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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinnati

DATE: [redacted]

SURNAME [redacted]

Date: NOV 7 2002

Contact Person:
[redacted]

ID Number:
[redacted]

Telephone Number:
[redacted]

[redacted]

Employer Identification Number: [redacted]

Dear Applicant:

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). Based on the information submitted, we conclude that you have not established that you are organized or operated exclusively for the exempt purposes described in section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

You were formed in [redacted] for the purpose of converting used school buses into medical and dental clinics and are contributing them to organizations in third-world and developing countries. You worked with the [redacted] to raise money and convert a bus into a clinic. You were successful in creating a clinic and sent the clinic to Empalame, Sonora Mexico. The clinic was a success as the clinic now daily treats about 80 people.

You are a corporation applying as a public charity under section 509(a)(1) or 509(a)(2) of the Code. You were incorporated on [redacted]. You submitted your application for exemption to the Cincinnati office on [redacted]. They received your application on [redacted]. The case was forwarded to the National Office in Washington, DC on [redacted]. Because the information provided with the application was not sufficient to make a determination whether the applicant qualifies for tax-exempt status, we sent you a request for additional information on [redacted]. On [redacted], you informed us that you just received the information letter and were requesting a 30-day extension, which you were granted. You called on [redacted] to inquire whether we received the responses to our information letter. On [redacted], we requested that you send another copy of your responses, as we never received your responses the first time. While you told us you would send it to us, we never did receive another copy from you. On [redacted], we again requested the information and because you never responded to our phone call, we subsequently issued a 10-day

letter on [redacted] You did not respond to our 10-day letter, so we officially closed the file for failing to respond to our requested information on [redacted] On [redacted] you called us again, asking about the status of your application. Because of your extenuating circumstances, we reopened your file without requiring you to pay another user fee. However, before proceeding with the application, we needed the responses to our request for information sent in [redacted] therefore, we faxed you another copy of the information letter and you were required to respond within 21 days of receiving that information. On [redacted] we e-mailed you to see if you received the information letter and whether you responded to each question, as your 21-day deadline was approaching. You responded that same day to our e-mail with the following e-mail: "[w]hat information letter? I'm not sure what you are talking about. I thought you were going on with the process. WOW, I've [sic] must have missed something." Because you may have misunderstood our instructions, we faxed and mailed (with return receipt requested) the information letter again. You timely responded, but you only responded to some of our questions.

In our information letter originally submitted [redacted] we asked 15 questions with subparts. Your responses only addressed about half of our questions. Specifically, the following questions were not answered:

1. Please provide anticipated budgets for the next two years, as requested in pages 8 and 9 of Form 1023.
   - (a) Include a detailed proposed financial statement showing probable sources of supports and amounts.

12. You indicated that you are leasing a building from [redacted]
   - (a) Please explain the relationship between [redacted] and [redacted]
   - (b) Please list the owners of [redacted]

14. You indicated in Part II, Question 1, you indicated that "[redacted] are sponsoring the conversion of buses into clinics".
   - (a) Please indicate whether you are working with [redacted] to achieve your objectives.
   - (b) Please indicate how your fundraising activities differ from the [redacted] fundraising activities.

15. You indicated in Part II that you will be providing third world countries with needed medical supplies.
   - (a) Please indicate if you are providing Medical and Dental equipment and supplies; and/or
   - (b) If you are providing used school buses and land/sea containers to convert into mobile medical and dental clinics.
   - (c) Please indicate what the anticipated costs will be for each.
   - (d) Please indicate what the anticipated donations will be.

(e) Please indicate how you anticipate raising the money to accomplish your objectives.
(f) Please indicate whether your organization intends to solicit equipment/property in addition to money.
(g) Please indicate whether there is a specific foreign organization that will be receiving your donated medical supplies.
(h) Please indicate whether the beneficiaries in Mexico of the medical supplies will be foreign organizations or individuals.
(i) If it is a foreign organization, please indicate whether it is a charitable organization.

Additionally, since submitting the original information letter, you underwent some structural changes that raise additional issues about your status. For instance, ( ) originally rented space from for 6 months. After the lease ended, you presumably moved your office to a different location. We are not sure whether you are leasing from another company; however, when we contact the phone number listed on your letterhead, the voice mail indicates that we have contacted a for-profit organization that is presumably located in the same office space as since they both have the same phone number.

You have three board members: , and James , are related by marriage, and and work at the same company, is self-employed in accounting and bookkeeping.

Since completing the medical unit in conjunction with the last , your organization has been inactive. According to the financial statements submitted with your Form 1023, you had $ in the bank, and you failed to provide any projections as to whether AIR will do any fundraising. Furthermore, the organization has three board members, all of whom have full-time jobs or other obligations that have impeded their ability to consistently implement any activities on behalf of While you do not anticipate any fundraising activities or any projects this year, you hope to get started again next year.

