



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201147033**
Release Date: 11/25/2011
Date: August 29, 2011
UIL Code: 501.03-22

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

Dear

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

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

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

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

Letter 4038(CG) (11-2005)
Catalog Number 47632S

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 6, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

N = Name of contest
O = State
P = Name of contest
Q = Date
R = Name of program
S = Name of contest
T = Name of program
U = Name of organization/contest

UIL Nos.

501.03-22

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.

ISSUE

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

FACTS

Letter 4036 (CG) (11-2005)

The information submitted indicates you were incorporated under the laws of the state of Q on Q. Your Articles of Incorporation state you are organized for the following purpose, in pertinent part:

You are a not for profit organization dedicated to the presentation of the P, which is a preliminary to the R.

You are committed to the same ideals and principles of the S and T – community service, personal and professional growth, and the spirit of competition.

In addition to providing an opportunity for young women to become actively involved in their community through various social platforms, the P, S, and T afford many participants a chance to achieve their educational goals through scholarships, gifts, and other opportunities.

Holding to these ideals and principles, that all young women should be given the opportunity to advance themselves, in all facets of their lives, you are proud to be a part of the S and T.

Your Articles of Incorporation also indicate upon dissolution any remaining funds of the organization will be donated to the U.

You state you plan to raise funds to provide “scholarships” for the young women of the county. Scholarships would be awarded based on a competition consisting of a talent (sing, dance, act, or play an instrument), interview, swimsuit and evening gown portions. A panel of judges will assess each contestant in the various portions of the competition and base the winners on the results of the assessment. You plan to offer six to ten scholarships annually from a pool of approximately twenty annual eligible contestants. Scholarships are to be used for educational purposes only and you have steps in place to monitor the amounts awarded to ensure scholarships are used for educational purposes.

You state winners are required to compete at the state and national level. In addition, winners must be available for public appearances in order to be awarded the scholarships of your organization as part of the contract signed by each contestant in order to compete. You later state that your board of directors has decided to remove the requirement to sign a contract in order to be a contestant and this should qualify your program for exemption.

You provided copies of your application and other material provided to the contestants. Your requirements for participation include the submission of photos and other related material, participation in the local competition and if selected participation in the state and national level. Your material refers to the title of P as a “job” and outlines the expectations of the winners which includes personal appearances, further competition and community outreach. You also provided a copy of your contract with N. Your contract with N states in order to be associated with N and U, you are required to provide winners or alternates to compete in the N.

You state throughout your application that you are associated with N and the U. You expressed your connection in various instances as outlined below:

1. Contestants are required to fill out an application provided to you by N as well as make a donation to a 501(c)(3) organization through the U's website. This is required by the U to be eligible to compete.
2. Your contract with N stipulates the ongoing relationship between you, N and U which includes requirements and other obligations that you have with each organization.
3. Your application states you have a close connection with N and U and you are a local affiliate of each organization.
4. Your application for the competition includes various references to N and U including informing the contestant of the possibility to compete in these competitions, use of the U logo and indications of the contestants need to be compliant with U eligibility requirements in order to compete.
5. Your application and other material used was directly supplied by N and U or drafted based on supplied information by these organizations.
6. Contestants are required to fill out an application and contract for N as part of the process for becoming eligible to compete in your competition.

You are primarily funded by donations from area companies and businesses.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational or charitable purposes, 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 states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3) of the

Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 117(a) of the Code provides, in pertinent part, that gross income does not include any amount received as a qualified scholarship.

Section 117(c) imposes a limitation thereon; however, and specifies that the exclusion for "qualified scholarships" shall not apply to that portion of any amount received which represents payment for teaching, researching, or other services by the student required as a condition for receiving the qualified scholarship.

A scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for the granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research or other activities primarily for the benefit of the grantor is treated as a requirement to perform services. A scholarship or fellowship grant conditioned upon wither past, present, or future services by the recipient, or upon services that are subject to the direction or supervision of the grantor, represents payment for services under this section.

Rev. Rul. 66-103, 1966-1 C.B. 134 holds that an organization whose primary activity is to provide awards and grants, including scholarship and fellowship grants to needy individuals who would otherwise not be able to pursue their studies for lack of funds and with no monetary benefits to the donor organization, qualifies for exemption under section 501(c)(3) of the Code. The organization is primarily engaged in a charitable activity of providing relief of the poor.

