



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201217020**
Release Date: 4/27/2012
Date: February 1, 2012
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 G. 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: December 15, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

N = Name
O = State
P = Date
Q = Name
R = Name
s dollars = Amount
t dollars = Amount
u dollars = Amount

UIL:

501.03-00
501.33-00

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 Internal Revenue Code?

No, for the reasons stated below.

Facts

You are a nonprofit corporation formed on P in the state of O. Your Articles of Incorporation state the "corporation is organized exclusively for charitable purposes under section 501(c)(3) of

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

the Internal Revenue code ...The organization trains _____ to serve
in public and private schools and _____ clubs/organizations.”

Your activities consist of recruiting and training _____ in order to provide
_____ to public and private schools, local area parks and recreation programs. The
leagues work through you at a specific rate for each game. The fees are s dollars per game per
umpire plus travel expenses. You indicated that you have no profit motive and work with other
non-profits.

To become a member, individuals apply in writing to join and must pass a background check,
hold membership in a _____ I sanctioning body, sign the membership agreement agreeing to
independent contractor status and undergo training to verify _____ abilities. In addition,
members are required to attend meetings and attend your ongoing training program. Members
are also evaluated annually to ensure they are performing up to your standards and those of
your customers. You currently have over _____ members.

Your members receive the full umpire fee including travel expenses and are paid twice a year.
Members then pay you _____ % of their earnings as membership dues and receive a Form 1099 for
tax reporting purposes.

Forty percent of your revenue comes from fees that schools pay. The remainder is from fees
that the parks department and various _____ incur.

In 2010, _____ fees resulted in revenues of t dollars. Expenses totaled u dollars. You
indicate that _____ % of revenues are paid out to the members for their services and revenue is
“*pass through* money.” Minimal expenses are incurred for office supplies and the training
materials.

You previously operated as the for-profit entity, N. Q, your Secretary/Business
Manager/Incorporator and R, your President each owned _____ % of N. No assets nor liabilities
were transferred to you.

Your board members are not compensated for their duties on the board but may receive
compensation as independent contractors for providing umpire services.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of
organizations organized and operated exclusively for charitable, religious or educational
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 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 exempt purposes. If an organization fails to meet either the organizational or
operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) 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 organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 61-170, 1961-1 C.B. 112., holds that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses’ registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization’s activities, the primary benefit of these activities was to the organization’s members.

Revenue Ruling 72-369, 1972-2 C.B. 245 held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations lacked any donative or charitable element and did not qualify for exemption under IRC 501(c)(3). In addition, the provision of such services constituted commercial services. Furthermore, the fact that the services are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Finally, the ruling states that an organization is not exempt merely because its operations are not conducted for producing a profit.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test 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, or scientific, but rather commercial. In addition, the court found that the organization’s financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from 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.” Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff’d, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a

substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

Application of Law

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

You do not meet the provisions of Section 1.501(c)(3)-1(a)(1) of the Regulations, because your Articles of Incorporation stated purpose is to train amateur baseball umpires to serve baseball leagues. This purpose is not limited to one or more of the purposes specified in the Code and regulations.

You are not as described in Section 1.501(c)(3)-1(c)(1) of the Regulations because your purpose is to provide employment opportunities for your member umpires to officiate games and earn revenue. This is not an exempt purpose specified under section 501(c)(3) of the Code.

You are not as defined in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are operating for the private interests of your member umpires. The scheduling of games for your members, and the distribution of your income as payments to them minus a small percentage to meet your expenses, indicate that your activities primarily benefit your members.

You are like the organization described in Revenue Ruling 61-170 because you are an organization of professional umpires that provide umpire services to various baseball leagues. Furthermore, your activities are primarily directed to arrange employment for members. In addition, like the organization in the revenue ruling, your membership is open only to specific professionals who meet particular requirements and continued membership in your organization depends on members maintaining specific certifications. Finally, like the organization in the revenue ruling, public support is negligible because membership assessments fund your activities.

You are similar to the organization described in Revenue Ruling 72-369 because the provision of umpiring services to non-profit organizations such as schools, parks and youth baseball is a commercial activity. Moreover, you are not exempt merely because your operations are not conducted for the purpose of producing a profit.

You are similar to the organization in Better Business Bureau v. United States because you operate for a substantial non-exempt commercial purpose.

You are similar to the organization in B.S.W. Group, Inc. v. Commissioner. For example, your primary purpose is to schedule and assign member umpires to various games and collect the fees from the games to pay your member umpires. Your only income is from these fees and these fees are high enough to pay your members who then pay you % of their earnings to cover your operational expenses. Like the court case, you are operating in a commercial manner.

You are like the organization in Easter House v. U.S., because you are primarily providing member umpires paid employment. Your only source of income is the fees you charge the various organizations for each game. Therefore, you also operate for a commercial purpose of providing a service for a fee.

Applicant's Position

You believe you meet the requirements of section 501(c)(3) because you provide umpire services at the lowest possible price to non profit organizations such as schools, parks and baseball leagues. Moreover, your goal is not to make a profit on fees charged. Doing this allows you to bring your services to the non-profits you serve and the general public of baseball teams at a reasonable rate. You also educate umpires by providing training to them so they can serve the baseball public properly.

Service Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in section 501(c)(3). Your goal of not earning a profit on fees charged, lacks any donative element and constitutes the conduct of a trade or business. Furthermore, even though some of your activities may be educational, you are primarily operating in a commercial manner that benefits your member umpires by providing them paid umpire assignments. Therefore, you are not described in section 501(c)(3) of the Code.

Conclusion

Based on the above, we find that you are not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Specifically, you do not meet the organizational test for exemption because your organizing document does not limit your purposes to those defined in Section 501(c)(3).

You also do not meet the operational test for exemption because you provide your member umpires officiating assignments and receive fees for these placements. You then pay these fees to your members, thereby operating for the private interests of your members. You also

operate in a commercial manner because you provide a service for a fee and the fee charged is not substantially below cost.

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, 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 G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892