

[REDACTED]
[REDACTED]
[REDACTED]
JUN 11 1984

Dear Applicant:

The evidence presented discloses that you were incorporated [REDACTED] under the laws of the State of [REDACTED]. You were previously incorporated under the name [REDACTED].

Your purposes, briefly stated, are:

1. To encourage cooperation and free intercourse among artists, art students, craftsmen, publishers, and others engaged in artistic activities; to hold competitions and exhibitions; and to promote the study and improvement of the arts;
2. To foster the development in the community of an appreciation of the musical arts, by promoting and producing musical productions and entertainments;
3. To publish writings, papers, books, pamphlets, newspapers, periodicals and other publications;
4. To operate and maintain a gallery or exhibition hall for the display of works of art by artists.

In the past you operated as a co-op for the benefit of your members. You have reorganized and separated some of your activities into the Association in an effort to qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. The co-op activities are still operated out of the same facilities with the same individuals performing the services. Your current activities include:

1. Operation of a gallery in the same place where the Co-op operates a shop. Sales are handled by the Co-op employees and a percentage goes to you. Your hours are the same as the Co-op shop.
2. Sponsoring a Freedom Fair and Labor Day Festival. You charge artists a fee to rent a booth plus [REDACTED] of their sales.

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Surname	[REDACTED]					

4. Operating the [redacted] which is open for classes and productions. Anyone can rent this area for a class or production.

5. Participating in events with other organizations in your city to promote your city.

Your Membership is composed of approximately [redacted] self-supporting artists. The remaining [redacted] are musicians, actors, poets and writers who are not self-supporting.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or 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(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization:

"(A) Limit the purposes of such organization to one or more exempt purposes; and

(B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the Regulations Provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), 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."

Revenue Ruling 71-395, 1971-2 C.B. 228, 68-2 USTC ¶13,000, 34 AFTR2d 68-6084 (1968), held that a cooperative art gallery formed and operated by a group of artists to exhibit and sell their works. The gallery showed and sold the works of its members and retained a commission on each sale. The ruling concluded that the gallery was a vehicle for advancing the careers and promoting the sales of its members, and therefore was not exempt.

Revenue Ruling 76-152, 1976-1 C.B. 152, held that a nonprofit organization of art patrons promoting community understanding of modern art by selecting, exhibiting, and selling art work of local artists was not exempt. The organization retained a commission on sales less than normal commercial charges. The reason for denying exemption was that the major activity of the organization served the private interest of the artists.

Your gallery, fairs, festivals, and exhibitions all allow the selling of art work. You charge a percentage of each artist's sales as a condition to exhibit. You are similar to the two organizations cited in the revenue rulings above. These activities serve the private interests of the artists.

Your activities with [REDACTED] consist mainly of renting the space to instructors, actors, or musicians. They are responsible for any activities that are conducted. Although you may have some educational activities in the programs you have conducted, this would not be sufficient to qualify you for exemption under section 501(c)(3) of the Code. Under the rationale of Better Business Bureau vs. United States, 328 U.S. 279 (1945), an organization must actually engage primarily in activities which accomplish one of the exempt purposes, and if more than an insubstantial part of its activities do not further such exempt purpose, the entity is not exempt.

We have concluded you are not exempt under section 501(c)(3) of the Code because you are not operated exclusively in furtherance of one or more of the exempt purposes described in section 501(c)(3) of the Code. Therefore, you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination 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 Internal Revenue 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 Court of 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."

[REDACTED]

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

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

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018