

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 4508
Cincinnati, Ohio 45201

Date: December 18, 2001

Employer Identification Number:
65-0216638
Person to Contact - ID#: Mr. J. Jennewein 31-07208
Contact Telephone Numbers:
513-263-3643 Phone
513-263-3662 FAX
Response Due Date:
January 8, 2002

Everglades College Inc
C/o Nick Jovanovich
Berger Davis & Singerman
350 E Las Olas Blvd Ste 1000
Fort Lauderdale, FL 33301

Dear Sir or Madam:

Before we can determine whether your organization is exempt from Federal income tax, we must have enough information to show that you have met all legal requirements. You did not include the information needed to make that determination on your Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

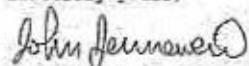
To help us determine whether your organization is exempt from Federal income tax, please send us the requested information by the above date. We can then complete our review of your application.

If we do not hear from you within that time, we will assume you do not want us to consider the matter further and will close your case. In that event, as required by Code section 6104(c), we will notify the appropriate state officials that, based on the information we have, we cannot recognize you as an organization of the kind described in Code section 501(c)(3). As a result, the Internal Revenue Service will treat your organization as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new Form 1023.

In addition, 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. Under Code section 7428(b)(2), your not taking all reasonable steps in a timely manner to secure the determination may be considered as failure to exhaust administrative remedies available to you within the Service. Therefore, you may lose your rights to a declaratory judgment under Code section 7428.

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

Sincerely yours,


John Jennewein
Exempt Organizations Specialist

Enclosure

Letter 1312 (OO)

Everglades College Inc
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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 page 1 of the application. If we do not receive your complete response by the due date, we will close your case temporarily. If you submit your response within 90 days after your case has been closed, we will re-open it for processing and you will neither have to file a new application nor lose your user fee.

PLEASE ATTACH A COPY OF THIS LETTER TO ALL CORRESPONDENCE.

Additional Information Requested:

1. Facts of Case:

Everglades College began in 1989 as American Flyers College, Inc (AFC), a for-profit entity. AFC was owned by American Flyers Schools, Inc AFS a Florida corporation wholly owned by Donald D. Harrington. On August 20, 1998, Arthur Keiser, Belinda Keiser, and Robert Keiser purchased the American Flyers College. On March 8, 2000, the American Flyers College Inc. was converted to a Florida not for profit corporation. In connection with the conversion, American Flyers College, Inc. changed its name to Everglades College.

In a memorandum of Understanding dated August 20, 1998, Arthur Keiser purchased AFC for \$10,000. Arthur Keiser is Director, Trustee, President Treasurer, and Secretary of Everglades College. In Memorandum of Understanding, it was agreed that AFC and AFS would enter into a separate agreement, effective following Keiser's acquisition of AFC's stock. Upon such terms as mutually agreed to by AFC and AFS, whereby AFC would provide AFS with a collegiate program for AFS flight students; and AFS would provide AFC with flight training services and programs for AFC's students. It was also agreed that AFC would not use "American Flyers" as its name or in any of its advertising material unless the Board of Directors of AFS expressly agreed to such use in-writing.

The Memorandum of Understanding also provided that all of the flight training for AFC students, including without limitation, written preparation and flight simulator instruction and aircraft, would be subcontracted by AFC to AFS flight schools, and the flight training curriculum offered by AFC would receive prior written approval of AFS. Even though AFC converted to a non-profit entity and changed its name, the contract between AFC and AFS still exists. Therefore, Everglades College is serving the private benefit of a for-profit entity.

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Everglades College has a scholarship program. In response to Schedule B of Form 1023, Everglades gave scholarships in the amount of \$500 each to 10 students who have completed associate degrees at Keiser College, a for-profit college owned by Arthur, Evelyn, and Robert Keiser. Therefore, Everglades is serving the private benefit of a for-profit entity.

Correspondence dated March 30, 2001 signed by Arthur Keiser, President of Everglades College, stated that the building in which the school is located is owned by a partnership in which related parties have a 42% interest and unrelated parties owned a 58% interest. The related parties are Keiser Building Corp., which is owned by Arthur Keiser who owns a 2% interest in the partnership; Spectrum Investment Associates which owns a 40% interest in the partnership is owned 48% by Arthur Keiser, 48% by Belinda Keiser and 4% by Robert Keiser. These joint venture (owned 42% by related parties) leases space to Keiser College which in turn's subleases to Everglades College Inc. The entire building comprises 83,624 square feet, including the area occupied by Everglades College. Also, housed in this facility are Keiser Career Institute and Everglades Management Company. Again, this arrangement serves the private benefit of the Keisers and they're related for profit entities.

