

Internal Revenue Service
701 B Street, Ste 902
San Diego, CA 92101

Department of the Treasury

Date: March 5, 2012

Mercy-The Medical Center Cannabis
Resource Center
c/o Mercy Center, LLC
1469 Capital St. N.E.
Salem, OR 97301

**Employer Identification
Number:**

80-0250854

Person to Contact - Group #:

Denise L Tamayo
ID# 95120

Contact Telephone Numbers:

619-744-7168

Response Due Date:

March 26, 2011

Dear Sir or Madam:

Thank you for the information recently submitted regarding your application for exemption. Unfortunately, we need more information before we can complete our consideration of your application.

Please furnish the information requested on the enclosure by the response due date shown above. If you do not provide the requested information in a timely manner, we will consider that you have not taken all reasonable steps to secure the determination you requested and we will close your case.

Please return the copy of our letter along with your response. It will help us to identify your file.

If you have any questions concerning this matter, or you cannot meet the response due date, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Denise L. Tamayo

Denise L. Tamayo
Exempt Organizations Specialist

Mercy-the Medical Cannabis Resource Center
EIN# 80-0250854

Note: Your response to this letter must be submitted over the signature of an authorized person or of an officer whose name is listed on the application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

PLEASE ATTACH A COPY OF THIS LETTER TO ALL CORRESPONDENCE

Additional Information Requested:

Thank for your patience as our EO Technical staffed reviewed your application, and your responses to our request for additional information.

As we discussed, below is the summary as provided by EO Technical.

The applicant is promoting illegal activities.

One of the purposes listed in your bylaws state that the organization is going to promote and encourage uses of cannabis. Another purpose is to assist patients who wish to use the commercial services. Additionally, in the narrative, the organization states that it will receive communications and perform public services such as matching patient to grower. In the description for Part IV, the organization states it will hand out excess medicine in the Mercy clubhouse and will help indigent patients with funding their supply.

You will also operate in a commercial manner. You are similar to a brokerage company, matching associations and service providers to individuals and groups. In the description for Part IV, the organization states it will match up patients with growers or transportation to dispensaries in addition to helping match general contractors with those needing services. These are substantial non-exempt purposes.

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The applicant is engaged in private benefit for its members. In the description for Part VIII, the organization states that it will set up separate accounts for its members if they want to control disbursement of marijuana. You cannot designate funds for yourself or for others under section 501(c)(3) of the Code.

As stated in your Form 1023 application, Perry Stripling, President of Mercy-the Medical Cannabis Resource center is also the sole member of Mercy Center LLC, an operational medical marijuana dispensary. The groups share office space and other resources.

We have provided applicable law for your review.

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 § 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in § 501(c)(3) of the Code in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, §§ 368, 372 (1959); 4A Scott and Fratcher, The Law of Trusts, §§ 368, 372 (4th ed. 1989). However, a trust is invalid if its purpose is illegal. Restatement (Second) of Trusts, § 377 (1959).

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term "educational" as used in § 501(c)(3) of the Code

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relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

21 U.S.C. § 802(16) defines marijuana as "all parts of the plant *Cannabis sativa L.* whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin."

21 U.S.C. § 812(c), Sch. I(c)(10) lists marijuana as a hallucinogenic substance and includes it on schedule I of the Schedules of Controlled Substances. A schedule I substance is a substance that (1) has a high potential for abuse; (2) has no currently accepted medical use in treatment in the United States; and (3) there is a lack of accepted safety for use of the drug under medical supervision.

21 U.S.C. § 841(a), known as The Controlled Substances Act, states that it is illegal for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.

United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 490 (2001), reiterates that there is only one exception from the Act for cannabis: Government-approved research projects. "It is clear from the text of the Act that Congress has made a determination that marijuana has no medical benefits worthy of an exception." Id. at 493.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In Ould v. Washington Hospital for Foundlings, 95 U.S. 303, 311 (1877), the Court noted that "[a] charitable use, where neither law nor public policy forbids, may be applied to almost any thing that tends to promote the well-doing and well-being of social man."

In Mysteryboy Inc. v. Commissioner, T.C. Memo 2010-13 (2010), the Tax Court held that the organization failed the operational test partly because the organization proposed to promote illegal activities.

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In *Bob Jones University v. United States*, 461 U.S. 574 (1983), the Supreme Court held that racially discriminatory education is contrary to public policy and the University therefore could not be viewed as providing public benefit within the charitable concept.

In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068, 1071 (6th Cir. 1974), the court held that an organization has the burden of proving that it satisfies the requirements of the particular exemption statute. The court noted that whether an organization has satisfied the operational test is a question of fact.

In *Federation Pharmacy Services, Inc. v. Commissioner*, 72 T.C. 687 (1979), *aff'd*, 625 F.2d 804 (8th Cir. 1980), the Tax Court held that while selling prescription pharmaceuticals to elderly persons at a discount promotes health, this does not entitle it to an automatic tax exemption under § 501(c)(3) of the Code.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352, 358 (1978), the court held that a consulting organization whose sole service was to find individual researchers for their clients, only some of which were exempt, did not qualify for exemption under section 501(c)(3) of the Code. The court found that B.S.W. Group's primary "activity constitutes the conduct of a consulting business [that] is ordinarily carried on by commercial ventures organized for profit."

Rev. Rul. 61-170, 1961-2 C.B. 112, holds that a nurses' association, which maintains an employment register primarily for the employment of its members, is not entitled to exemption under § 501(c)(3). The organization is primarily engaged in the performance of personal services by operating an employment service principally for the benefit of its members. Public participation in the management and support of the organization is negligible. It draws its support primarily from members, and a board of trustees composed of professional nurses controls the organization without public participation of any kind. Therefore, the organization is not free from substantial private benefit considerations in the operation of the nurses' register.

Rev. Rul. 69-175, 1969-1 C.B. 149, holds that a nonprofit organization formed by parents of pupils attending a private school that provides school bus transportation for its members' children serves a private rather than a public interest. The organization's income approximately equals the expenses involved in its operations.

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Rev. Rul. 73-349, 1973-2 C.B. 179, holds that an organization formed to purchase groceries for its membership at the lowest possible prices on a cooperative basis is not exempt as a social welfare organization described in § 501(c)(4) of the Code. The organization was a private cooperative enterprise for the economic benefit or convenience of its members. Any benefit to the community was incidental to the benefit received by the members.

Rev. Rul. 75-384, 1975-2 C.B. 204, holds that a nonprofit organization, whose purpose was to promote world peace, disarmament, and nonviolent direct action, did not qualify for exemption under §§ 501(c)(3) or (c)(4). The organization's primary activity was to sponsor antiwar protest demonstrations in which demonstrators were urged to violate local ordinances and commit acts of civil disobedience. Citing the law of trusts, the ruling stated that all charitable organizations are subject to the requirement that their purposes cannot be illegal or contrary to public policy.

Based on the information you provided in your application and supporting documentation, we conclude that you are not organized and operated exclusively for exempt purposes under § 501(c)(3) of the Code. An organization can be recognized as exempt under § 501(c)(3) only if it shows that it is both organized and operated exclusively for charitable, educational, or other exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt. Treas. Reg. § 1.501(c)(3)-1(a)(1).

You do not satisfy the operational test of § 1.501(c)(3)-1(c) of the regulations. Whether an organization operates exclusively in furtherance of an exempt purpose is a question of fact. An organization seeking tax-exempt status under § 501(c)(3) carries the burden of proving that it satisfies the requirements of the statute. See *Harding Hospital*, 505 F.2d at 1071. Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. at 283, the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Current federal law prohibits the use of cannabis except in limited circumstances; those limited circumstances do not include the use of cannabis for medicinal purposes. See *Id.* The fact that State legalized distribution of cannabis to a limited extent is not

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determinative because under federal law, distribution of cannabis is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial nonexempt purpose.

You also operate for private purposes rather than the public interest. An organization that operates primarily for the benefit of its members serves the interests of a select group of individuals rather than the community's or the public's interest. A business or other activity that assists the community incidentally and only provides benefits to a limited number of members of the community more than incidentally is not charitable. See e.g., Rev. Rul. 61-170, *supra*, Rev. Rul. 69-175, *supra*, and Rev. Rul. 73-349, *supra*.

Whereas, the IRS recognizes the legalization of marijuana under Oregon State law; the cultivation, manufacturing, delivery, transfer, transport, supply, sell or dispense, related supplies as well as the use of marijuana by qualified patients **does violate federal law.**

It appears that your activities do not resemble those organizations exempt under section 501(c) (3) of the Code.

If you would like us to continue processing this case, please provide the additional information that demonstrates you meet the operational test as outlined above.

If you do not want us to continue processing your application, you may send us a statement requesting the withdrawal of your application. This statement must be signed and dated by an officer of the organization.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
701 B Street, Ste 902
San Diego, CA 92120
ATT: Denise L. Tamayo