

**Internal Revenue Service
Appeals**

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Uniform Issue List

501.03-00

Legend:

A = Address

B = Number

C = Address

Department of the Treasury

Address any reply to:

Employer Identification Number:

Form Number:

Person to Contact:

Contact Telephone Number:

Fax Number:

Certified Mail

Dear :

This is our final adverse determination as to your request for exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Your request for tax-exempt status is denied.

You have not demonstrated that you are organized and operated exclusively for charitable, educational, or other exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals as required by section 501(c)(3) of the Internal Revenue Code. You have indicated that you have acquiesced to the denial. By executing Form 906-c, Closing Agreement on Final Determination Covering Specific Matters, you have waived your right to contest this determination under the declaratory judgment provisions of section 7428 of the Internal Revenue Code.

Contributions to your organization are not deductible under Code Section 170.

You are required to file Federal income tax returns on Form 1120 for any years, which are still open under the statute of limitations. You should file any returns due for these years or later years with A.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person identified on the front of this letter can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency by calling B or writing to C. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

Sincerely yours,

/s/
Appeals Team Manager



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M = Name of Organization

N = Name of Predecessor Organization

O = Abbreviation of Name of Organization

P = Specific type of horse

Q = Specific type of horse

R = Specific type of horse

S = Specific type of horse

T = Specific type of horse

U = Website Address

V = Website Address

W = Website Address

X = Name of Book

Y = Name of Newsletter

Date 1 = Specific Date

Date 2 = Specific Date

Date 3 = Specific Date

A = Name of person

B = Name of person

C = Name of person

D = Name of person

E = Name of person

F = Name of person

Country = Name of Country

State = Name of State

Tribe = Name of specific tribe.

University = Name of University

UIL:

501.05-01

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issue:

Do you, M, qualify for exemption under Section 501(c)(3) of the Internal Revenue Code?

Facts:

You, M, are a State nonprofit corporation formed on Date 1. Your Articles of Incorporation provide that "the purposes for which M is organized are exclusively charitable, scientific, literary, and educational within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law. The general purpose of this corporation shall be to identify, conserve, safeguard, and propagate the genetic integrity of the horse originally found in the possession of the Tribe in Country, and those bred in other countries by breeders whose foundation stock was drawn entirely from those tribes of the T Desert, as researched and defined in the X, and 'X' supplements beginning in 1961."

Your Articles further provide, "the purpose shall be accomplished through research of historical and genetic (scientific) data to add to the X or disqualify horses from the 'X', according to the standards as set down in said 'X'. The purpose shall be additionally accomplished through education of the international horse community, the general public, and youth (by publication), regarding historic, genetic and athletic value of these endangered genetic lines, and collection and sharing of historic artifacts, letters and documents."

Your Articles also state, "[u]pon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code..."

Prior to filing your Articles of Incorporation to form a nonprofit corporation, you became the successor to N. N was previously owned/operated by A, B, and C. N was not an exempt organization. N transferred their assets over to you; mainly X written by A. Both A and B sent in signed statements that no liabilities were transferred from N to you.

On Date 2, you submitted Form 1023 application for recognition of exemption under Code section 501(c)(3). You also supplemented information to Form 1023 with multiple responses.

Your activities are as follows:

- Dispersing of Y to your members;
- Maintaining a website (U);
- Maintaining a W Special Interest Group on the Internet (V);
- Video show competitions;
- Collection of historical documents related to Q horses;
- Donating to genetic analysis and research;
- Sale of the organizations asset, X, acquired from N; and
- Annual conventions to bring members and horse owners together.

As part of your activities, D and E edit and produce Y. You state the following regarding Y in your narrative description of your activities:

"...is entirely funded by subscriptions and donations to M."

"...covers information about breeding programs, foal births of rare horses, athletic events and successes of P horses submitted from members and non-member public."

Included in Y are lists of specific Q horses. Y also includes a list of Q horse "babies" including information about them such as their breeding parents. There is also a competition list including specific horses and how they placed in events.

Also as part of your activities, you maintain a website, U. You state the following regarding your website in your narrative description of your activities:

"Site is 100% educational, literary, historical, scientific, informational about the remaining progeny of X researched horses, accessible internationally."

