DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200151061

Date: SEP 28 2001

Contact Person:

Identification Number:

Telephone Number:

Uniform Issue Code:
513.04-00

T:EO:B2

Employer Identification Number:

Dear Applicant:

This letter is in reply to the letter from your authorized representative dated October 2, 2000, in which you requested rulings with respect to the tax consequences of your proposed construction and operation of an 18-hole golf course facility.

You are an organization that is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Our records show that your status as a public charity, rather than a private foundation, has not been officially determined, but that your principal activity is the operation of a school. You state that you are a residential school that is designed to rehabilitate court-referred juvenile males, and all candidates for admission must first be referred by Juvenile Court or other appropriate social service agencies. A typical profile of a juvenile male referred and accepted by you would be a group oriented, socialized delinquent, from a low-income often single-parent household located in an economically depressed neighborhood, who is without severe psychological and emotional problems.

Your philosophy is predicated upon the basic principles that your students have great personal endowment and have unlimited potential to learn and grow, and that although they may have done bad things, they are not intrinsically "bad boys." Accordingly, you promulgate two basic mandates for your students: (1) to change behavior from "anti-social" to "pro-social," and, (2) to develop life skills that will help sustain this change in behavior. In order to accomplish these mandates, your comprehensive educational program encompasses extensive instruction in three critical areas: pro-social behaviors, academic skills, and vocational skills. You believe that successful education in all these areas is the key to successful rehabilitation and the primary deterrent to further involvement in the court system.

Your vocational education and career development department ("VED") performs the vocational assessment and training of all your students and works with other departments for subsequent placement of each student. Your vocational program includes numerous separate vocational areas, each designed to help rehabilitate adjudicated youth by reinforcing pro-social behaviors and teaching job skills applicable to today's employment marketplace.

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VED vocationally evaluates each student upon his matriculation at your school. You state that, for example, VED evaluates aptitudes such as computer skills, eye-hand-foot coordination, verbal aptitude, motor coordination, writing skills, math skills, manual dexterity, and prior work experience (if any). You state that in addition to receiving a comprehensive evaluation of his skills, each student also visits all of your vocational shops in order for him to determine and express his vocational training preferences. Each student chooses his first three preferences for vocational shop placement, and VED places each student in a particular vocational area by matching that student's preferences with the student's previously evaluated skill set. You currently offer vocational training in the following areas: art and design, audio recording and engineering, auto body repair, automotive technology, barbering, ceramics, graphic arts and offset printing, journalism, mechanical and architectural drafting, opticianry, photography, radio broadcasting, residential carpentry, retail management, video production, welding, and golf course maintenance.

You state that in each vocational training program, students experience vocational education through real life work situations that not only teach vocational life skills, but also foster pro-social behaviors. The vocational instruction provides each student with a comprehensive vocational training program that is designed to prepare that individual with both the pro-social behaviors as well as the vocational life skills necessary for employment in a related field upon completion of the particular vocational program. You state that your 15 operational vocational shops (excluding golf course maintenance) are all at capacity and, accordingly, your vocational programs have had a waiting list of six months or longer for hands-on experience. You seek to reduce this lag time between admission and commencement of vocational training. You state that the golf course maintenance vocational program, when fully operational, will provide a minimum of 100 additional slots for the hands-on vocational training that students will need in order to acquire the marketable vocational skills and the pro-social behaviors that are crucial to obtain employment in the golf industry. The recently constructed golf course teaching facility on your grounds is adjacent to the campus where the students reside.

You state that the primary goal of the golf course maintenance vocational program is to rehabilitate the adjudicated students by preparing them for future employment in the golf industry through reinforcing pro-social behaviors and training them in all aspects of maintaining a regulation-size golf course facility. In addition to the hands-on training, students are taught in the classroom the complementary academic skills needed to master job skills. The vocational instructors teach the computer science aspects of golf course management, which include tee time reservations, golfer's handicap system, purchasing of supplies, inventory, irrigation, and fertigation. You state that the students' academic studies also include mathematics and basic chemistry along with communications and public relations skills. You state that although the main focus of this vocational training program is "golf house operations and turf management," students who receive this training will also be prepared for employment outside the golf course industry, such as spray technology, landscaping, irrigation technology, arborist management, farming, retail management, and industries relating to pro shop functions.

Your golf maintenance training program is directed by two of your instructors: the lead instructor responsible for the "golf house operations" aspect of the program has also been the coach of your student golf team for 12 years, and the lead instructor responsible for the "turf management" aspects of the program has an undergraduate degree in turf management. You

state that unlike most public and private golf courses, you do not employ a "golf pro," there will be no "golf instructional packages" for sale to the general public, and there will be no employees at the golf course facility other than the vocational instructors. Once the program is fully operational, the entire facility will be maintained by your golf maintenance students who will perform all work in their training capacity in conjunction with and under the supervision and direction of vocational instructors. You state that the vocational instructors will teach and train the students in the various components of golf course maintenance, including instructor positions in agronomy, maintenance techniques, spray and irrigation technology, turf mechanics, turf management, and golf house operations. As with all of the vocational programs, the students will be paid only a *de minimis* stipend on the days that they actually practice their golf course maintenance skills through hands-on work on the course under the supervision and direction of the vocational instructors. You state that as with all your vocational education training, this program is designed to be completed by a student in approximately twelve months, and consistent with your policy of employing only vocational instructors at the golf course, no student will stay on as an "entry level employee" at the golf course after the completion of his training. When a student completes the training program, your placement department will assist him with finding employment in or near his home location at a regulation size golf course.

