



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201031032**  
Release Date: 8/6/10  
Date: May 12, 2010  
Uniform Issue List:  
501.03-08  
501.03-23

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
1120  
Tax Years:  
All

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



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: March 26, 2010

Uniform Issue List:

501.03-08  
501.03-23

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

"Sample Budget"

Dear

We have considered your Form 1023 Application for Recognition of Exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code) and requesting to be classified as a school under section 509(a)(1) and 170(b)(1)(A)(ii). Based on the written information exchanged between us, we have determined that you failed to establish your qualification for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted shows that you were incorporated on August 27, 2008, under the non-profit corporation laws of your state. Your "Articles of Organization" state that you are organized exclusively for charitable, religious, educational and scientific purposes. Your bylaws state that you have a strong purpose within your community for preparing young people with learning disabilities and/or attention deficit disorder. You plan on offering a college preparatory program to 9<sup>th</sup> through 12<sup>th</sup> grade students.

Submitted with your Form 1023 were several documents that appear to have been developed for another organization. Several of the documents contained the name of the other organization. In addition, your website address contained the same organization's name.

You submitted a copy of your bylaws and conflict of interest policy; however, there is no indication as to whether or not these documents were ever approved or adopted by your board of directors.

On March 16, 2009, we sent you a letter requesting additional information from you to help determine whether you qualify for exemption from Federal income tax under section 501(c)(3) of the Code. A second letter requesting additional information and clarification to your answers to the March 16 letter was sent to you on June 11, 2009.

Among the questions in this letter, you were asked if you had a regularly enrolled student body,

if you owned or leased the facility where your educational activities were regularly carried on, and if you maintained a regular faculty of qualified teachers. In your initial response to these questions you replied "n/a." A second request for this information revealed that you will start marketing your school to the public in March, 2010, you plan on entering into a leasing agreement once you receive non-profit status, and you anticipate adding qualified teachers in August, 2010.

You were asked to provide copies of the minutes of your board meetings. You replied that you have not had any board meetings and will not have a board meeting until you are granted exemption from federal income tax under section 501(c)(3) of the Code. You currently have three members on your board of directors, two of whom use the same mailing address.

Moreover, you were asked to provide specific financial data for a three year period. You completed the financial data schedule on Part IX of the Form 1023 by filing zeros on all lines. However, you did submit a document entitled "Sample Budget." The submitted budget is not in the required format. You stated that you have not received any actual revenue or incurred any actual expenses.

Among your activities is the Corporate Internship Program ("Program"). Under this program Sponsoring Companies enter into a contract to fill full-time entry level jobs in their offices. The students will be employees of the Program, not the Sponsoring Companies. Each student will work standard daily business hours, five days per month. The Program will handle the payroll and other employer issues for the students. The students are required to assign their earnings to you.

You have also submitted a copy of your extensive and challenging curriculum. It includes classes such as linear algebra, precalculus AB mathematics, physics, marine biology, advanced physics, and architecture design, etc. The budget that you submitted with your application indicates that you will have three teachers.

Section 170(b)(1)(A)(ii) of the Code provides, in part, that the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs to an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 501(c)(3) of the Code provides, in part, for exemption from federal income tax of 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 1.170A-9 (c)(1) of the Income Tax Regulations (the "regulations") states that an educational organization is described in section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the

latter are merely incidental to the educational activities. A recognized university which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

Section 1.501(c)(3)-1(a)(1) of the 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 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 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. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 4.03 of Rev. Proc. 2010-9, 2010-2 I.R.B 258, provides that exempt status may be recognized in advance of operations if proposed activities are 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. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. 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. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

#### RATIONAL

For an organization claiming the benefits of section 501(c)(3), "exemption is a privilege, a matter of grace rather than right." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10<sup>th</sup> Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

The Tax Court has stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3)." Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970).

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 information you have submitted is insufficient for us to conclude that you are organized and operated exclusively for educational or other exempt purposes as specified in section 501(c)(3) of the Code because it is incomplete, unresponsive, vague, contradictory, and indicative of substantial non-exempt purposes.

The limited information you provided in your application, your supporting documentation, and your responses to two additional inquiries did not provide sufficient detail to conclude that you are operated for an exempt purpose. Though you refer to educational activities that could be exempt, you are not yet carrying out those activities, and have not met your burden of disclosing all the facts bearing on your organization, operations and finances that would allow us to make a decision about your future activities. Section 4.03 of Rev. Proc. 2010-9, *supra*. Among other important facts, we do not know how many students you expect to attend, how you will recruit them, whether you will lease or purchase a facility and what kind of curriculum you will teach. We do not know what portion of your revenue you expect to derive from tuition, or from other sources such as payments from public school systems, earnings by your students, grants and donations.

Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3) of the Code. See Share Network Foundation, and New Dynamics Foundation, *supra* ("vague generalizations and conclusory expectations are insufficient to demonstrate that the application meets the operational test.") You submitted information that was vague or not specific to the question asked, or even, apparently, to your organization. The name of some other organization was in several documents and in your web address. The budget attached to your application, labeled "Sample Budget" appears to have been copied from a boiler plate budget and not prepared specifically for you.

Some of the information that you did submit is flawed. For example, the revenue items listed in the Revenue Section of your budget do not equal the total amount. Also, the "Sample Budget" includes several items of revenue titled: TRA Reduction, Federal Title I funds, and Federal school start up grant, Summer 2009, that you have neither supported or explained elsewhere. For example, the Federal school start up grant was for the summer of 2009, when you were not in operation. This budget was prepared for varying levels of anticipated enrollment; however, it is not supported with evidence that you can reach any of the levels of enrollment. Thus, your application does not contain an "open and candid" disclosure of all facts" which bear upon your "organization, operations, and finances" as required by the Tax Court in Bubbling Well Church of Universal Love, Inc., *supra*.

You have stated that your board of directors has not met and will not meet until you have received your tax-exempt status. Therefore, as you plan your activities, you are entirely under the control of a single individual. There is no indication that your Bylaws and Conflict of Interest Policy were ever approved or adopted by the board of directors. Even after your board becomes active, it will be made up of three individuals, two of whom use the same mailing

address, indicating a close family or business relationship. All of these circumstances prevent us from concluding that you will operate for the benefit of the public. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Some of the information that you submitted is contradictory. Although you said in your application that you intended to educate children with learning disabilities and attention deficit disorder, the curriculum that you have submitted is quite extensive and intellectually challenging. You have not explained the appropriateness of such classes as linear algebra and advanced physics. Furthermore, the number and range of classes indicated that they belonged to a school with a much larger faculty and student body than yours.

One of the activities that you did describe in some detail appears to have a non-exempt commercial purpose. You said that you would solicit contracts from companies for your Corporate Internship Program ("Program"). Under this program, Sponsoring Companies enter into a contract with the Program to fill full-time entry level jobs in their offices. You did not describe any educational component of the program that would be appropriate for high school aged students, especially those with learning disabilities. Rather, the students would be employees of the Program, working standard daily business hours five days per month. The Program would handle the payroll and other employer issues for the students and require them to assign their earnings to you. This Program is similar to the commercial activities performed by a for-profit temporary manpower agency. As such, this Program has a substantial non-exempt purpose; therefore you will not be operated exclusively for charitable purposes.

Therefore, you have not established that you are operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Furthermore, you have failed to establish that your activities further a public charitable purpose rather than the promotion of private interests.

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.

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 (IRS) 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](http://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 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 (SE:T:EO:RA:T:2)  
James Zelasko (3Q6)  
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