court-ordered desegregation, you only recently decided in the last few years to adopt a racially discriminatory policy that you termed as "applicable" for students.

While you have adopted a racially nondiscriminatory policy and even conduct outreach efforts, your school operations, however, failed to show significant enrollment of black students. Your main outreach of an annual advertisement in newspapers does not appear to show that the advertisement was primarily designed to solicit black enrollment. Your current school year shows enrollment of 7 black students, that number pales significantly when compared to the overwhelming 156 enrollment of white students, and in particular when considering you are operating in an area with a significant black population. While we acknowledged that you provided financial assistance toward enrollment of your black students, we also noticed that this assistance could be part of your advertised 50% discount for new students.

We believe that the lack of substantial black students, as well as the lack of teachers and administrative staff in your school is because of your failure to make intensive, comprehensive and good faith efforts to reach the black community for their enrollment and employment. You have not provided us with sufficient evidence supporting any such efforts in your submitted materials. Moreover, while you may interact with the blacks only outside of your classroom, like in participation in sports, such interaction is unavoidable and does not prove that you have implemented your nondiscrimination policy. The relevant criteria deal here is with restrictions on those who may become insiders, i.e. students at your school.

Furthermore, Rev. Proc 75-50, at section 4.07, provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. To date, even with 40 years of existence and operation, you have not employed any black teacher or administrative staff. Instead all your teachers and administrative staff member are whites. In this regard, you stated that your only concern in hiring teachers is to employ teachers who are the best qualified and who concentrate on the best means of teaching the students. Also, you indicated that your emphasis is placed on the best possible environment possible for a student, regardless of his color or nationality, to learn.

Therefore, although you have adopted a policy of nondiscrimination and made created an outreach committee, it appears that your adoption of a nondiscriminatory policy and creation of an outreach committee are merely done for compliance in form purposes and not in good faith. Also, any efforts toward outreach to the black community are minimal.

Moreover, we think that the presence of your school discriminatory policy is further evidenced in your decision not to participate in the State's free textbook program because of its strict requirement that participating schools must be documented to be operating in a non-discriminatory manner in its admission and enrollment practices, which you may not be able show.

Based on the foregoing, we conclude that you failed to demonstrate that you have taken sufficient steps to overcome inference of racial discrimination sets forth in the court cases cited herein. As a school without a nondiscriminatory policy to students, as such term is defined in Rev. Rul. 71-447, you are not considered operated exclusively for exempt purposes under section 501(c)(3) of the Code. Moreover, and in particular on the basis of your situation, under the court injunction orders issued on May 5 and June 2, 1980, we cannot accord you tax exemption under section 501(c)(3) of the Code.

Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T:2

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements