



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201007060**

Release Date: 2/19/10

Date: November 25, 2009

Uniform Issue List Number:

501.00-00

501.03-08

501.35-00

503.00-00

503.03-00

SE:T:EO:RA:T:2

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 under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

You have failed to establish that you will be operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. Furthermore, you have not described your operations in sufficient detail to permit a conclusion in advance of the commencement of operations that you clearly meet the requirements of section 501(c)(3) of the Code. See Rev. Proc. 2008-9, 2008-2 I.R.B. 258. Finally, you have failed to establish that you will not serve private interests.

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.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

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.

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 24, 2008

Contact Person:

Uniform Issue List Number:

501.00-00

501.03-08

501.35-00

503.00-00

503.03-00

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Legend:

M =

State =

A =

B =

C =

R =

S =

T =

Z =

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.

FACTS:

You, M, are a not-for-profit corporation organized under the laws of State. You filed a Form 1023 seeking exempt status under section 501(c)(3) of the Internal Revenue Code.

Your articles of incorporation provide that you are organized for the specific purpose of creating "systems that will service talent, talent agents, talent managers, producers, directors and casting directors, helping them keep organized, informed, and up to date."

You offer a subscription service whereby you provide subscribers with a domain name, a website, a website editor, an email address, an appointment calendar, a career tracking grid, profiles of casting directors and talent agents, and an endorsement gallery where subscribers can endorse products in exchange for those products. You describe your activity to potential subscribers as being similar to "I" because it allows subscribers to have "free reign to create their own website." Subscribers can also use your website to "pitch" themselves for potential jobs within the entertainment industry.

You state that your website is a "safe place for anyone interested in the entertainment industry" because it offers "a virtual office that will share systems and information at a reasonable and nominal cost to the subscriber with no advertising" You specifically intend for your website to be "like a magazine online all about them [the subscribers] and their career." You describe yourself as a "one stop virtual and interactive office web space, guiding [subscribers] to make informed spending decisions and helping them to be on top of their creative game by preparing them to win."

Additionally, you state that your website will allow individuals to:

[U]pdate their personal website and all their on line website presence as well as log, update and keep track of their business history. Via a myriad of editable grids including a calendar, audition grid, callback grid, booking grid, pitch list grid, publicity grid, thank you history grid and other related integrated relational grids, the talent and their representatives stay organized and informed.

You claim to be operated for educational purposes because you assist subscribers with managing their careers by providing them with the "information and tools" that they "need to obtain employment in the acting industry. You do not plan to offer your subscribers any educational opportunities such as formalized instruction, performance opportunities, mentoring opportunities, or internships within the entertainment industry. Instead, you assert that you are providing "vocational counseling" because you will post interviews with "industry professionals, including casting directors, talent agents and personal managers to compile a library of information" on your website. Your subscribers will also be able to receive notes, instructions, and suggestions from casting directors, talent agents, and managers. These suggestions would include lists of specific vendors or services that the subscriber should use or purchase. The notes and instructions would only come from managers and agents if that manager or agent is specifically listed as the subscriber's "representation." The only live person class you plan on providing is a "free weekly workshop when [you have] space available to help show the subscribers how to use their virtual office."

You submitted, as examples of your services, several websites created by your subscribers. In particular, you submitted both the public and private pages for C as an example of your typical subscriber's website. C's public pages consist of photographs, a resume, a biography, a scrapbook, and a questionnaire containing answers to questions such as "My Zodiac Sign," "My Favorite Food," and "My Favorite Ice Cream." The private page contains a blog, email, a notepad, a rolodex, a calendar, a guide to setting up a website, and a website editor.

You also provide other services to your subscribers. For example, on your home page you provide links to websites of other companies so that your subscribers can purchase merchandise. You "want[ed] to have products . . . that are fun and interesting and if the subscriber clicks them they find out how they can buy that product . . ." You state that this is "advertising or product placement only." You also have another site called S, which is accessible from your website. S provides a link to a website that allows subscribers to book their travel plans. You will receive a referral fee for each subscriber that makes their travel plans through this site. You state that you have temporarily removed this link because there is a monthly fee associated with it, but that the fee will be removed once you are given exempt status under section 501(c)(3) and at that time you will "buy the membership" to the travel agency's site.

