



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201046016**  
Release Date: 11/19/2010

Date: August 27, 2010

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.36-00; 501.36-01

Dear \_\_\_\_\_ :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: June 24, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

M = Organization  
D = City  
E = State  
F = Incorporation Date

**UIL:**

501.36-00  
501.36-01

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.

**Issues**

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

**Facts**

You were incorporated as a Not-for-Profit entity in the State of E on date F.

Per your Articles of Incorporation, the specific and primary purposes include the advancement of charity and education and the operation of a restaurant and other food services with a commitment to community outreach funding for families or individuals that exceed the income

Letter 4036 (CG) (11-2005)  
Catalog Number 47630W

poverty guidelines for assistance and/or suffers a financial or economic crisis and other related or corresponding charitable purposes by the distribution of funds for such purposes.

Your Articles of \_\_\_\_\_ also include language that complies with the organizational test as described in section 501(c)(3) of the Code.

Your bylaws indicate your primary purpose is to provide educational and career development opportunities.

Your governing body includes the Executive Director/Human Resource Coordinator, the Chairman/Director, the Vice Chairman/Director, the Secretary/Director, the Treasurer/Director, the Senior Director of Operations, the Director of Dining Room Operations, the Director of Membership and the Director of Membership and Call Center Operations.

The Executive Director/Human Resource Coordinator and the Senior Director of Operations are husband and wife and also your founders and incorporators. Each is estimated to be paid \$ \_\_\_\_\_ annually. The Director of Dining Room Operations is the daughter of the Senior Director of Operation and the step-daughter of the Executive Director/Human Resource Coordinator. The Director of Finance and Marketing is the mother of the Executive Director/Human Resource Coordinator. The Director of Dining Room Operations, the Director of Membership, and the Director of Membership and Call Center Operations each are estimated to be paid \$ \_\_\_\_\_ annually. The Chairman/Director, The Vice Chairman/Director, the Secretary/Director, and the Treasurer/Director are volunteers. One of the contractors, whose company is selected to handle kitchen design and installation and architectural plans during the renovation phase, is the spouse of the Director of Membership.

You describe your mission as follows: "strive to provide superior value, offer outstanding quality customer service, quality fine foods and fine dining. We want our customer and members to have the total experience of M. Not only will our clientele receive a fine quality meal, they will also be provided with an enjoyable and relaxing atmosphere." You later amended narrative description of planned activities to state your mission is the respected dedication and commitment to community outreach for working families and individuals in crisis in the community.

Your business plan states the focus for the profits from the services will be instituted into your

\_\_\_\_\_ for working families and individuals in D community that otherwise do not qualify for assistance because the total household income exceeds the Federal & State Income Poverty Guidelines to obtain assistance. Your requirements are the family or individual must be experiencing an economic or financial crisis and the total household income must exceed the Federal & State Income Poverty Guidelines for assistance.

Your business plan also describes membership are made available to any consumer; membership dues are tax deductible; and your purpose is to provide quality fine foods, excellence in fining dining, superior service to your members and customers, development or financial knowledge, and valuable information which will support your financial decisions and

along with many other charitable programs

once you are operational.

You state the restaurant industry is currently being dominated by a few larger restaurants and you believe you can successfully enter the industry as the first of its kind 501(c)(3) not-for-profit restaurant by offering quality fine dining and fine foods, excellence in customer service, membership to the restaurant, special member only discounts, superior value and competitive prices.

You state, "M will evolve into an incredibly customer-focused, member-focused, not-for-profit restaurant, valued and devoted and committed to meeting all associated customer and member needs and the responsibility to their satisfaction." You state it is your long-term goal to be global with your mission and be the restaurant of choice for the largest fine dining audience in the D community and in America. You state that, once you have the opportunity to serve consumers and offer benefits of the restaurant and membership along with your competitive prices, you believe the consumer or member is less likely to move to your competitor. The last section of your business plan states the following:

Due to intense competition, restaurants must look for ways to differentiate their place of business and make it unique in order to achieve and maintain a competitive advantage. The founders of M realize the need for differentiation and uniqueness, and believe that combining a fine dining experience and a

will be the concept of success. The fact that no other national restaurant has entered this arena, presents us with a window of opportunity and an entrance into a profitable market.

You state your hours of operation will be consistent with other restaurants, Monday through Saturdays with possibility of Special Events and Fundraisers scheduled on Sundays along with one time per month open to provide Senior Citizens Brunches in conjunction with your Senior Citizens Program. You will operate with both paid staff and volunteers. You will employ trainers for the on-the-job training of the students. You will have about administrative staff members, instructors/trainers, to students at any given time for training and employment purposes, and 96 employees to run the restaurant. You also indicate % of your staff will be employees (key staff, instructors and trainers) and % will be students.

