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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200945070**
Release Date: 11/6/2009

Date: 8/12/09

UIL: 501.03-00, 501.03-08, 501.03-17

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: July 8, 2009

UIL Code:
501.03-00
501.03-08
501.03-17

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:
State S =
State S statute a =
State S statute b =
City R =
A =
B =
C =
X =
Date r =
Date s =
Date t =
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Date w =
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Dear :

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

FACTS

You were formed on Date v as a non-profit membership corporation under the laws of State S. Article IV of your Articles of Incorporation stated:

> *The Corporation is a political organization as defined in 26 U.S.C. §527(e) and State S statute a, as amended, and is organized and operated exclusively for the purpose of*

*accepting contributions and making expenditures for the transition period between the election of A as ***** of State S and *****.*

Your Articles did not include language stating that the organization's purposes are charitable or are otherwise to accomplish any of the purposes described in section 501(c)(3) of the Code.

Article XIII stated that in the event of your liquidation, dissolution or winding up, your net assets will be disposed of "exclusively for the purpose of the Corporation or in accordance with law."

A was elected *****of State S on Date x, and ***** on Date z. You conducted all of your activities between Date v, your date of formation, and Date z, when your operations ended.

On Date u, you filed Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code). On Date t, we sent you a letter proposing to deny your application. You did not file a protest. On Date s, we sent you a letter stating that because we did not receive a timely protest, the proposed denial letter was final.

On Date y, you amended your Articles of Incorporation to state that you are "organized and operated exclusively for educational and charitable purposes within the meaning of section 501(c)(3)" of the Code. Article IV of your amended Articles states:

> *The Corporation shall be organized and operated exclusively for the educational and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code"). The Corporation is formed to (i) engage in research, the gathering of information, analyzing such data, and the publication of the results to educate and associate together administrators, scholars, and others: (ii) assist local governments in the metropolitan region by studying and recommending, regional policies directed at the solution of mutual problems that transcend the local jurisdictions; and (iii) promote civic pride in the community, the state, and the country by providing ceremonies at patriotic and community functions.*

Article XIII of your amended Articles states that in the event of your dissolution or final liquidation, any net assets shall "be distributed to one such organization or organizations organized and operated exclusively for charitable or educational purposes under section 501(c)(3) of the Code, or to the Federal government, or to a State or local government, for a public purpose, as the Board of Directors shall determine."

On Date r, you filed a new Form 1023. It is that application that is the subject of this letter.

From Date v, your date of formation, until Date z, when you ceased operations, you carried on the three related activities described below.

Your original Articles of Incorporation stated that your Board of Directors consists of between two and seven members. Your Articles also stated that the members of the corporation are the persons who serve on your Board of Directors. From Date v, your date of formation, until Date z, when your operations ceased, you had two Directors: B, who also served as your President,

and C, who also served as your Treasurer and Secretary. Under your Bylaws, because they were Directors, they were also members of the corporation.

Your Bylaws stated that your President is your chief executive officer with general powers and duties of supervision and management. The President is authorized to perform all other duties required by the Board. The President also presides at all meetings of the Board of Directors and the members. Pursuant to your Bylaws, Directors determine your mission and purposes, participate in electing other Directors to your Board, select, appoint and review the performance of officers, and manage any personnel. You have stated that your Directors establish and conduct your fundraising programs, approve your budget, and monitor your programs.

C is the managing director of a ***** firm in City R, State S. Prior to B's participation in your organization, he served as A's ***** A, and as A's *****. Since Date z, B has served as A's *****.

