



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201411038**
Release Date: 3/14/2014
Date: December 19, 2013

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

UIL: 501.03-30; 501.32-00

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.

Since 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.

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, you should 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.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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,

Acting Director, Exempt Organizations

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 30, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = State
C = Date
D = Religion
F = Foreign Country #1
G = Foreign Country #2
H = Congregation
X = Co-founder #1
Y = Co-founder #2
Z = Religious Movement Organization

UIL:

501.03-30, 501.32-00

Dear :

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

Issue

- Do you qualify for exemption under section 501(c)(3) of the Internal Revenue Code ("Code")? No, for the reasons described below.

Letter 4036(CG) (11-2011)
Catalog Number 47630W

Facts

X and Y co-founded you. Both X and Y were previously employed at Z. Upon elimination of their positions at Z, they founded you to continue their many years of service to the D community. You were incorporated in the state of B on C (date). Your Articles of Incorporation state your purposes as those which are consistent with section 501(c)(3) of the Code.

Your mission is to support small, struggling synagogues across the nation in formulating strategic blue prints for managing their congregations. To accomplish this mission, your time is spent on consulting, workshops and webinars and travelling on D heritage/mission trips.

In the past, you offered a series of on-line webinars in various areas of synagogue leadership including, strategic planning, engaging volunteers, and qualities of board leadership. These webinars, were open to members and leaders of congregations throughout the U.S. You have also conducted two (2) four-hour consulting workshops for two small, struggling congregations. Each workshop consisted of training for the congregation's board and prospective board members. Topics included engaging passionate volunteers and the role and responsibility of board members. In addition, you began consulting with two small congregations on a weekly basis to assist them with strategic planning and board and membership development. These consultations included assessing their current and future needs as well as their potential for both membership growth and development of new leadership.

You led a mission to the D communities in F, where you visited with the struggling D community in F, met with their leaders, prayed with their congregations and provided moral support to their coreligionists.

Currently and in the future, your main focus will be consulting D congregations (approximately 60% of your efforts), mission trips and D heritage travel.

Your governing body consists of three persons who are related to or are friends of X or Y. All officers hold indefinite terms.

Your main source of income is from consulting fees and fees related to the D heritage trips. Expenditures pay X and Y as a independent contractors or educators for consulting services, webhosting (for webinars and website) costs and office expenses.

Consulting fees are based on a rate of approximately \$75 per hour. If a congregation agrees to a minimum of 10 hours of consultation in any given month, a lower rate will be charged. The congregations you already work with are also charged this lower rate. No data was provided comparing your consulting fees to fees charged by others for similar

services.

X is paid over \$25 per hour for his consultation services to congregations when the charge is the lower amount stated above.

You offer seminars and workshops, which are a part of your consultation activity, at a standard rate of over \$475 per hour plus expenses. However, you have reduced the rate to over \$225 per hour for small congregation based on their needs and ability to pay. Comparable rates were obtained from various independent providers of similar services. The comparable rates ranged from \$150 - \$350 per hour and anywhere from \$1,000 - \$5,000 (plus expenses) for a four hour seminar.

You did not provide any information on how many seminars and workshops you have provided or the revenues that were received from such events.

With regards to your mission and D heritage travel, you assisted a congregation in developing a mission to foreign country F. The missions and travel are promoted through emails to synagogue members and leaders throughout the U.S. as well as by advertising in either local (B) D publications or in national D magazines. Your past trip to foreign country F included 22 individuals participating. Your next mission to foreign country F plans to have 30 participants. You plan a trip to foreign country G as well and you expect to have 20 participants.

You provided the following financial data regarding your trip to foreign country F: Eight single occupancy participants and fourteen double occupancy participants produced revenue of over \$65,000 for the trip. Tour service providers were paid over \$62,000 for the trip. "Educators," who travel and provide guide information were paid over \$475. The rest of the revenue was spent on miscellaneous expenses (advertising, printing, etc.).

You provided the following projected financial data for your future trip to foreign country F: Eight single occupancy participants and twenty-two double occupancy participants will produce revenue of over \$92,000 for the trip. Tour service providers are due to be paid over \$83,000 for the trip. "Educators" will be paid over \$3,500 (collectively including airfare and meals). The rest of the revenue will be spent on miscellaneous expenses (advertising, printing, etc.).

You provided the following projected financial data for your future trip to foreign country G: Eight single occupancy participants and twelve double occupancy participants will produce revenue of over \$70,000 for the trip. Tour service providers are due to be paid over \$66,000 for the trip and "educators", who travel and provide guide information were paid over \$5,500 (including airfare and meals). The rest of the revenue will be spent on miscellaneous expenses (advertising, printing, etc.).

Each trip also includes an expense labeled "income for H". This is a donation to X's local house of worship, for their sponsorship and provision of a general religious license issued by the U.S. Department of the Treasury (for the travel to foreign country F).

Your "educators", who provide services similar to what a tour guide provides, are X and Y. Their travel, meals and lodging are covered through the revenue received for each tour.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("Regulations") states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

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

Revenue Ruling 67-327, 1967-2 C.B. 187, held that a nonprofit organization formed for the purpose of arranging group tours for students and faculty of a university to allow them to travel abroad and which has no other activities was not entitled to exemption from federal income tax under section 501(c)(3) of the Code. The organization assisted in forming groups of persons having a common affiliation with a university and who were interested in chartering transportation for foreign travel. As agent for each group, it collected the estimated pro rata share of the charter and administrative costs. The organization arranged for the transportation, paid the carrier, retained a sum to defray its expenses, and returned any balance to the group members. The organization was not entitled to exemption under section 501(c)(3) of the Code because the arranging of group tours is not in itself the instruction or training of the individual for the purpose of improving or developing his capabilities.

