Department of the Treasury
Internal Revenue Service
Southeast Key District (EP/EO)

[redacted]

Employer Identification Number:
[redacted]
Person to Contact:
[redacted]
Telephone Number:
[redacted]
In Reply Refer To:
[redacted]
Date: FEB - 1 1999

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

Our review of your application indicates that your articles of incorporation do not meet the organizational test required to be recognized as tax exempt under section 501(c)(3) since this document does not limit your purposes exclusively to one or more purposes described in this section. In addition, you also have not made any provision for the distribution of your assets to qualified section 501(c)(3) organizations in the event your organization dissolves.

It is indicated in your application that [redacted] was formed for the purpose of furthering the interests of the members through negotiations with club management.

Activities of the organization include the following:

1. meetings between the officers and the club owners to further the interests of the members;
2. provide input into club operations, and discuss proposed management decisions before they are implemented;
3. determine if membership benefits are comparable to other various country clubs;
4. determine if golf and clubhouse facilities, policies and procedures are equitable and adequate; and
5. working with management in planning and possible implementation of the clubhouse facility becoming private and its use restricted to membership only.

EO: T. Smith 2-1-99

[redacted]

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and 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 to qualify for exemption under 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(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

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 such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "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."

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of an established financial need.

[redacted]

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust because it was created and operated for the benefit of specified persons.

Likewise, in Revenue Ruling 57-449, published in Cumulative Bulletin 1957-2, on page 622, a trust set up to pay a certain sum to all individuals enrolled in a certain school on a particular date was held to be a private trust. It's not a charitable trust because the beneficiaries were a group of identifiable individuals.

Regulations 1.501(c)(3)-1(c)(1) indicates that an organization will not be exempt under section 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, an organization whose operations result in private benefit that is more than insubstantial will not be considered as serving an exempt purpose. This private benefit prohibition applies to all kinds of persons and groups, not just to "insiders" subject to the stricter inurement proscription.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private purpose. Thus to meet the requirements of this subparagraph, 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. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

While you are organized on a nonprofit basis, nonprofit is not the same as exempt. The fact that you do not make a profit is not the controlling factor. See United States v. La Societe Francaise de Bien, Mut., 152 F. 2d 243 (9th Cir. 1945), c . Denied 327 U.S. 793 (1946); Hassett v. Associated Hospital Service Corporation, 125 F. 2d 611 (1 Cir. 1942), cert. Denied 316 U.S. 672 (1942); Baltimore Health and Welfare Fund v. Commissioner, 69 T.C. 554 (1978); and B.S.W. Group, Inc. V. Commissioner 352 (1978).

Revenue Ruling 72-369, published in Cumulative Bulletin 1972-1, on page 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the operational test of the Regulations, the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(C)(3) of the Code.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust 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 Claims Court, 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."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

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

Sincerely,

Paul M. Harrington
District Director

Enclosure: Publication 892

Cc: State Attorney General [redacted]