This letter will address the issues raised by your letter dated November 26, 1999.

Statutory Requirement for Exemption

An organization is exempt from federal income tax under sections 501(a) and (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") if (i) it is organized and operated exclusively for exempt purposes; (ii) no part of its net earnings inures to the benefit of any private shareholder or individual; and (iii) a substantial part of its activities is not devoted to political or lobbying activities. "Exempt purposes" means, in addition to other stated purposes, religious, charitable, scientific, testing for public safety, literary and educational purposes. The first requirement is fulfilled only if both the organizational and the operational tests are met. Treas. Reg. §1.501(c)(3)-1(a)(1).

The Organizational Test and Satisfaction by TEM

The organizational test requires, in pertinent part, that the articles of incorporation limit the organization to one or more exempt purposes and not expressly authorize it to undertake, except as an insubstantial part of its activities, activities which do not further one or more exempt purposes. Treas. Reg. §1.501(c)(3)-1(b)(1).
TEM satisfies the organizational test because (i) Article Four of its articles of incorporation (the "Articles") provides that it is organized and shall be operated exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of Code §501(c)(3), (ii) Article Eight of its Articles provides that no part of the net earnings of TEM shall inure to the benefit of any private shareholder or other individual, and (iii) Article Eight of its Articles provides that no substantial activities of TEM shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and TEM shall not participate in, or intervene in (including the publishing of or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Moreover, the answer to Part II, lines 13 and 14 of the Form 1023 for TEM submitted to the Internal Revenue Service (the "Service") on March 11, 1999 (the "Form 1023") provides that TEM will not attempt to influence legislation and will not intervene in any way in any political campaign, including the publication or distribution of any statement.

**The Operational Test**

The operational test is satisfied if the organization engages primarily in activities which further one or more of the exempt purposes specified in Code §501(c)(3) and if it does not engage, except to an insubstantial amount, in activities which do not accomplish an exempt purpose. Treas. Reg. §1.501(c)(3)-1(c)(1).

Treas. Reg. §1.501(c)(3)-(d)(2) provides that the term "charitable" includes the "advancement of religion" and the "advancement of education". Treas. Reg. §1.501(c)(3)-1(d)(3) defines "educational" as relating to the instruction either of the individual to improve or develop his capabilities or of the public on subjects "useful to the individual and beneficial to the community". Example (2) of Treas. Reg. §1.501(c)(3)-1(d)(3) provides that an organization whose activities consist of presenting public discussion groups, forums, panels, lectures or other similar programs is educational. Example (3) of Treas. Reg. §1.501(c)(3)-1(d)(3) provides that an organization which presents a course of instruction by means of correspondence or through utilization of television or radio is educational.

In Rev. Rul. 67-4, 1967-1 C.B. 121 the Service ruled that the publication of printed material may be educational if:

(a) the content of the publication is educational;

(b) the preparation of the material follows methods generally accepted as "educational" in character;

(c) the distribution of materials is necessary or valuable in achieving the organization's educational purposes; and
(d) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

In addition to Rev. Rul. 67-4 cited above, the Service has issued numerous other revenue rulings involving organizations engaged in (i) publishing educational and religious materials, (ii) educational and religious broadcasting, (iii) providing educational instruction and training, and (iv) selling educational products. A common characteristic of all of these organizations is the operation of a business activity. The fact patterns and analysis in many of these revenue rulings, as well as the definition of "educational" in Treas. Reg. §1.501(c)(3)-1(d)(3) and Examples (2) and (3) therein, are relevant to a determination that TEM satisfies the operational test of Code §501(c)(3).

Educational Publishing

In Rev. Rul. 67-4 the Service concluded that an organization formed to encourage scientific research in, and to disseminate educational information about, specific physical and mental disorders by publishing and selling, below cost through public subscription, a journal containing abstracts of current information from the world's medical and scientific publications was "charitable" because it advanced education. In Rev. Rul. 66-147, 1966-1 C.B. 137 the Service held that the publication of abstracts of scientific and medical articles by an organization contributed to the advancement of education by providing an effective means for the increased dissemination and application of such knowledge.

In Rev. Rul. 71-413, 1971-2 C.B. 228 the Service determined that a nonprofit organization acting as a clearinghouse and course coordinator by bringing together instructors and interested students in a community for purposes of instruction is advancing education and is entitled to exemption under Code §501(c)(3). That organization published a bulletin listing scheduled courses that had been reviewed and approved by a coordinating committee appointed by the organization. The Service concluded that the content of the courses, and the manner of their presentation by the organization, were such that the instruction was useful to the individual and beneficial to the community. By enabling students and instructors to come together for purposes of instruction on subjects useful to the individual and beneficial to the community, the Service concluded that the organization was advancing education and was, therefore, "charitable" within the meaning of Code §501(c)(3).

In Rev. Rul. 58-194, 1958-1 C.B. 240 the Service held that a corporation organized for the purpose of operating a store and supply store and a cafeteria and restaurant on the campus of a university primarily for the convenience of its student body and the members of its faculty, was operated exclusively for educational purposes and qualified under Code §501(c)(3). A similar ruling was made by the Service in Rev. Rul. 69-338, 1969-2 C.B. 116.
Religious Publishing

In Rev. Rul. 68-306, 1968-1 C.B. 257 the Service held that a nonprofit organization that published and distributed on a subscription basis a newspaper primarily devoted to news, articles, and editorials related to church and religious matters was charitable and exempt under Code §501(c)(3) because it was contributing to the advancement of religion.