*****

You created *****, including ***** and working groups (hereafter, collectively referred to as the ***** for the purpose of conducting research into issues of public concern to the citizens of State S and attempting to find solutions to such problems. The ***** were targeted towards making specific recommendations to A about these issues. The ***** focused on issues related to *****

The ***** consisted of volunteers and staff. The meetings of the ***** were open to both the public and the media. Each ***** prepared a report for A that addressed key issues, themes and findings which were the result of the public meetings and information gathered, and made specific recommendations to A. The subject matter of the ***** was based on A's policies and platform, which ***** described during ***** For example, a press release ***** stated:

*****

A press release dated ***** stated:

*****

A press release ***** stated:

*****

A press release ***** stated:

*****

Several ***** were created for the purpose of reviewing candidates for *****in ***** and making recommendations to ***** A regarding those candidates. For example, a press release ***** stated:

*****

A press release ***** stated:

*****.

A press release ***** stated:

*****

The ***** issued its final reports before A's ***** You state that these reports were available to the general public on a website (X) until Date w. These reports are not currently available on this website or elsewhere on the Internet but copies may be obtained from ***** A's office free of charge.

You state that the ***** accounted for approximately 63.5 percent of your time and resources.

Employment Activities

In addition, you created and maintained a website on which users could submit their resumes to you for the purpose of applying for appointed, non-civil service job positions within State S. You collected submissions from applicants through this website and hired human resources specialists to sort through the submissions to identify the most qualified applicants. You provided the information of ***** to the ***** for review. The *****conducted interviews and chose the individuals ***** wished to hire for these *****positions. You created and maintained a database containing information for over ***** individuals interested in positions with the State S ***** You made this database available to each of the ***** for use as a resource in filing appointed, non-civil service positions in their departments. You state that if you had not undertaken this activity, the State S Civil Service Office would have performed these activities, *****.

You state that these activities accounted for approximately 11 percent of your time and resources.

Public Events

You state that you also conducted a series of ***** intended to promote civic pride in State S and promote patriotism at the state and national level that accompanied the ***** A. These activities included a free family festival, called "***** D," *****. With the exception of the ******, these events were free and open to the general public. Invitations were issued for the *****, but were not checked at the door. Members of the press were invited to all events, which were televised to the general public.

You state that these activities accounted for approximately 25.5 percent of your time and resources.

State law provides that $a of state funds are available for the use of a *****, upon his request, "*****." State S statute b. You state that A did not accept this funding, but instead, you paid for all of the ***** office expenses.

LAW

Section 501(c)(3) of the Code describes a corporation organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its 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 ("regulations") states that to be described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. 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 states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations states that no organization will be considered to be organized exclusively for one or more exempt purposes if, under its articles of organization, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(3)(iii) of the regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to have objectives and engage in activities that would characterize it as an "action" organization as defined in section 1.501(c)(3)-1(c)(3) of the regulations.

Section 1.501(c)(3)-1(c)(3)(ii)(b) of the regulations states that an organization is an "action" organization if a substantial part of its activities is attempting to influence legislation, which includes advocating the adoption or rejection of legislation.

Section 1.501(c)(3)-1(c)(3)(iv) of the regulations states:

> An organization is an action organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities

that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be regarded as exempt if more than an insubstantial part of its activities further a non-exempt purpose.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be recognized as exempt under section 501(c)(3) of the Code if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. This term includes relief of the poor and distressed or of the underprivileged; the erection of public buildings, monuments, or works; and lessening the burdens of government. It also includes the promotion of social welfare by relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations includes in the definition of educational activities the instruction or training of the individual for the purpose of improving or developing his capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 62-71, 1962-1 C.B. 85, states that an organization which, as its primary objective, advocates the adoption of a doctrine or theory which can become effective only by the enactment of legislation does not qualify for exemption under section 501(c)(3) of the Code because it is an "action" organization and thus is not operated exclusively for educational purposes within the meaning of section 501(c)(3). The organization conducted research, made surveys of economic conditions, moderated discussion groups, and published books and pamphlets. The organization's research activities were primarily concerned with a theory or doctrine that could be put into effect only by legislative action.

In Rev. Rul. 64-128, 1964-1 C.B. 191, an organization was exempt from federal income tax as an organization described in section 501(c)(3) of the Code because it was organized and operated exclusively for educational purposes. The issue was whether it also qualified as an organization described in section 503(b)(2) of the Code. (Section 503(b)(2) described "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on; . . .") Based on the facts presented, this revenue ruling concluded that the organization did not also qualify as this type of organization.

