

INTERNAL REVENUE SERVICE  
c/o McCaslin Industrial Park  
2 Cupania Circle  
Monterey Park, CA 91755

DEPARTMENT OF THE TREASURY  
Western Key District

CERTIFIED MAIL

Date: MAR 20 1989

[REDACTED]

Employer Identification Number:

[REDACTED]

Person To Contact: ID Number:

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply To:

[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c) (3) of the Internal Revenue Code (Code). Based on the information submitted, we have concluded that you do not qualify for exemption under Code section 501(c) (3).

**FACTS:**

The information submitted disclosed that you sent us two sets of articles of incorporation and one complete application, Form 1023 for [REDACTED] and the first page of another Form 1023 for [REDACTED]. [REDACTED] was incorporated on [REDACTED], Charter number # [REDACTED]. Even though the organization submitted a certificate of forfeiture on [REDACTED], there is no evidence that the organization dissolved its corporate status. The second set of articles of incorporation is for [REDACTED] which was incorporated on [REDACTED], Charter number # [REDACTED]. This corporation was incorporated before the forfeiture by the state. There are two separate legal entities using the same EIN and claiming exemption as one organization. Per response dated [REDACTED], the organization sent us a partially complete Form 1023 for [REDACTED]. The organization subsequently submitted information that [REDACTED] is the organization which they wish to exempt applying for exemption and submitted the rest of Form 1023 application for exemption for [REDACTED].

Your purposes are to promote the collecting of antiques and art for the Houston area public, thereby enhancing the long term sales and profitability of the individual businesses of [REDACTED] members.

The activities of your organization are:

- (1) Annual antique show;

- (2) Free lecture to the public on antiques at the annual antique show;
- (3) Meeting throughout the year to plan the antique show.

Support is derived from:

- (1) Membership dues.
- (2) Advertising income.
- (3) Booth rental to exhibitors.
- (4) Admission to the antique show.

#### ISSUE:

Does the organization qualify for exemption from federal income tax as an organization described in Code section 501(c) (3)?

#### LAW:

Section 501(c) (3) of the Code provides that a corporation, community trust, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, no part of the net earning of which inures to the benefit of any private shareholder or individual, no substantial part of activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

Section 1.501(c)-1(a)(1) of the Income Tax Regulations (Regs) provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be 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.

Section 1.501(c) (3)-1(d) (1) (ii) of the Regs states "it is necessary for an organization to establish that is not organized or operated for the benefit of 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."

A cooperative art gallery formed and operated by a group artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3) of the Code. Revenue Ruling 71-395.

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

## ANALYSIS AND CONCLUSION:

In order to qualify under Code section 501(c)(3), an organization must be organized and operated exclusively for one or more purposes specific in that section. If the organization fails to meet either organization or operational test, it is not exempt, per regulation section 1.501(c)(3)-1(a)(1). To meet the operational test, the organization must engage in activities furthering public purposes rather than private interest. It must not be operated for the benefit of designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly by such private interest.

The primary activity of your organization is to produce annual antique shows and sales for the benefit of your members. Only certain dealers are allowed and requested to participate in the shows and sales. Your primary source of funding comes from profit from its antique show. From the period from [REDACTED] to [REDACTED], the organization has retained 0% of commission from sales of antiques at the show. These [REDACTED] participating antiques dealers has received 100% commission on sale of antiques and directly benefited by the exhibition and sale of their antiques. As in the case in Revenue Ruling 71-395, the artists are directly benefited by the exhibition and sale of their works, and the primary activity of the organization is serving the private interests of those dealers whose inventory is displayed for sale. The educational and charitable activities are insubstantial and not the primary purpose of your organization. The primary purpose and your activities are to serve the private interest of your members to increase profits.

It is the position of the Internal Revenue Service that your organization does not qualify for exemption from Federal Income Tax under section 501(c)(3) of the Code. Accordingly, you are required to file income tax return on Form 1120 annually with your respective service center. If you are in agreement with this determination, we request that you sign and return the enclosed agreement, Form 6018.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals, your request for a hearing should include a written appeal giving the fact, as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing must be held at the office of Regional Directors of Appeals, or if you request, at a mutually convenient District Office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as failure to exhaust available administrative remedies and will then become our final determination. 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."

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

Sincerely yours,

  
  
District Director

Enclosure (s):  
Form 6018  
Publication 892