

Internal Revenue Service

Department of the Treasury

District
Director

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact

Telephone Number

Refer Reply to

Date

APR 1 0 1996

APR 2 2 1996

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 reason for this conclusion and the facts on which it is based are explained below.

The information you submitted indicates that you were incorporated in [redacted]. Your stated purpose in your Articles of Incorporation is to be "organized and operated exclusively for religious, charitable, scientific, literary and educational purposes and for the prevention of cruelty to children."

Your activities as stated in your application are that you will conduct seminars regarding human reproduction and development and the ethical treatment of unborn children. You will also train counselors for crisis pregnancy centers and act as a support organization for local churches and their congregations. In a subsequent letter dated [redacted], you state that your support will consist of providing information to churches and congregations and not financial support.

Your income is derived from voluntary contributions from members of the public, seminar admission fees and sales of organizational and other educational material, such as, the booklet entitled "[redacted]" by [redacted], published by your organization and [redacted] in the name of the author.

You have shown expenses for salaries of officers, administrative costs, office expenses, educational material and media purchases, seminar costs and payroll taxes. You state, however, that you no longer plan any educational media purchases (e.g., radio) at this time or in the foreseeable future.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations 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, "to be exempt an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational 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 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). 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) of the Regulations provides, in part, that "an organization may be exempt if it is organized and operated exclusively for... educational purposes."

Section 1.501(c)(3)-1(d)(3) of the Regulations provides that the term "educational" as used in section 501(c)(3) relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

This section goes on to state that "an organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principle function is the mere presentation of unsupported opinion."

The court stated in "B.S.W. Group, Inc. v. Commissioner", 70 T.C., 352, 356-357 (1978) that "the purpose toward which an organization directs its activities and not the nature of the activities themselves, determine whether the organization meets the operational test."

Revenue Procedure 86-43 published in Internal Revenue Cumulative Bulletin 1986-2 on page 729 published the criteria used by the Service to determine the circumstances under which advocacy of a particular viewpoint or position by an organization is considered educational within the meaning of section 501(c)(3) of the Code and also within the meaning of section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations.

It has been, and it remains, the policy of the Service to maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization. The focus of section 1.501(c)(3)-1(d)(3), and of the Service's application of this regulation, is not upon the viewpoint or position, but instead is upon the method used by the organization to communicate its viewpoint or position to others.

The method used by an organization will not be considered educational if it fails to provide a factual foundation for the viewpoint or position being advocated, or if it fails to provide a development from the relevant facts that would naturally aid a listener or reader in a learning process.

The procedure goes on to state that "the presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its viewpoint or position is not educational:

1. The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.
2. The facts that purport to support the viewpoints or positions are distorted.
3. The organization's presentations make substantial use of inflammatory and disparaging terms and expresses conclusions more on the basis of strong emotional feelings than of objective evaluations. (Inflammatory meaning "tending to arouse strong emotion as passion, anger, or violence" and disparaging to mean "to speak of in a belittling way" according to Webster's Dictionary).
4. The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

The procedure also states that two recent court decisions have considered challenges to the constitutionality of section 1.501(c)(3)-1(d)(3) of the regulations. One decision held that the regulation was unconstitutionally vague: "Big Mama Rag, Inc. v. United States", 631 F. 2d 1030 (D.C. Cir. 1980).

This organization involved a feminist-oriented organization that published a monthly newsletter as its primary activity. The organization also focused on issues such as promoting women's rights and educating the public on issues of concern to the women's movement. The organization had a policy of printing anything that would advance the cause of the women's movement and refusing to publish material it considers damaging to the cause.

The court, however, did state that "the denial of the organization tax exemption was not based on the organization's claim that the Service discriminated against Big Mama Rag on the basis of its views on lesbianism." The court stated in footnote 7 of its opinion that "the Service did not rely on the organization's sexual orientation as a basis for denial. The denial was based on the fact that the "full and fair" standard of the educational regulations was not discriminatory on its face because it applied to all organizations equally."

On September 15, 1980, the US Court of Appeals reversed the decision in Big Mama Rag, Inc. v. U.S., 80-2 U.S.T.C. Paragraph 9674 and concluded that because the "educational" regulations permit the Service to grant or withhold exemption based on an organization's views, regulation 1.501(c)(3)-1(d)(3) unconstitutionally conditions 501(c)(3) exemption on an organization's waiver of its First Amendment right to free speech. A non-discriminatory denial of a tax benefit, however, not aimed at suppressing speech content, does not infringe First amendment rights." "Cammarano v. United States", [59-1 U.S.T.C. paragraph 9260], 358 U.S. 498, 512-513 (1959).