In Rev. Rul. 66-256, 1966-2 C.B. 210, the organization's primary purpose was to bring about a fair and open-minded consideration of social, political, and international questions by the promotion and sponsorship of a public forum at which debates and lectures were conducted. In carrying out its primary purpose, it invited prominent individuals to discuss varying political and social matters and national and community interest. It also sponsored debates. It invited individuals representing opposing viewpoints to debate particular topics. Frequently, the persons invited to lecture or debate are controversial and occasionally there is opposition to their appearance.

In Rev. Rul. 70-79, 1970-1 C.B. 127, the organization was created to assist local governments of a metropolitan region by studying and recommending regional policies directed at the solution of mutual problems that transcend the local jurisdictions, but affect all of them. The organization held meetings to discuss, identify, and cooperate in developing regional plans and policies for such problems as water and air pollution, waste disposal, water supply, and transportation. A staff of experts engaged by the organization researched and analyzed problems discussed at the meetings and distributed reports to the local governments and news media. Although some of the plans and policies formulated by the organization could only be carried out through legislative enactments, the organization did not direct its efforts or expend funds in making any legislative recommendations, preparing prospective legislation, or contacting legislators for the purpose of influencing legislation. The ruling concluded that in conducting nonpartisan analysis, study, and research into these problems and publishing the results for the benefit of the general public, it also was engaging in educational activities. The ruling also concluded that because the organization did not advocate the adoption of any legislation or legislative action to implement these findings, it was not an "action" organization. Therefore, the organization qualified for exemption under section 501(c)(3) of the Code.

Rev Rul. 70-186, 1970-1 C.B. 129, described a nonprofit organization formed and operated to preserve and improve a lake for public recreation. The organization was financed by contributions from lake front property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake. The ruling held that because the organization ensured the continued use of the lake for public recreational purposes, it was performing a charitable activity and exempt under section 501(c)(3) of the Code. The benefits derived from the organization's activities flowed principally to the general public through the maintenance and improvement of public recreational facilities, and any private benefits derived by the lake front property owners did not lessen the public benefits flowing from the organization's operations. However, the ruling noted that the case was distinguishable from a situation where an organization uses its funds primarily to foster private interests and the benefit, if any, to the general public is only incidental.

Rev. Rul. 74-117, 1974-1 C.B. 128, involved an organization that was formed for the purpose of implementing an orderly change of administration of the office of the governor of a state in the most efficient and economical fashion by assisting the governor-elect during the period between his election and inauguration. Its principal functions were: (1) to screen and select applicants for important state appointive offices, and (2) to prepare a legislative message and program reflecting the party's platform and a proposed budget and budget message for the governor-elect, which he will present for enactment by the legislature immediately after his inauguration. The ruling concluded that the organization was not "lessening the burdens of government"

within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations because the state government had not provided services of this type for the governor-elect and thus had not recognized the activities as functions of government prior to his inauguration. The ruling also concluded that while the people of the jurisdiction may well derive a substantial benefit from the organization's activities, its predominant purpose was to effectuate changes in the government's policies and personnel which would make them correspond with the partisan political interests of the governor-elect and his political party. Since these activities are partisan in nature and are directed to a substantial extent to the adoption of legislation, the organization was deemed an "action" organization as described in section 1.501(c)(3)-1(c)(3).

Rev. Rul. 78-84, 1978-1 C.B. 150, held that an organization formed by citizens of a community to promote civic pride in the community, the state, and the country by providing a color guard and conducting flag-raising and other ceremonies at patriotic and community functions was promoting patriotism, a recognized charitable objective, and qualified for exemption under section 501(c)(3) of the Code. The organization otherwise qualified for exemption under section 501(c)(3) and was formed specifically for the purpose of promoting civic pride in the community, the state, and the country. The organization conducted flag-raising ceremonies on holidays and at dedications of newly installed flag poles in the community. It conducted military funerals for deceased veterans and participated in community parades. The organization's expenditures were for uniforms and other necessary equipment. By providing a color guard and conducting ceremonies at patriotic celebrations and other community events, the organization was operating exclusively for charitable purposes.

Rev. Rul. 85-1, 1985-1 C.B. 177, applied the criteria set out in Rev. Rul. 85-2, infra, for determining whether an organization's activities lessen the burdens of government. In this ruling, the organization was created to assist a county's law enforcement agencies in policing illegal narcotics traffic more effectively. The organization provided funds that allowed the county's agents to engage in certain activities for which funds were not otherwise available. This ruling concluded that by funding activities that the county treats as an integral part of its program to prevent the trafficking of illegal narcotics, the county demonstrated that it considered these activities to be its burden. Thus, the organization was lessening the burdens of the county by enabling it to augment its law enforcement activities.

Rev. Rul. 85-2, 1985-1 C.B. 178, states that to determine whether an activity is a burden of government, the question is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. A close interrelationship between the government and the organization is evidence that the organization is actually lessening the burdens of the government. To determine whether the organization is actually lessening the burdens of government, all the relevant facts and circumstances must be considered.

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

The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In Phi Delta Theta Fraternity v. Commissioner, 90 T.C. 1033 (1988), one of the issues was whether a periodical published by a fraternity was "educational" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. In concluding that it was not, the Tax Court stated: "An educational purpose is served only where a public interest, rather than a private interest of the petitioning organization, is the primary beneficiary of the educational activity." Id. at 1040.

In Columbia Park and Recreation Assoc. v. Commissioner, 88 T.C. 1 (1987), aff'd without published opinion, 838 F.2d 465 (4th Cir. 1998), the court of appeals upheld the decision of the Tax Court that the organization did not "lessen a burden of government," within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations, and thus was not exempt under section 501(c)(3) of the Code. The organization provided a wide range of services and facilities to the residents of Columbia, Maryland. The organization contended that if it did not provide these services and facilities the local or state government would have to provide them. The Tax Court stated that this assertion does not mean that the organization's activities are, in fact, a burden of government. Instead, the organization must demonstrate that the State of Maryland or the county accepts the organization's activities as their responsibility and recognizes the organization as acting on their behalf. In addition, the organization must establish that its activities actually lessen the burden of the state or local government.

In Quality Auditing Co., Inc. v. Commissioner, 114 T.C. 498 (2000), the organization inspected and audited the facilities of steel fabricators to determine whether they met certain industry standards to qualify for certification. In concluding that the organization did not "lessen the burdens of government," within the meaning of section 1.501(c)(3)-1(d)(2)of the regulations, the Tax Court stated: "An organization can be classified as having the charitable purpose of lessening the burdens of government only if two criteria are satisfied." Id. at 507. First, a governmental unit must consider the activities engaged in by the organization to be its burden. It must be shown that a governmental unit accepts the activities as its responsibility and recognizes the organization as acting on its behalf. Additional factors, such as whether the activities are part of a legislated governmental program or an express governmental delegation of function, should be considered in the determination of whether activities constitute a government burden. The court also said: "Second, the organization's performance of the activities must actually lessen the burdens of Government." Id. at 507.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization operating a school to train individuals for careers as political campaign professionals did not exclusively serve purposes described in section 501(c)(3) of the Code because it did not operate on a nonpartisan basis and it served private interests more than incidentally. The court concluded that the organization conducted its activities to benefit one political party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

ANALYSIS

Based on our analysis of the information you submitted with your application and in subsequent correspondence, we have determined that you were not organized and operated exclusively for one or more tax-exempt purposes within the meaning of section 501(c)(3) of the Code, and therefore do not qualify as an organization described in section 501(c)(3).

To be described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section (the "Organizational Test" and the "Operational Test," respectively). If an organization fails to meet either the Organizational Test or the Operational Test, it is not exempt. See section 1.501(c)(3)-1(a)(1) of the regulations. For the reasons explained below, we have concluded that you failed to satisfy both the Organizational Test and the Operational Test.