Educational Broadcasting

In Rev. Rul. 66-220, 1966-2 C.B. 209 the Service concluded that a nonprofit corporation organized exclusively for educational purposes to operate a noncommercial broadcasting station presenting educational, cultural and public interest programs was exempt under Code §501(c)(3) since it provided instruction of the public on subjects useful to the individual and beneficial to the community. Included among the sources of this organization's income were receipts from the sale of a monthly program guide. The Service noted in Rev. Rul. 66-220 that an "educational" organization described in the Treasury regulations includes an organization whose activities includes public discussions, forums, lectures, panels, and other similar programs broadcast on radio and television with a full and fair exposition of the pertinent facts. In Rev. Rul. 76-4, 1976-1 C.B. 145 the Service concluded that an otherwise qualifying organization that produced and distributed free (or at small cost-defraying fees) educational, cultural, and public interest programs for public viewing via public educational channels of commercial cable television companies was operated exclusively for educational purposes and exempt under Code §501(c)(3).

Religious Broadcasting

In Rev. Rul. 78-385, 1978-2 C.B. 174 the Service held that a nonprofit organization formed to advance education and religion by broadcasting religious and educational programs for all but an insubstantial amount of its broadcasting time from a television station it owned and operated under a commercial license qualified for exemption under Code §501(c)(3) even though its remaining broadcast time was devoted to commercially sponsored programs.

Educational Instruction and Training

Rev. Rul. 68-71, 1968-1 C.B. 229 deals with an organization formed to educate young people as well as adults about employment opportunities, and to assist them in planning their careers and achieving occupational adjustment. To implement its purposes, the organization conducted occupational research, published the results of such research, and sponsored group and individual vocational counseling. Its publication provided information to potential job seekers as to available opportunities and how to take advantage of those opportunities. The publications were sold at a nominal charge. The Service concluded that the organization was engaged in an educational activity and qualified under Code §501(c)(3) because it helped people in planning their careers and achieving
occupational adjustment by distributing educational publications and providing free vocational counseling.

In Rev. Rul. 72-101, 1972-1 C.B. 144 the Service concluded that a nonprofit organization created through collective bargaining agreements to train individuals designed to acquire skills in an industry was advancing education and exempt under Code §501(c)(3) as a charitable and educational organization.

Selling Educational Products

In Rev. Rul. 70-129, 1970-1 C.B. 128 the Service determined that an organization formed to support research in anthropology by manufacturing quality cast reproductions of anthropological specimens which were sold to scholars and educational institutions in a noncommercial manner was advancing education and exempt under Code §501(c)(3). In Rev. Rul. 76-37, 1976-1 C.B. 148 the Service concluded that a nonprofit corporation that purchased building lots, furnished funds to a public vocational center for use in its on-the-job home construction training program, sold the completed homes to the general public at fair market value, and used the income from the sales to finance new projects and obtain vocational training for the public school system qualified for exemption under Code §501(c)(3). The Service concluded that the organization's activities contributed importantly to the overall program of the vocational center and promoted education within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(3).

Satisfaction of the Operational Test by TEM

Based on a reading of your letter dated October 27, 1999, it appears that the Service believes that TEM does not satisfy the operational test because TEM is not operated exclusively for exempt purposes, but is operated for substantial commercial purposes. Your letter suggests three reasons for your belief: (i) the earnings of TEM inure to private individuals, (ii) TEM intends to accomplish its purposes by producing and marketing Christian educational materials and publications, whether developed by it or other Christian organizations or ministries, and (iii) TEM's primary activity appears to be the marketing and selling of teaching aids, such as booklets, posters, flash cards, board games, flannelgraphs, stories, publications, audio and video productions, and the like.

I dispute your conclusion and believe your analysis is not only flawed, but has been rejected by numerous courts. TEM is operated exclusively for charitable and educational purposes and in a noncommercial manner and its activities are conducted solely to further and accomplish its exempt purposes. Each revenue ruling cited above involved an organization engaged in a business activity, e.g., educational publishing, religious publishing, educational broadcasting, religious broadcasting, educational training and instruction, and selling of educational goods. Finally, any suggestion that the earnings of TEM inure to the benefit of private individuals is ludicrous and without merit.
Specific Purposes of TEM

The specific purposes of TEM are stated in Part II, line 1 of the Form 1023 and in my letter to you dated August 12, 1999 (the "August Letter"). Part II, line 1 of the Form 1023 states that the purposes of TEM are to build a stronger community by encouraging communication, character-building and family involvement by providing educational materials and sharing experience and counseling with parents and children in order to promote family values, self-improvement and family-life skills. The response to Question 1 in the August Letter provides that the primary purpose of TEM is to function as an agent to serve the moral, educational, instructional and religious needs of missionaries and homeschoolers.

The response to Part II, line 1 of the Form 1023 provides that TEM intends to accomplish its purpose by producing and distributing Christian educational materials and publications. The answer to Question 1 in the August Letter provides that the Christian and educational materials, teaching aids and literature provided by TEM will be designed to give parents, home-school teachers, as well as children themselves, a tool which in and of itself contains moral training, character-building development and positive peer influence. This answer in the August Letter also provides that topics of the teaching aids will include Bible fundamentals, friendship and courtesy and hygiene.

Part II, line 1 of the Form 1023 also provides that TEM also intends to accomplish its exempt purposes by (i) conducting seminars, lectures, and other events to promote positive values and educational techniques and practices and (ii) developing and distributing regular religious newsletters, publications and literature to be made available to missionary families in the United States and throughout the world.

There is no question that TEM's purpose is charitable because it is the advancement of education. Treas. Reg. §1.501(c)(3)-1(d)(2). The activities of TEM are educational within the meaning of Treas. Reg. §1.501(c)(3)-1(d)(3) because they are clearly relating to the instruction of the individual to improve or develop his capabilities or of the public on subjects useful to the individual and beneficial to the community. In addition, Example (2) of Treas. Reg. §1.501(c)(3)-1(d)(3) provides that an organization whose activities consist primarily of public discussion groups, forums, panels, lectures, or other similar programs is educational.