Applicable Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious 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(a)(1) of the Regulations states:

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

Section 1.501(c)(3)-1(b)(1)(ii) of the Regulations states:

In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iii) of the Regulations states:

An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In International Postgraduate Medical Foundation v. Comm., TCM 1989-36, The Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a non-profit corporation that conducted continuing medical educational tours. Michael Holin, trustee and executive director of the non-profit corporation, was also a shareholder and president of H & C Tours, a travel agency. The Foundation used H & C Tours exclusively for all travel arrangements. The Foundation did not solicit competitive bids from any entity other than H & C Tours. In holding the Foundation not to be exempt, the Court stated:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. Denied 413 U.S. 916(1973). Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes. D.H. Dillard, Chairman of Old Dominion's board and E.S. Dillard president of Old Dominion was an officer and director of the Dillard Foundation who acquired all of the claims against the Brown Dynalube Company and all of its outstanding stock from a transferee of Dynalube's organizers for \$1. W.C. Pritchett, its vice president for finance, and William T. Minor, Jr served as attorney and accountant for both the company and the foundation were all officers and directors of the foundation.

At the time E.S. Dillard acquired the debentures he intended to give them away instead of selling them. Between 1954 and 1956 he donated Dynalube debentures to the Dillard Foundation for \$59,000 and to a church for \$26,000 in which he deducted the face value of those debentures as charitable contributions on his personal income tax returns.

E.S. Dillard and Prichett played an active role in the foundation Dynalube-Messie transactions and E.S. Dillard was the direct beneficiary of these activities. The officers of the foundation used the company's facilities to transact foundation's business, and they performed services for the foundation on company time. In holding Old Dominion Box Co. charitable contributions to be exempt the Court stated:

Dillard Foundation was operated for the benefit of private interest and it found the organization did not operate for charitable purpose at all times rather it was engaged in substantial non-exempt charitable activities. In addition, the court found that Appellant was not an innocent contributor to the foundation because of the interlocking activities of the Appellant and the foundation to give securities away.

Rev. Rul. 76-441, 1976-2 C.B. 147, presents two situations concerning school operations. In the first scenario a nonprofit school succeeded to the assets of a for-profit school. While the former owners were employed in the new school, the board of directors was completely different. The ruling concludes that the transfer did not serve private interest. Part of that conclusion was based on the independence of the board. In the second scenario, the for-profit school converted to a nonprofit school. The former owners became the new school's directors. The former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. The conclusion is stated as follows:

The directors were, in fact, dealing with themselves and will benefit financially from the transactions. Therefore, (the applicant) is not operated exclusively for educational and charitable purpose and does not qualify for exemption from federal income tax under Section 501 (c)(3) of the code.

Rationale:

Like International Postgraduate Medical Foundation v. Comm., your operations are substantially, if not completely, similar to that of the AFC as it existed prior to the purchases as a for-profit entity. You have not made any significant changes to your operations after the acquisition. A realistic look at the operations of your organization and the AFC, which you acquired, shows the operations to be so interrelated to be functionally inseparable.

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Everglades College is privately held and controlled by the Keisers despite the fact that they do not constitute a majority of the governing board. Therefore, it appears you operate for the benefit of private interests of the Keisers. You are similar to the organization in Old Dominion Box Co., supra because you operate for the benefit of private parties. Operating for the benefit of the Keisers is a substantial nonexempt purpose that will preclude exemption.

Although Everglades College is offering educational courses to further one career, the central question is whether you operate for the benefit of private interest of designated individuals, or the creator or the creator's family. In Rev. Rul. 76-441 a for-profit school was converted to a nonprofit school in which former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. Although the operation of a school is a charitable activity, the manner in which you operate leads to conclude that your school bestows significant private benefit for the Keisers and their for-profit corporation.

Based on the facts and circumstances provided to date, it appears you cannot satisfy the basic requirements for exemption, in that you fail the operational test. To determine if you qualify under Section 1.501(c)(3)-1(c)(1) of the regulations the Service determines if the organization engages primarily in activities which accomplish one or more exempt purposes. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations expands on the operated exclusively concept by providing that an organization is not operated exclusively to further exempt purposes unless it serves a public rather than a private interest. Based on the facts that you have provided in your application for recognition of exemption, it appears you are operated for a private purpose rather than a public purpose.

The purpose of this correspondence is to present our understanding of the facts and to explain why it appears that your organization may not qualify for exemption. This is not a denial of your request for exemption. If any of the facts of the case as presented above are incorrect, please clarify. If you do not agree with our interpretation and application of the law, please explain.

If you agree with the facts of the case and with the application of the law, you may withdraw your application through a written statement.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: John Jennewein
Room 4508

Street Address:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: John Jennewein
Room 4508