Your golf maintenance-training program is conducted on a new regulation size teaching lab-facility that includes an 18-hole golf course and warm-up area (the putting green and driving range to be used by golf course players, your golf team and in your intramural activities). You state that a regulation golf course facility provides an opportunity for you to teach and develop job skills ranging from grounds maintenance to golf house operations. Course maintenance, irrigation, turf equipment maintenance, and golf cart maintenance management strategies and demands vary from small courses to regulation size 18-hole facilities. You state that an 18-hole course provides a realistic, true to life environment for instruction that allows the students to actively learn and practice the skills applicable to the total operation of a golf course. You also state that it is imperative that students have an actual "laboratory" for study and practice. Learning to maintain a regulation size 18-hole facility renders the students significantly more attractive to potential employers who generally require "regulation size" golf course maintenance experience. Similarly, many secondary schools in turf management require comprehensive "regulation size" (i.e., 18-hole) golf course maintenance experience as an entrance prerequisite. Finally, you state that fewer than 18 holes would provide significantly fewer available training slots for vocational studies, and that a golf course that is not regulation size (less than 18 holes) may not attract significant course use.

You state that your golf course facility will be open to the public in order to accomplish your two basic mandates for your students. Generating significant actual play of the course is critical in order to provide the students with a facility that consistently needs the variety of maintenance techniques that are taught in the program (i.e., the development of life skills). In addition, use of the course by the general public provides for the interaction that is essential for the development of the "pro-social" skills in the students. In order to teach the variety of skills associated with tournament play, your facility is available for high school and collegiate golf tournaments and charitable golfing events, but is not available for rental for traditional outside events such as weddings, banquets, or business meetings. You state that your greens fees are competitively priced with other public golf sites in your area.

You state that although public golf courses generally do not close their golf sites for vocational training, the uniqueness of your golf course will allow you to close the course regularly to teach the students the specific turf management skills during daylight hours. Students will practice accommodating requests for starting times in a manner that allows for uninterrupted play and alleviates community concerns regarding traffic control. Students will generate Tee Sheets to be used by the Starter (a student in training) to further facilitate the spacing of play. Your tee time systems will create limited play at the golf site. Although most public courses have starting times every seven to ten minutes to generate maximum profits, your course currently generates tee times approximately 15 minutes apart. You state that the longer tee time spacing will reduce the percentage of golfers at your course on any given day by 35% to 50% compared to other public courses in the area. Accordingly, you plan to do only minimal advertising of the course, if any. However, you state that the limited number of golfers will create a realistic environment necessary to teach the students how to maintain and manage the golf site (e.g. sufficient actual use of the course to necessitate many of the "turf management" applications) and will also create just enough public involvement to teach the students pro-social interaction skills. This limited number of golfers will create a "true to life" experience for on the job training. Therefore, you believe that the limited number of golfers will allow for sufficient play of the course that is necessary to fulfill both the vocational and socialization objectives of the program. Because your students all attend the school by virtue of court adjudication, members of the public will not golf with the students on a regular basis. However, students may team with vocational instructors and members of the general public for occasional tournament play (such as a charitable benefit golf event).

You state that a golf course maintenance facility is utilized for storage of golf carts and turf-grass maintenance equipment. In addition, this building houses the classrooms for student instruction, including the computer science aspects of golf course management as well as a mechanical shop area for maintaining all course equipment. Also included in the facility is a student-run alcohol-free snack bar, with a limited menu of sandwiches and short order grill items, and a student-run pro-shop with a limited line of golf articles such as tees, balls, gloves, and rental of carts and clubs (e.g. only those articles conceivably necessary for purchase on the day of play). This allows students to receive instruction related to the management of these activities, including sales and purchasing of food and golf items, inventory control, and handling of cash receipts.

You also state that for the past 15 years, you have had an interscholastic student golf team in your athletic program. Your team's practice course, which was also utilized as your home course, was located approximately 20 miles from your campus. Your State Interscholastic Athletic Association matches are required to be played on an 18-hole course, and you are a member of that association. Accordingly, your new regulation-size facility will also serve as the home course for your golf team for both practice and matches.

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

Section 1.501(c)(3)-1(d)(3)(i)(a) of the Income Tax Regulations provides that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of organizations described in section 501(c).

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain allowable deductions and modifications.

Section 513(a) of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of the function constituting the basis of its exemption.

Section 1.513-1(d)(2) of the regulations provides that trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes; and it is "substantially related" only if the causal relationship is a substantial one. The regulation continues that for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Rev. Rul. 73-127, 1973-1 C.B. 221, holds that an organization that operates a cut-rate retail grocery store in a poverty area, and allocates four percent of its earnings for use in a job training program for the hard-core unemployed does not qualify for recognition of exemption under section 501(c)(3) of the Code.

