



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201125042**  
Release Date: 6/24/2011  
Date: March 31, 2011  
UIL Code: 501.03-00

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.

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,

Lois Lerner  
Director, Exempt Organizations

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: February 16, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

N =

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 were incorporated under the nonprofit laws of the state of M. Article II, Section 1.b. of your Articles of Incorporation provides that you were formed "To develop and maintenance [*sic*] a website containing a list of referral links to websites of certain merchants who agree to pay the Corporation a commission resulting from such referral."

You are governed by an eight-member board of directors which consists of four couples. Your bylaws provide that the directors serve a life term unless they resign or are removed. Directors can only be removed for cause.

In the narrative provided with your application for exemption, you represent that you are an Internet based organization founded to utilize pay-for-performance Internet marketing systems to raise funds for Christian causes. You indicate that you expend 85% of your time maintaining a website, N, through which you link potential customers with paid advertisers. You represent that you have no paid employees.

You operate an online shopping mall utilizing the services of various providers of online marketing services ("Service Providers") to link shoppers with affiliated retail merchants. You earn commissions from the affiliated retail merchants each time a shopper utilizes one of the links on your website to make purchases. Commissions vary based on your agreement with each affiliated store. The Service Providers facilitate your relationship with the affiliated retail merchants by providing the underlying technology that manages links and tracks results and commissions earned by you. The Service Providers remit payments due to you by the affiliated retail merchants. You do not pay a fee for these services.

As described above, you utilize your website to link shoppers with affiliated retail merchants. Your website provides,

Although you refer to the amounts paid to you by the affiliated retail merchants as donations, these are actually commissions paid to you based on the sales your website generates.

You allow shoppers using your website to direct your earnings by using one or more of the three programs you operate. The amount of your earnings that a shopper can direct is based on the commissions generated as a result of the shopper's purchases. Shoppers set up an account with you to track the purchases they make using your website. Shoppers can direct the funds to your Standard Giving Account, Tuition Assistance Account or Tuition Supporter Account.

With respect to disbursements under each of the three programs, your website provides that checks will be issued annually if the shopper's account balance is at least \$25. Amounts of less than \$25 will remain in the account. The funds will be disbursed at the end of the year in which the \$25 threshold is met.

Through your Standard Giving Account, a shopper can designate one of the charities listed on your website as the recipient of the funds credited to the shopper's account. You represent that each charity listed has been recognized as an organization described in section 501(c)(3) of the Code.

Your Tuition Assistance Account allows a shopper to make a tuition payment to the Christian school or college he attends. Disbursements are made by check payable to the school specified by the account holder. The check is mailed to the account holder. You inform the account holder that he can mail or drop off the check at his school and ask the school to credit his tuition account.

The Tuition Supporter Account allows family and friends to direct funds to a specific individual's tuition assistance account.

Your tuition program can be used for any Christian school from preschool through college. In your letter dated October 12, 2009 you state, "The way our tuition program is structured schools really do not need to choose to participate in our program. Our members choose to participate and earn toward tuition at their school. We do send emails to schools and ask them to help promote our program to families in their newsletters and websites."

In our letter dated August 13, 2009 we stated that your Tuition Assistance Accounts and Tuition Supporter Accounts result in an impermissible private benefit to the individual students on whose behalf you make tuition payments. In your letter dated September 9, 2009 you state that the funds are donated to the schools and they choose to use the funds to lower the student's tuition.

The following statement appears in the documents submitted with Form 1023, "Our tuition assistance program supports individual families by providing funds to Christian Schools intended to be used by the schools to reduce the tuition cost of these families."

With respect to disbursements of funds, the financial information submitted in your letters dated October 12, 2009 and November 10, 2009 identifies disbursements from Tuition Assistance Accounts as tuition payments for designated students.

In your letter dated October 12, 2009 you state that shoppers choose to participate and earn toward tuition at their schools.

