



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201044018**
Release Date: 11/5/2010

Date: August 9, 2010

UIL: 501.35-00; 504.50-00

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,

Rob 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: May 27, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Date of Incorporation

B = State of Incorporation

C = Date of Amended Articles of Incorporation

UIL Codes: 501.35-00
504.50-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a) and your protest. 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. This letter supersedes our letter dated July 6, 2009.

ISSUE

Do you qualify for exemption under section 501(c)(3) of the Code?

FACTS

You were incorporated in the B on date A. Your Articles of Incorporation initially stated that you provide ambulances and wheel chair vans to organizations that provide transportation services to the elderly and handicapped. Your Articles of Incorporation were amended on date C to state that you are organized exclusively for charitable, religious, educational and scientific purposes.

Although you were incorporated on date A, you were not operational in the first two years of your formation.

You state that you will work with organizations to develop a comprehensive, coordinated and accessible system of transportation responsive to the needs of the aging population within the community and institutional setting. Your purpose as stated on Forms 990 is to provide safe and low cost transportation to the general public.

You state, "Each program has a scope of practice and these vary widely. Actual pricing will be determined as we examine each program's requirements. ... Since these programs are all very mature, the administrators have a history of data for comparison."

Your staff will meet the necessary qualifications to transport elderly and disabled persons. They will receive training in cardio pulmonary resuscitation. They must have completed an emergency vehicle operators course and pass a Federal Commercial Drivers License equivalency test. You will conduct criminal background checks and motor vehicle driving record checks on all employees. Drivers must also undergo physical, drug and alcohol screening as well. You will provide tuition assistance to your employees.

Your financial support will come from the organizations that hire you to provide paratransit services to their clients. Your rates will be \$ per passenger per one-way transport plus \$ per loaded mile for every mile after six miles. You will also charge a Waiting Fee of \$ per hour or fraction thereof. Your expenditures include wages for drivers, support staff, fuel, insurance, and continuing education and tuition assistance expenses.

LAW:

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes relief of the distressed.

Revenue Ruling 72-124, 1972-1 C.B. 145, describes an organization that operated a home for the elderly. It qualified for exemption under 501(c)(3) as a charitable organization because it met the special needs of the elderly for housing, healthcare and financial security.

Revenue Ruling 76-244, 1976-1 C.B. 155, describes a charitable organization that provided home delivered meals to elderly and disabled persons. Volunteers delivered the meals. A nominal fee that was insufficient to cover the costs of the meals and delivery was charged. In some cases, no fees were charged depending on the recipients' abilities to pay. The organization qualified for exemption under section 501(c)(3) of the Code.

Revenue Ruling 77-246, 1977-2 C.B. 190, describes an organization that was formed to provide low cost bus transportation for senior citizens and disabled persons in a community where public transportation was unavailable or inadequate. Although the organization charged a nominal fee, it was dependent upon contributions and Federal and local governmental grants in order to meet its operating expenses. The organization qualified for exemption under section 501(c)(3) of the Code.

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 356-7 (1978), describes an organization whose sole activity was to provide consulting services for a fee to nonprofit organizations. It provided qualified persons to perform research projects for its clients. The fees charged by the organization were set at or close to cost but were not less than the organization's full cost of providing its service. The organization was denied exemption because it operated in a commercial, nonexempt manner. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization was not operated exclusively for charitable, educational or scientific purposes within the meaning of section 501(c)(3) of the Code.

APPLICATION OF LAW:

You are not described in section 501(c)(3) because you are not organized and operated exclusively for charitable, educational or religious purposes.

You do not comply with section 1.501(c)(3)-1(a)(1) of the regulations because you are not organized or operated exclusively for one or more exempt purposes.

You are not described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities is devoted to non-exempt purposes. The provision of paratransit or transportation services is not a charitable, educational or religious activity within the meaning of section 501(c)(3) of the Code. You have not demonstrated that the services you provide are offered in a noncommercial manner. You have not demonstrated that your fees for service arrangement are distinguishable from those of your commercial counterpart.

