



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200830027**

Release Date: 7/25/08

Date April 30, 2008

UIL Code: 501.33-00

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: March 18, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

State S =

A =

X =

Dear

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue 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 in State S as a Not-for-Profit Corporation. You will engage in several activities designed to aid A, the governor-elect of State S, prior to his inauguration. All of your activities will cease after the inauguration. The president of your organization has served on A's staff in the past and will be his _____ once he takes office.

You will create transition task forces to study various issues and create policy recommendations for A. According to your website, X, these task forces are organized around various subject areas, each of which reflect "_____". Your website states further that

The task forces account for approximately 33 percent of your budget.

You will also attempt to "identify qualified candidates for various political appointments in the new government." You solicit individuals to submit resumes on your website and evaluate those submissions. You have hired professional human resource personnel to assist in the evaluations. After this process, you will pass the submissions on to A. These activities account for approximately 27 percent of your budget.

Finally, you will conduct several public events celebrating A's inauguration. From the information you provided, these activities will consist of "festivities" including entertainers, tourism promoters, children's activities, and free food. These activities account for approximately 40 percent of your budget.

No current government officials are involved with your organization. You estimate that all of your funding will come from individual and corporate contributions. There are no grants from State S to your organization. You receive some in-kind support from a state university in the form of free office space and parking. State S will provide some locations and security for the inauguration events. In the past, State S has not provided government funds to organizations formed to assist governors prior to inauguration.

LAW

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax 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 provides that, in order to be exempt as an organization 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(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 states that educational activities include "instruction of the public on subjects useful to the individual and beneficial to the community."

Rev. Rul. 74-117, 1974-1 C.B. 128, holds that an organization which (1) screens and selects applicants for state appointive offices and (2) prepares a legislative message and program reflecting the party's platform and a proposed budget for the governor-elect is not exempt under section 501(c)(3). The ruling found that the organization was not lessening the burdens of government because the state government did not provide services for the governor-elect. It also found that the organization's predominant purpose was to effectuate changes in the government's policies and personnel which would make them correspond with the political interests of the governor-elect and his political party.

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 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 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 any burden of government 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 recognize 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 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 found that the organization was created and funded by persons affiliated with a one political party and that most of the organization's graduates worked in campaigns for the party's candidates. The court concluded that the organization conducted its activities to benefit the 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 during the application process and in light of the applicable law, we have determined that you do not operate exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

Lessening the Burdens of Government

An organization furthers charitable purposes by lessening the burden of government if a governmental unit actually considers the organization's activities to be its burden and the organization's activities actually lessen such burden. Section 1.501(c)(3)-1(d)(2) of the regulations. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances. Rev. Rul. 85-2, supra; Rev. Rul. 85-1, supra.

Factors that may be considered in determining whether an organization lessens a burden of government include: whether there is a close interrelationship between a governmental unit and the organization; whether the organization is funded by the government, and whether the government controls the organization. Rev. Rul. 85-1; Rev. Rul. 85-2.

You are similar to the organization described in Rev. Rul. 74-117, supra, because you screen and select applicants for state appointive offices and prepare analyses of issues the governor-elect identified during his campaign. An organization that aids a governor-elect prior to inauguration is not lessening the burdens of government if there has been no objective manifestation by the government that such activities are its burden, regardless of whether the

government would have to perform similar activities after the governor-elect takes office. Rev. Rul. 74-117, supra.

You have not presented any evidence to show that the government considers your activities to be its burden. There is no interrelationship between any governmental unit and your organization. None of your Board members is appointed by government agencies or are government officials acting in an official capacity. State S exercises no control over you. You receive no funding from State S, nor has State S provided funds for similar activities in the past. Your organization will only be active until A is sworn in as governor. Therefore, you will assist him while he is a private citizen and not while he is a government official.

You have asserted that if you did not conduct your activities, the government of State S would be forced to conduct them after A is sworn into office. However, this assertion, without more, does not demonstrate that your activities are a burden of the government when conducted prior to A's inauguration. See Columbia Park and Recreation Assoc. v. Commissioner, supra; Rev. Rul 74-117, supra.

Therefore, you are not organized and operated to lessen the burdens of government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations because no governmental body considers your activities to be its burden.

Non-Exempt Purposes

Under section 1.501(c)(3)-1(a)(1) of the regulations, an organization must be organized and operated exclusively for exempt purposes in order to qualify as an organization described in section 501(c)(3) of the Code. Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities are in furtherance of a non-exempt purpose. See, e.g. Better Business Bureau of Washington D.C., Inc. v. United States, supra.

You have not provided any evidence that the public events you will conduct for the inauguration further any exempt purpose. Providing free entertainment and food without more does not further a charitable or educational purpose. Therefore, we have concluded that these activities are in furtherance of a non-exempt purpose. These activities are more than insubstantial because they account for 33 percent of your budget.

Identifying political appointees for A does not constitute lessening the burdens of government for the reasons described above. You have also not provided any evidence that it furthers any other exempt purpose. Therefore, we have concluded that these activities are in furtherance of a non-exempt purpose. These activities are more than insubstantial because they account for 27 percent of your budget.

Therefore, more than an insubstantial part of your activities are not in furtherance of an exempt purpose within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations.

Impermissible Private Benefit

Under section 1-501(c)(3)-1(d)(1)(ii) of the regulations, to qualify as an organization described in section 501(c)(3) of the Code, an organization must not be organized or operated for private interests. An organization is operated for private interests if it is operated to confer benefits on persons who are not members of a charitable class. See American Campaign Academy v. Commissioner, supra.

Your task force activities result in more than incidental benefit to A. They are organized according to the major elements of A's campaign platform and they report to him. The results of the reports will be used by A in forming his plans. Therefore, it appears that the task forces' primary purpose is to provide information to A and only to incidentally inform the public. These activities more than incidentally benefit A, a private individual. Regardless of whether the task force activities serve some educational purposes, they are primarily organized for A's benefit. Similarly, your efforts to identify and evaluate potential political appointees for A are directed solely for his benefit.

Your activities are focused on assisting A prior to the time he becomes governor. Therefore, you are assisting A as a private individual and are operated primarily for his private benefit.

Conclusion

You have not established that a government body considers your activities to be its burden and therefore are not organized or operated to lessen the burdens of government. In addition, your activities further a more than insubstantial non-exempt purpose. Finally, you are organized and operated for the benefit of a private individual.

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.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements