



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: January 31, 2008

Number: 200817045

Release Date: 4/25/2008

UIL: 501.33-00
501.35-00
501.36-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4038 (CG) (11-2005)
Catalog Number 476328



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

Date: NOV 26 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M = Academy
O = State
Q = Date

UIL #'s:

501.33.00
501.35.00
501.36.00

Dear Applicant:

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

Issues

- Does M qualify for exemption under section 501(c)(3) of the Code?
- If, arguendo, M could qualify under section 501(c)(3), does M qualify for exemption under section 509(a)(1) and 170(b)(1)(A)(ii) as a school?

Facts

M was incorporated on Q in the state of O as a corporation for religious purposes, and, according to the Articles of Incorporation, "The specific purpose of this corporation is to operate as a religious home school independent study program". M states that it has qualified under the laws of O as an Independent Study Program and has filed an affidavit with O that M is a Private School.

In order to be exempt, M must meet the requirements under Internal Revenue Code Section 501(c)(3). In order to be classified as a school, M must meet the requirements under Regulation 170(b)(1)(A)(ii) and Rev. Proc. 75-50, all as set forth in the Law section following.

M, according to the narrative of activities supplied with M's initial application, "...provides record keeping services for those who use it as their Independent Studies Program Provider. ...(M)... files the required affidavits with the appropriate agencies as necessary. ...(M)...maintains a system to provide communications between those affiliated with...(M)." Later in the application M states "The Primary function of ...(M)...is to function as an Independent Study Program for Elementary and Secondary School Students".

Later, in an undated response received March 13, 2007, M stated "The sole activity of this organization is to provide services and aid to members for a nominal fee..." and "... (M)...is not providing services to other non-profit organizations but is instead providing services below cost to individual members (families).and "... (M)...functions as a virtual private school, a substantial amount of the materials and labor are currently donated by members and the director/officers. Additionally the members provide their own curriculum and materials and most of the teaching so that the bulk of the expense is at the home level." On M states "We provide record keeping services, park days, field trips, fun school wide activities, parent led co-ops as well as junior high and high school level classes." M provided a copy of its ISP Parental Agreement which states at item 1) "We understand that the school cannot offer legal immunity and is only providing school services to assist parents in the schooling of their children" and at item 2) "We realize that although the school is keeping our children's records, it is in no way responsible for their actual education and at item 6)c., "Parents will provide and pay for their own curriculum." In another document which M requires parents to sign headed SUPPORT PARENTAL AGREEMENT, M repeats statements 1) and 2) from the ISP Parental Agreement.

According to a document provided March 13, 2007 entitled EXPLANATION OF FEES, M charges a "Full ISP Membership" fee of \$ per year for full access to "...our email lists, field trips, school sponsored classes and school activities such as Thanksgiving Feast, Easter Party and special events and our school curriculum library. Our school also provides services such as signatures for work permits, auto insurance and other documents that require an official school seal". M also charges a "Support Group Membership" of \$ per year which includes all of the services above except for the use of the school seal.

According to a document provided March 13, 2007 entitled PARENT RESPONSIBILITIES CONTRACT, parents are required to sign a statement "As a parent of a child/children who participates in ...(M)...classes: I understand and acknowledge that the parents will remain the primary source of learning for all of their child/children. Also, "I understand and agree that the host home is not a partner, sponsor, member, teacher, officer, attendant, supporter or affiliate of ...(M)...". and "...our goal is to leave the host home in the same or better condition than when we arrived", and, "I understand that I am responsible for any...issues brought to my attention by the tutor..."

According to a document provided March 13, 2007 entitled CLASS SCHEDULE AND DESCRIPTION, M provided as an attachment a list of 15 classes, each showing the name of a tutor. Concerning these classes M said "As an independent study/virtual school these classes represent opportunities for the students to add to their Independent study program..."

Later, in an undated response received March 28, 2007, when asked about these classes M responded "There are currently five (5) classes being offered. The location of these classes, student lists and attendance lists are not required disclosure under ...(O)... Education Code Section..." and "Minimum fees per student and per class are established by the provider (tutor)The payments are made to the tutors who are not employees of...(M)...."

M was asked "For each class you describe as "...additional classes are provided by ...(M)... to students at no cost", please list the class, provide the physical address at which students attend and a copy of the attendance sheet or similar document listing each attendee."

M responded on March 28, 2007 "This is currently one class, the Biblical Philosophy Class. The location of this class, student lists and attendance lists are not required disclosure under ...(O)...Education Code Section...".

M's principal activity is the provision of services to the parents of home school children. Among those services:

- a) Record keeping services for members.
- b) "Field trips" for which M has provide a list of planned trips but not the number of trips actually held nor the names or numbers of student attendees for each trip.
- c) "Parent led co-ops" which M originally had originally failed to define or quantify and subsequently indicated did not exist.
- d) The provision of "supplemental school sponsored classes" offered on M's internet web site only and for which M had not originally provided a copy of each of the internet classes nor a list or number of student attendees of each class. Subsequently, M said that these classes did not exist.
- e) A "referral service" to unrelated tutors. The tutors hold classes for the children of members. These classes are held by the individual tutors at the tutor's homes. The parents pay the tutors directly. M has not disclosed a list of tutors, a list of classes, has not provided copies of course materials, has said that it does not have a relationship with the tutors and has not provided a count and list of student attendees of each class.
- f) A "school seal" for documents requiring a "school seal".
- g) A single class for member's children, "Biblical Philosophy Class". However, M failed to provide a copy of the course, the location at which the course is held, or a list or number of students who attend. M says that this class is provided by a tutor and paid for directly to the tutor. M states that the tutor is an officer of M and such activity would ordinarily be the tutor's personal for-profit activity.

Revenues are primarily from membership fees.

Law

Code Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 501(c)(3) describes, in part, an organization that is organized and operated exclusively for religious, charitable, 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 Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it must be both organized and operated exclusively for one or more of the purposes specified in such section. 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 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 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must be organized and operated to serve a public rather than a private interest and specifically 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.

Internal Revenue Code section 170(b)(1)(A)(ii) defines a school as "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Revenue Rulings: Revenue Ruling 76-384 held that an organization that operates a tutoring service for students on a one-to-one basis in their homes, maintains a small center to test students to determine their need for individual tutoring and employs tutors on a part time basis is not an educational organization of the type described in section 170(b)(1)(a)(ii). Revenue Ruling 69-175 describes an organization formed by the parents of pupils attending a private school exempt under 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to those children whose parents belong to the organization.

Revenue Procedures: Revenue Procedure 90-27 at Section 5.01 says that a ruling or determination letter will be issued 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 the exemption is claimed.

In Better Business Bureau of Washington D.C. Inc v. United States, 328, U.S. 279, CT.D.1650, C.B. 1945 the Supreme Court of the United States said "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any category of charitable under section 501(c)(3) of the Code.

M cites Revenue Ruling 71-529 regarding an organization composed of and controlled by organizations exempt under 501(c)(3) and acts as a financial investment adviser to its exempt members.

M cites Revenue Ruling 72-369 regarding an organization providing managerial and consulting services at cost to unrelated exempt organizations and the organization was held to be not exempt under 501(c)(3).

M cites Revenue Ruling 69-528 concerning an organization formed to provide investment services on a fee basis exclusively to organizations exempt under 501(c)(3) which was held to be a feeder organization under Section 502 of the Code.

M also cites Revenue Ruling 69-175 which states that when a group of individuals associate to provide a cooperative service for themselves, they re serving a private interest

M cites Pierce v Society of Sisters 268 US 510 in favor of a varied curriculum in a case regarding the upholding of an order enjoining appellant public official from enforcing an act that required children to attend public schools.

M cites Wisconsin v Yoder 406 US 205 concerning the granting of certiorari in a case regarding the respondent's conviction for violating Wisconsin's compulsory attendance law. The substance involved whether Amish parents could be forced to send their children to public school and M finds therein support for a varied curriculum. .

M cites Meyer v State of Nebraska 262 US 390 which reversed and remanded a case in which the State of Nebraska forbid the teaching of languages other than English.

Application of Law

The "not more than an insubstantial part of its activities" standard of *section 1.501(c)(3)-1(c)(1) of the regulations* can be understood by reference to Better Business Bureau v. United States, 316 U.S. 279 (1945) which held that an organization which engaged in some educational activity but pursued nonprofit goals outside the scope of the statute was not exempt under *section 501(c)(3) of the Code*. The Court stated that an organization is not operated exclusively for charitable purposes if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to

include inurement, private benefit, and operations which further nonprofit goals outside the scope of section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations calls for operations to serve a public purpose rather than the private purpose of the parent members of M

Section 170(b)(1)(A)(ii) calls for:

- (a) A regularly scheduled curriculum. M indicates that its curriculum is that used by each of its individual member parents. The curriculum of each of the individual parents is, by definition, not the curriculum of M.
- (b) A regular faculty of qualified teachers. M has no faculty but indicates that its faculty consists of each of its individual member parents, of outside and unrelated tutors and of an officer/director who acts in the capacity of an outside and unrelated tutor. The parent members who teach their children and the tutors who are unrelated to M are, by definition, not the faculty of M.
- (c) A regularly enrolled student body. M indicates that children of its members constitute an enrolled student body. The students of the individual members and of the tutors who are not related to M are, by definition, not also students of M.
- (d) Facilities where its educational activities are regularly carried on. M indicates that its facility is the home of each of its members and the home of each of its unrelated tutors. The homes of the parents and of the tutors' who are unrelated to M are, by definition, not the facilities of M.