At the Tuition Assistance Account page of your website, you state,

With respect to individuals who wish to start saving for children who have not reached school age, your website provides,

At the Tuition Supporter Account page of your website, you state

You provided a sample letter which you furnish to Christian schools. It states, in part, "Earnings checks are mailed directly to the families [*sic*] homes. The checks will be

made out to the school so that they can be included with the next tuition payment or dropped off at the school.”

You provided a copy of an ad you ran on an online radio station. The ad included the following language, “...

You posted a classified ad in a local newspaper which stated, “Earn For Chr. School Tuition Shop at N and earn for your Church or Christian School/College Tuition.”

In your letter dated September 9, 20 you represent that you will distribute approximately 85% of your total receipts through your three programs. To date you have distributed \$ You are holding an additional \$ in accounts payable. Thus, a total of \$ of your funds have been distributed or are held in accounts payable for the benefit of the individuals or charities specified in your accounts. Of this amount, \$1090.81 has been distributed to, or held in accounts for the benefit of, designated individuals. The remaining \$ has been distributed, or is being held in accounts for, charitable organizations listed on your website.

Although you have received some contributions, your primary source of support is from the commissions you receive from stores which advertise on your website.

Initially, you indicated that you were seeking classification as an organization described in section 509(a)(3) of the Code. In your letter dated September 9, 20 you indicated that you are now seeking classification as an organization described in section 509(a)(2).

LAW:

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, provided 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 provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more 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 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(c)(2) of the regulations provides that an 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(c) of the regulations defines private shareholder or individual as a person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Therefore, to meet the requirement of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3) of the Code.

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 the relief of the poor and distressed or the of the underprivileged; advancement of religion; and, advancement of education or science.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code 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 purpose of carrying on an unrelated trade or business.

Rev. Rul. 66-103, 1966-1 C.B. 134, held that a nonprofit organization providing awards and grants, including scholarships and fellowship grants, to needy individuals to enable them to continue their work in the creative arts, as well as to continue their education and studies, with no monetary benefit to the donor organization, is entitled to exemption from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 69-175, 1969-1 C.B. 149, held that a nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children, serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code. When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. The organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it is not exempt from Federal income tax under section 501(c)(3).

Rev. Rul. 70-186, 1970-1 C.B. 128, describes an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features. Although the organization clearly benefited the public, there necessarily was also significant benefit to the private individuals who owned lake front property. The revenue ruling held that the private benefit was incidental to the accomplishment of the organization's exempt purpose. The benefits to be derived from the organization's activities flowed principally to the public. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners.

In contrast, Rev. Rul. 75-286, 1975-2 C.B. 210, describes an organization formed by the residents of a city block to preserve and beautify that block. Its activities consist of paying the city government to plant trees on public property within the block, organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas within the block. Membership in the organization is restricted to residents of the block and those owning property or operating businesses there. The revenue ruling concluded that the organization did not qualify for exemption under section 501(c)(3) of the Code because it operated to serve private interests by enhancing members' property rights.

In Rev. Rul. 76-442, 1976-2 C.B. 148, an organization's primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning. The revenue ruling states that aiding individuals in their tax and estate planning is not a charitable activity in the generally accepted legal sense. The organization is providing commercially available services to individuals who can afford them. The revenue ruling concludes that although funds may ultimately be made available to charity as a result of the organization's planning assistance to individuals, the benefits to the public are tenuous in view of the predominantly private purpose served by arranging individuals' tax and estate plans. The fact that gifts to charity are contemplated in the plans does not convert the organization's assistance into a charitable activity or one that promotes social welfare within the meaning of the regulations.

In *Miss Georgia Scholarship Fund, Inc. v. Commissioner*, 72 T.C. 267 (1979) (“*Miss Georgia Scholarship Fund*”), the Tax Court held that an organization created to award scholarships to the Pageant’s contestants, did not qualify under section 501(c)(3) of the Code. The “scholarships” would be forfeited if the winning contestant failed to provide certain services. The Tax Court held that the amounts awarded were not scholarships because the amounts paid were compensation for services performed.