Organizational Test

An organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes. Correspondingly, an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. In addition, no organization will be considered to be organized exclusively for one or more exempt purposes if, under its articles of organization, its purposes are broader than the purposes specified in section 501(c)(3). See Section 1.501(c)(3)-1(b)(1) of the regulations.

From Date v, your date of formation, until Date z, when you ceased operations, your Articles of Incorporation stated that you were a "political organization as defined in 26 U.S.C. §527(e) . . . " and that you were "organized and operated exclusively for the purpose of accepting contributions and making expenditures for the transition period between the election of A as ***** of the State S and *****." It was not until Date y, ***** after you ceased operations, that you amended your Articles of Incorporation to delete this language and to state that you are "organized and operated exclusively for the educational and charitable purposes within the meaning of section 501(c)(3) of the . . . Code . . . ."

Therefore, from the date of your formation until you ceased operations, you were not organized exclusively for one or more exempt purposes, as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations. Rather, you were organized to engage in activities that furthered non-exempt purposes. In addition, during this period, your Articles of Incorporation did not limit your purposes to one or more exempt purposes, as required by Section 1.501(c)(3)-1(b)(1)(i) of the regulations, but expressly empowered you to engage in activities that are not in furtherance of one or more exempt purposes.

Therefore, from Date v, your date of formation, until Date z, when you ceased operations, you failed to satisfy the Organizational Test as described in section 1.501(c)(3)-1(b) of the regulations.

Operational Test

An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3), and if not more than an insubstantial part of its activities further a non-exempt purpose. See, e.g., section 1.501(c)(3)-1(c)(1) of the regulations; Better Business Bureau of Washington D.C., Inc. v. United States, supra. Exempt purposes include, among others, charitable or educational purposes and lessening the burdens of government. See section 1.501(c)(3)-1(d)(1).

Your primary activity, accounting for 63.5 percent of your time and resources, consisted of operating the ***** The primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** for ***** However, the operation of the ***** did not further an exempt purpose within the meaning of section 1.501(c)(3)-1(d) of the regulations.

- Educational

For purposes of section 501(c)(3) of the Code, educational activities include the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. See section 1.501(c)(3)-1(d)(3)(i) of the regulations.

The primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for ***** Although the meetings of the ***** were open to the general public, and the final reports were available on your website for almost a year, the principal purpose for which you conducted the ***** was to develop and make recommendations to A with respect to issues ***** identified during ***** campaign, and only incidentally for the purpose of educating or informing the general public. Your principal purpose was not to instruct the public on subjects useful to the individual and beneficial to the community, as required by section 1.501(c)(3)-1(d)(3)(i) of the regulations, but rather to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for *****. See also Phi Delta Theta Fraternity v. Commissioner, supra ("An educational purpose is served only where a public interest, rather than a private interest of the petitioning organization, is the primary beneficiary of the educational activity.").

You cite three revenue rulings in support of your position that you are an educational organization within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations: Rev. Rul. 64-128, supra; Rev. Rul. 66-256, supra; and Rev. Rul. 70-79, supra.

Rev. Rul. 64-128 is not applicable to your situation. The issue in that ruling was not whether the organization qualified as an educational organization within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations, but whether it also qualified as one described in section 503(b)(2).

In addition, you are distinguishable from the organization discussed in Rev. Rul. 66-256. The purpose of the organization described in this ruling was to bring about a fair and open-minded

consideration of social, political, and international questions by the promotion and sponsorship of a public forum at which debates and lectures were conducted. It invited prominent individuals to discuss varying political and social matters of national and community interest. In sponsoring debates, it invited individuals representing opposing viewpoints, and frequently, the persons invited to lecture or debate were controversial and occasionally there was opposition to their appearance. However, the primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for ***** Thus, the issues your ***** considered were partisan in nature.

You are also different from the organization described in Rev. Rul. 70-79. That organization studied and recommended regional policies directed at solving various problems affecting certain local jurisdictions. It did not direct its efforts or expend funds in making any legislative recommendations. Also, because it did not advocate the adoption of any legislation or legislative action to implement its findings, it was not an "action" organization. However, the primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for *****. The recommendations your ***** made to A were suggestions to A for legislation as solutions to the issues addressed. Further, as discussed below, we have concluded that your are an "action" organization within the meaning of section 1.501(c)(3)-1(c)(3) of the regulations.

- Lessening the Burdens of Government

For purposes of section 501(c)(3) of the Code, the term "charitable" includes "lessening the burdens of government." See section 1.501(c)(3)-1(d)(2) of the regulations. Whether an organization's activity is a burden of government depends on whether there is an objective manifestation by the governmental that it considers such activity to be part of its burden. The fact an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. In determining whether an organization is actually lessening the burdens of government, all the relevant facts and circumstances must be considered. See, e.g., Rev. Rul. 85-1, supra; Rev. Rul. 85-2, supra; Columbia Park and Recreation Assoc. v. Commissioner, supra; Quality Auditing Co., Inc. v. Commissioner, supra.

You have not established that operating the ***** was a governmental responsibility of State S. You have not identified any statements or actions by the State S government by which it officially acknowledged or recognized that conducting the activities of the ***** or making legislative recommendations to the ***** was a state governmental obligation. Nor have you demonstrated that the State S state government had expressly approved your activities as helping to relieve the state of a state responsibility. See, e.g., Rev. Rul. 85-1, supra; Rev. Rul. 85-2, supra. Although state law appropriated $a for the use of the *****, these funds were available only if requested by the ***** and only "******." State S statute b. The fact that A rejected these funds is not relevant because the statute does not address expenses for the activities of your ***** relating to developing and making specific recommendations to the *****. Thus, you are similar to the organizations in Columbia Park and Recreation Assoc. v. Commissioner, supra and Quality Auditing Co., Inc., supra.

Finally, you are also ***** to the organization described in Rev. Rul. 74-117, supra, which concluded that the organization's activities did not relieve any burden of the government, within

the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. In that ruling, the organization: (1) screened and selected applicants for important state appointive offices, and (2) prepared a legislative message and program reflecting the party's platform and a proposed budget and budget message for the governor-elect to present for enactment by the legislature immediately after his inauguration. Your ***** activities, the purpose of which was to develop and make specific recommendations to A based on the public issues ***** identified during ***** campaign for *****, and your Employment Activities, as described above, are ***** to those carried on by the organization described in this ruling.

Therefore, your operation of the ***** does not "lessen the burdens of government" within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

- Action Organization

Furthermore, based on all the facts and circumstances, we have concluded that you were an "action" organization within the meaning of section 1.501(c)(3)-1(c)(3) of the regulations. An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation, which includes advocating the adoption or rejection of legislation.

The primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for *****. Thus, because your operation of the ***** was partisan in nature and was directed to a substantial extent toward the adoption of legislation, you were an "action" organization under section 1.501(c)(3)-1(c)(3) of the regulations. In this respect, you were ***** to the organization in Rev. Rul. 74-117, supra. *****.

You are also similar to the organization in Rev. Rul. 62-71, supra, which concluded that an organization that adopted a doctrine or theory that can become effective only by the enactment of legislation is an "action" organization. The recommendations your ***** made to A were suggestions for legislation as solutions to the issues addressed.

Therefore, because you were an "action" organization described in section 1.501(c)(3)-1(c)(3) of the regulations, you were not operated exclusively for one or more exempt purposes as required in section 1.501(c)(3)-1(a) of the regulations.

- Public Events

Your Public Events activities accounted for 25.5 percent of your overall time and resources. Therefore, they do not constitute your primary activity within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations. Thus, even if these activities promoted patriotism and civic pride as described in Rev. Rul. 78-84, supra, because you did not operate primarily for these purposes, you were not operated exclusively for one or more exempt purposes as required by section 1.501(c)(3)-1(a) of the regulations.