In exchange for these features, you charge subscribers an annual membership fee. Additional fees are charged for multimedia, email set up, and search optimization. You will also provide referrals to website designers if individuals would like customized pages or specialized assistance.

In addition to providing sites for a fee to subscribers, you also provide free services to other individuals. You allow casting directors, talent agents, and personal managers to have "side" websites to your own website. These companion sites will contain the names, biographies, photos, videos, audio messages, contact information for these casting directors, talent agents, and personal managers. The sites will also provide information on the "type of talent they are interested in" employing. The agents, managers, and casting directors would also have the same virtual office set up as other subscribers, except for a "different color scheme." Their site includes a "blog," email access, a website editor, professional profiles of their clients, links to client websites, access to various documents, a calendar, a notepad, a rolodex, and other services. Registration and access to these services are free for agents, managers, and casting directors. You state that the casting directors, talent agents and managers are "giving the talent valuable information about each of these entertainment industry professionals" and that asking "a casting director or talent agent or personal manager to pay for this is just not proper business protocol in the industry" because the "talent NEED them and their information" You also plan on allowing talent agents and managers to use your website for the purpose of scheduling auditions, marketing to subscribers, and showing "quotes from jobs which is useful for the agents and managers when negotiating" on behalf of their clients. Finally, you plan on providing agents with an "internet photo delivery system" which will give agents the ability to compete in the marketplace.

A, your president, is a talent manager for R. Of your current subscribers, 80% are either clients of R or are working as interns and receiving "management services [from R] in exchange for their various tasks." You do not believe that you are providing a benefit to your interns or R. However, you do state that "A has been able to make [you] grow and make the clients of R get a website for a reasonable fee . . . in the long run it will all be quite good for the clients of R and for [your] future." You state that "the website of the talent is a marketing tool for the talent and for the manager which is R to use to market the career of that talent." But also feel that your services do not benefit R more than any other talent agency.

Your president, A does not currently receive a salary. However, when you are fully running, A will receive a percentage of the amount generated by fees, not to exceed a certain amount. B, your vice president, is currently receiving all the subscription fees from "all the original subscribers." Additionally, B will receive a percentage of the fees from new subscribers. In your original application, you stated that both A and B would be rewarded for their contributions to the company by having a "paid staff position" for "as long as that individual wants." These individuals would also receive a "retirement 401k to be determined and designed by a 401k expert of their choice." You proposed modifying this section of your bylaws to state that A and B will have paid positions for nine years.

Additionally, while your Articles of Incorporation provide that upon dissolution, your remaining assets shall be distributed to an organization that is exempt under section 501(c)(3) of the Code, according to your bylaws, another organization, Z, a 501(c)(6) organization, will receive a distribution of your assets upon your dissolution. These funds will be ear marked to for the creation of a fund for talent managers in the entertainment industry. A, who is also a member of

Z, will “coordinate” the “structure, guidelines, and regulations for distribution of the funds given to the [fund] and or to Z.” As a “requirement of Z accepting this donation” A will be given “a lifetime honorary membership [to Z] and or a President Emeritus status, titles of her choice” and will not “have to pay the annual dues.” You have proposed modifying this provision so that it allows A to be the committee chairperson for the fund instead of having a lifetime honorary membership or President Emeritus status.

LAW:

Section 501(c)(3) of the Internal Revenue Code (“Code”) provides that corporations will be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational 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 (“regulations”) provides that an organization, in order to be exempt under section 501(c)(3) of the Code, must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides “[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals”

Section 1.501(a)(1)-1(c) of the regulations defines private shareholder or individual as “persons having a personal and private interest in the activities of the organization.”

Section 1.501(c)(3)-1(d)(3) of the regulations defines educational as referring 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. The regulation also provides four examples of educational organizations. Example 1 states that an organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on is educational if it otherwise meets the requirements of section 501(c) of the Code. Example 2 provides that an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs is educational if it otherwise meets the requirements of the section 501(c). Such programs may be on radio or television. Example 3 states that an organization which presents a course of instruction by means of correspondence or through the utilization of television or radio is educational if it otherwise meets the requirements of section 501(c). Example 4 provides that museums, zoos, planetariums, symphony orchestras, and other similar organizations are educational if they otherwise meet the requirements of section 501(c).

