



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200929019**
Release Date: 7/17/2009

Date: April 23, 2009

UIL: 501.03-30, 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.

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 476328

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: April 23, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B= Name of the Entity

C= Article of the State Non-Profit Corporation Act

D= Name of Entity

E= City, State

F= State

G= Name of Federal Agency

H= City, State

T= Name of Individual

J= Address of Website

K= Name of Individual

L = Name of Individual

M = Name of Individual

N= Chapter of State Statutes Code

O = Address

UIL Index

501.03-30

501.33-00

Dear Applicant:

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.

Issues:

Have you met your burden of proof that you are formed to serve a public rather than a private interest?

Do you seek recognition of tax exemption under section 501(c)(3) of the Code in order to obtain public contributions to advance a private purpose?

Does the manner in which your activities have been carried out demonstrate that you are not operated exclusively to further a tax exempt purpose under section 501 (c)(3) of the Code?

Facts:

You, (B), were incorporated pursuant to C on June 28, 2005. Article 2 of your Articles of Incorporation listed the initial registered agent as D of E. Article 6 of your Articles of Incorporation stated that "The corporation is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. The Corporation shall engage in all activities necessary to accomplish these purposes, including, but not limited to, caring and housing battered mothers, elderly person, homeless criminal justice persons and children."

You did not submit a narrative description of activities with your Form 1023, Application for Recognition of Tax Exempt Status Under Section 501(c)(3) of the Internal Revenue Code. In an effort to ascertain your specific programs and manner of operation, several information letters were sent to you including the letters dated January 6, 2006, July 21, 2006, October 30, 2006, December 8, 2006, December 28, 2007 and May 5, 2008 to request for additional information. In your responses, you indicated that you had no organizational minutes or bylaws. According to a list of your missions and objectives submitted with your response dated January 6, 2006, **your stated missions are:**

- To educate adolescence about violence
- To provide education to the disabled
- To teach high risk children computer skills, reading skills, and communication skills
- To provide youth sports and after-school programs
- To promote the well-being of teenage pregnant mothers and battered women
- To provide education on substance abuse and counseling to ex-offenders

Your stated objectives are:

- "To create and/or develop affiliation with institutions known to have sound educational programs in democratic principles and ethics.
- To educate potential young leaders in...America about the values of democracy and its impact on human development and about the interwoven relationship that exists between democracy, freedom and free enterprise.
- To develop programs that will mobilize potential young leaders (High School/College Graduates) to participate in disseminating democratic principles throughout the continent of...America.
- To seek, encourage, and support, credible and qualified democratic clubs and organizations to help the foundation in monitoring and enhancing democratic procedures during electoral politics.

- To encourage, solicit, and strongly support, programs and public policies and government action on matters of local, state, and national significance that will further strengthen and vertically integrate the basic principles of democracy in the continent of America.
- To seek total support from government, private and public entities from all democratic countries in the Western Hemisphere.
- To develop internship and recruiting programs that will foster the political education and political participation among the people of each country.
- To establish newsletters with timely information on each country that will address and educate the people about its current economic, social and political issues and changes.
- To identify and seek the help of an established network of experts to train young entrepreneurs how to implement economic policies that will encourage economic growth, job creation, and expanded opportunity for the people.
- To teach courses designed through the Organization's leadership training program, to emphasize the significance and the continued expansion of freedom, democracy and free enterprise in America."

Your list of missions and objectives concluded with a statement that funds would be solicited to support any of the listed activities and that the above listed activities were not all inclusive. You also indicated that your activities will be within the realms of your Articles of Incorporation and the guidelines of section 501(c)(3) of the Code.

You further provided that "We will acquire persons with training skills that ha[ve] prior experience and license to invoke what the program requires [i]n accordance with the RFP (Request for Proposal) and make the necessary tools and man power available. **In short, our programs will cover the requirement of a RFP of the funding facility...** We are attaching a copy of a plan (RFP) that we can comply with, if an IRS 501(c)(3) is issued prior to our submission of a proposal." Two template samples of Request for Proposals (RFP) were included with the response. **One document was a RFP for independent commissioning provider services. Another RFP was to apply and qualify as an irrigation consulting firm.** These consulting contract documents do not appear to have any relevance or connections to the accomplishment of your stated missions or objectives. In addition, you provided two pages from Grants.gov which described grant opportunities for approximately three million dollars to fund educational programs.

When questioned about the undefined nature of your described activities which are dependent on whatever grants you are able to obtain through a Request for Proposal (RFP), you presented a new program description which included your goal to provide education on HIV/AIDS. **This HIV/AIDS program will also be performed in accordance "with the RFP."** Furthermore, your new program description listed many of the same missions and objectives previously submitted.

You further explained that "Our request for an advance ruling will assist in our acquiring funding,

if one of the foundations we have sought funds from in fact wants to fund us... **However, without the 501(c)(3) determination letter, this organization will not be funded, regardless of whether our activities will be based on future grants funding and/or grant request."**

You indicated that your Board members were K, L and M. You provided on Page 3 of the revised Form 1023 received on September 25, 2006 that none of your officers or directors are related to each other through family or business relationships. Additional information put forward on your board members explained that the President and Vice President are Adjusters for G. The compensation for your President/Director is \$6,000 per year and for your Secretary is \$3,000 per year.

Your budgets are as follows:

| | |
|----------------------------|--|
| Contributions | |
| Gross Receipts | |
| Total Revenue | |
| Fundraising Expenses | |
| Compensation- Directors | |
| Salaries | |
| Occupancy | |
| Professional Fees | |
| Other Expenses | |
| Total Expenses | |

Based on your budgets, aside from possibly the Other Expenses category, no direct expenditures were allocated for the operation of any educational program. You indicated that your gross receipts included income from the fees for services you provide to other nonprofit organizations. You stated that your service fees are based on a sliding scale. Your facility is located at O. You described your facility as a metal building install on the property. You also stated that the property is large enough for basketball courts and a baseball diamond.

You filed a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on June 30, 2005. The Form 1023 was submitted to the Internal Revenue Service under a cover letter from a company by the name of D located in H. T, the owner and sole proprietor for the company D, identified himself on the cover letter as a Grant Writer/Commercial Broker Paralegal Specialist. **T stated on the cover letter that "I hope some speedily action proceed on your part in acquisition of the letter so that we may proceed with grant request."** The cover letter also included the D website address J. Excerpts from this website advertised the D company services as follows:

We at [D] write business and marketing plans for small and large businesses. We also submit the same plans to lenders to acquire funding. We make applications to the United States Government for Free Money, Grants!!!

Free Money, it rightfully your, applied for in the proper manner. Do you have a

501(c)(3) if not, your chances [are] slim to none, we will get one for you then we will apply for your free money!!!!!!

Most of your responses to requests for additional information were sent under the cover letter from T and/or T's company D. Moreover, your responses were submitted under the signatures of T and/or your President, K.

A Business Consultant Contract between you and T's for-profit company D was presented. **This contract, dated June 26, 2005, was for business consultation and fundraising services to be performed by T and T's company D. The contract stipulated that T was a business consultant "concerning matters relating to the management and organization of [your] company, [your] financial policies, the terms and conditions of employment, and generally any matter arising out of the business affairs of [your] company."** Services in the Business Consultant Contract also included fundraising and grant writing. **T, through D, was to receive a minimum of \$ over a twelve months period plus a 10 percent to 15 percent commission for grants or contributions received.**

To explain your fundraising program, the response to request for additional information included copies of 12 letters dated September 23, 2005 that were prepared by D. These letters solicited donations for you in amounts up to \$. **The letters also claimed that donations were needed so that you "may keep our doors open to the overrun of (hurricane) evacuees" from Louisiana.** This letter writing fundraising campaign requested a total \$ in donations "to keep our doors open." However, you have no facility or programs that provide housing for Louisiana hurricane victims.

Another fundraising campaign conducted by the business consultant/fundraising agent, T, on your behalf was a raffle. Copies of approximately 60 solicitation letters to sell raffle tickets were submitted by T and K. The content of the letters were identical and were addressed to different individuals or companies from New York to California. In the letters, you indicated that you were designed to serve low-income families and individuals by providing critically needed home repairs and housing assistance for the homeless, and to assist in training youths. The raffle tickets sold for \$50 each and only 500 tickets were to be sold. The letters stated that a drawing was to be held on Tuesday, December 25, 2006 and the raffle prize was a \$5,000 MasterCard/Visa Gift Card. Raffle tickets could be purchased using cash, check, or credit card and the proceeds were to benefit you. In addition to soliciting the sale of raffle tickets by mail, your website allowed individuals to purchase tickets for the same raffle online.