To date, you have not opened your restaurant. You are currently in the start-up mode seeking funding to begin operations. Although you do not obtained a facility, you describe the facility will be at least 122,000 square feet and will seat over 1,000 guests in the dining area alone. You will have a minimum of 600 parking spaces.

You project that the restaurant start-up expenses will be \$ . This includes \$ attributed to employee's salaries and benefit; \$ for building expenses and \$ for food, beverage and equipment.

You provide a start-up summary of expenses that lists Kitchen Design; Architectural Plans, Manuals/Handbooks/Recipes/Brochures; Pre-Opening Labor; VIP Lunch/Dinner; Building/Lease/Equipment/Accessories; Liquor License/Alcoholic Beverages; Program Fundraising and Reserve.

Your revenues will include membership dues. You offer tax-deductible membership dues to any consumer and can be paid under five membership categories: single, husband and wife/couples, family, corporate and student. The membership benefits include discounts on lunches, dinners, parties, banquets, parties, business meetings, weddings, and bridal and baby showers. Your three-year growth forecast reads as follows:

Potential Customers	Yr 1	Growth	Yr 2	Growth	Yr 3
Member – Lunch	\$	%	\$	%	\$
Non-Member – Lunch	\$	%	\$	%	\$
Member – Dinner	\$	%	\$	%	\$
Non-Member – Dinner	\$	%	\$	%	\$
Children (3 – 12)	\$	%	\$	%	\$
Member Parties/Banquets	\$	%	\$	%	\$
Non-Member Parties/Banquets	\$	%	\$	%	\$
Total Growth	\$		\$		\$

You also provide a five-year sales forecast, which shows the restaurant sales will \$ for year 1, \$ for year 2, \$ for year 3, \$ for year 4 and \$ for year 5. You estimate there will be 100 employees to operate the restaurant.

You state you will offer a wide menu variety, atmosphere, ambience, a friendly, professional staff in a casual environment. The menu will be established by the Assistant Director of Operation. The menu will consist of standard items and will be altered for training and by member/patron demand. The restaurant will offer some 125 various menu entrees of fine quality food and fine dining, including a vegetarian selection and a children's menu. You also have suggested dinner wines along with a discrete wine list. You state all of these qualities will be consistent with your goal of providing quality fine foods and a remarkable fine dining experience. You state that you will inform your patrons/members their meals are tax deductible on all menus, advertisements, brochures, consumer receipts and all marketing data.

You state prices of the menu are set consistent with market value and then discounted to fit a charitable organization. You also state the menu prices have been set below cost of market value to fit a charitable organization. As part of membership benefits, your members receive % discount on menu items. The percentage of discounts fluctuates between % to % for soups and appetizers, and % to % for larger items on the menu such as special salads and entrée items with respect to fine dining.

You state a second method of funding is through sponsorship. You state you will depend solely upon grant and sponsorship funding for the start-up component of this "Charitable

Organization." You state you will rely on grant and sponsorship funds for special events and fundraisers dedicated to your charitable cause. You forecast you will raise \$ \_\_\_\_\_ in semiannual fundraising.

You state that you will offer each donor, contributor, grantor, or sponsor the ability to maintain a separate contribution accounts under which they have the right to give advice on the use or distribution of their funds. You state the donor, contributor, grantor, or sponsor may also provide advice on the types of investments, distribution from the types of investments, or the distribution from the contribution account, including the specific program or start-up expenses for the first year of your operation.

You state nonmembers also have the benefit of a tax deductible charitable contribution; the difference in the members and nonmember price of a meal, party, banquet, etc. is the charitable contribution for nonmember. There are four levels of sponsorship ( \_\_\_\_\_ ).

The sponsorship benefits include complimentary dinner, advertisement in your newsletter and menu, a plaque, and membership. Sponsorship receipts will be used to defray the capitalization costs necessary to purchase the restaurant equipment.

Aside from operating the restaurant, you state you will be involved in other charitable activities. The Special Programs listed in your application include Tuition Program; Job Training Program; Community Outreach Funding Program; Welfare to Work; Homeless Shelter Program; Christmas Program; and Senior Citizens Program and Building Program.

You indicate that you will provide two types of scholarships: College Tuition Program and Pre-College Tuition Program. The College Tuition Program will be offered to those going to college that have a dedication to Community Outreach. The Pre-College Tuition Program will be for working families experiencing financial difficulties and want their child to attend parochial, private or Christian school.

You state Job Training is based on a two-week classroom course schedule and 60-day on-the-job training course schedule which takes into account the difficulty, hazard and liability that training people for food service trade entail. Each employee will be paid for both work and attending of the job training classes. The remaining training period will be spent in community outreach activities.

You state the Community Outreach Funding Program will provide an opportunity for families and individuals to obtain assistance for rent/mortgage, utilities, food and clothing. Your Welfare to Work Program will provide an opportunity for a job training program and an opportunity for employment with you

You state you will implement a Homeless Shelter Program, which will provide an opportunity for the homeless shelters to receive quality food from you. The volunteering committee when selected will be members and will have extensive contacts with Homeless Shelters as well as the various city agencies that serve the homeless.

The Senior Citizens Program will provide funding for seniors experiencing financial difficulties. The Building Program will work with families due to crisis repair and rebuild their home that homeowners/renters insurance does not cover and to be eligible their income must exceed the Federal & State poverty guidelines for assistance and funding.

You have an agreement with another entity who will handle the transfer of the funds for your special programs. Your application states that you will be transferring funds for your special programs to only one liaison organization, which has agreed to aid in the screening and distribution of funds for all of the Charitable Special Programs that you intend to offer.

You indicate the training program is designed to not only educate the students but also to open up jobs for your graduates. If employment is unavailable at your facility upon completion of the job training program, your recruiter will then begin job placement services for employment elsewhere. There will be approximately 25 to 50 trainees. You estimate about 25% to 50% of trainees will remain as employees. You state the wages will be set according to guidelines of the Labor Board Laws consistent with other Restaurants employees and taking into consideration the wages of a non-profit or 501(c)(3) corporation. Staff members will work a 40-hour week and students will have a 40-hour training/work week. After training, most hired wait-staff/buss persons will work approximately 32 hours a week consistent with other restaurant establishments.

You state no one will be paid for the Christmas program, which will take at least 3 months to establish. Your patrons will volunteer to adopt a less fortunate family for the Christmas Holiday; each family will provide a list of things needed for the family and the Volunteer Committee will disburse the lists to the adopting patrons and the restaurant will donate gift cards to local grocery stores so the families can obtain their traditional family Christmas dinner. The Tuition and the Senior and Building Programs will also be operated by a Volunteer Committee. You project the Tuition Program will provide ten \$1,000 tuition/scholarship awards. You estimate the Senior Citizen Program will have 250 to 500 seniors attending brunch one Sunday per month. The Building Program will be based on victims who go through hardships and disasters in a fiscal year; and if not qualified for other assistance, you would then extend an application for assistance from you.

## 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" of 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 organized or 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 interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

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 and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the "educational" refers to as the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Rev. Rul. 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to hard-core unemployed did not qualify for exemption. The corporation was formed to operate a retail grocery store to sell food to residents of a poverty area at prices substantially lower than those charged by competing grocery stores, to provide free grocery delivery service to residents who need it, to participate in the Federal food stamp program, and to provide job training for unemployed residents. The organization's purpose of providing job training for hard-core unemployed was charitable and educational within the meaning of the common law concept of charity; however the organization's purpose of operating a retail grocery store, where food was sold to residents of a poverty area at low prices, was not recognized as a charitable purpose under the basic common law concept of charity. The ruling went on to say the operation of the store and the operation of the training program are two distinct purposes, that was, ends or objects sought to be accomplished by the organization through use of its resources; and since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

In Rev. Rul. 76-94, 1976-1 C.B. 171, the Service held that an exempt organization's operation of a retail grocery store as part of its therapeutic program for emotionally disturbed adolescents, almost

fully staffed by the adolescents, and on a scale no larger than was reasonably necessary for the performance of the organization's exempt functions, was not unrelated trade or business.

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed argued that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church does not qualify under IRC 501(c)(3). The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including:

- a. The organization's operations were presumptively commercial;
- b. The organization competed directly with other restaurants and food stores;
- c. The organization used profit-making pricing formulas common in the retail food business;
- d. The organization engaged in a substantial amount of advertising;
- e. The organization's hours of operation were competitive with other commercial enterprises; and
- f. The organization lacked plans to solicit donations.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), 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.

In Nelson v. Commissioner, 30 TC. 1151 (1958), the court held that an applicant for tax exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the laws conferring the benefit sought."

## Application of Law

You are not as described in section 501(c)(3) because you are not organized and operated exclusively for charitable, educational, scientific or religious purpose. Your restaurant does not further the exempt purpose described in section 501(c)(3).

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part, specifically the restaurant, of your activities is devoted to non-exempt purposes.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because your activities serve private benefits of your members and patrons, who not only receive a discount for their meals but also a tax deductibility for their membership fees and/or meals.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the restaurant and the operation of the training and other charitable programs are two distinct purposes. Since the operation of the restaurant is the main part of your activities and is not a recognized charitable purpose, you are not organized and operated exclusively for charitable purposes. Your restaurant hours, prices, menu items and services are competitive to for-profit restaurants. Your restaurant is staffed by paid employees and trainees may be hired as your employees after their training. Your paid staff is mainly for the operation of the restaurant rather than for the training program or any charitable functions. Your restaurant operation is no different from those of for-profit restaurants; therefore, you are in competition with for-profit restaurants. Furthermore, you serve private benefits to your patron members and patron non-members by giving them discounts and tax deductibility benefits to lure them from your competitors.

You are not similar to the organization ruled in Rev. Rul. 76-94 because your restaurant operation is your main function and your planned training and charitable programs are secondary to your total activities and are added programs as the way to attract customers to your restaurant. As you indicated, you believe that the consumers or members are less likely to move to your competitors once you have the opportunity to serve the consumers and offer benefits of the restaurant and membership along with competitive prices. Therefore, any charitable and training programs are secondary and incidentally to your overall activities.

You are similar to the organizations described in the American Institute for Economic Research v. United States, supra, and Living Faith, Inc. v. Commissioner, supra. You plan to operate a fine dining restaurant in competition with other for-profit fine dining restaurants. Your restaurant is viewed as commercial. Your hours, prices and menu items are competitive to those of for-profit restaurants. Your sources of revenues are mainly from restaurant sales and your expenses are mainly for the restaurant operation. Taking in totality, your restaurant is a significant non-exempt commercial activity that is not incidental.

As held in Better Business Bureau of , supra, a single non-exempt purpose, if substantial, will preclude tax exemption under section 501(c)(3) of the Code. Your restaurant operation, a substantial part of your activities, is a non-exempt purpose; therefore, you are not operating exclusively for an exempt purpose as described in section 501(c)(3).

According to the findings in Nelson v. Commissioner, supra, you have the burden of proving that you satisfy the requirements of the particular exemption statute. Whether you meet this requirement is a statement of fact. The facts indicate that your primary activities are the operations of a fine dining restaurant that is similar to any other for-profit restaurants. Thus, you do not appear to qualify under Section 501(c)(3).

### **Applicant's Position**

You state that you are operating for charitable purposes and you do not wish to separate the charitable programs from the operation of the restaurant. You state that, if you separate the restaurant operation from the charitable programs umbrella, it leaves entirety of your operations cut-off and isolated completely from obtaining any opportunity for funding and bank loans from financial institution.

You provide copies of information from the Internet about other organizations, which may have been recognized under section 501(c)(3) of the Code. You state that those organizations have great similarities in their charitable purpose comparable to your charitable purpose but not offering all of the exact programs you would be offering. You also provide letters of support from Senators and Representatives.

### **Service Response to Applicant's Position**

Your activities mainly comprise of a restaurant operation, which is in competition with any for-profit restaurants. Your restaurant is commercial in nature and not as described under section 1.501(c)(3)-1(a)(1) of the regulations. In addition, you provide private benefits to your members and patrons by giving them a discount for their meals as well as a tax deduction for membership fee and/or part of restaurant tabs. Although you change your mission statement to sound more charitable, your proposed activities, mainly the operation of the restaurant, remain unchanged. The training and other outreach program that you may have are insignificant to the commercial aspects of the restaurant operation.

Finally you believe you are exempt under section 501(c)(3) of the Code, because other similar organizations are exempt under section 501(c)(3). However, each determination is based on facts. Qualification or operations of another organization have no bearing on the determination of your status. You have not proved that you qualify for exemption under section 501(c)(3). See Nelson v. Commissioner, supra.

### **Conclusion**

Based on the facts and circumstances presented, the Service concludes that you do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Your activities are indistinguishable from similar activities of an

ordinary commercial enterprise. Accordingly, you must file Federal tax returns and contributions to you are not deductible under section 170 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". The statement of facts (item 4) must be accompanied by the following 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."*

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*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](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 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.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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 S. Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure:  
Publication 892