The same court later considered the exempt status of an organization concerned with preserving the racial and cultural heritage of white Americans of European ancestry. In "National Alliance v. United States", [83-2 U.S.T.C. paragraph 9434] 710 F. 2nd 868 (D.C. Cir. 1983), the court focused on membership bulletins and monthly newsletters, concluding that "the material did not fit within any reasonable interpretation of the statutory term "educational" regardless of the constitutionality of the regulation."

In the decision of "National Alliance v. United States", 710 F. 2nd 860 (D.C. Cir. 1983), the court upheld the Service's position that the organization in question was not educational. Although the latter decision did not reach the question of the constitutionality of section 1.501(c)(3)-1(d)(3), it did note that the "Methodology Test" used by the Service when applying the regulation tends toward ensuring that the educational exemption be restricted to material which substantially helps a reader or listener in a learning process." The court also noted that "the application of the test reduced the vagueness found in the earlier Big Mama Rag decision."

The four factors in section 3.03 of the Revenue Procedure 86-43 was advanced during the course of National Alliance's litigation as an elaboration of the "full and fair" exposition standard previously deemed unconstitutionally vague in Big Mama Rag, Inc.

The book's presentations make substantial use of inflammatory and disparaging terms and does express conclusions more on the basis of strong emotional feeling rather than on objective evaluation. Page 5 of the book states "There...it was... [redacted] who sentenced one...to death. Here...it is the mother who takes away...the breath". Another example of this use is depicted on the page opposite page [redacted]. The picture is of an alleged baby with detached body parts. On page [redacted] the thoughts expressed in "[redacted]" state that a fetus was "screaming" as life passed away. This is not supported by fact as indicated in criteria #1 of the revenue procedure. On page [redacted] the thought is expressed: "Baby's dead...all brutalized. Baby's dead...disposalized." This does not appear to be based on fact and is distorted. Throughout the book is the substantial use of inflammatory and disparaging terms and expresses conclusions more on the basis of strong emotional feelings rather than on objective evaluation.

In regard to the material submitted, a significant portion of the material makes use of inflammatory and disparaging terms and expresses conclusions more on the basis of strong emotional feelings, rather than on objective evaluations. Only an insignificant amount of your material submitted is based on objective fact and evaluation. Therefore, the methods used by your organization are not considered to be educational. You have failed to provide completely factual foundations for the viewpoints and positions being advocated, and you have also failed to provide a development from the relevant facts that would materially aid a reader in a learning process. The approach on the subject matter is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

Within the brochure entitled "[redacted]" are listed several seminar studies. When asked to name and provide a short synopsis on the topics you present at your seminars, you stated to see the above mentioned flyer. The brochure does not go into specific detail on the topics you present. The topics indicated are "[redacted]", "[redacted]", "[redacted]", "[redacted]" and "[redacted]". No summary was provided for the "[redacted]", whereas, summaries were provided for "[redacted]", "[redacted]", and "[redacted]". These summaries, however, do not go into any specific detail.

When asked about your participation in any political activities, you stated that "the organization will not be involved, either directly or indirectly, in political campaigns." However, the [redacted] is presented by a [redacted] (P [redacted]), and, according to the brochure, is a member of the [redacted]. The brochure lists several fees for registering for those seminars. The [redacted] has a listed fee.

Because of the purpose and affiliation of the organization in [redacted] and your organization, it cannot be said that your organization is not indirectly involved, in some way, in influencing legislation or even political activities.

Your organization is similar to the rationale discussed in "Nationalist Movement", supra., in that, the "method" in which your advertising supplement and book published by you is not considered to be educational within the meaning of section 501(c)(3) of the Code and underlying regulations.

You have not provided information for us to determine whether there is private benefit or inurement for the book copyrighted in the name of an individual and published by you. You have not shown that you are organized and operated exclusively for educational purposes in accordance with Revenue Procedure 86-43 and that no part of the net earnings of the organization inure to the private benefit of individuals or shareholders.

We have concluded, therefore, that you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

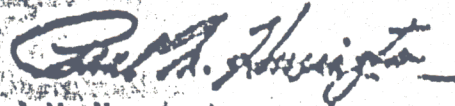
If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a written power of attorney or tax authorization with us.

If you do not 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 judgment 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 of 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 yours,



Paul M. Harrington
District Director

Enclosure:
Publication 892