T, your business consultant/fundraiser, established a website for you. This website was for the purpose of soliciting funds. You represented on your website that you were recognized as a tax exempt entity under section 501(c)(3) of the Code. Your website also included a link which enabled donors to donate directly to the PayPal account of T's company D. You have not submitted any evidence that any potential funds deposited into the PayPal account of D would be remitted to you to fund a charitable program. In your response, you stated that the D PayPal account was provided on the donation link to illustrate to you "where the donation button should be." T also provided that D did not receive any donations from the website. The transactions reported for the D PayPal account were submitted.

You have supplied a signed statement that as of August 2007, T is no longer assisting you. K will be handling the organization's business. In addition, you presented documentation to show

that D is no longer the Registered Agent for you. Despite the change in Registered Agent, no evidence has been submitted to demonstrate that your contract for consulting services with D has been rescinded.

Law:

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

Section 1.501(a)-1(b) of the Income Tax Regulations provides that an organization described in section 501(c)(3) of the Code must submit a detailed statement of its proposed activities with its exemption application as well as any additional information deemed necessary for a proper determination of whether it is exempt.

Section 1.501(c)(3)-1(a)(1) of the Income Tax 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(c)(1) of the Income Tax Regulations states 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) of the Code. 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(d)(1)(ii) of the Income Tax 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. Thus, to meet the requirement of this subdivision, it is necessary for an organization to 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 601.201(n)(1)(ii) of the Income Tax Regulations provides that a ruling or determination letter will be issued to an organization provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy these requirements. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures.

Revenue Ruling 75-384, 1975-2 C.B. 204 held that a nonprofit organization formed to promote world peace and disarmament by nonviolent direct action and whose primary activity is the sponsoring of antiwar protest demonstrations in which demonstrators are urged to commit

violations of local ordinances and breaches of public order does not qualify for exemption under section 501(c)(3) or (4) of the Code. This Revenue Ruling also noted that the generation of criminal acts increases the burdens of government; thus frustrating a well recognized charitable goal which is the relief of the burdens of government.

The above Revenue Ruling also imparted that as a matter of trust law, one of the main sources of the general law of charity, no trust can be created for a purpose which is illegal. The purpose is illegal if the trust property is to be used for an object which is in violation of the criminal law, or if the trust tends to induce the commission of crime, or if the accomplishment of the purpose is otherwise against public policy. IV Scott on Trusts Sec. 377 (3d. ed. 1967). Thus, all charitable trusts (and by implication all charitable organizations, regardless of their form) are subject to the requirement that their purposes may not be illegal or contrary to public policy. See Rev. Rul. 71-447, 1971-2 C.B. 230; Restatement (Second), Trusts (1959) Sec. 377, Comment (c).

In Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information. "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities....Such generalizations do not satisfy us that [applicant] qualifies for the exemption." Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004).

The court in est of Hawaii v. Commissioner, 71 T.C. 1067(1979) found that an organization formed to educate people in Hawaii in the theory and practice of "est" was a part of a "franchise system which is operated for private benefit," and therefore may not be recognized as exempt under section 501(c)(3) of the Code. The applicant for exempt status was not formally controlled by the same individuals controlling the for-profit organization owning the license to the est body of knowledge, publications, methods, etc. However, the for-profit exerted "considerable control" over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting the price for the training. The court found that the fact that the applicant's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit corporations were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether it benefited substantially from the operation of the applicant. The court determined that there was a substantial private benefit because the applicant "was simply the instrument to subsidize the for-profit corporations and not *vice versa* and had no life independent of those corporations."

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36, the Tax Court concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization were carried on, the latter organization was not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code, even if it furthers other exempt purposes.

Better Business Bureau of Washington, D. C., Inc. v. United States, 326 U.S. 279 (1945) held that activities of the Better Business Bureau were not exclusively educational or charitable as its aim was to promote prosperity and standing of the business community. This served a substantial private purpose and precluded exemption under section 501(c)(3) of the Code. The court also 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.