Substantial Non-Exempt Purpose

In addition, even if your ***** furthered an exempt purpose, your Employment Activities, as explained below, furthered a substantial non-exempt purpose, thus precluding you from qualifying for exemption under section 501(c)(3) of the Code. An organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities further a non-exempt purpose. The presence of a single, substantial non-exempt purpose will destroy exemption even if additional exempt purposes are present. See, e.g., section 1.501(c)(3)-1(c)(1) of the regulations; Better Business Bureau of Washington D.C., Inc., supra.

- Employment Activities

Your Employment Activities did not further a charitable purpose within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations because they did not "lessen the burdens of government" within the meaning of that regulation. See, e.g., Rev. Rul. 85-1, supra; Rev. Rul. 85-2, supra; Columbia Park and Recreation Assoc. v. Commissioner, supra; Quality Auditing Co., Inc. v. Commissioner, supra.

Your Employment Activities provided employment services for the ***** with respect to *****. Your conducting these activities on your own did not replace governmental activities that were the responsibility of the State S Civil Service Office because you have not established that these specific activities were a governmental burden. You state that had you not carried on these activities, *****. However, the fact that a governmental agency may undertake an activity, if requested, is insufficient to establish that the activity is a burden of the government. Further, you have demonstrated no official acknowledgement by State S that these activities were a governmental burden, or that the State had formally approved you conducting these activities as a means of relieving this burden.

Furthermore, your Employment Activities were ***** to the employment activities conducted by the organization in Rev. Rul. 74-117,supra, i.e., screening and selecting applicants for important state appointive offices. That ruling concluded that the organization's activities did not relieve any burden of the government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

Therefore, your Employment Activities, which you state accounted for 11 percent of your time and resources, furthered a substantial non-exempt purpose.

Impermissible Private Benefit

Furthermore, even if you otherwise qualified for exemption as an organization described in section 501(c)(3) of the Code, your activities furthered a substantial private interest. Therefore, you are precluded from otherwise qualifying for exemption.

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

The primary purpose of your ***** was to develop and make specific recommendations to A based on the public policy issues ***** addressed during ***** campaign for *****. B, one of your two members, Directors and officers, previously served as A's ***** A, and as A's ***** . Currently, B serves as *****. A. As one of your officers, B held the position of President. Under your Bylaws, the President also served as your chief executive officer. Your other member, Director and officer, C, was a practicing *****. Thus, B had the authority to exercise substantial influence and control over your operations and activities. Accordingly, you were not governed by an independent Board, and your principal officer, the President and chief executive officer, *****. B's close connection to ***** A strongly suggests that your Board of Directors did not represent a broad public interest, but rather that you were operated primarily for the personal benefit of A, who was a private citizen until *****.

Additionally, you are ***** to the organization described in Rev. Rul. 74-117, supra. One of the conclusions in that ruling was that while the people of the jurisdiction may well derive a substantial benefit from the organization's activities, its predominant purpose was to effectuate changes in the government's policies and personnel which would make them correspond with the partisan political interests of ***** and *****. Thus, your ***** activities, by means of the public policy recommendations it made to A, and your Employment Activities, by identifying and recommending candidates for appointive non-civil service positions *****, conferred a more than incidental private benefit on A, a private citizen until *****, and the political party ***** represents. These activities are also similar to the type of benefits conferred on private individuals by the organization in American Campaign Academy, supra.

Therefore, you were operated primarily for the benefit of private interests, rather than public interests, in violation of the proscription in section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Conclusion

You have not established that you met both the Organizational Test and the Operational Tests because you were not organized and operated exclusively for one or more exempt purposes. Your primary activities did not further a charitable or educational purpose or lessen the burdens of government. Instead, your primary activities furthered a substantial non-exempt purpose. In addition, you were an "action" organization. Finally, you operated primarily for the benefit of private rather than public interests.

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

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements