

CERTIFIED

[Redacted]

Person to Contact: [Redacted]

Telephone Number: [Redacted]

Refer Reply to: [Redacted]

Date: **MAY 01 1985**

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 of 1954.

The information submitted discloses that you were incorporated on [Redacted] under the nonprofit corporation laws of the State of [Redacted].

The available information discloses that you operate two shops, namely; a pharmacy and uniform shop. Approximately, [Redacted]% of the sales of the uniform shop and [Redacted]% of the pharmacy are made to hospital employees. These shops are located in the [Redacted] which is adjacent to [Redacted]. Any profits deriving from sales will be deposited with the hospital's foundation ([Redacted]) to further the work of the hospital, especially free services to the indigent.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (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. (2) The term 'exempt purpose or purposes', as used in this section, means any purpose or purposes specified in Section 501 (c) (3)...."

"(b) Operational test. (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. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]	[Redacted]	[Redacted]			
Surname							
	3/25/85	4/1/85	4/15/85	4/1/85			

Section 1.501(c)(3)-(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more purposes, unless its assets, upon dissolution, are dedicated to 501(c)(3) purposes.

Section 502(a) 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 grounds that all of its profits are payable to one or more organizations exempt from taxation under Section 501.

Section 502(b) provides that for purposes of this section, the term "Trade or Business" shall not include:

- 1) The deriving of rents which would be excluded under Section 512(b)(3) if Section 512 applied to the organization,
- 2) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or
- 3) Any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gift or contributions.

The operation by a Section 501(c)(3) hospital of a gift shop patronized by patients and visitors making purchases for patients and employees, a cafeteria and coffee shop primarily for employees and medical staff, and a parking lot for patients and visitors only, does not constitute a trade or business. Rev. Rul. 69-267, Rev. Rul. 69-268, and Rev. Rul. 69-269.

Since your creating instrument does not provide for the distribution of assets to 501(c)(3) organization upon dissolution you are not organized exclusively for 501(c)(3) purposes.

It is concluded that the operation of a pharmacy and uniform shop for hospital personnel in a hospital office building adjacent to a hospital constitutes a trade or business. This is based on the finding that the operation of these shops is not excepted from being a trade or business under Section 502(b) because your employees are salaried and receive employee benefits. It is also held that the operation of these shops would not be excepted from the definition of a trade or business under Revenue Rulings 69-267, 69-268 or 69-269. A pharmacy and or uniform shop operated for the benefit of hospital personnel does not come within the scope of these rulings because they are not considered necessary to continue the quality of the hospital.

Accordingly, you are a feeder organization as defined in Section 502(a) and not exempt from taxation under Section 501(c)(3) because your operations are not exclusively charitable or educational.

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

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."

Sincerely yours,


District Director

Enclosures:
Publication 892
Form 6013