On your website, U, you have several tabs. The following information has been found on U:

There is a section marked "Q". In this section of your website, you have a list of different breeders of Q horses. You describe each of the breeders and link to their websites. On the breeders' websites, they can directly inquire to purchase one of these horses.

There is also a section marked "Q Sales List" where you directly link to websites that sell Q horses. On these linked websites, a buyer can directly inquire to purchase one of these horses.

There is also a section marked "Q Stallions". This is a list of stallions that are available for breeding and the breeders who have them. You directly link to these breeders' websites where an interested party could directly contact the breeder to purchase the stud service of the stallions.

You also maintain a W Special Interest Group on the Internet, V. You state the following regarding V in your narrative description of your activities:

"90% devoted to current issues/ topics concerning education about and preservation of the genetic integrity of the designated equine (open to the Public, so topics cannot be strictly controlled or we lose the students). Covers breeding problems, events, health issues, etc."

You provide in your application that you own 350 copies of X. You plan to sell these for \$200 each to fund your organization, specifically the genetic analysis and research.

"The corporation currently owns 350 copies of the antique book, X. Copies are for sale for \$200 each to fund the research and educational activities of the Corporation. Some books will be donated to Convention attendees for promotional purposes. Wholesale value is approximately \$120 each. The Corporation will own updates to the book, X, as they are added, as well as DVD updates. Sale prices of these updates and DVDs will be determined by membership."

"The only condition of the book donation was that the sales should fund the new Corporation's charitable, historic, educational, scientific and literary purposes. There is no written agreement."

A statement was signed by A (the author) and D (board member of M) on Date 3, stating that all rights of X have been transferred over to M.

Some excerpts from X were included in your attachments to Form 1023. Included in them was the following language:

"X is published to encourage the preservation and increased production of the type of I horses originally found in the possession of the Tribe of Country, and bred in other countries by breeders whose foundation stock was drawn entirely from those tribes. X is devoted to those bloodlines which its sponsors believe to be suitable for that purpose, and is designed to help the American breeders identify those animals still living."

"There are not now, and never will be again, enough of the R and S to make the smallest dent in the American I horse market, but if these foundation-blood animals are not preserved for the use of each and every breeder it will be a tragedy no amount of hindsight will ever be able to cure. Some people still talk of going back to Country for a fresh supply of the Antique blood when they have used up what we have, sincerely believing there must be an inexhaustible supply of more where these came from... There are indeed a very few of the originals left, but they are scattered far and wide and those in possession of the best of them are in no mood to part with them for export..."

You also describe your involvement in scientific research done by University. You enclosed a letter from E that explains the research that you fund. That letter states, "the current research is to investigate the genetic differences among different strains of I horses by analysis of microsatellite and mitochondrial DNA D-loop variation. An important component of the study will be to determine the genetic origins of the various I horse lines that exist within the United States. Although there have been a number of studies that examined genetic variation within the I horses, there has never been one that focused upon within strain variation and origin of US lines. The study is part of an ongoing project to understand the genetic relationships among domestic horse breeds and the genetics of domestication that have been a part of my research program for many years".

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings 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 be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further 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 exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides, in part, that the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section 501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization's primary purpose does not consist of carrying on an unrelated trade or business.

Section 501(c)(5) of the Code provides for the exemption from Federal income tax of agricultural organizations.

Section 1.501(c)(5)-1 of the regulations provides that the organizations contemplated by section 501(c)(5) of the Code as entitled to exemption from income taxation are those which (1) have no net earnings inuring to the benefit of any member, and (2) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 73-520, 1973-2 C.B. 180, discusses what qualifies as an agricultural organization. It holds that a dog club that promotes and protects a particular breed of dog does not qualify for exemption as a 501(c)(5) organization because a dog is not considered livestock. It further goes on to describe the terms agricultural and livestock.

