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October 3, 2011

Ms. Sally Fallon Morell
President
Weston A. Price Foundation
4200 Wisconsin Avenue, NW
Washington, DC 20016

Dear Ms. Morell:

You have asked our firm to advise you on whether the Weston A. Price Foundation (hereinafter, "the Foundation") may be treated as a trade association and therefore potentially subject to liability for personal injuries allegedly resulting from consumption of raw milk. Based on our review of the Foundation's organization and operations, it is our opinion that the Foundation is organized and operated as a tax-exempt entity under section 501(c)(3) of the International Revenue Code (IRC), and therefore is not a § 501(c)(6) trade association. As a consequence, we do not address the question of whether a trade association could be held liable for the intentional or negligent acts of its members or others.

Description of § 501(c)(3) organizations

To qualify as tax exempt under § 501(c)(3) of the IRC, an organization must be organized and operated exclusively for charitable, religious, educational, scientific, etc. purposes.¹ Such an organization:

1. Is organized and operated for the benefit of the general public, with no private benefit flowing to any member, director, shareholder, or any other person with control;²
2. May have members;³
3. Typically receives financial support from broad public sources;⁴
4. Typically receives foundation grants;⁵
5. May not engage in "substantial" lobbying activities;⁶ and
6. May not have direct or indirect involvement in campaigns for public office.⁷

¹ I.R.C. § 501(c)(3); 26 C.F.R. § 1.501(c)(3)-1(d)(2).

² I.R.C. § 501(c)(3); 26 C.F.R. § 1.501(c)(3)-1(d)(2).

³ See generally I.R.C. 509(a)(2)(A). See also I.R.S. Pub. 4220, "Applying for 501(c)(3) Tax-Exempt Status," page 6.

⁴ Rev. Rul. 55-656.

⁵ See generally I.R.C. § 170(a).

⁶ IRS Publication 557 (Oct. 2010), page 44.

⁷ I.R.C. § 501(c)(3).

Additionally, the Internal Revenue Service (“IRS”) considers the following factors when determining whether an organization operates within the parameters of § 501(c)(3) organizations:

7. For a § 501(c)(3) organized for educational and scientific purposes, that its research and study are not carried on to set standards for or to police an industry, but to provide for educational and scientific benefits to the general public;⁸ and
8. The organization is controlled by a board of directors principally drawn from public organizations and the public at large.⁹

Description of § 501(c)(6) organizations

On the other hand, a trade association is recognized under section 501(c)(6) of the IRC and is operated primarily to promote a common business interest.¹⁰ A trade association is devoted to improving business conditions of one or more lines of business.¹¹ Such an organization:

1. Conducts activities primarily benefitting its members, as opposed to benefitting the general public;¹²
2. Is made up of members that are for-profit businesses having a common business interest;¹³
3. Has primary activities that do not consist of performing particular services for individual persons;¹⁴
4. Is a membership organization generally controlled by its business-entity members;¹⁵
5. Is typically supported by membership dues;¹⁶
6. Generally does not receive grants;¹⁷
7. May lobby as its primary activity;¹⁸ and
8. May engage in campaigns for public office if not a primary activity.¹⁹

The following activities tend to illustrate a common business interest:

9. Promotion of higher business standards and better business methods and encouragement of uniformity and cooperation;²⁰

⁸ Rev. Rul. 76-455.

⁹ Rev. Rul. 55-656.

¹⁰ I.R.C. 501(c)(6); Reg. 1.501(c)(6)-1; IRS Publication 557 (Oct. 2010), page 47.

¹¹ Reg. 1.501(c)(6)-1.

¹² Reg. 1.501(c)(6)-1; Rev. Rul. 69-632; Rev. Rul. 74-553; Rev. Rul. 73-567; Rev. Rul. 80-287.

¹³ Reg. 1.501(c)(6)-1.

¹⁴ IRS Publication 557 (Oct. 2010), page 47.

¹⁵ Rev. Rul. 61-170.

¹⁶ IRS Publication 557 (Oct. 2010), page 47.

¹⁷ Most foundations only make grants to charitable organizations – those organized under I.R.C. § 501(c)(3).

¹⁸ IRS Publication 557 (Oct. 2010), page 48.

¹⁹ IRS Publication 557 (Oct. 2010), page 48.

²⁰ IRS Publication 557 (Oct. 2010), page 47.

