



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200908049**
Release Date: 2/20/2009

Date: November 24, 2008

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Uniform Issue List:
501.03-22

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: 8/8/08

Contact Person:

XXXXX
XXXXX
XXXXX

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
XXXXX

Uniform Issue List:
501.03-22

Legend:

<u>A</u>	=	XXXXX
<u>B</u>	=	XXXXX
<u>C</u>	=	XXXXX
<u>D</u>	=	XXXXX
<u>E</u>	=	XXXXX
<u>F</u>	=	XXXXX
<u>G</u>	=	XXXXX
<u>H</u>	=	XXXXX
<u>I</u>	=	XXXXX
<u>Q</u>	=	XXXXX
<u>P</u>	=	XXXXX
<u>G</u>	=	XXXXX
<u>I</u>	=	XXXXX
<u>S</u>	=	XXXXX

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.

You are a nonprofit organization incorporated in A on Q. Your stated purpose is to provide funding for the education of students in the medical field. You have not adopted bylaws. You state that you have adopted a conflict of interest policy.

You have a three person Board of Directors. Your current directors are B, C, and D. C is the mother of B. All three directors receive a salary of P.

In order to achieve your stated purpose, you plan to maintain a fund that will be supplied by money that you receive from the sale of E, vitamins and health products, and medical

equipment for use by EMT's, physicians, and hospitals. You also state that you will raise funds through donations, grants from private organizations and government entities, and entrance fees from raffles, sporting events, and other events that you may hold. The majority of your time, however, will be dedicated to the sale of the products listed above.

You obtain your inventory from E at cost. E owns the copyrights to two medical programs contained in some of the products that you sell, but E does not charge you any fees associated with the use or sale of its intellectual property. B is the president and founder of E. E sells the same products that you will sell, but E targets physicians and hospitals whereas you target individual consumers.

g% of the gross profits (after paying E cost for the product) will go to your scholarship fund. The other r% will go to pay your operating expenses. All proceeds will be deposited in your checking account. s% of any money that you receive, other than from the sale of goods, will go towards the scholarship grants.

The number and amount of your scholarship grants will be determined based on the amount of available funds as well as the current cost of obtaining a 4-year Bachelor's Degree from G, since your grants are school specific. The grant money will be prepaid annually and held by G under the supervision of the Coordinator of Scholarships and Federal Work Study for G.

Each scholarship grant will be awarded by your selection committee. You plan for the membership of this committee to include the Coordinator of Scholarships and Federal Work Study for G, H, I, a clergyman, two teachers, and D. Eligible recipients must have a B- or better GPA from their junior and senior years in high school, no criminal record, good moral character, an interest in the field of medicine, and insufficient finances to be able to afford college. Recipients must also complete a grant application. The selection committee evaluates applicants and makes selections based on high school grades, letters of recommendation, interviews, and an essay by the applicant.

The grant will be supervised by the Coordinator of Scholarships and Federal Work Study for G and monthly reports will be made to you. Continued receipt of grant money is conditioned on the maintenance of a B average, non-participation in campus protests, and random drug screening (if necessary and part of school policy). Failure of any recipient to live up to these conditions will result in a warning followed by possible termination of the grant money if the failure persists.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations which are both organized and operated exclusively for charitable purposes, and no part of the net earnings of which 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 qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. An organization that fails to meet either the organizational or operational test 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 which accomplish one or more of the exempt purposes specified in section 501(c)(3). An

organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of section 501(c)(3), although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose and if the organization is not organized and operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the Code.

Section 513 of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of the charitable purposes constituting the basis for its exemption.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is related to exempt purposes where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income); and it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income from the sale of goods or the performance of the services does not derive from the conduct of related trade or business. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Section 4943 of the Code imposes a tax on the excess business holdings of any private foundation in a business enterprise.

In Rev. Rul. 54-305, 1954-2 C.B. 127, the Internal Revenue Service held that a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of its otherwise unrelated tax exempt members was engaged in business activities that would be unrelated activities if carried on by any one of the tax-exempt organizations served and therefore was not entitled to exemption under the predecessor to section 501(c)(3).

Rev. Rul. 54-305 was based upon the ruling in Hospital Bureau of Standards & Supplies, Inc., a case that involved evaluation and purchase of necessary hospital supplies by an organization for hospitals which was subsequently lost by the Government in the Court of Claims. Hospital Bureau of Standards & Supplies, Inc. v. United States, 158 F. Supp. 560 (Ct. Cl. 1958). Although the Government did not apply for a writ of certiorari, the regulations under section 502 of the Code were subsequently amended as a result of that case in order to make it clear that a business organization could not be exempt if it was used by unrelated exempt organizations and was operated for the purpose of engaging in activities that would amount to the conduct of unrelated trade or business if carried on by the exempt organizations.

In Rev. Rul. 69-177, 1969-1 C.B. 150, an organization that manufactured and sold wood and metal products was wholly owned by a tax-exempt college. One of the primary purposes of the organization was to employ the students of the college to enable them to continue their education. A majority of the organization's employees were students of the college. However, student employment was not related to the curriculum of the college. The organization turned over the profits from its business to the college. The ruling points out that, although granting scholarships to enable needy students to obtain an education may be a charitable activity, if an organization engages in trade or business to obtain funds for scholarship purposes, it is not exempt merely because the profits are used for scholarships.

In Rev. Rul. 73-164, 1973-1 CB 223, an organization was formed by a church to promote and provide financial support for the charitable programs of the church through the performance of certain printing functions and the production of income for church use. It sought to accomplish these objectives these objectives by printing religious materials for the church but also derived substantial profits from the operation of a commercial printing business. The publication functions performed for the church accounted for approximately 10 percent of the overall publishing activities of the organization. All of its profits were derived from the commercial printing business. All of the net income was paid to the church. The ruling holds that although the organization may be organized and operated exclusively for charitable purposes by virtue of the fact that the beneficial use of all of its assets was effectively dedicated to exclusively charitable objects, its only basis for qualifying in that respect, apart from the relatively insignificant amount of printing performed for the church, was that all of its profits were required to be paid to the church. Since the organization had no other significant charitable activity and its principal income producing activity was the conduct of a trade or business, the Service held that the organization was not exempt under section 501(c)(3) of the Code.

The basic principal to be derived from the above discussion is that organizations performing ordinary commercial services to raise funds for exempt organizations or scholarship funds are not performing a charitable function and are not themselves exempt under section 501(c)(3). The income derived from such activities is not income related to a charitable purpose within the meaning of section 513.

Your primary activity is the sale of E, vitamins and health products, and medical equipment for use by EMT's, physicians, and hospitals. You have indicated that E sells the same products that you will sell, but that E's target market differs somewhat from yours. E is a for-profit business engaged in commercial activity. In this way, you are similar to the organizations described in Rev. Rul. 69-177 and Rev. Rul. 73-164 because your activities are commercial in nature and not substantially related to any exempt purpose. The fact that g% of the profits from these commercial activities are used for a scholarship fund does not change this analysis.

Furthermore, the sale of these products will consume between 5 and 7 hours per day. Thus, like the organization described in Rev. Rul. 73-164, your principal income producing activity is the business activity of selling certain medical products and your fundraising through donations, grants from private organizations and government entities, and entrance fees from raffles, sporting events, and other events that you may hold is not significant.

Both of the organizations described in Rev. Ruls. 69-177 and 73-164 were denied exempt status under section 501(c)(3) of the Code. You are similar to these organizations in that almost

all of your profits from unrelated trade or business activities are to be used for charitable purposes.

Accordingly, we conclude that you are not organized and operated for charitable purposes within the meaning of 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.

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