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EP/EO:T

APR 18 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 reasons for this conclusion and the facts on which it is based are explained below.

The information submitted discloses that you were incorporated under the nonprofit laws of the [Redacted] on [Redacted]. Your stated purposes are "to promote the advancement of baton twirling as an education and worthwhile benefit to youth activity."

Your membership is composed of girls 6 to 18 years old chosen by the Executive Director. Membership also includes their parents or guardians.

Your activities include baton and dance classes during the school year and the summer, twirl corps and show production routines which are performed for a local audience and then taken to a national competition. You participate in a national competition on the last week of July each year and participate in a World Championship every three years. The [Redacted] parents help raise funds in order to get the girls to the annual national competition and the world competition every three years. The Executive Board and Executive Directors determine how the funds are to be raised each year and on what the funds are to be spent.

Each [Redacted] has the option of raising funds to be used for her personal or family expenses related to any trip she undertakes. This can be accomplished by selling specific items or by over-selling her required quota of sales during the Christmas and Easter candy sales.

On those years when the [Redacted] travel abroad, your fundraising activities are supplemented by the solicitation of funds to corporations, businesses, [Redacted] alumni and individual private donations.

If a [Redacted] family participates in all the scheduled fundraisers for a given year, all of the [Redacted]'s expenses are paid by the organization. If a [Redacted] family participates in all of the fundraising during a world competition year, the [Redacted]'s entire trip will be paid for by the organization.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]	EP/EO:T				
Surname	[Redacted]	[Redacted]	[Redacted]				
Date	4/2/96	4/3/96	4-17-96				

Your income is derived from contributions, awards, membership dues, assessments, and gross receipts from your fundraisers. Your expenses are for occupancy, independent contractors, costumes, music, scenery and props, entry fees, travel expenses, judging fees, storage, bank charges, postage and supplies.

All [redacted] attend dance and baton twirling classes at the private school owned by one of your board directors; [redacted]. All of your officers have children on the 1995-1996 team rosters.

Section 1.501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, educational and religious 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 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 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)(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 interest. 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.

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.

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.

While your application supports your exempt purpose, all organizations described in section 501(c)(3) of the Internal Revenue Code must also establish that they are operated exclusively for charitable purposes. You have failed to establish that your net earnings do not inure to the benefit of any private individual and you are operated for public purposes rather than private interests. Inurement of income is strictly forbidden under section 501(c)(3) of the Internal Revenue Code without regard to the amount involved.

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.

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, not a charitable trust, because the beneficiaries were a group of identifiable individuals.

Revenue Ruling 69-175, published in Cumulative Bulletin 1969-1, page 149, describes a parent organization that provided bus transportation to and from the private school their children attended. By providing bus transportation for school children, under the circumstance described, the organization enables the parents to fulfill their individual responsibility of transporting their children to school. By operating in this manner, substantial private benefit accrued to the benefit of the parent members which negated the charitable intent of this activity and precluded exemption under section 501(c)(3).

The element of public benefit is a necessary condition of legal charity. If the purpose 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 economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in 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 614(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 power of attorney or tax authorization with us.

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 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."

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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,

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General ([REDACTED])

[REDACTED]