You are not described in section 1.501(c)(3)-1(d)(2) of the regulations because you do not directly provide services to a charitable class. Your clientele consists of healthcare organizations and institutions that hire you to provide paratransit for their clients.

You are not like the organization described in Revenue Ruling 72-124. Although you require special training of your drivers to meet the physical needs of your riders, you do not meet other special needs, such as financial security, of the elderly and the disabled. You are contracted for services by organizations, institutions and publicly funded programs that provide services to elderly and disabled persons. You are not providing your services directly to the elderly and disabled; therefore, you do not consider their ability to pay. Payments are expected from the health care organizations or institutions, which hire you. You charge the rate of \$ per passenger, one way. In addition, you charge \$ for every mile after the first six miles and a waiting fee of \$ per hour. You have no provisions for basing your fees on the rider's ability to pay.

You are not like the organization described in Revenue Ruling 76-244. You are dependent on the service fees you bill your clientele in order to operate. Your fees cannot be described as nominal. No provision has been made for those riders, who are unable to pay. You operate in a commercial manner like any transportation service. You determine your costs and set your fees to meet your financial obligations.

You are not like the organization described in Revenue Ruling 77-246 because the rates you plan to charge organizations and institutions are not below cost. You do not take into consideration the riders' ability to pay. Furthermore, you do not charge the riders; you bill the organizations that hire you to provide transportation services. You are dependent on the transportation fees you charge to cover your expenses. The majority of your expenses are salaries and wages.

You are similar to the organization described in the B.S.W Group, supra. Your sole purpose is to provide transportation services for your clients that request non-emergency transportation for their clients. You are dependent solely on the fees you charge to operate. The provision of transportation services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fees you charge lack the donative element necessary to establish your activities as charitable. Your fees are also set above cost in order to allow for the tuition assistance program you offer your employees. You do not qualify for exemption because you operate in a commercial manner rather than exclusively for charitable purposes.

APPLICANT'S POSITION:

You state that you have considered many pricing situations and the ability of riders to pay. You state that you would provide a sliding fee schedule if necessary.

In response to our request for additional information, your officer states, "I am not aware that we have supplied you with any such information. The Public Utilities Commission (PUC) requires that paratransit services submit maximum rates for approval. The rates provided in our April 20 letter are those rates."

You subsequently state that you will offer discounts from the PUC rates for private pay situations and will be based on the specific needs of the individuals. Your rates charged to organizations will be determined based on each organization's requirements and the level of services they are requiring. You state, "It is typical to supply a 'cost build up' analysis for each request for proposal."

SERVICE RESPONSE TO APPLICANT'S POSITION:

Although you state that you have considered many pricing situations and the ability of riders to pay, you have not substantiated your claim. You have not provided a sliding scale fee schedule to demonstrate that your fee is based on the ability to pay of the riders. You have not demonstrated that you do not operate in a commercial manner. There is no evidence that your transportation rates are below cost. Furthermore, you have not demonstrated that your rates address the financial needs of your riders, including the elderly and the disabled.

Your riders are not your direct customers; therefore, you do not have an obligation to provide them a below-market rate. Your direct customers are the organizations that you hire you for the provision of transportation to their clients.

You state you will offer discounts for private pay situations based on the specific needs of the individuals. However, you have not submitted data to substantiate the determination of ability to pay of your riders.

You rely solely on fees for transportation services you provide to health care organizations and institutions, which are your direct clients. You do not directly charge the elderly and disabled persons for the services you provide; therefore, you do not consider the riders' abilities to pay. The fact that you intend to provide tuition assistance to your employees indicates that your fees are set above your operating costs.

CONCLUSION:

Based on the information provided, you do not qualify for exemption under section 501(c)(3) of the Code. You are not organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code because you operate in a commercial manner. You have not demonstrated that you directly serve a charitable class nor have you demonstrated that the rates you charge meet the financial needs of the charitable class.

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*.

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:

Deliver to:

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