Rev. Rul. 55-230, 1955-1 C.B. 71, grants exemption under section 501(c)(5) of the Code to an association that was organized to guard the purity of the breed of Welsh ponies; to promote interest therein; and to establish, maintain, and publish authoritative records, registers, and transfers of ownership of that breed. Its activities consisted of registering and maintaining records of pure bred Welsh ponies, recording transfers of ownership, and publishing literature describing the Welsh pony for the benefit of its members or others interested in improving or raising the breed. Membership in the association is open to any person, firm or corporation interested in improving or raising pure bred Welsh ponies. Its receipts are derived from membership fees, registrations and transfers. Expenditures are for operating expenses and for premiums for association-sponsored classes at a State fair. No part of the net income inures to the benefit of any member.

Rev. Rul. 55-230, goes on to state, "persons engaged in raising Welsh ponies are considered livestock producers engaged in agricultural pursuits". This further defines agricultural pursuits.

Application of Law:

You are not as described in section 501(c)(3) of the Code because you are not operated exclusively for charitable, educational, or other exempt purposes.

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities is devoted to non-exempt purposes.

You have not demonstrated that you do not inure to the benefit of private individuals. You, M, maintain a website, U, that contains links to private sellers of Q horses. Those breeders earn a profit, and private benefit, by being able to sell horses and/or stud services to interested persons. As a result, under section 1.501(c)(3)-d(1)(ii) of the regulations, you do not meet the requirements of section 501(c)(3) of the Code.

You are similar to the organization described in Rev. Rul. 55-230. You are organized to guard the purity of the breed of Q horses; to promote interest therein; and to help fund research on the genetics of this breed of horses. You state that you are unlike this organization because you are not a horse registry. We disagree because you do maintain a partial horse registry, as you maintain listings of horses and their genetic parents in your newsletters. You are also similar to the organization described in Rev. Rul. 55-230 because you promote and fund research on the genetics of this particular breed of horse.

You are very similar to Rev. Rul. 73-520 because you too promote and protect a particular breed of animal.

Applicant's Position:

You state, "You have our organizing document. I do not include it here. Our purposes are limited according to exempt purposes set forth in section 501(c)(3) and 501(c)(3) is referenced. We, M, have a dissolution clause according to 501(c)(3). You have all of these documents".

You state, "our preservation purpose is preservation of the genetic integrity of the animals (not preservation of the book), achieved through education of the public in horse history, literature, and science, using the book, X, as a tool or research, and as a tool in the education of the public on the horse history and literature. Scientific data may require new supplements to the book itself. Our long term goal (preservation of the genetic integrity of this rare animal) cannot be achieved without inclusion of youth in this education process".

You also state that you do not facilitate the selling of horses, and that your W group information has facilitated the rescue of a few of the P whose owners fell on hard times and could no longer care for them, but that was not profit based action.

You state that you should not be classified as an organization described in Section 501(c)(5). You state,

"We are not horse breeders. M has nothing to do with horse breeding. As stated under Revenue Ruling 55-230, we would need to establish, maintain, and publish record,

registers, and transfers of ownership of a breed for 501(c)(5). We DO NOT DO any of those activities. On the contrary, we are contributing to a scientific DNA study project at University (E). We facilitate search for horses needed in the study, lobby for sample collection internationally, and make monetary contributions, among our other activities and purposes according to operational rule”.

Service Response to Applicant's Position:

Your organizing document limits your purposes to section 501(c)(3); however, you have not demonstrated that you meet the operational test. As stated in section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations, if an organization fails to meet either one of the tests, it is not exempt under section 501(c)(3). We do not agree that you are adhering to the purpose statements set forth in your organizing document. Although you state limitation of purposes, your actual activities are not limited to Section 501(c)(3) activities.

Preserving the integrity of a specific breed of horse does not make an organization qualified for section 501(c)(3). Although you state that you do not facilitate the selling of horses, the facts show a breeders' directory, sales list, etc., which facilitates the selling of horses.

You state that you should not be classified as an organization described in Section 501(c)(5) and that Revenue Ruling 55-230 does not apply to you. Based on the information provided in the facts and analysis above, we disagree because your activities are similar to those of the organization described in the said ruling.

Conclusion:

Based on the facts and information submitted, you are not operated exclusively for exempt purposes, and therefore, you are not described in section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal

as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Deliver to:

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892