N includes the provisions governing charitable raffles in the State of F.

Application of Tax Law:

You have not met your burden of proof that you are formed to serve a public rather a private purpose. Reg. 1.501(c)(3)-1(d)(1)(ii) states that to be charitable, an organization must serve a public rather than a private interest. The *organization must demonstrate* 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. *The burden of proof* as stated in Reg. 1.501(c)(3)-1(d)(1)(ii) *is on the organization* to show that it is not organized or operated to serve private interests.

Despite several attempts to ascertain your specific programs and manner of operation, you have only provided a broad and open-ended listing of your missions and objectives. Your list of general activities did not include standards, criteria, procedures or other means adopted for carrying out those activities or the sources of income and nature of expenses for each of your programs as required in Section 1.501(a)-1(b) and Section 601.201(n)(1)(ii) of the Income Tax Regulations. Your list of missions and objectives concluded with a statement that funds would be solicited to support any of the listed activities and that the listed activities were not all inclusive. You described your activities in a template fashion without specific details regarding your manner of operations. As affirmed by the Court in Peoples Prize v. Commissioner, *supra*, "Such generalizations do not satisfy us that [applicant] qualifies for the exemption." Although you state that any conduct your organization will be within the realms of your Articles of Incorporation and the guidelines of section 501(c)(3) of the Code, you have failed to provide details about how you will specifically operate your programs in a way that ensures that exclusively charitable purposes will be accomplished. As maintained in Harding Hospital, Inc. v. United States, *supra*, and Section 1.501(c)(3)-1(d)(1)(ii), the burden is on the applicant to establish that it is operated exclusively to serve one or more exempt purposes. Thus, you have not established the factual basis for your exemption and have not demonstrated that you have met the burden of proof you are exclusively operated for tax exempt purposes under section 501(c)(3) of the Code.

The administrative record demonstrates that you are seeking the privilege of tax exemption in order to obtain public contributions to advance a nonexempt private purpose. You have exhibited a keen interest in achieving recognition of tax exempt status in order to solicit public contributions but less of a focus in carrying out the operations of an actual exempt program, which is an essential part of tax exempt status. When it comes to detailing the manner of your operations, you have repeatedly stated that your programs will be operated to comply with the requirements of any successful grant request. In lieu of bylaws or operating procedures, you stated that you will comply with RFP plans if a determination letter recognizing you as an organization exempt under section 501(c)(3) of the Code was to be issued. These plans described operating procedures for irrigation consultants and independent commissioning provider services. The provision of irrigation consulting services or independent commissioning

provider services are not inherently tax exempt activities. In addition, you have provided various Federal grant application opportunities as possible activities that you would conduct if the grant request was to be approved. These statements and documents demonstrate that your planned activities primarily depend on whatever grants you or your Business Consultant/Grant Writer can successfully attain. Hence, you are formed to acquire "free money grants" (as advertised on your Business Consultant's website) which may be available to organizations with an IRC § 501(c)(3) determination letter of tax exempt status. You are unable to provide the particulars of your operations because your operations are solely dependent on the grants you are able to secure. The administrative record indicates that your primary focus is not on the responsibilities and obligations that come along with "free money grants" such as operating a charitable program, but on receiving tax free money to spend as you wish. In est of Hawaii v. Commissioner, *supra*, the court found that the fact that the applicant's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit corporations were trading on that status. You are similar to the organization described in est of Hawaii v. Commissioner, *supra*, in that you have no established mode of operations. Your programs remain undefined and are dependent on whatever grants you are able to obtain. Rather than being formed for a genuine tax exempt purpose, you are formed to capitalize and trade on your possible status as a tax exempt entity under section 501(c)(3) of the Code in order to obtain "free money grants." You are formed to serve a private rather than a public purpose.

Section 1.501(c)(3)-1(a)(1) of the Income Tax 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. Additionally, organizations described under section 501(c)(3) of the Code must meet other standards. The organization must not distribute net earnings to insiders (the prohibition against inurement) and it must operate for the benefit of public rather than private interests (the prohibition against impermissible private benefit). The prohibition of inurement means that a private shareholder or individual cannot pocket the organization's funds except as reasonable payment for goods or services. Prohibited inurement refers to transactions between a tax-exempt organization and an individual in the nature of an "insider." The private individual (insider) to whom the benefit inures has the ability to control or otherwise influence the actions of the tax-exempt organization so as to cause the benefit. As a general rule, an insider is referred to as an organization's trustees, officers, members, founders, or contributors.

Although T was not listed as a board member, T, specifically T's company D, was your registered agent and helped to create your organization. The D company solicited clients through its website with the promise of "free money" and stated: "*Do you have a 501(c)(3) if not, your chances [are] slim to none, we will get one for you then we will apply for your free money!!!!!!*"

You have entered into a business contract agreement for consulting and fundraising services with T. The consultation services to be performed included the management of all your business affairs. Therefore, T was given the ability to control and influence the actions of your organization. The contract also showed T's personal financial interest in your organization since he is to receive 10 to 15 percent of grants/funds obtained. The contract stipulated that as a business consultant, T advised you in generally any matter arising out of the business affairs of the company.

You have not demonstrated any discretion or control over the fundraising activities conducted

by T and T's company D. You allowed the Business Consultant/Grant Writer to solicit for any and all funds. The facts provided in the administrative record included a series of transactions which intentionally benefited the Business Consultant/Fundraising Agent. One example was the letter writing campaign to solicit funds intended for Louisiana hurricane victims to be housed in a facility which did not exist. Each of the 12 letters sent to various foundations and organizations was requesting up to \$ _____ to fund a nonexistent charitable program. Under the terms of the consulting and fundraising contract, if any of these potential donors had approved the request, T would have received a commission based on the misrepresentation of a material fact. Another example was the website that T established for you which permitted donations to be made directly to D. There was no evidence that any funds deposited into the PayPal account of D would be remitted to you to fund a charitable program. Like the organization described in est of Hawaii v. Commissioner, *supra*, you have ceded effective control of your operations over to T and enabled your organization to function as an instrument to further the purposes of T and his for-profit company D, resulting in impermissible private benefits and/or prohibited inurement to your Business Consultant, T. As established International Postgraduate Medical Foundation v. Commissioner, *supra*, when a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code, even if it furthers other exempt purposes. As you have permitted D to benefit substantially from the manner in which your activities are conducted, you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

Since you are incorporated and operating in the State of F, your raffle fundraiser must comply with the N. Your raffle fundraiser appears to have violated a number of the provisions under the N. One of the provisions of N is that in order to conduct a charitable raffle, an organization must meet the definitions of a "qualified nonprofit organization." One form of a qualified nonprofit is an organization exempt under section 501(c) of the Code. Your organization was not recognized as tax exempt from federal income tax under Section 501(c) of the Internal Revenue Code and therefore, does not appear to be classified as a "qualified nonprofit organization." Another provision of N is that the prize may not be money which is defined as coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency. Your raffle prize was a \$ _____ MasterCard/Visa Gift Card which is a form of a cash equivalent. Moreover, "raffle tickets may not be advertised state wide." Hence, your sale of raffle tickets through a mass mailing across the country and on your website may have violated State restrictions on raffle promotion and ticket sales. Analogous to the organization described in Revenue Ruling 75-384 but in contravention of a well established charitable goal, your conduct of a possible illegal act may have increased rather than decreased the burden of government. Accordingly, you do appear to be operated exclusively for charitable purposes.

You, through D, have solicited charitable donations for nonexistent charitable programs, appeared to operate a raffle in violation of state law and has a website which permitted donations to be made directly to the D PayPal account with no evidence that the funds would be used to fund charitable programs. These examples showed that you are not operated exclusively for purposes under section 501(c)(3) of the Code. Similar to the organization described in Better Business Bureau of Washington, D. C., Inc. V. United States, *supra*, 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. You have not established the factual basis for your exemption and have not demonstrated that you meet the burden of proof you are exclusively operated for tax exempt purposes under section 501(c)(3) of the Code. In

fact, you are operated for a substantial non-exempt private purpose. You seek to obtain tax exempt status under section 501(c)(3) of the Code principally to solicit any and all forms grants and public contributions. Rather than being formed for any genuine tax exempt purpose, you are formed to capitalize and trade on your possible status as a tax exempt entity under section 501(c)(3) of the Code in order to obtain "free money grants." You have permitted the for-profit consulting firm, D, to substantially benefit from the manner in which your activities are carried out. As you are formed to serve a private rather than a public interest, you do not meet the qualifications for recognition of tax exemption under section 501(c)(3) of the Code.

