



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201143020**  
Release Date: 10/28/2011  
Date: August 1, 2011  
UIL Code: 501.00-00  
501.03-22  
501.03-30  
501.33-00

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
Form 1120 U.S. Corporation  
Income Tax Return  
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.

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 G. 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: June 15, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL:

501.00-00, 501.03-22, 501.03-30, 501.33-00

Legend

|                 |   |
|-----------------|---|
| Articles        | = |
| Charter         | = |
| City            | = |
| Ethnic Group    | = |
| Ethnic Liquor   | = |
| Event Organizer | = |
| State           | = |
| Website         | = |

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 are a State nonprofit membership corporation organized in 2009. Your Charter does not state your exempt purposes. However, you have agreed to file an amendment adding "The corporation is organized and operated exclusively for charitable, religious, educational, and scientific purposes." Your Articles state you were organized exclusively for charitable, religious, educational, and scientific purposes and prohibits private inurement, lobbying, and campaign intervention. Upon dissolution Art. 6 directs net assets to a named organization which is a section 501(c)(3) exempt organization.

Membership is open to all persons who reside or work in greater City area and meet the membership criteria. You have represented that there are not any written membership criteria but that membership is open to all. You are governed by an uncompensated board elected

annually by the membership. The board elects all officers and none are compensated. All of your activities are performed by your members.

Most of your activities or proposed activities can be generally described as business and social networking, social events for members, community volunteering, fund raising, scholarships, and grant-making. The most frequent event is weekly indoor volleyball. Similar frequent events include monthly business mixers, social wine tastings, business networking events, social-Ethnic Liquor, tennis tournament, tennis clinic, sand volleyball, dodge ball tournament, golf tournament, picnics, and mock networking. The \_\_\_\_\_ supervises a

Nonmembers are charged higher fees to participate in events. You stated that "the social activities provide a means to build personal relationships in order to build the organization."

The first statement on your Website's \_\_\_\_\_ page is

Your recruiting brochure emphasizes that members

The networking events are to "gather and recruit potential members in order to help the organization grow. Without resources (people) we could not fulfill projects or continue to volunteer."

You intend to recruit professionals to "mentor members about the professional world through guidance and experience that more mature members have." Only members are eligible to be mentored.

You sponsor and provide volunteer labor primarily to Event Organizer. You said you did not know whether Event Organizer was a tax-exempt organization described in section 501(c)(3) of the Code. Event Organizer is not listed in Service Publication 78 (the IRS cumulative list of section 501(c)(3) organizations). Event Organizer organized events such as '[Event Organizer] at the State Fair',

\_\_\_\_\_, an \_\_\_\_\_, and an \_\_\_\_\_

You participated in these events as a sponsor and by providing volunteer labor. You did help organize \_\_\_\_\_ All events are open to the public.

Your members occasionally work on homes being constructed by \_\_\_\_\_, they have also helped people clean-up after local floods, and participated in \_\_\_\_\_ and \_\_\_\_\_ fund raisers. You organized a \_\_\_\_\_ drive among your members.

You report that thirty-five to fifty percent of your total effort across 2008, 2009, and 2010 is dedicated to business networking and community volunteering. As a percentage of program effort they represent more than \_\_\_\_\_ in some years.

Your scholarship activity is in two parts. First, you grant scholarships to individuals, and second, you grants funds to Ethnic Group organizations who select qualifying recipients. You organize and promote an Ethnic Group Benefit to raise funds to support your proposed scholarship and grant-making efforts. The initial goal is to grant \$5,000 each to 6 organizations, and then to more organizations as fundraising permits.

Your scholarship program awards scholarships only to members or their families without regard to income-testing and expressly favors Ethnic Group. The intent is to encourage your members to apply for the scholarships. We asked you to represent that you would "ensure that your grants are not used for scholarships that discriminate based upon race, color, religion, sex, or national origin" and you represented that you will ensure that your scholarships will not "discriminate based upon race, color, religion, sex, or national origin" but you also answered that "We encourage the recipient to be of [Ethnic Group] descent."

Eighty percent ( ) of your funding for 2008, 2009, and 2010 comes from corporate donations with some membership fees. The corporate donors appear to be solicited by members and the you are not in any way an affiliate of any donor corporation. There is no investment income. You will earn de minimis interest from checking/savings accounts and potentially some interest from money markets or certificates of deposit where the you will deposit your scholarship funds until disbursed.

### Law

Section 501(c)(3) of the Code provides for recognition of exemption from federal income tax of organizations which are organized and operated exclusively for, among other things, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (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 that 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 the 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 provides that an organization is not operated exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

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 is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term 'educational', as used in section 501(c)(3) of the Code, as relating to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

The Supreme Court held in Better Business Bureau v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) of the Code.

In Retired Teachers Legal Defense Fund v. Commissioner, 78 T.C. 280, 286 (1982) the tax court defined private benefit to include any "advantage; profit; fruit; privilege; gain or interest."

Rev. Rul. 60-143, 1960-1 C.B. 192, social and recreational activities carried on by an alumni association of a university, which are merely incidental to its basic purpose and objective of advancing the interests of the university, do not of themselves preclude such organization from tax exemption under section 501(c)(3) of the Code as an association organized and operated exclusively for educational and charitable purposes.

Rev. Rul. 70-186, 1970-1 C.B. 128, ruled exempt 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 at large, there necessarily was also significant benefit to the private individuals who owned lake front property.

Rev. Rul. 73-128, 1973-1 C.B. 222, recognized as exempt under section 501(c)(3) of the Code an organization formed to provide educational and vocational training and guidance or nonskilled persons who are unable to find employment or cannot advance from poorly paid employment due to inadequate education. The organization operates a number of community programs including classes in remedial reading and language skills, general counseling services, and job training programs.

### Analysis

You will be organized for section 501(c)(3) of the Code exempt purposes upon amendment of your Charter as you agreed. However, you will not be operated exclusively for section 501(c)(3) exempt purposes because more than an insubstantial part of your activities (i) are social events to build relationships among your members or are professional development events to advance members' careers, which are not exempt purposes, and (ii) provide a private benefit to your members and to organizations that are not recognized as section 501(c)(3) organizations, which is not merely incidental to providing a public benefit. Accordingly, you are operated to further a substantial non-exempt purpose and therefore not operated exclusively for exempt purposes.

Section 501(c)(3) of the Code provides for recognition of exemption from federal income tax of organizations which are organized and operated exclusively for, among other things, charitable, religious, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual. 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 that 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 the 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. In Better Business Bureau v. U.S., 326 U.S. 279 (1945) the Supreme Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization also is not operated exclusively for any exempt purpose unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) of the Code must establish that it is not organized or operated for the benefit of private interests. However, Rev. Rul. 60-143 ruled that activities which have social and other related features do not disqualify an alumni association from exemption under section 501(c)(3) because those activities were 'incidental' to accomplishing the organization's exempt purpose of serving its university a section 501(c)(3) organization. An activity is "incidental" when it is necessary to the accomplish an exempt purpose.

You are primarily a professional society for advancing members' career and professional development through numerous social events, business and social networking, mentoring, and scholarships for members or members' families. Your organizational structure includes a social events director and career events director who report to your Vice-President of Programs.

Your most frequent events are social events for your members including weekly indoor volleyball, social wine tastings, social-Ethnic Liquor, tennis tournament, tennis clinic, sand volleyball, dodge ball tournament, golf tournament, and picnics. Generally, social activities for members do not further section 501(c)(3) of the Code exempt purposes. Rev. Rul. 60-143 approves activities with social and other related features provided they are incidental to

accomplishing an organization's exempt purposes. Unlike your annual Ethnic Group Benefit, a fundraiser which has social features, your other social events are not raising money to fund activities which further exempt purposes nor performing any charitable, educational, religious, or scientific tasks. You said that "the social activities provide a means to build personal relationships in order to build the organization." Social activities are not necessary to build relationships among your members. Performance of charitable activities also build relationships, such as when your members worked together to clean up flooded houses and worked together on houses being constructed for low-income people. More importantly, building relationships among your members is not an exempt purpose. You also charge non-members more than members to participate in your events, which is a private benefit to your members. A private benefit is any "advantage; profit; fruit; privilege; gain or interest." See Retired Teachers. Your social events are a substantial part of your activities and are not incidental to furthering one or more exempt purposes. Additionally, they provide a private benefit to your members. Accordingly, you have a substantial non-exempt purpose which destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S.