10. Education of the public in the use of credit;²¹
11. Establishment of uniform casualty rates and compilation of statistical information;²²
12. Establishment and maintenance of the integrity of a local commercial market;²³
13. Operation of a trade publication primarily intended to benefit an entire industry;²⁴ and
14. Encouragement of the use of goods and services of an entire industry.²⁵

Additionally, the IRS considers the following factors when determining whether an organization operates within the parameters of § 501(c)(6) organizations:

15. The organization performs research only for its creators (directly or indirectly) – i.e., the research projects are selected by the members and are primarily for the purpose of increasing sales of members' products;²⁶
16. The organization has a code of ethics;²⁷
17. The organization polices a profession;²⁸
18. The organization has purposes, committees, or activities aimed at developing goodwill or fellowship among its members;²⁹ and
19. The organization provides social or recreational activities, or provides facilities such as a restaurant, lounge, or clubhouse for members³⁰

The Foundation was incorporated on September 2, 1999 as a nonprofit corporation in the District of Columbia, exclusively for charitable and educational purposes, including the dissemination of nutrition research and promotion of education, research, and activism in the field of nutrition and food production methods.³¹ The IRS recognized the Foundation to be organized and operated as a § 501(c)(3) organization in a determination letter dated February 12, 2004, of which a copy is attached.

The following factors support the position that the Foundation *is* a § 501(c)(3) organization:

1. The Foundation's services and activities are for the benefit of the general public – i.e., they improve the health and wellbeing of the general public, and not just its supporters; its programs and services are open to all;
2. The Foundation's members are primarily individual consumers and their families;

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Rev. Rul. 69-632.

²⁷ Rev. Rul. 71-506.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Articles of Incorporation of The Weston A. Price Foundation, Article Four.

3. The Foundation has broad public support – in 2010, it received 35.32% of its gross revenues from conference fees, 33.65% from membership dues, 22.9% from donations, 6.48 % from sales of literature, and 1.65% from miscellaneous sources;
4. The Foundation has received foundation grants;
5. The Foundation does not engage in “substantial” lobbying activities;
6. The Foundation has no direct or indirect involvement in campaigns for public office;
7. The Foundation’s research and programs are not to set standards for or to police an industry; and
8. The Foundation’s board of directors is composed of individuals drawn from the public at large. Board members include: Sally Morell – journalist, chef, and nutrition researcher; Geoffrey Morell – naturopathic practitioner; Dr. Thomas Cowan – medical doctor and author; Kayla Daniel, Ph.D. – author and nutritionist; Michael Schmidt – biodynamic farmer in Canada; and Mary Enig, Ph.D. – expert in lipid chemistry.

The following factors support the position that the Foundation is *not* a trade association under § 501(c)(6):

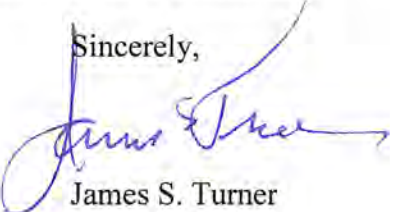
1. The Foundation is not organized or operated primarily to promote a common business interest – it has no ties with the meat or dairy industry or any organization promoting these industries;
2. The Foundation is not made up of for-profit businesses having a common business interest;
3. The Foundation provides practical educational training and information to individual persons, such programs being open to all, with benefits flowing to the public at large;
4. The Foundation is not business-member controlled – its board is not composed of persons from any particular industry;
5. The Foundation has broad public support;
6. The Foundation receives foundation grants;
7. The Foundation does not engage in “substantial” lobbying activities;
8. The Foundation has no direct or indirect involvement in campaigns for public office;
9. The Foundation does not promote higher business standards or methods; nor does it encourage uniformity or cooperation in an industry;
10. The Foundation does not establish or maintain the integrity of a local commercial market;
11. The Foundation does not operate a trade publication primarily intended to benefit an entire industry;
12. The Foundation does not encourage the use of goods and services of an entire industry; rather, the Foundation advocates for a natural-foods diet, regardless of any industry or business interests;
13. The Foundation’s research and programs do not serve the purpose of increasing sales in any industry, but rather are for the improvement of health and wellbeing of food consumers and members of the public generally;

14. The Foundation has no code of ethics for its members;
15. The Foundation does not police a profession;
16. The Foundation has no business members, and therefore does not promote fellowship or goodwill among such members; and
17. The Foundation has no social or recreational facilities.

Based on current federal law and regulations governing tax-exempt entities, a review of the Foundation's legal documents, and a review of the Foundation's operations, we are of the opinion that the Foundation is "exempt under section 501(c)(3) of the Code" and properly "classified as a public charity under [Code section 170(b)(1)(A)(vi)]."³²

However, should the threatened litigation proceed, the Foundation has a defensible position that its speech is protected by the First Amendment. Consistent with its status as a § 501(c)(3) organization, the Foundation's speech serves to educate the public. In addition, such speech does not constitute commercial speech because it is not "speech which does 'no more than propose a commercial transaction.'"³³ Therefore, the Foundation's speech is not subject to the limitations on commercial speech, but rather, is entitled to the highest level of protection under the First Amendment.

If you have any questions about this letter, please do not hesitate to contact us.

Sincerely,

James S. Turner

³² IRS determination letter, dated February 12, 2004.

³³ *Va State Bd. of Pharmacy v. Va Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976), quoting *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 385 (1973).