In Revenue Ruling 69-266, 1969-1 CB 151, an organization formed and controlled by a doctor of medicine, "hired" to conduct research programs consisting of examining and

treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code.

In Revenue Ruling 71-529, 1971-2 C.B. 234, (distinguished by Rev. Rul. 72-369, below), a nonprofit organization that provided assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code. By assisting the participating colleges and universities to manage their endowment or investment funds more effectively for fees that represent less than fifteen percent of the total cost, the organization was found to be operating in an exclusively exempt manner.

In Revenue Ruling 72-369, 1972-2 CB 245, an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. The ruling found that providing managerial and consulting services on a regular basis for a fee was a trade or business ordinarily carried on for profit. The fact that the services in this case were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish an activity as charitable.

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.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), *cert. denied* 414 U.S. 910 (1973).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section

501(c)(3) exempt organizations.

Application of Law

You are not as described in section 501(c)(3) because you are not operated exclusively for charitable, religious or educational purposes. The facts show a more than insubstantial part of your operations is providing services, such as consulting and travel in a commercial manner.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you have failed to establish that you are not operated for the benefit your creators. The facts show X and Y control you, set fees and determine compensation they receive.

You are similar to Rev. Rul. 67-327 because you too arrange group travel tours, collect fees, to cover the travel and other related costs.

Like Rev. Rul. 72-369, you are providing consultation services as well as travel services at cost. The fact that some of your services are provided to exempt organizations is not sufficient to characterize the activity within the meaning of section 501(c)(3).

Similar to the nonexempt organization in Rev. Rul. 69-266, you were formed by the same people who provide services. Like that organization, you charge prices to what comparable companies charge for the same services. Unlike the exempt organization in Rev. Rul. 71-529, you charge rates that are not substantially below cost. This is true of your consulting and travel services. This type of pricing policy lacks a donative element.

Like the nonexempt organization in Rev. Rul. 72-369, you are providing consultation services on a regular basis for a fee and operate in a manner similar to a trade or business ordinarily carried on for profit. Providing such services is a regular trade or business ordinarily carried on for profit. The fact that the congregations you serve are exempt in nature is not sufficient to characterize the activity as charitable.

Since you are operating a regular trade or business, you have a underlying commercial motive as noted in Better Business Bureau of Washington D.C. Further, your operations benefit your founders, which also constitutes a substantial nonexempt purpose (see Old Dominion Box Co.). The commercial motive and substantial nonexempt purpose preclude exemption under section 501(c)(3) of the Code.

You are similar to B.S.W. Group, Inc. because you are providing services that constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Further, your main source of income is fee revenue. The fees you charge are set high enough to recoup all projected costs and provide income and

benefits (free travel, accommodation and meals) to your founders.

Applicant's Position

You indicated that there are small underserved and/or isolated communities throughout the world. These congregations are unable to secure the services of competent administrators or executive directors. Their leadership is often unskilled in the area of nonprofit management. They are in need of leadership training, development and management support. The many for-profit and nonprofit consulting firms that offer these services have fees that are beyond the reach of such congregations. Your mission is to provide assistance, in many forms to these small underserved D communities. You offer two highly trained consultants (X and Y) with a combined eighty years of synagogue experience to these congregations at rates far below what others charge. You can do this because your consultants are retired from their careers and seek only modest fees for their time and expertise. X and Y have worked as synagogue directors with hundreds of congregations providing leadership training seminars, strategic planning, and operational and administrative guidance. X and Y now desire to share their experience and expertise with congregations that might not otherwise have the capacity to engage such skilled consultants.

It is also your mission to bring groups of American D people to small D communities that are remnants of what were at various times in history, large thriving D communities in an effort to educate them about D history. For example, you note that prior to 1959, there were 15,000 D people in foreign country F and today only 1,500 D people remain there in small congregations. You assist American congregations in organizing missions to foreign country F. The missions you arrange provide an opportunity for American D people to visit their foreign counterparts thus strengthening the will of the D people in foreign country F to maintain their commitment to the world D community. The missions bring these congregations much needed supplies of religious articles as well as medications, D books and school supplies. The participants get the chance to learn about D communities in foreign country F.

In Europe, there are many D communities that were decimated by the Nazi regime. Over the past several years, many of these communities have been revived. You offer American D people an opportunity to visit these communities and more importantly, to assist in rebuilding these communities.

All of your mission trips have a component of direct assistance to the D communities visited, either in the form of providing supplies or assisting with specific projects such as cemetery restoration. All of your missions provide one or two educators who travel with the group constantly teaching the D history of the area as well as the efforts to rebuild and rededicate the communities. As with your consulting, your tour educators are paid

a modest fee for their time and expertise.

Service Response to Applicant's Position

You state that your fees are modest in comparison to other providers of similar services. However, with regards to your seminars and workshops, you provide services at cost and, occasionally, exceed costs compared to other independent providers of similar services.

You did not submit any specific comparative data. You did indicate that when you charge a lower amount per hour, X received a reduced amount of dollars per hour. As noted in Rev. Rul. 71-529, this is not substantially below cost, rather it is above the cost that X charges for his provision of consultant services. You provided no other information on costs associated to the provision of such services. Therefore, we must conclude that your charges are not substantially below cost. As noted, you provide services on a regular basis for a fee and operated in a manner similar to a trade or business ordinarily carried on for profit.

Conclusion

Based on the facts, we conclude that you are not in compliance with the above stated laws and precedence. You do not meet the operational test under section 501(c)(3) of the Code because the manner in which you operate is commercial. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 of the Code.

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How To Appeal An IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing a Protest." The "explanation of your reasons for disagreeing" (4th bullet) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and statements and, to

the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

You may 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.

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure: Publication 892