Your business and social networking events also provide a private benefit to your members that is not incidental to furthering any exempt purpose. Business and social networking has a significant benefit of enhancing each member's business and social opportunities, which is an advantage to your members. An advantage is a private benefit. See Retired Teachers. Substantial private benefit is permitted only if it is incidental to accomplishing an exempt purpose. Your purpose for such networking events is "to gather and recruit potential members in order to help the organization grow. Without resources (people), we could not fulfill projects or continue to volunteer." Your advertising of these events emphasizes business and social opportunities and minimizes your charitable mission. No charitable, educational, religious, or scientific activities are performed at most of these events. Your board's agenda and calendar of events are replete with discrete networking activities which represent 20-30% of the your effort for years 2008-2010. You report 'recruiting' (i.e. business and social networking) efforts were 25-30% of your total effort; more than volunteer efforts for 2008 and 2009, and equal to volunteer efforts in 2010. Unlike in Rev. Rul. 70-186 where cleaning a public lake also necessarily benefitted the surrounding land owners, your enhancement of members' business and social opportunities is not merely incidental to accomplishing your exempt purposes. Accordingly, you have a substantial non-exempt purpose which destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S.

You also propose to recruit professionals to "mentor members about the professional world through guidance and experience that more mature members have." Only members are eligible to be mentored. Generally, mentoring is not a valid educational activity with the meaning of section 1.501(c)(3)-1(d)(3) of the regulations because it lacks any formalities of instruction such as curriculum, specific courses of instruction, or published instructional materials, which can be administratively evaluated by the IRS to determine whether they are mere presentation of unsupported opinion or constitute propaganda. Nor is it generally a charitable activity when the recipients are skilled professionals. Mentoring your members about the professional world also provides a private benefit to your members that is not incidental to providing any public benefit. Accordingly, you have a substantial non-exempt purpose which destroys the exemption



regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S.

Volunteering in the community represents 25%, 15%, and 20% of your effort for 2008, 2009, and 2010 respectively. Event Organizer is the primary beneficiary of your volunteer efforts but is not a section 501(c)(3) of the Code exempt organization. Rev. Rul. 56-304 held that a section 501(c)(3) organization may distribute funds to nonexempt organizations and to individuals for projects which are in furtherance of its exempt purposes, provided that the charity retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes. While some of Event Organizer's events appear to be cultural events others are clearly not. Unlike the organization described in Rev. Rul. 73-128 which provided employment services to nonskilled persons who could not find employment or cannot advance from poorly paid jobs due to a lack of education, the International Job Expo is directed at business professionals without regard to employment status. The International Business Networking events improve the business and social opportunities of your members, also without regard to employment status. Unlike the organization in Rev. Rul. 56-304, your support to non-exempt organizations is not limited to activities which clearly further section 501(c)(3) of the Code exempt purposes. Moreover, your participation in these activities provides a private benefit to the Event Organizer. Accordingly, you have a substantial non-exempt purpose which destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S.

Your scholarship criteria include scholastic ability and that recipients be members or family of members. The scholarship committee reviews applications and submits recommendation to Applicant officers who select recipients. Committee members and officers related to an applicant must recuse themselves. Upon selection the application packet of each recipient is destroyed. Scholarships are paid directly to the college or university. Unlike scholastic ability or financial need, membership in you is not a criteria that furthers educational, charitable purposes, religious, or scientific purposes within the meaning of section 501(c)(3). Such criteria make these scholarships a private benefit to your members. A private benefit is any "advantage; profit; fruit; privilege; gain or interest." Retired Teachers Legal Defense Fund v. Commissioner, 78 T.C. 280, 286 (1982). This private benefit is not incidental to serving any exempt purpose.

Additionally, destroying all scholarship records and case histories is not permitted. Certain information must be retained. Rev. Rul. 56-304 requires organizations making grants to individuals must maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the IRS. Because these scholarships provide a substantial private benefit to your members that is not incidental to furthering any exempt purpose, you have a substantial non-exempt purpose which destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S.

Because more than an insubstantial part of your activities further the career and social interests of your members, which is a private benefit to your members that is not incidental to furthering any exempt purpose, and provide a private benefit to non-exempt organizations which is not incidental to furthering your exempt purposes, you are not operated exclusively for exempt purposes. Accordingly, you are not an organization described in section 501(c)(3) 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

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