APPLICABLE LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax of

organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization 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 test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be egarded as "operated exclusively" for one or more exempt purposes only if it engages primarily n activities which accomplish one or more of such 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(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. The section cross-references the definition of private shareholder, which is contained in section 1.501(a)-1(c). That section provides that the words "private shareholder" or individual in section 501 refers to person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, 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 determining whether an organization is operated for a public benefit rather than a private benefit, a court may consider the size of the board of directors and their control of the organization. Western Catholic Church v. Comm., 73 T.C. 196 (1979).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the requirement in section 501(c)(3) that an organization be organized and operated "exclusively" for exempt purposes was construed as meaning that the organization have as its "primary" activity the performance of exempt functions. The Court further held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose.

Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), aff'd, 670 F.2d 104 (9th Cir. 1980), the Tax Court considered the qualification for exemption of an organization purporting to be a church. Three family members controlled the applicant. The court stated:

> While this domination of petitioner by the three Harberts, alone may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status. It calls for open and candid disclosure of all facts bearing upon petitioner's organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements of section 501(c)(3).

Thus, close control of an applicant, because of the potential for abuse, requires a clear demonstration that private interests will not be served.

In P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no payments were going to the bar. The Court was not persuaded.

> A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The Court went on to conclude that the organization had a substantial nonexempt purpose.

Merely operating a service for other unrelated organizations that are exempt is an ordinary trade or business. See B.S.W. Group, Inc. v. C.I.R., 70 T.C. 352 (1978).

ANALYSIS

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

[redacted] is not organized exclusively for tax exempt purposes under section 501(c)(3). In your Articles of Incorporation, Article XI titled "Dissolution," you state that "[u]pon the dissolution of [redacted], assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code..." In your response to our information letter, which you completed around [redacted] you wrote, "[t]he trustees were set in place to help if or when AIR disbanded, to make sure all debits are paid and that ***all that is left*** is sold and ***is split evenly between the Board Members*** for they are all so the owners of the company" (Emphasis added). By distributing assets upon dissolution to board members rather than for an exempt purpose, your response contradicts your Articles of Incorporation and violates the organizational requirements under section 501(c)(3).

Additionally, to meet the requirements of section 501(c)(3) and section 1.501(c)(3)-1(d)(1)(ii) of the regulations, an organization must 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. By distributing assets to board members, [redacted] would be serving a private rather a public interest. Therefore, you have failed to show that your organization is organized exclusively for exempt purposes.

Furthermore, [redacted] has failed to satisfy the operational test. The regulations under section 501(c)(3) expand on the requirements for satisfaction of the operational test. The key requirement is that an organization be operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations expands on the operated exclusively concept by providing that an organization is not operated exclusively to further exempt purposes unless it serves a public rather than a private interest. Based on the facts that you have provided in your application for recognition of exemption, even though your organization may be operating for exempt purposes, [redacted] does not operate exclusively for exempt purposes as it has a substantial nonexempt purpose.

The phone number listed in your letterhead is for [redacted] not [redacted]. According to your voice mail, [redacted] provides accounting, bookkeeping, payroll, incorporation services, business loan documentation services, and business loan services. These are the types of services that [redacted], CEO for [redacted], is qualified in performing. Like the organization described in P.L.L. Scholarship, [redacted] activities could be used to the advantage of [redacted]. Therefore, there may be private benefit involved.

Lastly, in your responses sent on [redacted] you have indicated that you worked in conjunction with the [redacted] to convert a bus into a medical unit that will provide medical relief to the poor. Based on your response, this shows that [redacted] may be performing exempt activities. However, you have failed to provide any support whether [redacted] or the [redacted] organized this. If the [redacted] organized and implemented the activity, incurred all the expenses, provided the buses, etc. and you were only required to assist in building the medical unit, then the [redacted] was engaged in the exempt activity and you only modified the bus to serve the [redacted]'s needs. Since providing services to exempt organizations is itself a trade or business, such activity does not support exemption under section 501(c)(3) of the Code. See B.S.W. Group, Inc. v. C.I.R., supra.

While your activities may, to some extent, promote health, based on the information submitted, we are not able to conclude that you are operating ***exclusively*** for exempt purposes. Your organization's board composition, affiliation with a for-profit, and intention to compensate board members with assets or money upon dissolution show that you are have non-exempt motives, however unintentional they may be. The non-exempt purposes served by your activities are substantial in nature. As the Supreme Court stated in Better Business Bureau, supra, the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

CONCLUSION

You are not organized exclusively for exempt purposes under section 501(c)(3) of the Code. You do not operate exclusively for one or more exempt purposes. You operate for the benefit of private interests. You are operated for private rather than public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Your activities are indistinguishable from similar activities of an ordinary, commercial enterprise. Upon dissolution, your money or assets will inure to the benefit of AIR's "owners" and board members.

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.

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 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 Code section 6104(c).

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

Internal Revenue Service
[redacted] T:EO:RA:T:1
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[redacted]

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

Sincerely,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1