Applicant's Position:

In reference your open-ended activities, you submitted a new program description to provide education on HIV/AIDS. However, this HIV/AIDS program will also be performed in accordance "with the RFP." Hence, no specific details regarding the program were provided. Furthermore, your new program description listed many of the same missions and objectives previously submitted.

In regards your donations and funds from raffle sale being deposited directly the PayPal account of D, you claimed that your website was not launched. T stated that the D PayPal account was provided on the donation link to illustrate to you "where the donation button should be." T also asserted that D did not receive any donations from the website. The transactions reported for the D PayPal account were submitted. With respect to the raffle fundraiser, you believe that it was operated within the guidelines of F State Law.

Finally, you presented a signed statement that as of August 2007, T is no longer assisting you. K will be handling the organization's business. In addition, you submitted documentation to show that D is no longer the Registered Agent for you.

Service Response to Applicant's Position:

Similar to the prior listing of your missions and objectives, your new activity to provide education on HIV/AIDS will also be conducted in accordance with whatever grant request you are able to obtain. Therefore, we maintain our position that the organization's planned activities primarily depend on whatever grants you are able to attain. You are formed to acquire "free money grants" which may be available to organizations with an IRC § 501(c)(3) determination letter recognizing its tax exempt status. You seek recognition of tax exemption under section 501(c)(3) of the Code not to further a true charitable purpose but to obtain "free money grants" for a substantial non-exempt private purpose.

Your position that the website was not launched is not valid. The website was discovered using ordinary search engines and its content was validated in writing by both the organization's President and the Business Consultant. In addition, the website was actively selling raffle tickets and soliciting for donations.

A two page brochure released by the Attorney General's office of F helps to interpret the provisions governing charitable raffles. A copy of this brochure was sent to you by the letter dated July 17, 2007 to illustrate the possible violations. This brochure stated that "qualified organizations" permitted to hold charitable raffles must have existed for at least three years and be exempt from federal income tax under Section 501(c) of the Internal Revenue Code. As you

are not an organization exempt under Section 501(c) of the Code, you do not appear to be a qualified organization permitted to hold charitable raffles in the State of F. In addition, the prize may not be money which is defined as coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency. Your raffle prize was a \$ MasterCard/Visa Gift Card which is a form of a cash equivalent. Moreover, "raffle tickets may not be advertised state wide or through paid advertisements." The sale of raffle tickets online and by the letter writing campaign appeared to violate the state wide promotion and sale of raffle tickets provisions.

Your claim that T is no longer acting as your Business Consultant/Grant writer does not excuse the fact you have operated to provide substantial benefits to T or T's for-profit consulting company, D. Moreover, there is no evidence that your consulting services contract with D has been made null and void. T, through D, stood to substantially benefit from the manner in which your fundraising activities have been carried out. You have failed to operate exclusively for charitable purposes and do not meet the operational test required to qualify for tax exemption under section 501(c)(3) of the Code.

Conclusion:

You have not demonstrated that you have met the burden of proof you are exclusively operated for tax exempt purposes under section 501(c)(3) of the Code. You have not established the factual basis for your exemption. You are unable to define the programs that you will operate as your programs are dependent on whatever grants you are able to obtain. Moreover, you are operated for a substantial non-exempt private purpose. The administrative record demonstrates that you solicited donations and grants for a nonexistent charitable program. It appears that your fundraising raffle may have violated certain provisions of state law. You seek to obtain tax exempt status under section 501(c)(3) of the Code principally to solicit any and all forms of grants and public contributions. Rather than being formed for a true charitable purpose, you are formed to take advantage of and trade on your possible status as a tax exempt entity under section 501(c)(3) of the Code and to receive "free money grants." You have permitted the for-profit consulting firm, D, to substantially benefit from the manner in which your activities are carried out. Therefore, since you are formed to serve a private rather than a public interest, you do not meet the qualifications for recognition of tax exemption under section 501(c)(3) 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, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;

3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

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

Deliver to:

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

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: Publication 892