In *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945) (“*Better Business Bureau*”), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an “underlying commercial motive” that distinguished its educational program from that carried out by a university.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978) (“*BSW Group, Inc.*”), 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. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. The court found that the corporation had completely failed to demonstrate that its services were not in competition with commercial businesses. The court found that the organization’s financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its 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. Moreover, it did not appear that the corporation ever planned to charge a fee less than “cost.” And finally, the corporation had failed to limit its clientele to organizations that were section 501(c)(3) exempt organizations.

#### RATIONALE:

Section 1.501(c)(3)-1(a)(1) of the regulations provides 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 purposes specified in such section. These tests are independent, and an organization must satisfy both to be exempt.

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly authorize it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes even if its articles limit its purposes and activities to those specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(ii) of the regulations provide that an organization that is organized or operated to serve private rather than public interests cannot be recognized as operating exclusively for exempt purposes.

Providing online marketing services does not further an exempt purpose. Article II, Section 1.b. of your Articles, provides that you were formed to “develop and maintenance [sic] a website containing a list of referral links to websites of certain merchants who agree to pay the Corporation a commission resulting from such referral...” Thus, your Articles expressly authorize you to carry on activities which are not in furtherance of an exempt purpose. Accordingly, you do not meet the organizational test described at section 1.501(c)(3)-1(b)(1) of the regulations.

You state in your application that you operate a standard giving program that allows shoppers who use your online marketplace to designate individuals and Christian organizations such as churches and schools to receive commissions generated by their online purchases.

You operate your online marketplace through your website, N. N serves as a link which allows individuals to purchase and retail merchants to sell goods and services. The operation of your website does not differ from similar websites operated by for-profit online marketing firms. The contracts you have entered into with your affiliated retail merchants do not differ from the contracts retail merchants enter into with for-profit businesses engaged in online marketing. You are primarily supported by the fees generated through your operation of your online marketing business. You estimate in your application for exempt status that building and maintaining the website takes % of your time, and general administration takes an additional % of your time.

The majority of your time is devoted to the operation of an online marketing business operated in a manner which is indistinguishable from those operated by for-profit businesses. You directly compete with those for-profit businesses. Your primary source of financing, fees from the provision of marketing services, does not resemble that of a typical 501(c)(3) organization. Thus, like the organizations described in Rev. Rul. 76-442 and *BSW Group, Inc., supra*, your primary activity is the operation of a trade or business ordinarily carried on by for-profit businesses.

Providing services of an ordinary commercial nature, regardless of whether the undertaking is conducted on a nonprofit basis and is beneficial to organizations described in section 501(c)(3), does not further a charitable purpose, unless the service directly accomplishes a tax-exempt purpose. Your online marketing services indirectly further an exempt purpose since some of the profits are distributed to organizations described in section 501(c)(3) of the Code. However, the services themselves do not directly further a charitable purpose.

Although you have a charitable purpose, the provision of online marketing services is not incidental to that purpose. On the contrary, the charitable purpose is incidental to your commercial purpose. Your online marketing services further a substantial nonexempt purpose and preclude recognition of exemption under section 501(c)(3) of the Code. See *Better Business Bureau, supra*. Furthermore, the provision of such services results in a substantial benefit to your affiliated retail merchants in the form of increased sales.

To date, % of your funds have been distributed to, or are held in accounts payable for the benefit of, the individuals named in your Tuition Assistance Accounts and Tuition Supporter Accounts. In your letter dated October 12, 20 you indicate that these are not tuition payments but rather are donations to Christian schools. You provided the following information with respect to these two programs:

“Our tuition assistance program supports individual families by providing funds to Christian Schools intended to be used by the schools to reduce the tuition cost of these families.” See documents submitted with your Form 1023.

With respect to disbursements of funds, the financial information submitted in your letters dated October 12, 20 and November 10, 20 identifies disbursements from Tuition Assistance Accounts as tuition payments for designated students.

In your letter dated October 12, 20 , you state that your members choose to participate and earn toward tuition at their schools.

At the Tuition Assistance Account page of your website, you state

At your Tuition Supporter Account page of your website, you state,

A sample letter you send to Christian schools provides

With respect to the tuition assistance checks you issue, your radio ad states,

You posted a classified ad in a local newspaper which stated, “...

Although you characterize distributions made with respect to your Tuition Assistance Accounts and Tuition Supporter Accounts as donations to the schools specified by the

account holders, the statements above clearly indicate that the distributions are intended to be used as tuition payments by the individuals specified in your Tuition Assistance Accounts. These payments result in an impermissible private benefit to the specified individuals.

You operate in a manner similar to the organization described in Revenue Ruling 69-175, *supra*, which held that parents who were providing a cooperative service for themselves were serving their own interests and did not qualify for exemption under section 501(c)(3) of the Code. By providing tuition assistance to designated individuals through your Tuition Assistance Accounts and Tuition Supporter Accounts, you relieve those individuals of some or all of the responsibility of paying their tuition.

Unlike the activities of the organization described in Rev. Rul. 70-186, *supra*, the tuition assistance payments you make are not incidental to accomplishing your exempt purpose, distributing funds to organizations described in section 501(c)(3) of the Code. Such payments serve no purpose other than to benefit the designated individuals.

The organization described in Rev. Rul. 75-286, *supra*, served the private interests of residents of a particular block by enhancing their property. Like that organization, your Tuition Assistance Accounts and Tuition Supporter Accounts were formed to benefit a select group of individuals by providing tuition assistance payments.

To date, through your Tuition Assistance Accounts and your Tuition Supporter Accounts, you have distributed, or are holding in accounts payable, \$ \_\_\_\_\_ for the benefit of designated individuals. These payments, which result in a private benefit to the designated individuals, constitute 74% of the amount which you have distributed, or are holding in accounts payable. Thus, a major objective of your operations is to provide a private benefit to designated individuals.

Rev. Rul. 66-103, *supra*, held that an organization that provided scholarships based on need was entitled to exemption under section 501(c)(3) of the Code. Unlike that organization, the payments you make do not constitute scholarships nor are such payments limited to a charitable class. Anyone setting up an account on your website is eligible to receive payments. Shoppers using your website must perform a service, purchasing goods, to be eligible to receive or designate distributions. See *Miss Georgia Scholarship Fund, supra*, in which the court held that an organization was not exempt under section 501(c)(3). The court found that distributions made were not scholarships because the amounts paid were linked to the performance of services.

Although you distribute some funds to organizations described in section 501(c)(3) of the Code, your primary purpose is the operation of an online marketplace, a trade or business which does not directly further a charitable purpose. Furthermore, your operation of the marketplace results in an impermissible private benefit to your affiliated

retail merchants whose sales are increased through participation in your marketplace. Finally, revenue from the operation of your marketplace is distributed to specified individuals through your Tuition Assistance Accounts and Tuition Supporter Accounts. These distributions serve no charitable purpose and result in an impermissible private benefit. Thus, you are operated to serve both exempt and non-exempt purposes. The non-exempt purposes you serve are substantial. The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. See *Better Business Bureau, supra*. Accordingly, you do not meet the operational test described at section 1.501(c)(3)-1(c)(1) of the regulations.

#### CONCLUSION:

Based on the information above, you have failed to demonstrate that you are organized or operated exclusively charitable or educational purposes within the meaning of section 501(c)(3) of the Code. Accordingly, we conclude that you do not qualify for exemption under section 501(c)(3).

Because you do not qualify for exemption as an organization described in section 501(c)(3) of the Code, you must file Federal income tax returns.

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.

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](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 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:EO:T:RA  
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,

Lois G. Lerner  
Director, Exempt Organizations