

Closed - No Partial Receipt

8/11/92

JUL 02 1992

Employer Identification Number: [REDACTED]  
Key District: Atlanta

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 and have concluded that you do not qualify under that section for the reasons herein set forth.

You were incorporated in [REDACTED] under the laws of the State of [REDACTED] and your stated purpose is "...to create a nationally chartered non-profit chain of women's clubs to function as a fund raising organization to fight drug and alcohol abuse and provide funds for research". Your By-Laws state other purposes and objectives including providing an "enthusiastic support environment for women's groups and sports education for sports widows", "...by selling sports-wear and other items with the distinctive logo [REDACTED]'".

A trademark for "[REDACTED]" has been applied for by [REDACTED], a for-profit Oregon corporation. [REDACTED] is the incorporator and sole stockholder of this for-profit entity. [REDACTED] is also your founder, President and Director. There is an oral license agreement between you and the for-profit which gives you exclusive rights to the "[REDACTED]" label. All products or merchandize with the label must be purchased from the for-profit entity.

It is initially expected that your first clubs will be formed in the [REDACTED] cities that have a National Football team and that you will have clubs in [REDACTED] cities by [REDACTED]. As membership grows it is expected that large amounts of wearing apparel and other products with the "[REDACTED]" label or logo will be sold. You anticipate that the clubs are expected to produce [REDACTED] dollars in product sales annually after the initial start up period.

The names, addresses and part of a new member's fees will be sent to the for-profit entity, and in return the for-profit will

send products directly to the new members. Your local clubs throughout the country will be encouraged to seek local retail outlets to carry the products with the "[REDACTED]" label.

Section 501(a) provides, in part, that organizations described in section 501(c) are exempt from federal income taxation. Section 501(c)(3) describes, in part, an organization which is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes no part of the net earnings of which inures to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it 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 or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i)(a)-(b) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and the articles 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 an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the 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(c)(2) of the regulations provides that 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.

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 specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit or 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.

Situation 2 of Rev. Rul. 69-545, 1969-2 C.B. 117, describes a hospital, otherwise serving a charitable purpose, that was denied exemption under section 501(c)(3) of the Code because it served a private interest more than incidentally. The revenue ruling states that in considering whether a nonprofit organization claiming charitable exemption is operated to serve a private benefit the Service will weight all of the relevant facts and circumstances in each case.

The presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Better Business Bureau v. United States, 326 U.S. 279 (1945).

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert denied 413 U.S. 910 (1973).

Leon A. Beechly v. Commissioner, 35 TC 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-5 (1989), the Court concluded that the petitioner was not described in section 501(c)(3) of the Code. The petitioner was organized for the purpose of providing continuing medical education to physicians. To this end, it took physicians on three week tours throughout the world. The petitioner shared offices with a for-profit travel agency which was controlled by the petitioner's principal officer. It made all its travel arrangements through the agency.

The Court found that a substantial purpose of the petitioner was benefitting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes

[REDACTED]

within the meaning of [section] 501(c)(3),  
even if it furthers other exempt purposes.

If a private interest is served, it must be incidental in both a qualitative and quantitative sense. In order to be incidental in a qualitative sense, it must be a necessary concomitant of the activity which benefits the public at large. In other words, the activity can be accomplished only by benefiting certain private individuals. To be incidental in a qualitative sense, the private benefit must not be substantial after considering the overall public benefit conferred by the activity.

While certain of your activities may be considered charitable within the meaning of Section 501(c)(3) of the Code, from the facts presented it is clear that your operations will result in substantial financial benefits to a for-profit entity owned by your founder, President and Director. Funds raised through the sale of products with the "[REDACTED]" label or logo, which you will promote, will generate income to the related for-profit entity.

Although funds may also be available for charitable purposes the private interests of individuals connected with both you and the for-profit will be served to more than an incidental degree.

Thus, by promoting the business interest of a for-profit entity to a substantial extent, you are not "operated exclusively" for one or more purposes described in section 501(c)(3) in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Further, you are serving private interests more than incidentally. Section 1.501(c)(3)-1(d)(ii) of the regulations. Leon A. Beeghly v. Commissioner and International Postgraduate Medical Foundation vs. commissioner, supra.

In addition, your Articles of Incorporation as presently constituted do not meet the organizational test since the purposes therein are not limited to section 501(c)(3) purposes and your assets are not dedicated to the same purposes upon dissolution.

Accordingly, you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

You are required to file federal income tax returns on Form 1120. Contributions made to you by individuals are not deductible for tax purposes under section 170 of the Code.

[REDACTED]

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 some one 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 Practice Procedures.

If you do not protest this proposed 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 judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, 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 with in 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 Director. Thereafter, any question about your federal income tax status should be addressed to that office.

Additional letters with respect to this case should be sent to [REDACTED], Room [REDACTED], Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224

Sincerely yours,

(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 2

cc: DD, Atlanta  
Attn: EO Group

cc: State Officials

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]				
Surname	[REDACTED]	[REDACTED]				
Date	6/22/92	7/2/92				