TEM's staff and volunteer endeavors include (i) hands-on community service work and humanitarian support in the local and inner city areas, (ii) individualized guidance and counseling for parents, families and youth, (iii) conducting informal and formal meetings and seminars for Bible study and moral instruction, and (iv) conducting fellowship groups and providing support groups for interaction of educational purposes and informational resources to home-schoolers and to the public.

Support group activities involve a meeting of parents, of home-schoolers, or even youth, where one or more of TEM's staff or volunteers would impart information, or hold a forum for
educational discussion of techniques and new innovations, as well as for spiritual guidance and Biblical counseling.

TEM will also be initiating and be involved in seminars, lectures, and other events to promote positive values and educational techniques and practices. TEM will either sponsor these activities, or offer these services to appropriate institutions and organizations, whether religious or educational, public or private, church or social. These seminars and lectures will be on teaching techniques for missionary families and home-schoolers who do school their children at home, as well as on topics of Christian and Biblical study, Christian leadership, fostering moral behavior, teaching children the Bible, and leading children in a Christian home. TEM will also conduct seminars and lectures on communication skills, parenting skills, communicating with teens and adolescents, Christian discipline and its place in the home, how to help children scholastically through tutorial techniques, as well as many other tips and practices for lending a good moral and Christian life.

TEM believes that conducting these seminars and lectures, as well as developing support groups and individualized counseling and instruction, are very important and further TEM's exempt purposes because holding such events enables TEM to impart the knowledge, research and instruction its founders and staff have gained in education, in Christian values and in educational instruction. These seminars and lectures will act as a forum to share experience and counsel on contemporary educational issues, home-schooling, Christian leadership, moral education and behavior. TEM also intends to use these seminars, lectures and discussions as an avenue for supplying information and resources to people, supplying newsletters and brochures on TEM activities and information on new TEM educational materials, and future lectures, seminars and Bible studies.

Currently TEM conducts two types of regularly held fellowship meetings and support group sessions at the residence of William Moore, though periodically these are also held at an outside facility usually donated for use or at the house of an attendee. Such meetings are held for a 1-2 hour duration and on either a Monday or Wednesday evening. The attendance varies at each. The weekly meeting normally has 7-10 people, whereas the bi-weekly event has 20-25 people. Those who attend are adults and youth. The adults that attend are mostly parents, Christians in their faith and are active home-schoolers. The youth are between the ages of 16-25, of which some are students or working. There is no charge or fee to attend which is why these are held at William Moore’s residence or in a residence of an attendee or at a donated facility. TEM also offers a “follow-up” program of individualized counseling, visitation and prayer-support.

Periodically TEM intends to hold larger events in which an average of 50-75 people attend, which will include a seminar on moral education, Christian values, or other educational issues given by a lecturer or video presentation, and individualized or small group discussions or workshops. The organization, presentation and hosting of these events is coordinated and supervised by the Board of Directors of TEM, and by volunteers. The subject matter of these events are determined
by the Board of Directors and donations are solicited to defray any expenses, either beforehand by request or solicited from the private or business sector. Attendees are not charged an entrance fee or donation to participate.

TEM also intends to set up an information base or resource for Christian missionaries and home-schoolers as well as for the public where in a regular newsletter and postings at its Web site TEM will make available information such as parenting tips and methods, communication skills and techniques, moral education resources and issues, Christian-based guidance and instruction, and other related topics in accordance with TEM's mission purposes to promote Christian values and educational instruction and materials. This information and resource will be regularly updated and researched by the staff of TEM and its volunteers and have at its basis both Christian and secular experts and organizations.

As stated above, the Service ruled in Rev. Rul. 67-4 that the publication of printed material may be educational in certain circumstances. TEM intends to develop, produce and distribute audio/visual as well as printed, Christian-based educational items for Christian homes, schools—both religious and secular—churches, social institutions and the public. TEM believes that the production and/or distribution of selected educational materials furthers its exempt purposes because it is a service to the community, missionary families, home-schoolers and to the public at large by providing for them items that are educationally wholesome and that have Christian-based values. TEM is especially interested in providing educational items that are accredited or acclaimed by academic or educational institutions, as well as items that families, children and youth can use which will inspire their Christian growth, Christian leadership and good, moral behavior.

Being both an educational-based organization as well as a Christian-based organization, TEM intends to not only instruct, train and offer techniques, but also to provide materials that further the Christian educational instruction, family values, moral training, and scholastic improvement. Since TEM believes that its purposes are only accomplished by providing the best in moral quality and educational quality, TEM will not only produce these materials, but will also reproduce and distribute materials of the highest quality that are produced by other Christian ministries or organizations, even by secular companies, educational companies, or institutions. TEM's goal is to provide the best educational materials at the lowest possible price. TEM's publications, videos, tapes, CDs, etc., are selected as to the content as much as possible based on approval by academic, religious, and educational organizations.

To date 99.9% of the educational products distributed by TEM have been to missionary organizations, for missionary families themselves and their ministries at minimal cost—or free when possible—via TEM's Missionary Services Program.

In the response to Part II, line of the Form 1023, TEM also stated that it intended to develop and sell regular religious newsletters, publications and literature, making these available to
missionary families in the U.S. and throughout the world. To date TEM has not engaged in this activity and has decided not to pursue this activity. TEM has decided to concentrate on providing educational materials, conducting seminars and lectures, providing audio and video materials, books, posters and other related items for religious and educational purposes, and funding and/or supplying educational materials to missionary families and funding humanitarian service projects of Christian organizations worldwide.

