

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: [REDACTED]

Telephone Number [REDACTED]

In Reference to: [REDACTED]

Date:

NOV 12 1997

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] for charitable purposes. You will engage primarily in activities of promoting educational activities for school children and all other persons interested in zoology by sponsoring group trips to [REDACTED] and in promoting the educational community outreach programs conducted by [REDACTED]. Your objectives are to provide the students and the public with rich and rewarding experience with animals and to expose them to science, animals, nature and environment. You also plan to create scholarships for students wishing to pursue study in zoology, cooperate with other educational institutions in the development of educational programs and materials related to zoology, and acquire zoological exhibits.

Your officers are [REDACTED] as President and Treasurer, [REDACTED] as Vice President, and [REDACTED] as Secretary. Your officers are also the officers, directors and key employees of [REDACTED] (hereinafter "[REDACTED]"): [REDACTED] is President, Secretary and a director, [REDACTED] is a director, and [REDACTED] is Office Manager. Another officer of [REDACTED] is [REDACTED] as Vice President and Treasurer. [REDACTED] is the sole stockholder of [REDACTED]. In addition to sharing officers and key employees, you share an office with [REDACTED].

[REDACTED] is a for-profit corporation which owns, operates and does business as [REDACTED]. [REDACTED] features a variety of species of animals and offers guided tours, camping, and rides on ponies and a miniature train called the "[REDACTED]." [REDACTED] is open daily to the general public from 10:00 am to 6:00 pm.

Summer camps, for ages 5 through 12, have hours of operation from 8:00 am to 4:00 pm with available extended hours.

Access to [REDACTED] is available for daily admission and annual membership fees. Daily admission fees are \$ [REDACTED] for adults and children age 13 and up, \$ [REDACTED] for children (free for age under 2), \$ [REDACTED] for seniors, and a discounted rate of \$ [REDACTED] each person for groups of 20 and up. Train and pony rides are \$ [REDACTED] each. Summer camp charges are \$ [REDACTED] per day or \$ [REDACTED] per week per child with an extra fee of \$ [REDACTED] for every 15 minutes for extended time (7:30 am to 8:00 am and 4:00 pm to 6:00 pm).

Annual membership fees are \$ [REDACTED] for individuals, and \$ [REDACTED] for a family of four with \$ [REDACTED] for each additional family member. Discounted camping fees are \$ [REDACTED] per day and \$ [REDACTED] per week per child.

[REDACTED] was originally named [REDACTED] when [REDACTED] and [REDACTED] opened it in [REDACTED] with only a few domestic animals. It was opened to the public on a limited basis mainly for birthday parties.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for charitable or other exempt 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(c)(1) of the Income Tax 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 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(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, it is necessary for an organization to establish that it 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.

In est of Hawaii, A Hawaiian Corporation v. Commissioner, 71 T.C. 1067 (1979), the Tax Court denied exemption under section 501(c)(3) of the Code to an organization that was essentially controlled by a separate commercial entity and was engaged primarily in providing instructional programs under licensing

arrangements with the commercial entity. Although the organization had an educational purpose, it is part of a franchise system which is operated for private benefit and its affiliation with this system taints it with a substantial commercial purposes.

In International Postgraduate Medical Foundation, T.C.M. 1989-36, the court held that the Service had properly revoked the 501(c)(3) status of an organization that did not operate exclusively for exempt purposes. The court based its conclusion, in part, on the fact that a related for-profit corporation had benefited substantially from the manner in which the activities of the exempt organization were conducted. In these circumstances, the court said, an organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code, even though it furthers other exempt purposes.

In this case, the organization had the substantial non-exempt purpose of benefitting a for-profit travel agency controlled by parties related to the organization. The organization had been formed and was controlled by an individual who had previously operated all tour operations through a for-profit entity. The travel agency received substantial fees from customers attending tours promoted by the organization, under a non-competitive arrangement.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), aff'g T.C.M. 84-349, the court upheld denial of 501(c)(3) status to an organization because it operated for the non-exempt purpose of providing a market for the services of a for-profit fund-raising firm owned by parties related to the organization. Key facts considered by the court included that employees of the for-profit firm devoted two-thirds of their time to the organization's business; that the majority of the organization's income went for payments to the for-profit firm; and that the controlling parties profited from the relationship. The court rejected the organization's argument that the crucial inquiry was the reasonableness of the contracts involved, saying that the "critical inquiry" was instead "whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church," 765 F.2d at 1392 (citing est of Hawaii v. Commissioner, supra).

In Better Business Bureau of Washington, Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt

purposes exclusively. This means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption, regardless of the number and importance of truly exempt purposes.

In Leon A. Beechly Fund, 35 T.C. 490, 518 (1960), revocation of a foundation's exempt status was sustained even though the foundation emerged from the transactions without financial loss. The court noted in that case that the foundation's primary objective in entering into the transaction was to benefit the stockholders of a particular business corporation with the "objective of ultimately benefitting charities running a poor second." The test was not ultimate profit or loss, but whether, at every stage of the transaction, those controlling the exempt organization guarded its interests and dealt with related parties at arm's length.

To qualify for exemption under section 501(c)(3) of the Code, you must establish that you are both organized and operated exclusively for one or more of the purposes described in that section and that you do not primarily serve the interests of private individuals.

Our analysis of your case indicates that you are engaged primarily in promoting or providing a market for the commercial services of [REDACTED] or its sole business, [REDACTED]. You are able to accomplish this by being operated and controlled by the officers of [REDACTED].

By engaging primarily in promoting the business of a related for-profit entity, you are primarily engaged in activities that are not in furtherance of an exempt purpose. As such, you are not operated exclusively for an exempt purpose pursuant to section 1.501(c)(3)-1(c)(1) of the regulations.

Further, by serving primarily the private interests of [REDACTED] or [REDACTED] rather than public interests, you are once again not operated exclusively for an exempt purpose. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. See also Better Business Bureau, supra.

Your are indistinguishable from the organizations described on est of Hawaii, Church by Mail, Inc. and International Postgraduate Medical Foundation, supra. In these cases the courts held that the organizations did not qualify for exemption because they were engaged in substantial non-exempt activities and served the interests of those for-profit entities.

Therefore, we conclude that you are not exempt under section 501(c) (3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this 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 judgement 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 30 days, this ruling will become final and copies will be forwarded to your key District Director in Dallas, Texas. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely,

[Redacted Signature]

[Redacted Title]
Chief, Exempt Organizations
Technical Branch 3