M is similar to the organization in Revenue Ruling 76-384 denied status as a school and, although M is not an educational organization, it does not qualify under 170(b)(1)(A)(ii) because it does not, on its own, meet any of the four criteria for a school.

M is similar to the organization in Revenue Ruling 69-175 denied exemption as "...a group of individuals (who) associate to provide a cooperative service for themselves.

To the extent that M has not provided information in its correspondence then M is similar to the organizations in Revenue Procedure 90-27 that do not provide sufficient details to permit a conclusion of exemption.

M is similar to the organization denied exemption in Better Business Bureau of Washington DC Inc v. United States in that its purposes are not educational but rather to supply services to each of its individual member parents.

M cited Revenue Ruling 71-529 but M is not similar to the organization described there since it is not composed of and controlled by organizations exempt under 501(c)(3) but rather its members are individual home schooling parents who are, through their membership and the activities of M, relieved of what would otherwise be their individual responsibilities as home schooling parents.

M cited Revenue Ruling 72-369 and is similar to the organization described there which organization provided managerial and consulting services at cost to unrelated exempt organizations. The organization was held to be not exempt under 501(c)(3) and M similarly provides services to unrelated individuals.

M cited Revenue Ruling 69-528 and is similar to the organization described there formed to provide investment services on a fee basis exclusively to organizations exempt under 501(c)(3) as a feeder organization under Section 502 of the Code and therefore not exempt under 501(c)(3). M provides services to unrelated members who are, through their membership and the activities of M, relieved of what would otherwise be their individual responsibilities as home schooling parents.

M cited Revenue Ruling 69-175 which states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing administrative services for home school children of members, under the circumstances described, the organization enables the member parents to fulfill their individual responsibility as a home school parent. Accordingly, M does not qualify for exemption under 501(c)(3).

M cited Pierce v Society of Sisters 268 US 510 in favor of a varied curriculum in a case regarding the upholding of an order enjoining appellant public official from enforcing an act that required children to attend public schools. Pierce v Society of Sisters is not relevant as there is nothing in a denial of 501(c)(3) exemption which would force a student to attend a public school and nothing that would prevent a parent from determining curriculum. In this case there is a lack of any curriculum in M which is one factor which prohibits M from claiming status under 170(b)(1)(A)(ii).

M cited Wisconsin v Yoder 406 US 205 concerning the respondent's conviction for violating Wisconsin's compulsory attendance law. The substance involved whether Amish parents could be forced to send their children to public school. The subject matter of Wisconsin v Yoder is not relevant as there is nothing in denial of 501(c)(3) exemption which would force a student to attend a public school and nothing that would prevent a parent from determining curriculum. In this case there is a lack of any curriculum in M which is one factor which prohibits M from claiming status under 170(b)(1)(A)(ii).

M cited Meyer v State of Nebraska 262 US 390 which reversed and remanded a case in which the State of Nebraska forbid the teaching of languages other than English. Meyer v State of Nebraska is not relevant in that nothing in denial of 501(c)(3) exemption would prevent a parent from teaching any subject and M does itself not teach any subjects and should M ever teach any subject there would be no prohibition on any such subject.

Applicant's Position

M maintains that it does qualify under 501(c)(3) by virtue of the separate activities of its member parents and that M also qualifies under Regulation Section 1.501(c)(3)-1(d)(1)(ii) by virtue of the separate activities of its member parents.

Service Response to Applicant's Position

M's positions are not valid since these positions are not on the activities of M itself but rather on the separate activities of its member home schooling parents.

Conclusion

M does not qualify for exemption under 501(c)(3) because its principal activity is the provision of administrative services to its member home schooling parents. Further, arguendo, if M did qualify under 501(c)(3) it would not qualify under 170(b)(1)(A)(ii) because it does not meet any of the four conditions thereunder.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:
Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:
Internal Revenue Service
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892