Each of the activities of TEM have been ruled to be exempt by the Service in the revenue rulings cited above. Similar to the organizations discussed in Rev. Rul. 67-4 and Rev. Rul. 66-147, TEM produces and distributes educational materials. The organization in Rev. Rul. 67-4 received income from subscriptions and defrayed its operating costs by contributions. As discussed in Rev. Rul. 67-4 line 1 of the Form 1023 and in the answers to Questions 1 and 2(a) of the August Letter, TEM's intent is to provide its materials at a very minimal price above its cost, and in some cases free of charge. In all cases, the price is substantially below retail and is not designed or intended to generate large profits. TEM intends to sell its educational materials as cost-efficiently as possible, covering production and distribution costs and overhead, adding a small margin to cover staff expenses and to generate additional funds for investment in future productions. TEM also intends to provide support through contributions to other organizations exempt from Federal income tax under I.R.C. §501(c)(3).

In Rev. Rul. 67-4 the Service provided four requirements for determining if educational publishing qualified for exemption from Federal income tax under Code §501(c)(3). First, the content of the publications must be educational. There is no question that all materials produced by TEM are educational. Second, the preparation of the materials must follow methods generally accepted as "educational" in character. Unfortunately, the Service provided very little guidance in Rev. Rul. 67-4 for how it determines if the second requirement is satisfied, except to note that the organization involved in Rev. Rul. 67-4 provided reference to its literature and that the organization's materials enabled individuals afflicted with the physical and mental disorders about which it gathered information to receive improved instruction and treatment. Please read the response to Question 6 of the August Letter from which it should be readily apparent to you that there is an ongoing need within the missionary community for low cost, superior quality educational materials. There is no question that TEM should satisfy the second requirement for the same reasons the organization in Rev. Rul. 67-4 did.

The third requirement listed by the Service is that the distribution of the materials is necessary or valuable in achieving the organization's educational purposes. One of the purposes of the organization involved in Rev. Rul. 67-4 was to disseminate educational information about specific types of physical and mental disorders. From a reading of Rev. Rul. 67-4 the fact that the Service considered the organization to satisfy this requirement is so obvious that it is not even specifically discussed. The same conclusion has to be reached with respect to TEM.
Finally, the Service in Rev. Rul. 67-4 requires that the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices. The Service concluded that the organization in Rev. Rul. 67-4 satisfied this requirement for two reasons. First, the Service concluded that the distribution of the organization's materials was carried out essentially in a "charitable" manner, in the sense that there was a public benefit derived from the distribution. The second reason was that the charges for the materials recovered only a portion of the costs. There is no question that there is a public benefit derived from the materials distributed by TEM. Even though TEM does not price its materials below cost, its pricing is substantially below retail and is designed only to cover its costs with a small margin for future expenditure. For example, as explained to you in the answer to Question 2(a) of the August Letter, TEM distributed two series of 36-page, Christian-based, color, educational booklets (3,000 total) for which it paid about 69¢ per booklet, including shipping. TEM sold the booklets for 89¢ plus shipping and handling. The 20¢ per booklet mark-up was to cover TEM's overhead and future investment. 3,000 multiplied by 20¢ is a $600 profit before overhead. In some cases its products are distributed free of charge. An organization cannot be expected to sell its products below cost in order to satisfy the fourth requirement of Rev. Rul. 67-4. There is no question that TEM meets the fourth requirement and for the same reasons the Service concluded the organization in Rev. Rul. 67-4 qualified for exemption. Under Code §501(c)(3), it must do so for TEM.

As stated in Part II, lines 1 and 2, TEM clearly intends to solicit contributions from individuals and the business community and to apply for grants. To the extent TEM is successful in its fundraising, it will enable TEM to sell its materials closer to cost, at cost or below cost like the organization in Rev. Rul. 67-4 and to distribute more of its materials free of charge like the organization in Rev. Rul. 66-147. Without contributions, donations and grants, an organization cannot be expected to sell its products below cost or it will not be able to continue its operations. This is the basis of the pricing used by the organization granted exemption in Rev. Rul. 70-129 which set its prices at a level designed to recoup its costs and expenses. In this ruling the Service concluded that the manufacture and sale of the organization's products provided an effective means for making its research and study aids available. A similar conclusion was reached by the Service in Rev. Rul. 76-37.

TEM is clearly distinguishable from the organization denied exemption under Code §501(c)(3) in Rev. Rul. 60-351, 1960-2 C.B. 169 because that organization made its magazine available to the general public at regular subscription rates and received additional income from advertising. If TEM sells its materials, it does so substantially below retail and receives no advertising income. The Service concluded that the organization in Rev. Rul. 60-351 was organized for the primary purpose of publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices. A similar conclusion was reached by the Service in Rev. Rul. 77-4, 1977-1 C.B. 141 where an organization's only activity was publishing a newspaper of general news, soliciting advertising and selling subscriptions. To the contrary, TEM is organized for the primary purpose of advancing education of missionaries and home schoolers, to promote
family values, self-improvement and family-life skills and accomplishes its purposes by distributing educational materials, providing counseling, developing support groups, and conducting seminars and lectures. It can hardly be maintained that TEM publishes and sells its materials in accordance with ordinary commercial publishing practices. In addition, unlike the organizations in Rev. Rul. 60-351 and Rev. Rul. 77-4, TEM does not only produce and sell educational materials. As stated above, it conducts many activities designed to promote family values, self-improvement and family-life skills, all of which are educational within the meaning of Treas. Reg. §1.501(c)(3)-1(d)(3). Moreover, TEM intends to provide financial assistance to other organizations exempt from Federal income tax under Code §501(c)(3).