In Rev. Rul. 67-392, 1967-2 C.B. 191 an organization which encouraged and promoted the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts, and securing paid engagements for the artists to improve their professional standing

was granted exempt status.

In Rev. Rul. 68-71, 1968-2 C.B. 249 an organization formed to educate young people as well as adults about employment opportunities, and to assist them in planning their careers and achieving occupational adjustment was found to be tax exempt. To implement its purposes, the organization conducted occupational research, published the results of such research, and sponsored group and individual vocational counseling. The organization also presented broad pictures of various vocational areas, such as skilled trades, business, and civil service. The publications were sold at a nominal charge to educational institutions, agencies of the Federal Government, and the general public. The organization did not charge a fee for its vocational counseling services. Its income was derived mainly from contributions.

In Rev. Rul. 71-395, 1971-2 C.B. 228 a cooperative art gallery formed by a group of artists to exhibit and sell their works was not entitled to exemption because the gallery was a vehicle for advancing the careers of its members and for promoting the sale of their works. As such, “[i]t serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.” Accordingly, the organization failed to qualify for exemption as it was deemed operated for the benefit of private individuals within the prohibition of Treas. Reg. § 1.501(c)(3)-1(d)(ii).

Under Rev. Proc. 2008-9, 2008-2 I.R.B. 258, exempt status will be recognized in advance of the commencement of operations if the proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. In order to satisfy this criteria, 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.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for 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 those carried out by universities.

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct.Cl. 490 (Ct. Cl. 1969).

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court relied on the “commerciality” doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose.” Among the major factors the court considered in assessing the commerciality of an organization is the organization's competition with for-profit commercial entities, the extent and degree of below cost services provided, the pricing policies, and the reasonableness of financial reserves. Additional factors included whether the organization used commercial promotional methods, such as advertising, and the extent to which the organization receives charitable donations.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) of the Code

because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. In making this determination the court relied upon the following: that the corporation had failed to demonstrate that its services were not in competition with commercial businesses, that the organization's financing did not resemble that of a typical 501(c)(3) organization, that the organization had not solicited, nor had it received, voluntary contributions from the general public, that the corporation's only source of income was from fees for services, and those fees were set high enough to recoup all projected costs, and to produce a profit.

RATIONALE:

Based on the information provided in your Form 1023 and the supporting documentation you provided, we conclude that you are neither organized nor operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code. In order to qualify for tax exempt status under section 501(c)(3) of the Code, you must be both organized and operated exclusively for exempt purposes.

You are not organized for exempt purposes because your funds will be distributed for non-exempt purposes upon your dissolution. Your articles of incorporation provide that your funds will be distributed to an organization recognized as exempt under section 501(c)(3) of the Code upon dissolution. However, both your bylaws, and other information submitted to us, shows that in actuality you will distribute your funds to an organization organized under section 501(c)(6) of the Code. The provision of funds to a 501(c)(6) organization for purposes that are not in furtherance of your exempt purposes under section 501(c)(3) of the Code prohibits you from meeting the organizational requirements for exemption.

You are also not operated exclusively for exempt purposes. You claim that you are operated for educational and charitable purposes. However, your main activity is operating a website that allows users to create personal profiles, calendars, emails, and blogs. Your website allows managers, directors, and casting agents to do the same. This activity is not educational within the definition of section 501(c)(3) of the Code and is not directed to the public benefit.

Section 1.501(c)(3)-1(d)(3) of the regulations defines educational as referring to the instruction or training of an individual for the purposes of improving or developing the individual's capabilities or as the instruction of the public on subjects that are useful and beneficial to the community. Examples of educational organizations under the regulations include colleges and primary schools, public discussion groups that have panels, correspondence schools, and museums, zoos, and similar organizations. You do not meet the definitions of an educational organization and are not comparable to any of the examples contained in the regulations. Hosting an online website that is similar to "T" is not educational.