Rev. Rul. 69-257, 1969-1 C.B. 151 holds that an organization providing scholarships selected from a broad class of applicants on the basis of scholastic standing, qualifies for exemption under section 501(c)(3) of the Code. The organization is primarily engaged in the charitable activity of advancing education.

In Miss Georgia Scholarship Fund, Inc. v. Commissioner, 72 TC 267 (1979), the Tax Court held that a separate fund created by the Miss Georgia Pageant solely to award scholarships to the pageant's contestants, did not qualify under section 501(c)(3) of the Code because the scholarships were awarded in consideration of contractual obligations. The contract required contestants to participate in the Miss Georgia Pageant and appear in public as directed by pageant officials. A winning contestant who failed to honor the contract forfeited all rights to her "scholarship." The Tax Court concluded that the "scholarships" were compensation for signing the pageant contract and for performing services under it. Therefore, these awards were not section 117 scholarships and the fund was not operated exclusively for section 501(c)(3) purposes.

In Binger v. Johnson, 394 U.S. 741 (1969), the Supreme Court stated that to be excluded from gross income under section 117, scholarships must be “relatively disinterested, no strings educational grants, with no requirements of any substantial quid pro quo from the recipients.”

APPLICATION OF LAW

Section 501(c)(3) of the Code and section 1.501(c)(3)-1(a) of the regulations sets forth two main tests to qualify for exempt status. An organization must be organized and operated exclusively for purposes described in section 501(c)(3) of the Code. Your Articles of Incorporation do not state you are organized for section 501(c)(3) purposes and your dissolution clause states your assets will be distributed to U, an organization not exempt under section 501(c)(3). You do meet the organizational test.

You do not satisfy the requirements of the operational test of the regulations as you have not provided evidence that you are exclusively operated for any of the aforementioned purposes of section 501(c)(3).

You state in your application that you would award scholarships based on a competition consisting of a talent (sing, dance, act or play an instrument), interview, swimsuit and evening gown portions. Based on this information, your scholarships would not be granted on the basis of need or educational merit as described in Rev. Rul. 66-103 and Rev. Rul. 69-257.

You state the requirements for participation in your competition includes the submission of photos and other related material, participation in the local competition and if selected participation in the state and national level. Furthermore, you submitted multiple references to the winners' responsibilities as being a “job.” You are similar to Miss Georgia Scholarship Fund, Inc. v. Commissioner, because your requirements fall directly in line with this case. Furthermore, as with Binger v. Johnson, you are providing compensation to your participants and not scholarships as described in section 117. Again, similarly to Miss Georgia Scholarship Fund, Inc. v. Commissioner, you have no exempt purpose being that providing compensation to your participants is your sole purpose.

You have a close connection to N which requires providing participants in the state and national level competition. In addition, you represent that you rely heavily on N and U to provide critical portions of your operations as outlined above. This heavy reliance on N and U indicates that you would be unable to operate without the connection to N and U. Therefore, it appears that you would not be able to remove yourself from the contractual obligations you have with N and U and still be able to operate. Being that your contractual requirements state that you provide contestants to the state and national contests, you continue to require your contestant's agreement to compete in these competitions if selected. This requirement in itself would constitute your scholarships to your participants as compensation as in Binger v. Johnson.

APPLICANT'S POSITION

You state that your board of directors has decided to remove the requirement to sign a contract in order to be a contestant and this should qualify your program for exemption.

SERVICE'S RESPONSE

We hold that you do not meet the requirements for tax exemption under section 501(c)(3) based on the explanation provided above. You have not made a significant change to your operations. The removal of the contract for participants does not eliminate the quid pro quo compensation aspect of the scholarships you provide. Furthermore, although you indicate that you will remove the contractual obligations of your participants, you continue to require your participant's agreement to compete at the state and national level if selected and meet the contractual obligations of N and U. Your requirements and stipulations placed on the receipt of your scholarships constitutes compensation and not a scholarship as outlined above.

Based on the information provided in your application and supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Code. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

CONCLUSION

Based on our analysis of the facts presented and, in light of the applicable law, we have determined you do not qualify for tax exemption as 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. 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. The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed 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.”

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, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Lois Lerner

Lois Lerner
Director, Exempt Organizations

Enclosure: Publication 892