



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201222044**  
Release Date: 6/1/2012

Date: March 9, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.35-00; 501.03-30

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.

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

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: January 20, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**Legend:**

**B** = state  
**C** = date  
**D** = individual  
**F** = individual  
**G** = business  
**H** = lodge  
**J** = program  
**K** = state

**UIL:**

501.35-00  
501.03-30

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**Issues**

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

**Facts**

More than 20 years ago you began "hosting a group of men on a father and son guided fishing adventure in tents to (state) K." Your Executive Director, D, and another director, F, purchased two acres of land for the purpose of establishing a "ministry for men on the land." "The land was bought and developed slowly every summer, with a Lodge in mind." D initially operated the "fish camp" as a small business offering week

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

long fishing adventures in K. Approximately 16 years after the first father and son fishing adventure "the non profit concept took place" and you were incorporated in the State of B on date C. Your name includes the surname of D. Your application for exemption was filed more than eight years after you incorporated.

Your Articles of Incorporation state, in part, that you are organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 ("Code"), including, for such purposes, establishing and operating a fishing camp and retreat center for Christian individuals and church groups as a means for them to pause from the daily routine, to develop discipleship and mentoring relationships with other Christian believers and to participate in programs that integrate outdoor activities with Christian living.

Your governing body consists of nine directors, including D, his son and one of D's employees from D's outside business.

You operate a fishing camp and retreat center during the months of June, July and August. This includes a "volunteer camp" where individuals help build a new lodge and maintain the camp. The individuals are asked to "donate" a dollar amount per night to offset food and transportation costs. Your website states this is a "work emphasized week with time still found to fish." You also have a week long camp where men mentor a fatherless young man where the cost is approximately \$2,400 per person. You describe your couples cooking class as "an educational week long retreat just for couples that love to cook & eat." The cost for the couples cooking class is almost \$3,000 per couple "for a full and fun week at the Lodge." It includes "sightseeing & shopping time and plenty of R&R." You also offer private camp retreats for Christian leaders and ministry groups.

All of your programs focus on outdoor activities. An example of a typical week is as follows:

**Sunday:**

Guest arrives in K. You pick them up and give a tour while driving to the lodge. The guests check in and enjoy a drink or appetizer on the patio before they are taken to their room. Dinner is served about an hour after arrival. After dinner, an orientation about your offerings is given and the staff is introduced. At 8:30pm, a camp fire is offered, where treats and hot beverages are provided.

**Monday through Friday (daily routine):**

Most meals are served at the lodge. Between meals the guests partake in their chosen outdoor excursions. At night, after a campfire, guests are invited to make an ice cream run to the general store and/or enjoy a road trip to view the area and look for local wildlife (such as moose spotting).

Saturday:

Brunch is served. Guests pack up, check out and are transported to the airport.

An example of a typical day is as follows:

8:30am- Breakfast at the lodge

9:00am- Morning devotional – lead by one of your directors

9:30am- Prepare lunches for the day

10:00am – 6:00pm- Construction project and fishing or outdoor adventure: the construction project would consist of a variety of different outdoor activities, such as how to build a fire, cut down a tree, basic carpentry skills and similar activities. The fishing or outdoor excursions are chosen by the guests themselves.

5:30pm- Appetizers are served.

6:30pm- Clean up and prepare for dinner: Campers will be taught how to gut, cut and cook fish.

7:00pm- Dinner

8:30pm- Campfire and message from camp pastor

10:00pm- Free time: Nature hikes, trips into town or any leisurely activity chosen by the camper.

Weekly, the participant can book fishing and touring adventures, but some guests purchase a pre-planned week of adventures. You provide a listing of the available excursions for which fees are charged. Fees range from \$ 75 to \$ 400. However, there are also free excursions such as touring the historical sights of the local village or just relaxing at the lodge.

D, D's son and F continue to own the land where you operate. You have a verbal agreement leasing the land for 99 years at \$1 per year. The written Land Lease agreement you submitted was not executed. It stated in pertinent part: "This letter serves as our agreement to allow [you] legal authority to build its [your] attached master plan on stated two acre property owned/managed by D for the purpose of operating its [your] ministry. The term of this lease is for 99 years from the above date at a rate of \$1.00 per year...Owner shall be responsible for property tax...for 50% usage of original cabin.. until you build the master lodge in its place. You are responsible for all taxes, utilities, wells, plans, permits, development, construction, and insurance when it [lodge] is completed and insurable. Your map of the property shows a new lodge with six bedrooms and five bathrooms, an original lodge with one bedroom, living room and kitchen, a bath house with showers and stalls, a bunkhouse for up to four beds and plans to construct another lodge and a shop/education center.

You advertise your camp and lodge through your website, DVD's and brochures. The materials use the terms such as fun, adventure and relaxing to describe your activities. According to your website, the week camp includes ground transportation (once in K),

four 'world class fishing adventures', six nights lodging, meals, packaging and processing of the participants' fishing catch, camp fire speakers throughout the week and all fishing gear required. The participant has to supply their own transportation to K, fishing licensing, a few of the off-site meal costs, tips and gratuities and personal items (like clothes and shoes). Participants are expected to bear their own costs and pay fees to attend each of your programs.

As you indicate in past meeting minutes regarding the purpose and vision of the fish camp you aim to find the unique experience, envisioning a full restaurant, spa, fire ring and set up for people who are going to fish. Stating, "Its all about marketing and product". Additional meeting minutes demonstrate what you would need to do to take the current fish camp from "one star up to two star services". Lodging, schedules for guests to stick to, a tour and overview for guests including fishing holes, the camp, beach and options for their stay such as excursions, uniforms to be worn by staff, better food service, picture CDs for guests.