In Rev. Rul. 68-71 the Service held an organization exempt which educated young people as well as adults about employment opportunities and assisted them in planning their careers and achieving occupational adjustment. That organization conducted and published research and provided group and individual counseling. In Rev. Rul. 72-101 the Service held an organization exempt which trained individuals desiring to acquire skills in an industry. TEM should be held exempt on the same basis as the organizations in Rev. Rul. 68-71 and Rev. Rul. 72-101. All of these organizations are educational within the meaning of Treas. Reg. §1.501(c)(3)-1(d)(3) because all three relate to the instruction either of the individual to improve or develop his capabilities or of the public on subjects useful to the individual and beneficial to the community.

In The Incorporated Trustees of the Gospel Worker Society v. U.S., 520 F. Supp. 374 (D.D.C. 1981), the court stated that the cases interpreting the operational test fall into two types of factual patterns. The first type involves an organization conducting activities which also carries on a trade or business for profit. According to the court, the main inquiry in this type of situation is whether the profit-producing activity is merely incidental to and in furtherance of the organization's exempt activity and exempt purpose. See, e.g., Scripture Press Foundation v. United States, 285 F.2d 900 (1961) where the Second Circuit held that the organization's door-to-door evangelism and religious instructional activities were incidental to the sale of its religious literature for profit and Saint Germain Foundation v. Commissioner, 26 T.C. 648 (1956) where the Tax Court held that the organization's sale of religious publications producing income was incidental to its religious purposes as manifested through the conduct of religious classes and conclaves. The Service proposed to revoke The Incorporated Trustees of the Gospel Worker Society's exemption on the grounds that the religious and charitable activities for which the exemption had been granted had virtually ceased, and that the operation of the publishing business at a "substantial" profit (e.g., a surplus in excess of $5.8 million in one year) indicated the existence of a trade or business unrelated to its exempt purposes. TEM is clearly distinguishable from The Incorporated Trustees of the Gospel Worker Society. TEM's publishing activities are clearly incidental to its exempt purposes as discussed above, TEM's pricing methodology will never generate substantial profits, and as discussed in great detail, TEM also engages in numerous other educational activities.
The court in *The Incorporated Trustees of the Gospel Worker Society* at page 376 stated that although the fact that an organization's profits are very large is not conclusive of a non-exempt purpose, it is evidence indicative of a commercial character. Other courts have reached this conclusion. See, *Scripture Press Foundation*, supra, 285 F.2d at 803; *American Institute for Economic Research v. United States*, 302 F.2d 934, 938 (1962); *BSW Group, Inc. v. Commissioner*, 70 T.C. 352, 357 (1978); and *Golden Rule Church Association v. Commissioner*, 41 T.C. 719, 731 (1964). The reasoning adopted by these courts can be used to argue that an organization with very small profits or no profits at all, principally due to pricing designed to approximate cost of production and distribution, is not operated in a commercial manner. Such is the case with TEM.

The second type of case involves an organization whose sole activity is an income-producing one. In *BSW Group Inc. v. Commissioner*, supra 70 T.C. at page 356 the Tax Court held that since it is possible for an activity to be carried on for more than one purpose, the critical inquiry is whether the organization's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the non-exempt one of operating a commercial business producing net profits for the organization. See, e.g., *Christian Manner International, Inc. v. Commissioner*, 71 T.C. 661 (1979) in which the Tax Court concluded that the organization's primary, if not the sole activity, was the promotion, distribution and sale of its founder's book, with a principal non-exempt purpose of turning a profit; *Pulpit Resource v. Commissioner*, 70 T.C. 590 (1978) where the Tax Court held that the organization's sole activity was the publication and sale of a religious journal, but granted the exemption because it concluded that the activity furthered a primary exempt purpose of improving the preaching skills of the clergy; and *Fides Publishers Association v. United States*, 263 F. Supp. 924 (N.D. Ind. 1967) in which the court concluded that the organization was not exempt since its sole activity had a substantial non-exempt purpose of the publication and sale of religious literature at a profit.

TEM qualifies under the first fact pattern of the cases since its purposes are charitable and educational and its activities are merely incidental to and in furtherance of its exempt purposes. This is the same analysis as adopted by the Service in each of the revenue rulings cited above.

TEM also qualifies under the second type of case. In these cases, the courts are concerned about whether the organization operates in a commercial manner. In *The Incorporated Trustees of the Gospel Worker Society*, the court stated at page 376 that although the fact that an organization's profits are very large is not conclusive of a non-exempt purpose, it is evidence indicative of a commercial character. The court also found it troubling that there were abrupt increases in salaries of the top personnel of the Gospel Press. The court stated that while officers of a tax-exempt organization may, of course, receive remuneration for their services without jeopardizing the exemption, a substantial salary that rapidly rises in amount may be suggestive of a commercial rather than a non-profit corporation. The Tax Court in *Christian Manner International, Inc.*, supra, stated that private inurement is one factor indicative of a commercial purpose. As stated in the answer to Question 9 of the August Letter, to date the officers of TEM have not drawn a salary and the
proposed initial salary is only $300 a month which cannot by any measure be determined "large" or "substantial". Moreover, as stated in the answer to Question 4 of the August Letter, no officer or director of TEM will own the title or copyright to any material or receive any royalty for any material produced by TEM.

In Peoples Translation Service/Newsfront International v. Commissioner, 72 T.C. 42 (1979), the Service argued that the organization was operated in a commercial manner because it charged subscription rates, advertised its products, and "hoped" to pay its staff in the future. The organization argued, and the Tax Court accepted, that organizations charging for publications have repeatedly been granted exempt status and that in this case the organization's rates were set below cost. In addition, the organization pointed out that it provided free subscriptions to those who could not afford the below-cost subscription rate, and depended on contributions and grants to defray its operating costs. The Tax Court agreed with the organization that these factors and others taken together, distinguished it from other organizations denied exempt status as commercial enterprises. The same conclusion should be reached with respect to TEM.

The Service put substantial emphasis on the fact that Peoples Translation Service, like other organizations denied tax-exempt status, sold the bulletin at subscription rates. The Tax Court, however, noted that these nonexempt organizations did not, like Peoples Translation Service, charge rates set below cost. The American Institute for Economic Research, for example, received fees for periodicals and investment advice services which were "well" above costs of production. American Institute for Economic Research v. United States, supra 302 F.2d at 938. Other organizations sold books at a price set to return a profit. Fides Publishers Association, supra at 929; Christian Manner International, Inc., supra. Relying in part on the factor of fees set to cover costs and yield a 10.5 percent profit, the Tax Court held in BSW Group, Inc., supra at 359 that an organization which provided managerial and consulting services to nonprofit organizations was non-exempt.

The same arguments I made above in the discussion regarding the fourth requirement determined by the Service in Rev. Rul. 67-4 for educational publishing to be an exempt activity are relevant here. TEM does not operate in a commercial manner and it is obvious from the holdings in above-described cases, that the courts would agree.

The Tax Court in Peoples Translation Service/Newsfront International at page 50 also noted that the amount the organization spent on advertising was insignificant. The Tax Court cited the Service's holding in Rev. Rul. 68-306 that while the sale of advertising space will not automatically disqualify a journal from tax-exempt status, the absence of advertising underscores the organization's lack of a commercial intent. TEM does not sell advertising.
Your Specific Questions in the October 27, 1999 Letter

I will now address each of your questions in your October 27, 1999 letter in the order in which they were presented:

1. What is your exempt purpose? The above discussion thoroughly answers this question.

2. Explain what is the different (difference?) between your organization's activities and those of the For-Profit Bookstores? TEM's purpose is to provide wide dissemination of its materials for the purpose of improving the lives of those it can reach. To this end, it will provide its materials at very low cost to missionaries via its Missionary Services Program, donating its materials whenever possible. For-profit bookstores do not donate their products.

Through its sales to the general public, solicitation of contributions from the private and business sectors, as well as by keeping its costs as low as possible, TEM intends to provide its materials via its Missionary Services Program at a very minimal markup so that its sales price will be automatically below the retail cost of a Christian bookstore.

TEM also donates its materials. To date TEM has donated approximately $13,000 worth of its materials to members of its Missionary Services Program.

3. Who owns(s) materials being sold? This question has previously been answered in Part II, line 1 of the Form 1023 and in the responses to Questions 2, 3 and 4 of the August Letter. To reiterate, all materials produced by TEM, including all titles, copyrights, royalties or similar interests in recordings, books or other materials developed by TEM, are the property of TEM and not any individual officer or director of TEM. No officer or director of TEM will own any title or copyright or receive any royalty for any tape recording, book or any other material produced by TEM. No officer or director of TEM has any business interest or participation interest in any business with which TEM does or will do business, or with which it has or will enter into a licensing agreement either to purchase or distribute its materials.

4. How are you presently selling your materials (i.e. mail-order store)? This question has also been answered in Part II, line 1 of the Form 1023 and in the response to Question 2 of the August Letter. To reiterate, TEM is presently selling its materials through mail, phone and web order. TEM will also be offering its materials at any meetings or seminars that are conducted by TEM as well as...
through bible study support groups. The volunteers and staff of TEM also are involved in the community personally to distribute aid, to visit the homes of families (where they offer their experience and counsel and guidance on homeschooling or Christian bible study or topics of a related nature), and through these interactions also make available the educational materials of TEM.

(5) Where are your materials stored? The materials of TEM are primarily stored in a rented warehouse with a minimal amount stored in the office of TEM.

(6) How much are you selling each item for? This question has previously been answered in Part II, line 1 of the Form 1023 and in the responses to Questions 1 and 2(a) of the August Letter.

Please see Attachment 'A' for an updated list of all educational materials of TEM and their prices. As previously stated in this letter, currently approximately 99.9% of the sales of TEM are to members of its Missionary Services Program.

(7) Please provide a price list for all your materials (include any inventory list). See the answer to Question 6.

(8) Please provide a copy of your mailing list (include subscription and customer list). As stated previously and in the answer to question 9 below, 99.9% of the customers of TEM are members of its Missionary Services Program.

(9) How does this mailing list further your exempt purpose as opposed to a commercial purpose? Currently 99.9% of the customers of TEM are members of its Missionary Services Program. This is the very class of individuals TEM seeks to benefit by providing its materials. Approximately 85% of the customers of TEM are low income. TEM does not have a mass-mailing address list that it uses to solicit sales. It is currently focusing on providing materials via its Missionary Services Program, donating the materials whenever possible.

(10) Does the organization have a website? If yes, what is the website address? The website addresses of TEM are: www.edumediaunlimited.com and www.teamfederation.com.

(11) Do you conduct seminars, concerts, fundraisers, etc.? This has been discussed in detail above regarding the purposes of TEM. TEM does conduct seminars periodically throughout the year, although it does not have a regular schedule for them. TEM intends to conduct most of its seminars and concerts on a free admission basis. The purpose of the fundraisers are not only to solicit
contributions, but also to provide information about TEM to the attendees. This question has also been answered in the response to Part II, line 1 of the Form 1023.

(12) If yes, what is the purpose of the above activity? The principal discussion of this letter of the purposes of TEM answers this question. To reiterate, the purpose of the seminars is to make the public, a group of parents, a group of youth, or a group of home-schoolers aware of teaching techniques, teaching tools and teaching aids of TEM, as well as to inspire knowledge of the Bible and to inform them of the advantages of home-schooling. The seminars are also conducted for the purpose of raising the interest level in missionary work and the very worthy mission projects abroad. TEM also conducts smaller meetings and support groups in order to give individualized, hands-on guidance, counseling and help. These are typically conducted in the homes of families with whom TEM comes in contact. TEM also conducts one-on-one counseling with youth at locations that they frequent.

The purpose of the concerts is to give free concerts at schools, social institutions, shelters, city halls, or municipal events in order to promote family values, harmony in the community, helping the poor and underprivileged, and Christian values.

The purpose of the fundraising activity is to help raise funds for humanitarian aid within the local or inner city communities, and to raise additional funds for operation of TEM. As stated above, as the success of its fundraising efforts increase, it will enable TEM to offer its educational materials at a lower cost and to increase its financial assistance to organizations exempt from Federal income tax under Code section 501(c)(3).

(13) Where and by whom the activity will be conducted. This question has been answered in Part II, line 1 of the Form 1023. To reiterate, the activities will be conducted either at TEM's office, or at the home of a family who has invited TEM to hold a seminar or meeting there, or they may be conducted at a public park or hall, such as a community center, or at donated conference rooms at hotels or possibly at a recreational center or retreat center. All activities of TEM will be supervised and coordinated by one or more members of TEM's Board of Directors and with volunteer help.

(14) Are the activities of Teaching, Education & More conducted by volunteer or paid labor? This has been discussed in detail in both the Form 1023 and the August Letter. Please see Part II, line 1 of the Form 1023, Schedule A of Part IV of Form 1023, Part II, line 4(b) of Form 1023 and Question 9 of the August Letter. To reiterate, the activities of TEM are conducted by both volunteer and paid labor. Currently, volunteers and the members of the Board of Directors of TEM conduct
the majority of its activities. As explained in Part II, line 4(b) of the Form 1023 and in the response to the August Letter, TEM intends to compensate its officers. To date, however, TEM has not been able to pay any salary to its officers. The members of the Board of Directors and the officers of TEM have served TEM strictly as a volunteer. As explained in the answer to question 18 below, there have been a few paid employees.

(15) Provide detailed information as to how the contracts between your organization and Aurora Production AG; and Family Care Foundation were negotiated? Based on the research that TEM conducted regarding the production and distribution of Christian educational materials, TEM determined that the products from Aurora Production AG and the Family Care Foundation are consistent and relevant to the type of educational materials TEM wants to distribute to accomplish its purposes. You were previously sent samples of two products that TEM is currently distributing, which were purchased from Aurora Production AG, i.e., “Praisin’ U” booklet, and the “Feed My Lambs” booklet. TEM believes that both of these are very good materials: espousing strong moral values and simple, spiritual teaching and training for children to teach them the Bible and to teach them that God loves and cares for them and hears their prayers. TEM negotiated contracts with both organizations and they were approved by the Board of Directors of TEM.

(16) How was the royalty income amount determined? The royalty amounts were determined by arms-length negotiation between Aurora Production AG and Family Care Foundation and TEM. Generally, the royalty amount is 10% of the wholesale price. Royalties are only paid on products TEM licenses, and no royalties are paid on products TEM purchases from these entities.

(17) Are any related parties (husband, wife, children, friends, family, business partner, girlfriend, board members, etc.) involved in the above transactions that may have a business relationship or financial interest in the business doing business with you? This question was specifically answered in the responses to Questions 3, 4, 6, 7 and 8 of the August Letter. To reiterate, no member of the Board of Directors or any officer of TEM has any financial relationship with any company or entity doing business with TEM. No member of the Board of Directors or officer of TEM, or any of their family members or any person affiliated with them in any way, has any stock ownership or other financial interests in any of these companies or entities, or any relationship with the parties who control these companies or entities. All contracts with any organization unrelated to TEM are entered into on an arms-length basis.
Provide the following information about EduMedia:

(a) Is this a for-profit or non-profit entity? As explained in the answer to Question 9 of the August Letter, "EduMedia Unlimited" is a d/b/a of TEM. "d/b/a" means "doing business as." EduMedia Unlimited is not a separate organization. It is part of, and one and the same with, TEM. TEM also has another d/b/a, "TEAM Foundation." TEM operates under two d/b/a's because it believes that it simplifies the conducting of the projects and programs that TEM conducts. TEAM Foundation is primarily for the development and distribution of educational materials, such as the two booklets referred to in the answer to Question 15. EduMedia is the project that is involved with audio/visual materials, CD's, posters and tracts.

(b) Where are they located? The two d/b/a's operate at 7319-C Hines Place, Suite 102, Dallas, Texas, which is the address of TEM's warehouse.

(c) Do the organization share the same board of directors? As stated in the answer to question 18(a) above, EduMedia and TEAM Foundation are separate organizations; thus, they do not have a separate board of directors from TEM.

(d) Does the organization publish, distribute, and market the same materials? See the answer to Question 9 of the August Letter and question 18(a) above.

(e) Are any of the employees related to any of the boards members? Please see the answer to Question 9 of the August Letter which lists three employees of EduMedia. Michael Moore is the son of William Moore. No other employee is related to any board member or officer of TEM. Since EduMedia is only a d/b/a for TEM, these employees are employees of TEM.

(f) Are they also employees for Teaching, Education & More? See the answer to question 18(a) above.

(g) Do they receive separate salaries/wages? See the answer to question 13(a) above.

(h) How do the activities of this organization differ from Teaching, Education & More? See the answer to question 18(a) above.
(i) Do they share the same facility and equipment? Both TEAM Foundation and EduMedia Limited share the same facility where they house their inventory, and they also use the office of TEM. They also share the same equipment.

(j) If yes, is there an agreement or contract to allocate expenses? This is not relevant since EduMedia and TEM are one and the same organization.

(k) Are there separate business records? Separate records are kept only for internal purposes.

(19) You’ve stated that the foundation has its office in a residence of William Moore and is not charged Rent or utilities.

(a) Explain the expenses allocated on the budget for occupancy (rent/utilities, etc.). Please see the answers to Questions 11, 12 and 13 of the August Letter which thoroughly and specifically address this question. These answers specifically state that NO RENT is being paid. In addition, the answer to Question 12 of the August Letter specifically states that TEM is NOT being charged for utilities. TEM has its own phone line in its name and it pays the expenses. TEM also has a wireless telephone in its name and it pays the expenses. TEM also has expenses for office supplies, such as paper, shipping and mailing materials, and additional office supplies that you would normally find in any office. TEM also incurs rental on a warehouse at which the inventory is stored as described above.

(b) Please provide current updated financial data showing income and expenses. See Attachment ‘B’.

(20) How are the salaries/wages determined? Please see Par. 11, line 4 of the Form 1023 and the answer to Question 9 of the August Letter. To reiterate, the salaries and wages of the employees were determined by the job descriptions of the employees. In hiring its general manager and staff employees, the Board of Directors of TEM consulted with a CPA, a revenue specialist of the Service as well as other resources regarding non-profit management in Dallas to determine representative salaries based on the job descriptions of these employees. The main criteria of the Board in setting these salaries is to pay what is reasonable compensation for services rendered. There is no question that the salaries being paid are less than what a commercial business would be paying for similar duties.
(21) Who makes the salary/wage decision for both organizations? First and foremost, there is only organization as thoroughly addressed in the answer to question 18 above. In addition, please see Part II, line 1 of the Form 1023 where this question is answered. To reiterate, the Board of Directors determines the salaries for all employees.

(22) What is included in salary/wages figure (fringe benefits, housing allotment, car allowance, etc.)? Please see the response to Part II, line 4(b) of the Form 1023 and the answer to Question 9 of the August Letter where this information is specifically and thoroughly provided. In addition, no fringe benefits or housing subsidies are included in the salary amounts paid to the employees. TEM is only compensating the employees for the amount of work performed and at the rate it has determined to be a salary that is commensurate with the services being performed and less than what a commercial operation would be paying. TEM is paying these salaries with an intent to keep the costs and overhead to a minimum.

(a) Provide copies of job descriptions.

(1) EduMedia Unlimited "General/Productions Manger": This position entails the handling of the production of audio/video materials, posters, and related material for distribution and inventory, stock and bookkeeping management and to act on behalf of TEM to make the necessary payments, production expenditures, and to conduct the distribution and promotion of its products, and to issue regular production and financial reports to the Board of Directors of TEM. The position also entails all aspects of supervision of the warehouse/office as well as the staff personnel and volunteers. This position is full-time, 40 hours weekly.

(2) Job description of staff employees of EduMedia Unlimited: Part-time employment position of 16 to 20 hours weekly. The duties involve shipping/handling of products, warehouse stocking and ordering, office filing and clerical administration, telephone and mail answering, order-taking and performing work related errands outside of the office (pick-up and drop-off work).

(23) Please provide copies of board minutes. See Attachment 'C'.

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I hope this letter specifically answers each of your questions and addresses your concerns and a favorable determination letter will be issued to TEM shortly.

Very truly yours,

[Signature]

SJG:lam
cc: William Moore
The following explains how expenses are allocated for occupancy for the office in
the residence of William Moore. The office expenses are not allocated for
housing allowance or subsidy. The Foundation's business telephones are in the
name of the Foundation, office supplies, Post office box & related expenses are
for business purposes only and generally not for personal use.

In addition, the Foundation also allocates expenses for a rented
warehouse/office for its d.b.a. project, known as EduMedia Unlimited. The
location of this facility is given in Question 18b in our responses. This warehouse
facility is mainly for the purposes of storing the Foundation's inventory of
Christian educational materials, to house its shipping/handling operation, and a
small office for keeping records & for phoning.

The equipment the Foundation has is owned by the members and/or staff of the
Foundation. We do not allocate expenses for its use. The owners have agreed to
not charge a fee or receive compensation for its business use. However, the
phones & phone lines, office/shipping materials, mail, and related expenses for
this facility are paid for by the Foundation & the Foundation is the owner/signer
on the rental contract, phone lines, office furniture (eg. Shelving, office supplies,
desks, etc.), etc. that are part of this facility.

None of the Board members have any relationship, personal or business, to any
persons or businesses involved in the rental contract, and the Foundation's Board
decided to enter a 3rd party agreement for renting such a facility. Neither do any
Board members receive any inurement nor fringe benefit nor payment in this
contract.

The Statement of revenue & expenses for Teaching, Education And More:
Jan. 1, 1999 Through Oct. 31, 1999:

Breakdown of Occupancy:
Monthly Expenses for office in the residence of William Moore:
   - phone & fax: $100
   - cell phone: $40
   - rent: $0
   - office supplies/postage: $150
   - Post Office box rental: $9.50
   - Research materials: $25
   Monthly total: $350.00 (estimated)
Monthly Expenses for Warehouse/office location as mentioned in "Question 18b":

- Rent: $530.00
- Postage: $35.00
- Office supplies/shipping: $85.00
- Phone/Fax: $300.00
- Utilities: $240.00

Monthly total: $1,200.00

The remainder of the "Statement of Revenue & Expenses" continues on next document.