You also claim that you are operated for educational purposes because you assist actors with obtaining employment in the entertainment industry. In Rev. Rul. 68-71, 1968-2 C.B. 249 an organization formed to educate young people as well as adults about employment opportunities, and to assist them in planning their careers and achieving occupational adjustment was found to be tax exempt. To implement its purposes, the organization conducted occupational research, published the results of such research, sponsored group and individual vocational counseling, and presented broad pictures of various vocational areas, such as skilled trades, business, and civil service. The publications were sold at a nominal charge to educational institutions,

agencies of the Federal Government, and the general public. The organization did not charge a fee for its vocational counseling services. Its income was derived mainly from contributions. Unlike that organization, you do not conduct occupational research, sponsor counseling, present a broad picture of various vocational areas, or provide any service that could be deemed educational. Additionally, you charge substantial fees for your services and do not receive any income from the general public.

While you claim to be similar to the organization described in Rev. Rul. 67-392, 1967-2 C.B. 191, you do not conduct any activities that would make this comparison accurate. You do not hold weekly workshops, you do not sponsor concerts, and you do not actively secure paid engagements for your subscribers. Rather, you provide them with a website that allows them to stay organized and allows their agent to provide them with regular updates. Indeed you are more like the organization described in Rev. Rul. 71-395, 1971-2 C.B. 228. There, the organization was not entitled to exemption because the cooperative art gallery it operated was merely a vehicle for advancing the careers of its members. Similarly, you operate for the private benefit of enhancing the careers of your members.

The activities you perform are more akin to those of a trade or business that is ordinarily carried on by for-profit commercial organizations. In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court relied on the "commerciality" doctrine in determining whether an organization was operated for exempt purposes. The court in Airlie concluded that the organization was operated for a non-exempt commercial purpose because of the commercial manner in which the organization conducted its activities. Among the major factors the court considered in assessing the commerciality of the organization was the organization's competition with for-profit commercial entities, the extent and degree of below cost services provided, the pricing policies, and the reasonableness of financial reserves. Additional factors included whether the organization used commercial promotional methods, such as advertising, and the extent to which the organization receives charitable donations. Similarly, in B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), a corporation formed to provide consulting services was also deemed not exempt under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. In making this determination the court relied upon the following: that the corporation had failed to demonstrate that its services were not in competition with commercial businesses, that the organization's financing did not resemble that of a typical 501(c)(3) organization, that the organization had not solicited, nor had it received, voluntary contributions from the general public, that the corporation's only source of income was from fees for services, and those fees were set high enough to recoup all projected costs.

Like the organizations in Airlie and B.S.W. Group you are not organized for an exempt purpose. Rather you are operated for non-exempt commercial purpose. You compete with for-profit companies in providing your services and you stated that in your application that the primary difference between you and these for-profit organizations is that your fees are less. While your fees may be less, they are certainly not below cost or in any way distinguishable from the fees charged by similar organizations. You use advertising to recruit new subscribers, and your president directs clients from her for-profit talent agencies to your service. Your revenues are primarily generated through your subscribers and advertisers. You are a commercial organization with no distinction from a commercial for-profit venture and therefore are not organized for exempt purposes under section 501(c)(3) of the Code.

In addition to meeting the requirements of an exempt purpose, you must also operate for public benefit. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations require you to establish that you are not operated for the benefit of private individuals. However, you have not shown that you are operated for a public benefit, rather than private benefit. You provide organizational services and assistance directly to your subscribers. You allow talent agents and casting directors to access these profiles and send information to your subscribers for the purpose of obtaining jobs. You are providing more than an insubstantial private benefit to your subscribers. Even in your own words, you state that the subscribers to your service are receiving a benefit. You state that "the private benefit is to the talent that are using this system." You also provide a more than insubstantial private benefit to A. Under your bylaws, A is entitled to a Board position in exchange for directing the distribution of your assets upon dissolution. Even in your proposed amended bylaws, A would still receive an impermissible private benefit by being appointed to a life long position in exchange for the assets. Finally, you provide a private benefit to casting directors, agents, and managers because you allow them to use your site free of charge to assist with their clients in a variety of ways. As such, you are not operated for the public benefit, but rather a private benefit in violation of Treas. Reg. § 1.501(c)(3)-1(d)(ii).

CONCLUSION:

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Internal Revenue 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
TE/GE
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