



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200535029**
Release Date: 9/02/2005
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Date: 06/09/05

Contact Person:

Uniform Issue List:

501.03-25
501.03-30
501.03-33

Identification Number:

Contact Number:

Employer Identification Number:

Legend:

B =
C =
D =
M =
N =
O =
P =

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). 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.

FACTS:

You were incorporated on March 25, 2004, on a nonprofit basis, under the laws of the State of M. Pursuant to recommendations from our field office, you filed Articles of Amendment with the State of M on September 7, 2004. The Certificate of Amendment contains language stating exempt purposes under section 501(c)(3) of the Code and provides for the dedication of your remaining assets to exempt purposes upon your dissolution.

In response to Part II, 1, of Form 1023, exemption application, you describe yourself as a two year old faith-based ministry that will house, clothe, and provide education (including a GED Certificate), retraining for employment, spiritual empowerment, anger management, and rehabilitation for individuals who are suffering from all forms of addiction. You plan to receive as

residents (in facilities yet to be built) individuals who have been referred by the mental health unit of N County as well as the State of M. Some residents will also be referred to you by the penal system; all will be non-violent offenders. Men and women will be housed separately, as will juveniles (18 and below).

The following "in-house" training will take place: (a) Education (GED): 10-15 hours per week; (b) Spiritual Empowerment: 3-5 hours per week; (c) Anger Management: 1 to 2½ hours per week; (d) Behavioral Management: 1 to 2½ hours per week; and (e) Employment Training: 2 hours per week. Other employment training – nursing, cosmetology, plumbing, and electrical, etc. – will take place off premises.

In an undated response to a development letter dated July 16, 2004, from our field office, you state in Response #6 that anger and behavioral management will be provided by licensed social workers, family counselors, marriage therapists, and pastoral counselors. Further, spiritual empowerment will be provided by O School of Theology and associate pastors from P Church. In Response #7, your President, B, states that he is in the process of looking at several parcels of land on which to build a facility.

In further response to the above development letter, you provide the following information concerning the salaries of your three governing board members: M, his daughter C (Chief Operations Officer), and D (unrelated, Chief Financial Officer), will each receive 00 in , in , and in . Later, in a FAX communication of February 22, 2005, responsive to a development letter from this office, you state, in Response #2, that Board members will not be salaried. They will be compensated, in part, for their time, but, "The dollar amounts that were previously stated were unfounded estimates."

In Response #1 of the above letter, you advise us that your governing board has been expanded with two new members. You have included resumes of these individuals. One is a graduate of O School of Theology with a Master of Divinity degree, and was honored as the School's Valedictorian.

In response to a previous development letter from this office, dated December 9, 2004, your President, B, indicated that all contacts with State and local officials concerning the referral of individuals for drug rehabilitation had been strictly verbal – nothing in writing. In a follow-up letter, we asked for certain details concerning these verbal contacts. B responded by identifying the individual with whom he had been in contact; this person holds a position with the N County mental health agency. Over the past three years, B and this individual have discussed the following subjects: once your organization is operational, having a detoxification program which would enable you to get County referrals, as well as the provision of shelter for addicts in order to keep them away from destructive temptations; several approaches to helping juveniles and adults; training programs (GED and vocational); the most effective methods of spiritual and secular counseling; and approaches to the court system so as to give non-violent drug offenders or other addicts an opportunity at rehabilitation with your organization instead of a prison sentence. The two of you also discussed the financial backing and other support needed to implement your mission.

The financial data which you provided in Part IV of Form 1024 contained seemingly inflated estimates of projected expenditures for the years through . Thus, total expenses were listed for . You included an Expense Schedule with a breakdown of expenses. In our development letter of December 9, 2004, we asked for details of the various expenditures. You responded by FAX on January 27, 2005. In general, you considerably scaled down the projected expenditures. Response #5 dealt with our specific queries in subparagraphs (a) through (g).

In subparagraph (a), you state that you would like to purchase in a rural area and build in two phases. The first phase will consist of offices and housing (dormitory style), which will include classrooms, a cafeteria, and laundry facilities. The second phase will include a chapel and gymnasium. You represent that you will incur expenditures totaling for land acquisition, building improvements, and salaries for staff and other employees. This is a "one-time dollar amount", as opposed to a three year annual expense, as erroneously indicated before. You also caution that this only an estimate and that you have not contacted any architects, builders, or contractors.

In subparagraph (b), you state that the projected housing expenses of in each of and will be considerably reduced because you now anticipate that the number of residents will be in the range, instead of , as indicated earlier.

Under subparagraph (c), you state that the earlier projected furnishings expense of for each of the three years in question will be "greatly reduced". It should end up about half this amount. You have not yet conducted any "research" concerning furnishings.

Under subparagraph (d), responsive to our request for details concerning projected security expenses of \$3,000,000 in 2004 and \$3,200,000 in each of the following two years, you state that, "there are no pending contracts with any security agencies at this time."

In subparagraph (e), we inquired about projected transportation expenses of for and in each of and . You informed us that you will likely purchase three or four 17 passenger vans. They will be used to transport residents from your complex to vocational training facilities. Inasmuch as you now anticipate only to residents, the costs for vehicle purchases and maintenance are also greatly reduced.

Subparagraph (f) deals with our request for details of your projected expenses of in all three years for training with respect to computers, plumbing, and electricity. You refer to training at Q Technical Center and the R nursing school. Training at these institutions should lead to a wide range of employment opportunities. But the expense figures cited earlier by you should be reduced because you will have fewer residents than originally anticipated.

In subparagraph (g), we noted your projected counseling expenses of for and in each of and . You responded that these expenses were also overstated, but did not furnish any other details, such as information on salary levels and backgrounds of counselors.

In Response #7, you report no revenue or expenses in the period from your incorporation on March 25, 2004, through September 30, 2004.

In #1 of our development letter of December 9, 2004, we asked for details concerning your proposed programs for spiritual empowerment, anger management, and behavioral management, including the locale and hours of instruction, and background of instructors. You responded as follows:

The Good News Ministry, Inc. is a faith based organization and is focused primarily on rehabilitating individuals from addiction(s), be it drugs, alcohol, gambling, etc. We will be working with American Veterans, the general public and non-violent persons who are incarcerated but are eligible for release from prison institutions. We would like to purchase land and then build to house these individuals so they are in an area that does not have those stimuli that would tempt them to revert to those habits.

Persons who are licensed and accredited professionals in the mentioned areas will conduct spiritual empowerment, anger and behavioral management. These persons will be licensed ministers to aid in spiritual empowerment and persons to aid in anger and behavioral management will be licensed in ACPE, Association for Clinical Pastoral Education, AAPC, American Association of Pastoral Counselors or AAFMT, American Association of Family and Marriage Therapy. These persons will facilitate the sessions on the premises of The Good News Ministry. The facilitator with stipulations that the sessions should be no less than six (6) hours and no more than ten (10) hours per week for each session will design the length of the sessions. ...

To recruit teachers and facilitators, advertisements will be posted in local newspapers, churches and on the world wide web. Surrounding counties, state and federal agencies may refer students. ...Salary ranges will be researched by human resource personnel and then discussed by the interviewer and the interviewee.

LAW:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or other specified exempt purposes, "no part of the earnings of which inures to the benefit of any private shareholder or individual", and which does not engage in proscribed lobbying and political activities.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the

organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

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 exempt purposes as specified in Code 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 or operated exclusively for a section 501(c)(3) exempt purpose unless it serves a public rather than a private interest. Thus, it is necessary that the organization establish that it is not operated for the benefit of private individuals. An organization will not satisfy the operational test if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. See section 1.501(c)(3)-1(c)(2). Under section 1.501(a)-1(c), the term “private shareholders or individuals” refers to persons having a personal and private interest in the activities of the organization.

In general, an organization which applies for recognition has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632, 635 (7th Cir. 1963), and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 203, 206 (8th Cir. 1963). This includes proof that no part of an organization’s assets or net earnings inures to the benefit of any private individuals.

Rev. Proc. 90-27, 1990-1 C.B. 514, states in Sec. 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. ... 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... 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.

ANALYSIS:

With the enactment of the Articles of Amendment, you now meet the organizational test under section 501(c)(3) of the Code. However, the evidence submitted to date does not establish that you will meet the operational test under section 501(c)(3). And the burden is upon

the organization applying for recognition to demonstrate that it will meet all the requirements of the particular Code section under which it has applied. Specifically, we are not convinced that your community needs the facility that you propose to build. There is no indication that the local or State government supports the building of such a facility (primarily to aid drug addicts) or that it would make use of it in the event that your proposed project came to fruition. Finally, the expense estimates that you submitted, for housing, furnishings, transportation, security, etc., even as scaled back in your most recent submission, do not appear to be grounded in reality; they appear excessive. The fact of the matter is that you report no income or expenses for the first six months of your existence. Further, you have not furnished any evidence that you will attract any significant support from any level of government, or from corporate and/or private donations.

Finally, despite the expansion of your governing board from three (3) to five (5) members, and the enactment of a conflict of interest policy, we still have some concern that your actual operations will be controlled and directed by B and his daughter C. We acknowledge that there is no evidence of any inurement to the benefit of these individuals, but then there has been no financial activity on your part to date.

Inasmuch as the evidence submitted to date does not persuade us that you will be operated in furtherance of exempt purposes, we cannot issue a favorable determination, but instead invoke Rev. Proc. 90-27, cited supra. This is tantamount to the issuance of an adverse determination letter.

Based on the foregoing, we conclude that you have failed to establish that you will meet the operational test under Code section 501(c)(3). In order to qualify for exemption, an organization must satisfy both the organizational test and the operational test. See section 1.501(c)(3)-1(a)(1) of the regulations.

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 judgment 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
TE/GE (SE:T:EO:RA:T:2)
1111 Constitution Ave, N.W., PE
Washington, D.C. 20224

You may wish to FAX your response to us by using the following number:
Please make any FAX communication to the attention of

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 & Agreements