



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Date: July 29, 2004

Contact Person:

Uniform Issue List Number: 501.03-20

Identification Number:

Telephone Number:

Employer Identification Number: *****

Dear :

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

You are a nonprofit corporation incorporated in *** on ***. Your Articles of Incorporation state that you are organized for religious and educational purposes. Your Bylaws provide that you are organized to support the retirement plans and programs of a state convention of churches. Your Bylaws state that you and the religious body are "separate and distinct entities."

Your application for exemption states that your purpose will be to adopt, establish, maintain, and administer one or more employee benefit plans, including a 403(b) retirement plan and potentially a medical insurance program, for exempt organizations affiliated with a convention of churches in your state. Your application states that your organization currently has a three member Board of Directors, all of whom were appointed by the Treasurer of the state convention of churches.

Your application for exemption states that, at the present time, your organization "is in its organizational stages and has not been activated, nor begun doing business."

Your letter of May 26, 2003, states that differing opinions on theological, political, and governance issues have arisen in the relationships between your state's religious convention's members and the larger religious convention's members, such that you may need to be prepared to continue necessary employee benefits to the members of your own state convention who may, in the future, be compelled by their religious beliefs to withdraw from the existing larger church convention with its long-established system of employee benefits now serving your members. Wanting to avoid a religious schism, you note that you "sincerely hope that (this) applicant organization will never be activated." Your letter explains: "Given the importance of (this) corporation dealing with the retirement plan assets of potentially thousands of employees it was

deemed prudent to ensure that all legal requirements are met before assets are transferred and the corporation begins doing business. As a result, the organization respectfully requests a favorable determination from the Internal Revenue Service of the organization's tax-exempt status before the corporation begins doing business." Your letter, in Appendix 1, lists the nine members of a task force to assess the need for activating this applicant.

Your letter of May 26, 2003 states that you have no employees, no offices, and no assets. Your Form 1023, Part IV, Financial Data, is submitted with proposed amounts that would be "(Assuming Activation of the Corporation)."

Your application for exemption also states that you intend to be a publicly supporting organization under section 509(a)(3) because if and when you are activated, your Bylaws will be amended to provide that two-thirds of your governing body will be appointed by the supported convention of churches in your state. However, your Bylaws, as of now, before activation, reflect merely that your trustees must be members of churches in the supported convention of churches in your state.

Section 501(c)(3) of the Code provides, in pertinent part, for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for religious and/or charitable purposes, provided that no part of the organization's net earnings 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 of such exempt purposes specified in section 501(c)(3) of the Code.

Section 509(a)(3) of the Code provides, in part, that the term "private foundation" does not include an organization which is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified exempt organizations described in sections 509(a)(1) and 509(a)(2) of the Code; and is operated, supervised, or controlled by or in connection with one or more organizations described in sections 509(a)(1) and 509(a)(2).

Section 1.509(a)-4(e)(1) of the regulations provides that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization.

In general, an organization that applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular section of the Code under which it has applied. See Kenner v. Commissioner, 318 F2d 632 (7th Cir. 1963), and Cleveland Chiropractic College v. Commissioner, 312 F2d 203, 206 (8th Cir. 1963).

Revenue Procedure 90-27, 1990-1 C.B. 514, states, in section 5.02, that: exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the

section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded."

Revenue Procedure 2004-4, 2004-1 I.R.B. 125, 136, provides that, in section 8.01, the Service may decline to issue a letter ruling or a determination letter whenever warranted by the facts or circumstances of a particular case, and that, in section 8.02, that a determination letter will not be issued on alternative plans of proposed transactions or on hypothetical situations

The information you have submitted with your application for exemption fails to establish that you are, or will be, "operated exclusively" for exempt purposes within the meaning of section 501(c)(3) of the Code because we are not able to make a determination as to when you will, if ever, meet the operational test as required by section 1.501(c)(3)-1(c)(1) of the regulations, cited above. Since no exempt activity will be started until you are activated, you will not become operational and you will not perform exempt activities until the time when, and if, a possible religious schism or split might occur between you and a national convention of churches. The time frame for you to become operational is extremely indeterminate, and cannot be ascertained at this time. Thus, we cannot, at this time, determine that you will clearly meet all the operational requirements under section 501(c)(3), as required by Revenue Procedure 90-27, cited above.

For the above reasons, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code because you have failed to establish that you are, or will be, "operated exclusively" for exempt purposes.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

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

Further, the operational test under section 509(a)(3) of the Code can only be met if an organization actually engages solely in activities supporting or benefiting the section 509(a)(1) or (2) organizations for which it is organized to benefit or support. Because you are not currently operational, and you can not specify or provide evidence of when you expect to become operational, you do not meet this operational requirement. Thus, you would be deemed to be a private foundation, rather than an organization described in section 509(a)(3), if you were to be recognized as exempt under section 501(c)(3) at this time.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to

file a proper power of attorney and otherwise qualify under our Conference and Practices 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 United States Court of Federal 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 we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 1-877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE SE:T:EO:RA:T:2

1111 Constitution Avenue NW
Washington DC 200224

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements