

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: AUG 27 1997

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Employer Identification
Number:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in [REDACTED].

The purposes for which the corporation was formed are as follows:

The corporation is organized, and at all times shall be operated exclusively for charitable, religious, scientific or educational purposes. Consistent with the foregoing, the specific purposes of the corporation shall be to assist in the mental and physical development habilitation, rehabilitation, employment, support and service coordination of individuals with mental, physical or other disabling conditions or other individuals who are socially and economically disadvantaged; and to do every thing necessary or desirable, including the acquisition and development of business opportunities, to improve the abilities, skills, independence, integration, individualization and productivity of such individuals and their families; and to raise the funds necessary to achieve these purposes. These programs and services are offered but are not restricted to those disabled persons presenting medical, vocational, educational and social needs.

In your application form 1023, you stated that the purpose of [REDACTED] is to provide employment and training for individuals with disabilities and for other persons who are socially or economically disadvantaged. [REDACTED] indicated that it would operate a small restaurant to provide these employment and training opportunities.

In a letter dated [REDACTED], the IRS proposed to deny the organization's exemption under 501(c)(3). The proposed denial indicated that the operation of a [REDACTED] seat restaurant which opens to the public for breakfast, lunch and dinner with a permanent staff of ten is not a recognized charitable activity.

On [REDACTED], [REDACTED] entered into an asset purchase agreement with [REDACTED]. The buyer purchased all the physical assets of the restaurant including all restaurant equipment, kitchen equipment, furniture and fixtures and all other chattels and assets.

In a letter dated [REDACTED], [REDACTED] advised that they have added other activities and their start-up dates which are as follows:

- A) Janitorial service - [REDACTED]
- B) Temporary services - [REDACTED]
- C) Print shop - [REDACTED]
- D) Support services - [REDACTED]
- E) Consumer Directed Personal Assistance services - Tentatively schedule for [REDACTED]

[REDACTED] provides janitorial services to the City Hall of [REDACTED] under a three year contract that runs from [REDACTED] through [REDACTED]. The contract was secured through a bid submitted on [REDACTED]. [REDACTED] received the contract because it was the lowest of three bids. There are three full time and two part time employees included in this division.

[REDACTED] provides temporary employees to [REDACTED] under a contract dated [REDACTED]. The term of the contract is open ended. [REDACTED] is an unrelated organization. The number employed on [REDACTED] was [REDACTED]. The highest total employed has been [REDACTED].

[REDACTED] operates a print shop with equipment and space rented from [REDACTED]. There are three full time staff members. The services of individuals with disabilities are contracted through the [REDACTED] at a rate usually of 3 to 4 hours per week. The work is performed under contract to unrelated organizations.

[REDACTED] provides support services to individuals with disabilities in order that they may gain more control and independence in their lives. Services are provided to the individual for a monthly fee. All services are performed under contracts with individuals.

~~_____~~ has been supported solely by gross receipts from its activities. It also projects that it will be supported solely by gross receipts from its operations.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Revenue Ruling 73-127, 1973-1 C.B. 221 holds that a nonprofit organization that operates a retail grocery outlet and allocates a small portion of its earnings to provide on the job training to hard core unemployed individuals does not qualify for exemption from income tax. It was ruled that although the nature of the job training in this case is primarily on the job training and thus requires the existence of an operating business as its campus, the size and manner of the operation of the store as a retail grocery outlet is in itself an independent objective of the organization. It is conducted on a scale larger than is reasonably necessary for the performance of the organization's training program and was not intended to, nor does it fact, serve solely as a vehicle for carrying out the training program of the organization.

In Revenue Ruling 72-369, 1972 - 2 C.B. 245, exemption was denied to an organization formed to provide managerial and consulting services at cost to unrelated tax-exempt organizations for the purpose of improving administration of their charitable program. The ruling states that the furnishing of services at cost lacks the donative element necessary to classify the activities as charitable; and therefore, the organization is not operated exclusively for exempt purposes under section 501(c)(3).

The Federation Pharmacy Services Inc. V. Commissioner, 625 F. 2nd 804 (1980), affirming Tax Court, 72 T.C. 687 (1979), in which the appellate court held that a pharmaceutical service operated by a non profit organization was not exempt as a charitable organization because it was operated for a substantial commercial purpose. The service was organized to provide the general public with pharmacy services, and it provided special discount rates for handicapped and senior citizens in its area. The service was not committed to providing any drugs below cost or free to indigent persons; and therefore, although its services did improve health in the area, it was primarily a commercial venture operated in competition with other area pharmacies.

Like the organization described in Revenue Ruling 73-127, your janitorial and print shop activities are directed at the operation of services under contract for a fee. The operation of these activities with a permanent staff is not a recognized charitable activity.

Like the organization described in Revenue Ruling 72-369, your organizations provides a service to unrelated organizations for a fee. The organization provides these services at costs that include wages, benefits plus 7%.

Like the organization described in the aforementioned court case, your organization is not committed to providing services below cost or free to indigent persons, it is primarily a commercial venture operated in competition with other area business.

Although there are some charitable and educational purposes, we hold that you are not organized and operated exclusively for purposes stated in Section 501(c)(3) of the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

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 this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

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 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 within the Internal Revenue Service."

Sincerely yours,

Harold J. Hoff
District Director

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Enclosure: Publication 892