A registration form submitted as an exhibit shows a registered and paid participant that a one week stay with you includes airport transfers, ground transportation, four amazing world class fishing adventures, six nights lodging, meals all week, processing of any catches, a camp fire speaker and all fishing gear. The participant is responsible for air fare, fishing licenses, meals while travelling, tips, personal gear and personal items to pack provided on a list.

Your income consists of fees charged to volunteers and participants for stays at your camp, cooking classes and retreats. The fees range from just under \$50 per night to almost \$3000 for a week. You have received some donations from related parties. Expenses include costs of operating and maintaining the camp as well as expenses for fishing charters, fishing supplies and construction. Minutes of meetings also indicate you operate with paid staff, however, your financial statements did not show expenses for wages. Over \$19000.00 has been spent in construction costs for buildings built on the retreat property owned by D and F to be used by you in your operations.

### Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings 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 of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational

test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 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 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(c)(3)-1(d)(2) of the regulations includes the advancement of religion in its definition of the term "charitable".

Revenue Ruling 77-366, 1977-2 CB 192,

A nonprofit organization that arranged and conducted winter-time ocean cruises during which activities to further religious and educational purposes were provided in addition to extensive social and recreational activities was not operated exclusively for exempt purposes and did not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 77-430, 1977-2 CB 194,

An otherwise qualifying nonprofit organization that conducted weekend religious retreats, open to individuals of diverse Christian denominations, at a rural lakeshore site at which the participants were able to enjoy the recreational facilities in their very limited amount of free time and that charged no fees qualified for exemption under section 501(c)(3) of the Code as operated exclusively for religious purposes.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C 2003) the District Court found that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its

primary activities of operating a for-profit conference center.

**Application of Law**

You are not described in section 501(c)(3) of the Code because you operate for more than insubstantial social and recreational purposes.

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities are recreational. An itinerary of activities that take place at your retreat shows personal recreation is the main component of your camps and anyone from the general public can pay your fees and attend.

Section 1.501(c)(3)-1(c)(2) of the regulations provides 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. Since you have made substantial capital improvements to land owned by D in the form of the buildings built on the retreat land, your earnings have inured to an insider. Those buildings have increased the value of the land and the lease does not safeguard you from insider benefits. No amount of inurement can be overcome for qualification of exemption under 501(c)(3).

Even though section 1.501(c)(3)-1(d)(2), of the regulations states that advancement of religion is a charitable purpose not all of your activities are characterized as religious. As noted above, a typical week includes a significant amount of time for recreational activities that the guests choose freely. The morning devotional and the evening message from the camp pastor account for only a few minutes per day. Accordingly, you are not as described in the regulations.

You are similar to the organization described in Revenue Ruling 77-366, *supra*. You offer a retreat that has religious and educational aspects but also offers extensive social and recreational activities. Likewise, per your given schedule, you allow for extensive time for social and recreational activities.

You are not similar to the organization described in Revenue Ruling 77-430 because you do not limit the amount of recreational time of guests but instead promote and advertise recreation as your focus. Even though you offer scholarships in a few limited circumstances the vast majority of your programs are provided for a fee.

Like in Better Business Bureau of Washington D.C., *supra*, the presence of your substantial recreational purpose precludes exemption.

You are similar to Airlie, *supra*. Your patrons are not limited to tax exempt entities. You offer a variety of activities for a fee. Donations are solicited to cover the costs for some of your guests, however, most pay the full fee. You advertise your activities through



your website and the distribution of DVD's. You compete with other commercial entities that provide similar fish camp services. Even though you carry out some religious activities, the facts show these are incidental to your operation commercially.

### **Applicant's Position**

You maintain that you have four main activities. The first is a fish camp offered to men and adolescent men to fish and camp offering a spiritual aspect to build bonding throughout the week. The individuals who participate are normally fathers and sons.

Your second offering is a retreat and rest center for Christian leaders and small groups. This is aimed at providing relaxation and spiritual revival for men and women in Christian service. Your third offering, is similar to the second only aimed at Pastoral staff.

Finally, you offer a "J" mentoring program. This program assists single mothers by providing fatherless young men a chance to develop positive male relationships and an understanding of manhood through nature. For this program, you may offer scholarships to less fortunate participants who could not otherwise afford to attend.

Your indicate that your activities consist of interaction between fellow Christian men in an outdoor environment (such as fishing and hiking), hearing the Word of God, singing and fellowship, and rest and relaxation.

You feel that these activities are exclusively exempt in nature.

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

The facts show you provide fishing, camping, lodging and recreation for a fee. Your daily and weekly schedules reveal substantial free time for participants and very little time devoted to structured religious activities. By the same token, your website and promotional materials emphasize recreation. These facts clearly indicate your operations are not "exclusively" for section 501(c)(3) purposes

### **Conclusion**

Based on the information provided, you do not qualify for exemption under section 501 (c)(3) of the Code. You are not organized and operated exclusively for charitable or religious purposes within the meaning of section 501 (c)(3) of the Code because you operate in a commercial manner. Your operations further a substantial nonexempt purpose and net earnings have inured to organization insiders. Accordingly, you do not qualify for 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*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

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

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

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  
Director, Exempt Organizations

Enclosure: Publication 892