Rev. Rul. 73-128, 1973-1 C.B. 222, holds that an organization that manufactures and sells a line of toy products as part of its education and vocational training program for the unemployed and the under-employed qualifies for recognition of exemption under section 501(c)(3) of the Code.

Rev. Rul. 75-472, 1975-2 C.B. 208, describes a halfway house facility that provided room, board, therapy, and counseling for persons discharged from alcohol treatment centers after receiving short-term intensive care for alcoholism. As part of its program, the organization operated a furniture shop to provide transitional employment for residents of the halfway house. The revenue ruling concludes that the operation of the work shop was not the conduct of unrelated trade or business within the meaning of section 513 of the Code, explaining that the operation of the work shop in the manner described affords the residents gainful employment and enables them to develop the ability to cope with emotional problems and thus contributes importantly to the organization's exempt purposes.

Rev. Rul. 76-94, 1976-1 C.B. 171, holds that the income from a retail grocery outlet operated as part of a therapeutic program for emotionally disturbed adolescents was exempt

from unrelated business income tax. The business activity contributed importantly to the exempt purposes of the psychiatric treatment program because operating the shop enabled troubled teenagers to become involved with society, to assume responsibility, and to exercise business judgment, all of which contributed to their emotional rehabilitation and reintegration into the community. The business activity, based on the facts and circumstances, was operated on a scale no larger than reasonably necessary to accomplish the exempt function.

Pursuant to section 1.513-1(a) of the regulations there are three elements that must be present in determining whether amounts received by an exempt organization constitute unrelated business taxable income under section 512(a)(1) of the Code. First, the income must be from a trade or business; second, the trade or business must be regularly carried on; and, third, the trade or business must not be substantially related to the organization's exempt purpose or function.

In this case, operating an 18-hole golf course is a trade or business under section 513(c) of the Code, as it is an activity carried on for the production of income from the sale of goods or the performance of services. Also, the operation of the golf course will clearly constitute a regularly carried on activity within the meaning of section 512(a)(1). Thus, the available information indicates the first two elements (trade or business and regularly carried on) are present. The remaining issue is whether the operation of the golf course is substantially related to your exempt purpose as required by section 513.

To determine whether the operation of a golf course by an organization described in section 501(c)(3) of the Code is substantially related to its exempt purpose, it is necessary to ascertain the organization's primary purpose in conducting such an activity. Where the primary purpose behind operating a golf course is to further the organization's exempt educational purpose, such an activity meets the substantially related test, and income earned therefrom is not subject to the tax imposed under section 511. It is only where the primary purpose behind operating a golf course is unrelated to an exempt purpose that amounts derived from conducting this activity are subject to tax. Thus, it is necessary to examine the nature, scope and motivation for operating a golf course in making a determination as to whether there is a connection between the activity and the accomplishment of an exempt purpose. In accordance with section 1.513-1(d)(2) of the regulations, in each case such a determination depends upon the facts and circumstances involved.

Here, the nature of the educational program you provide to the juveniles who are referred to you consists of vocational education and career development. Your vocational program includes a wide variety of vocational areas such as printing, auto body repair and welding, all of which provide real work situations. Like your other vocational areas, the golf course program is designed to help rehabilitate the students by preparing them for future employment in the golf industry and possibly outside the golf industry in areas such as landscaping, irrigation technology and retail management. Although your golf course is regulation size and open to the public, there are facts that distinguish your golf course operation from that of a regular commercial course. Your distinguishing features include the absence of a "golf pro," the lack of "golf instructional packages" for the public, no employees other than instructors, maintenance performed only by students who receive a small stipend, closing of the facility for periodic

instruction, limited play through longer tee time spacing, and minimal advertising of the course, if any.

From the facts you have presented, as outlined above, it is clear that your golf course program is a part of your exempt vocational training program, and is not being operated on a scale larger than necessary to accomplish your exempt educational purpose. Like the organizations discussed in Rev. Ruls. 73-128, 75-472, and 76-94, all supra, your operation of a golf course in the manner described contributes importantly to the accomplishment of your exempt purpose in accordance with section 1.513-1(d)(2) of the regulations. Rev. Rul. 73-127, supra, is distinguishable, as the organization described therein operated its grocery store on a scale larger than reasonably necessary for the performance of its training program, and such activity did not, in fact, serve solely as a vehicle for carrying out the training program.

Accordingly, based on the facts and information submitted and the representations made, we rule that

(1) The construction and operation of the 18-hole golf course facility, and related snack bar and pro-shop, in conjunction with your golf course maintenance vocational program is substantially related to your exempt purpose within the meaning of section 513 of the Code, and

(2) The income therefrom is not subject to unrelated business income tax under section 511 of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. A copy of this ruling is being forwarded to the Ohio TE/GE Customer Service office.

Except as we have specifically ruled above, we express no opinion as to the federal income tax consequences of the transactions described above under any other provision of the Code.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely yours,

(signed) Terrell M. Berkovsky
Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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