



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Date: September 9, 2004

Contact Person:

Identification Number:
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Contact Number:
(202) ***_****

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Employer Identification Number: **_*****

Dear :

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

You were incorporated on _____, under the nonprofit statute of the State of _____. Article IV, paragraph (m) of your incorporating instrument provides that your primary purpose shall be "to educate the general public of the State of _____ about the facts (especially those established by independent research performed by reputable academic, scientific, or other expert sources) concerning the effects of casino, slot machine, and other types of gambling on communities, social services, crime statistics, local employment, and so forth, in the State of _____ and to educate the general public ... about the effects of what is commonly known as Indian Gambling on the foregoing and on the economy of the State of _____ and its communities. ... The corporation shall also educate the general public of the State of _____ by publishing appropriate statistics, opinions of experts, and any other such sources of information likely to aid the general public of the State of _____ in determining the validity of assertions made by proponents and opponents of the said initiative."

In response to Part II, 1, of Form 1023, exemption application, you state that your activities consist of efforts to advise _____ citizens of the effects, based on historical facts in other States and studies by recognized authorities, as well as historical events in _____, of the effects of gambling upon _____ institutions and the people of _____. These efforts include the distribution of educational materials, court analysis and examination of the constitutionality of various types of gambling under the _____ State Constitution, and publicizing studies by recognized educational

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institutions of the effects of gambling upon the community and State. You represent that you take no position on the passage of legislation; instead, you provide educational materials and facts to the general public so as to inform citizens about gambling in general and Indian gambling in particular. You also state that approximately 90 percent of your time will be spent on education and the remaining 10 percent on fund raising. Your directors and other volunteers will conduct your program of activities.

Under Part II, 13, you check off "No" as to whether you will attempt to influence legislation. You also check off "No" in Box 14, inquiring as to whether you will intervene in any way in political campaigns.

In a letter dated April 10, 2003 (Submission) in response to a development letter dated March 21, 2003, you furnished additional information concerning the nature of your activities, as set forth below.

You stated that, as part of your mission to provide the public with correct information about such gambling, you support "a court determination of whether some, all, or none of the terms of the Indian-related gambling initiative recently enacted in are constitutionally allowable. The nature of the activity will be to support such litigation, including the filing of amicus curia briefs with the appropriate courts." You report that, "Such litigation, on multiple levels, federal and state, is in progress currently. The most pressing is the Supreme Court determination, which is being briefed and will be argued in the relatively near future." You also advise us that currently, about 95 percent of your time is devoted to the clarification of legal/constitutional issues relating to Indian gambling, including, but not limited to the question concerning "slot machines" and issues relating to "Indian lands". You further stated this activity would comprise between 70% and 100% of your time for the next one to two years.

Your Submission included a letter dated , addressed to "Dear Contributor", which states, in part, that "Your generous contribution to (your organization) has provided the necessary financial support for the timely filing of a petition with the Supreme Court seeking a declaration that the tribal gambling initiative is unconstitutional and thus preventing it from being placed on the November ballot. So far, over citizens who care deeply about the future of our State have sent in their donations, ranging from \$ to \$." The letter further states that gambling advocates are spending millions of dollars on advertising and sophisticated public relations to gain public approval of the initiative. These "gambling forces", with access to many seasoned attorneys, "will try to throw up as many legal roadblocks to our efforts as they can devise." Further: " , while providing funding for the suit, is not one of the five legal plaintiffs."

The reverse side of the Dear Contributor solicitation letter contains a summary of the plaintiffs' three main arguments for defeating the Indian gambling ballot initiative, relating to (1) the prohibition of gambling under the Constitution; (2) the denial of equal protection under the Constitution and the 14th Amendment to the U.S. Constitution; and (3) the impairment of the obligation of contracts under the Constitution and Article 1, Section 10 of the U.S. Constitution. The solicitation letter continues as follows: "The State-tribal compacts entered into by the various tribes and the State of pursuant to Code would be automatically

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and unilaterally amended by the Indian Gaming initiative in violation of these constitutional provisions.”

The Submission also includes a copy of a news article, byline Associated Press, in the _____, edition of an ***** newspaper, stating, in part, that the ***** Supreme Court unanimously upheld the voters’ right to decide the future of gambling at reservation casinos. “The measure would clearly legalize about ***** electronic gambling machines already in use on the reservations. But the court decided that any question of constitutionality is moot, because the initiative has yet to go before the voters and become law.”

You have distributed literature which details, with studies and statistics, the social cost of introducing legalized gambling into a community, including an increased number of compulsive gamblers, family devastation (divorce, child abuse, etc.), a sharp rise in crime, poverty (the poor lose the greatest share of their income to gambling), and government corruption (many government officials convicted or forced out of office as a result of gambling related corruption).

In response to our inquiry, you submitted financial data for your taxable years ending _____, and _____. For _____, you report total contributions of \$***** and total expenditures of \$*****, resulting in a cash balance of \$*****. For _____, you report total contributions of \$***** and total expenditures of \$*****, resulting in a cash balance (including _____) of \$***** at the end of the year.

A breakdown of expenses for _____ shows you paid attorneys’ fees to an identified law firm in the total amount of \$*****, or over 90 percent of your total expenses. For _____, you paid out \$***** to this same law firm, again accounting for well over 90 percent of your total expenses. These legal fees were all incurred as a result of your fight to defeat legislation.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated “exclusively” for religious, charitable, educational, or other specified exempt purposes, “no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under Code 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(c) 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

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construing the meaning of the phrase “exclusively for educational purposes” in Better Business Bureau v. United States, 236 U.S. 279 (1945), 1945 C.B. 375, the Supreme Court of the United States stated, “This plainly means that the presence of a single noneducational 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(c)(3) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an “action organization.”

Subdivision (ii) states that an organization is an “action organization” if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. An organization will be regarded as attempting to influence legislation if it:

- (a) Contacts, or urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- (b) Advocates the adoption or rejection of legislation.

Under subdivision (iv), an organization is an “action organization” if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. All the relevant facts and circumstances will be considered in determining whether an organization has such characteristics.

Subdivision (v) states that an “action organization”, as described above, though it cannot qualify for exemption under section 501(c)(3), may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in section 1.501(c)(4)-1(a) of the regulations.

Rev. Rul. 62-71, 1962-1 C.B. 85, states that an organization which, as its primary objective, advocates the adoption of a doctrine or theory which can become effective only by the enactment of legislation does not qualify for exemption under section 501(c)(3) of the Code because it is an “action” organization and thus is not operated exclusively for educational purposes within the meaning of section 501(c)(3). The organization was formed for the purpose of supporting an educational program for the stimulation of interest in the study of the science of economics or political economy. The organization conducted research, made surveys of economic conditions, moderated discussion groups, and published books, and pamphlets. The organization’s research activities were primarily concerned with the single tax theory of taxation. This theory or doctrine could be put into effect only by legislative action.

For purposes of section 501(c)(3) of the Code, there is no distinction between “good” legislation and “bad” legislation. This principle is illustrated by Rev. Rul. 67-293, 1967-2 C.B. 185, which holds that an organization which is substantially engaged in promoting legislation to

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protect or otherwise benefit animals is not tax exempt under Code section 501(c)(3) even though the legislation it advocates may be beneficial to the community, and even though most of the organization's attempts to influence legislation are indirect. The organization remained exempt from federal income tax under section 501(c)(4) of the Code as a social welfare organization.

The majority of courts have held that it is not necessary or possible to distinguish between good and bad legislation. This is in accord with the traditional view dating back many years and now reinforced by a dictum of the U.S. Supreme Court to the effect that the statutory restriction on attempts to influence legislation simply "made explicit" the longstanding judicial principle that "political agitation as such is outside the statute, however innocent the aim." William B. Cammarans et ux v. United States, 358 U.S. 498 (1959). See also, League of Women Voters of the United States v. United States, 180 F. Supp. 379 (Ct. Cl. 1969), cert. den., 364 U.S. 822, and Alan B. Kuper v. Commissioner, 332 F. 2d 562 (3rd Circ. 1964), cert. den., 379 U.S. 920 (1964).

In regard to your application, the information clearly indicates you are an "action organization" within the meaning of section 1.501(c)(3)-1(c)(3) of the regulations. Your primary objective can be attained only by legislation or the blocking of legislation in the **** legislature. To this end, in your first two complete taxable years – and – 90 percent of your total expenditures were for legal services. These expenditures related to your attempts to defeat an Idaho ballot initiative authorizing the expansion of Indian gambling, including slot machines. Under section 1.501(c)(3)-1(c)(3)(iv) of the regulations, an organization will be considered an "action organization" if its main or primary objective may be "attained only by legislation or a defeat of proposed legislation." While your intentions and goals may be laudable from a civic standpoint, nevertheless the courts and the Service make no distinction between "good" and "bad" legislation. See Rev. Rul. 67-293 and the decision in William B. Cammaran, both discussed above.

We are cognizant of the fact that you do engage in educational activities within the meaning of section 501(c)(3) of the Code and the corresponding regulations. As stated above, you have distributed literature which documents the various social and economic ills which have befallen communities and states that have adopted legalized gambling. Nevertheless, these educational activities do not suffice to qualify you under section 501(c)(3) of the Code because your main purpose is to advocate, or campaign for, the attainment of the defeat of legislation as distinguished from engaging in nonpartisan analysis, study or research. See Sections 1.501(c)(3)-1(c)(3)(iv)(a) & (b) of the regulations. Under section 1.501(c)(3)-1(c)(1) of the regulations and the decision in the Better Business Bureau case, supra, the presence of a substantial nonexempt purpose would vitiate tax exemption under section 501(c)(3) "regardless of the number or importance of truly educational purposes."

Inasmuch as you are an "action organization", you do not meet the operational test under section 501(c)(3) of the Code. Under section 1.501(c)(3)-1(a)(1) of the regulations, an organization does not qualify for tax exemption under section 501(c)(3) if it fails to meet either the organizational test or the operational test.

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Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling 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 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 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:*)
***** (***)
1111 Constitution Ave, N.W.
Washington, D.C. 20224

You may wish to FAX your response to us using the following number: 202-***-****. Please be sure to make any FAX communication to the attention of *****.

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

Sincerely,

Charles F. Kaiser

Lois Lerner
Director, Exempt Organizations
Rulings & Agreements