



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200910061**
Release Date: 3/6/2009

Date: December 8, 2008

UIL: 501.35-00
501.36-01

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

cc:



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: September 9, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =
N =
aa =
bb =
cc =
dd =
ee =
ff =

UIL Nos.:

501.35-00
501.36-01

Dear :

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1986. Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Issue: Does the applicant organization (hereinafter "M") qualify for exemption under section 501(c)(3) of the Internal Revenue Code?

Facts:

M filed Articles of Incorporation in the state of N on Date aa. Article 4 of M's Articles of Incorporation provides in part that the purposes for which M is organized are "A ministry designed to meet the needs of families: women of God providing teaching, service, food, merchandise, child and elderly care and clothing."

M filed a Form 1023 application on Date bb seeking exemption from Federal income tax under section 501(c)(3) of the Code.

Information submitted with the Form 1023 application indicates that M has the following activities:

- (i) Educating women how to identify symptoms of depression.
- (ii) Coaching women of all age [sic] to identify life-threatening household products and cosmetics.
- (iii) Assisting parents about the cost of raising a child.

However, a review of M's website during the month of cc included the following information:

We are here to accommodate your needs and wants through education, information and events hosted by our sponsors. Click in and browse around, our next event can be yours. We have certified and licensed professionals providing: Activities for Children, Exercise Physiology, Financial Information, Hair Consultations, Health Screening, Modest Apparel and more. . . . This organization is designed to meet all NEEDS based on the principles of righteousness, built on a foundation of TRUTH. We accommodate all facets of life desirable and needed. Our sponsors are carefully screened to be certain that they provide the utmost quality of products and services.

In addition, M's website included the following:

- (1) A list of services provided by M, including:
 - (a) health & fitness appraisals
 - (b) program design & individual training
 - (c) massage therapy
 - (d) facials, manicures and pedicures
 - (e) fragrance oils and essentials
 - (f) free clinic visits
 - (g) qualified nurses aides, housekeepers and sitters
 - (h) we specialize in seniors
 - (i) we host private parties
- (2) Another portion of the website listed the following:
 - (a) hats, scarves and other coverings available
 - (b) hair care and consultation for all generations
 - (c) beauty and barber services
 - (d) skilled technique for eye brow arching and waxing
- (3) The website also listed the following services provided by M:

- (a) accounting and financial information
- (b) accommodating all insurance needs
- (c) credit repair seminars
- (d) job development, taxes and resumes
- (e) notary public
- (f) realtors
- (g) sewing classes
- (h) cooking classes
- (i) web design and information
- (j) computer classes
- (k) cable and telephone services
- (l) video and photography

(4) In addition, the website offered the following:

- (a) commercial and custom made clothing for the peculiar woman
- (b) custom fashion and designs
- (c) suits, hats, fur coats and shoes – all alterations available
- (d) jewelry, purses, clothing, T-shirts and accessories
- (e) new and used items for less
- (f) unique fabric and clothing originating from
- (g) sewing classes

When questioned about the above-stated portions of their website, M stated its website was designed to keep battered women and others aware of affordable services. The services are offered by third-party vendors. M does not receive any monetary value from the website.

After several requests by the Service, M modified its website to eliminate reference to services provided by vendors.

Another portion of the website listed the following services provided by M;

- (a) childcare and teaching
- (b) cooking classes
- (c) sewing classes
- (d) babysitting classes
- (e) summer camps and programs
- (f) 24 hour emergency childcare available
- (g) science Sundays, martial arts, and more

When questioned about this portion of the website, M stated it does not offer childcare and teaching, summer camp and programs, 24-hour emergency childcare, and science Sundays and martial arts. M indicated "If our clients are interesting [*sic*] in starting or learning about the above service/programs, we will refer them to an organization that offers them at no cost." M also indicated that it "*will offer* (emphasis added) parental class [*sic*], such as cooking, sewing,

and babysitting. . . . M *will offer* (emphasis added) parenting class to help younger parents and bettered [sic] women."

Other correspondence from M indicates it currently operates a 24-hour hotline for battered women.

Additional correspondence from M indicated it *planned* (emphasis added) to conduct the following activities for battered women: aerobics, body awareness, group therapy, and activities for children.

Additional inquires by the Service resulted in determining that M conducted a single event which was held on Date dd. A flyer for the event listed the following information about the event:

- (a) free prostate screens sponsored by a local hospital
- (b) the name of a local radio station attending the event
- (c) a fashion show
- (d) a karate demonstration
- (e) taxes and resumes done on site
- (f) financial information available
- (g) manicures and facials
- (h) massage therapy
- (i) hair consultations
- (j) activities for children

Correspondence from M indicates that all vendors donated their time to make people aware of their services. No vendor charged any fees for services rendered at the event.

In conclusion, the *actual activities* (emphasis added) consisted of holding one event, operating a website and operating a 24-hour telephone hotline.

Law:

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

Treas. Reg. § 1.501(c)(3)-1(a) provides that in order for an organization to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code.

Treas. Reg. § 1.501(c)(3)-1(b) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the

organization to engage otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(c)(1) 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 such 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.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense, and includes the relief of the poor and distressed, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination or combat community deterioration and juvenile delinquency.

Treas. Reg. § 1.501(c)(3)-1(d)(3) provides that the term "educational", as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 76-442, 1976-2 C.B. 148 held that a nonprofit organization whose primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning does not qualify for exemption under section 501(c)(3) of the Code. The Service held that:

Aiding individuals in their tax and estate planning is not a charitable activity in the generally accepted legal sense. The organization is providing commercially available services to individuals who can afford them. Although funds may ultimately be made available to charity as a result of the organization's planning assistance to individuals, the benefits to the public are tenuous in view of the predominantly private purpose served by arranging individuals' tax and estate plans. The fact that gifts to charity are contemplated in the plans drawn up does not convert the assistance into a charitable activity or one that promotes social welfare within the meaning of section 1.501(c)-1(d)(2) of the regulations.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that an organization is not operated exclusively for charitable purposes if it has a single noncharitable purpose that is substantial in nature.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), *aff'g* T.C. Memo. 1984-

349 (1984), the Court indicated whether an organization has a substantial nonexempt purpose is a question of fact, to be resolved on the basis of all the appropriate evidence.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court observed: "Factors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose."

Application of Law:

Article 4 of M's Articles of Incorporation indicates that it has a purpose of providing merchandise. The providing of merchandise is not an exempt purpose. Therefore, under Treas. Reg. § 1.501(c)(3)-1(b), M does not satisfy the Organizational Test.

M's *actual activities* (emphasis added) have consisted of operating a 24-hour hotline for battered women, operating a website and conducting an event on Date dd.

Operating a 24-hour hotline for battered women furthers an exempt purpose since this activity has the purpose of relieving the distressed. Under Treas. Reg. § 1.501(c)(3)-1(d)(2), relieving the distressed is considered to be within the definition of charitable.

M's website, until it was revised at the request of the Service, had a substantial nonexempt purpose. The website was replete with offers of merchandise for sale and services provided by vendors. This information on the website gives the appearance of a commercial hue to M's purpose. In applying B.S.W. Group, Inc. v. Commissioner, it would appear to the general public that M's website had a forbidden predominant purpose.

The event conducted by M had the substantial nonexempt purpose of promoting the vendors who sponsored or attended the event. Correspondence from M clearly indicates that all vendors donated their time to make people aware of their services. As for-profit entities, surely the vendors anticipated receiving future business resulting from their attendance at the event. Furthermore, per B.S.W. Group, Inc. v. Commissioner, while conducting a fashion show, offering manicures and facials, massage therapy and hair consultations may be informational, these activities have the appearance of a commercial hue and cannot be considered to further an educational purpose. As a result, the event conducted on Date dd does not further an educational purpose. In addition, the fact that the event was free of charge does not imply the event had a charitable purpose. As indicated by Rev. Rul. 76-442, 1976-2 C.B. 148, a nonprofit organization whose primary activity is the offering of *free* (emphasis added) legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity did not qualify for exemption under section 501(c)(3) of the Code. Therefore, the event conducted by M did not further an exempt purpose.

The event conducted by M had a nonexempt purpose. Using the standard set forth in Church by Mail, Inc. v. Commissioner, on the basis of all appropriate information, the activities

conducted by M furthered a noncharitable purpose which is substantial in nature. According to Better Business Bureau of Washington, D.C., Inc. v. U.S., M has not operated exclusively for exempt purposes. Since M has not operated exclusively for exempt purposes, M does not satisfy the Operational Test set forth in Treas. Reg. § 1.501(c)(3)-1(b).

M neither satisfies the Organizational Test nor the Operational Test. As a result, M is not organized and has not operated exclusively for exempt purposes under section 501(c)(3) of the Code.

Applicant's Position:

In correspondence from the Internal Revenue Service to M dated ee, the Service indicated that M does not appear to operate exclusively for exempt purposes under section 501(c)(3) of the Code. The Service suggested that M may qualify for exemption under section 501(c)(4) of the Code as a social welfare organization.

M responded on Date ff. M's response indicates it is of the opinion that it currently operates exclusively for charitable and educational purposes.

Services Response to Applicant's Position:

Through their website and their single event, M has operated with a substantial nonexempt purpose - to further the economic interests of vendors. Therefore, M has not operated and is not organized exclusively for exempt purposes under section 501(c)(3) of the Code.

Conclusion:

As indicated above, M does not satisfy the Organizational Test and the Operational Test. Therefore, we have concluded that M does not qualify for exemption under section 501(c)(3) of the Code. Consideration was given to whether M qualifies for exemption under other subsections of section 501(c) of the Code. However, M refused to be classified under section 501(c)(4) 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 th information affects our determination. If your statement does not provide a basis 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, *Exempt Organization Appeal Procedures for Unagreed Issues*.

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
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure

cc: