

Internal Revenue Service

Department of the Treasury

District  
Director

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date: MAR 13 1990

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you may qualify under section 501(c)(4) or 501(c)(6). If you would like to be considered for exemption under another subsection, please file Form 1024.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED]  
District Director

Enclosures: 3

ENCLOSURE 1

[REDACTED]

FACTS

[REDACTED], was incorporated under the Laws of the State of [REDACTED] on [REDACTED]. The Articles of Incorporation indicate the following purposes:

"To ensure that [REDACTED] functions now and in the future as a center for economic, social and cultural development for [REDACTED] County. Through educational programs and research, [REDACTED] will accomplish this by improving the level of organization and planning in downtown [REDACTED] which lessens the burdens of government, by improving the appearance of the downtown through the development of its existing historical character, which combats community deterioration; by aggressively seeking out those businesses, associations and organizations that meet the communities' economic, social and cultural needs, and by publicizing these efforts in order to broaden the Program's base of support."

The application filed with [REDACTED] through [REDACTED] states that the current economic condition of the community is best described as stable.

The Corporation will be financed by private donations and grants from the [REDACTED], the City of [REDACTED], and the [REDACTED] County Fiscal Court. It is anticipated that local government's contributions will increase in the next six years.

The Program will follow the National Main Street Center's "Four Point Approach" to revitalization. The four points are: Organization, Promotion, Design, and Economic Restructuring. Each of these areas will be directed by a Committee.

The Organization Committee is producing a brochure to describe the goals and objectives of the Program. The brochure will be an important part of the fundraising efforts. This committee also makes presentations to the Chamber of Commerce, the Merchants Association, etc., to educate the public about the program.

The Promotions Committee will work to compile an annual calendar of events to catalogue all the events of schools, churches, civic organizations, the Downtown Merchants Association, and the Chamber of Commerce. This Committee also plans to develop a logo and slogan for the community. They plan to provide artwork for banners that announce the antique car show and provide banners to create a lively, festive appearance in the central business district.

The Program Manager (a paid position) will assist the Retail Merchants Association in its marketing and promotional efforts. The Manager will write press releases about downtown, including its architecture, events, and merchandise. Publicity will be sent to neighboring towns to attract visitors.

The Design Committee is in the process of conducting a survey of downtown space. The results of this survey will be provided to any interested group or individual. The Design Committee plans to make recommendations for upgrading parking and traffic flow, downtown signage, sidewalks and streetlights, the utilization of space, and appropriate design in the Central Business District.

The Design Committee also plans to sponsor seminars, walking tours, and lectures to increase the public's awareness of the significance of the architecture of downtown [REDACTED].

The city government has already used a HUD Community Development grant to prepare a "Downtown Plan."

The Economic Restructuring Committee is reviewing existing market surveys and developing new market data. They plan to develop a computer database that categorizes available space in the central business district and make that information available to the public. The space will be categorized by current use, size, rent, and so on.

This Committee will develop a package of informational materials that will be useful to individuals seeking to establish enterprises in [REDACTED]. The Program intends to plan for the growth of the Central Business District and to direct that growth, if possible, in ways that are consistent with the Master Plan.

In addition to the four areas recommended by the national Main Street Program, you have formed a Tourism Committee. This Committee plans to develop special attractions in [REDACTED], and market them to a wide audience. You plan to create high-quality promotional materials, target specific market segments, and identify and develop attractions and amenities for visitors. One of your brochures indicates that you plan to help several Bed and Breakfast Inns get started.

The Summary provided with your letter of [REDACTED] states that you believe that this organization provides education on subjects that are useful to the individual and beneficial to the community. In addition, you claim to "lessen the burden of government" by collecting and disseminating information which eventually leads to increased tax revenue to the City.

LAW

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 or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states 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) of the Code. 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)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest. To meet this requirement that it serve a public purpose, an organization must establish that it is not organized or operated for the benefit of private interests.

The Supreme Court of the United States has held that a better business bureau is not exclusively educational or charitable. Its activities are in part aimed at promoting the prosperity and standing of the business community even though there is benefit to the public. This is a substantial private purpose that precludes exemption under section 501(c)(3) of the Code. Better Business Bureau of Washington D.C., Inc. v United States, 326 U.S. 279 (1945).

Revenue Ruling 75-286, 1975-2 C.B. 210, provides that a nonprofit organization formed to preserve and beautify the public areas in a block, thereby benefiting the community as a whole as well as enhancing property rights, will not qualify for exemption under section 501(c)(3) of Code but may qualify under section 501(c)(4).

Revenue Ruling 77-111, 1977-1 C.B. 144, provides that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under section 501(c)(3) of the Code. Similarly, an organization whose purpose is to revive retail sales in an area of economic decline by constructing a shopping center does not qualify for exemption.

A nonprofit organization formed to provide low-cost financial assistance to business enterprises in economically depressed areas may be exempt under section 501(c)(3) of the Code. In selecting recipients for aid, the organization identified particular undertakings that filled a community need and offered the greatest potential community benefit. Preference was given to business that provided training and employment opportunities for the unemployed or under-employed residents of the area. See Revenue Ruling 74-587, 1974-2 C.B. 162.

Revenue Ruling 85-2, 1985-1 C.B. 178, holds that a determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually "lessen" such governmental burden.

To determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. Whether an organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances.

#### ANALYSIS

The Corporation contends that it qualifies for exemption because it will combat community deterioration. It is further claimed that the subjects on which education is provided are useful to the individual and beneficial to the community. In addition, the corporation claims to "lessen the burdens of government" by collecting and disseminating information which eventually leads to increased tax revenue to the City.

Although the accomplishments of the Corporation's goals may have a secondary effect on community education and increased tax revenue, the major activities of market and space surveys, community advertising, and economic development provide an immediate benefit to area businesses. The City of [REDACTED] has not been designated as an economically depressed area. There are no plans to limit services to the unemployed or low-income population.

Increased tourism will directly promote the prosperity and standing of the business community.

#### CONCLUSION

The organization provided no evidence that the City of [REDACTED] considers market and space surveys and community advertising to be an ordinary burden of government.

The Corporation carries on a variety of activities aimed at improving the appearance and business climate of the Central Business District of [REDACTED]. Although some activities may be educational or charitable, there is a substantial benefit to the businesses of the area. Relieving the government's burdens in the areas of parking and traffic flow are very minor when compared with your other proposed activities. The Central Business District will benefit directly from the general improvement in the area's appearance and from the marketing of the area. There are no conditions which suggest that those who receive these benefits are of a charitable class. As the Supreme Court held in Better Business Bureau v. United States (supra), the provision of benefits to general businesses preclude exemption as an exclusively charitable and/or educational organization.

Therefore, the Corporation is not described under section 501(c)(3) of the Code. Exemption is denied.