



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201247017**  
Release Date: 11/23/2012  
Date: August 30, 2012  
UIL Code: 501.30-00  
501.33-00  
501.36-01

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
1120  
Tax Years:  
All 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,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

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 19, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

J = City  
M = State  
N = Date  
T = CEO/President

**UIL:**

501.30-00  
501.33-00  
501.36-01

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 meet the operational test under section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You incorporated in the state of M on N. Your Articles of Incorporation state you were formed to write grants for funds to help low income residents with food, clothing, shelter and medical needs as well as charitable organizations that serve the uninsured and underserved.

Your by-laws state that you are organized for community and economic development purposes which include: to promote community and economic development, to provide grant writing and notary public services, and to meet the needs of low to medium income residents and charitable organizations.

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

T is your Chief Executive Officer and President. At the time your application for exemption was submitted, T was your only board member and your Articles of Incorporation listed T as the sole incorporator. Your by-laws indicate T is responsible for your overall policy and direction. Your by-laws also state that all officers except for T will serve two year terms. Your executive summary indicated T's administrative skills include preparing state and federal grants. You initially stated T is a self employed grant writer, but later responded T is not. Your office is located in the home of T in J, M.

Your primary activity will be providing grant writing services for a fee to low to medium income individuals for small business grants for entrepreneurship, economic development programs or business opportunities and community based initiative grants for social programs. You will also assist local charitable organizations in raising funds for emergency housing, food pantries, free medical clinics, prescription drug assistance, and utility assistance. Finally, you indicated you will provide notary services to your customers.

The vision statement in your business plan states that you hope to be a highly successful business that is recognized for its excellent grant writing services. The company overview states that your services will be offered at affordable costs and your operations will be home-based.

The business goals and objectives section of your business plan provides further detail about your operations. It explains you chose to become a home-based business due to low start up costs and minimal financial risk. Therefore, profitability can be realized because of low operating costs. The plan states being a minority nonprofit small business owner is one of your strengths as well as having the corporate officer reside in the service delivery area. You plan to have an aggressive advertising campaign and will try to attract customers by word of mouth, business cards, postcards, flyers, pamphlets, radio announcements, television commercials, telephone calls, personal contacts and the internet. You will begin your operations by providing grant writing services to low to medium income residents and charitable organizations. You will also offer notary public services to your customers. To expand your services, you plan to hire a multi-media specialist in the future for public relations and a paralegal to assist customers with the preparation of legal documents. Individuals and organizations not represented in the market segment or who reside outside the target market can retain services based upon a retainer fee for time required to write the grant and the size of the grant. You estimated that 90 percent of your customers will be from your target market and at least 10 percent will be from outside of the target market.

Your fee schedule is complex and varies depending on whether or not your customer is inside or outside your target market. It also varies depending on the size of the grant. However, regardless of where the customer lives or the size of the grant, all of your revenue will come from fees for services in the form of an hourly charge, a retainer fee, or a percentage of the grant. You anticipate charging an average percentage of 13% of the grant through the administrative cost ceilings (percentage of grant) of various combinations of grants. This income was included on your financial data page of Form 1023 as gifts, grants, and contributions received. Even though you consider this revenue as a grant, it is actually a fee charged for performing the grant writing service. It is not a voluntary contribution to your

organization. Your fee amounts were determined based on the fees charged by a private grant writer.

You submitted a list of start up costs with your application that includes professional fees, insurance, deposits, supplies, utilities, trash, telephone, internet, postage and advertising. Your rent and utilities were calculated based on the percentage use of T's home.

## Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings 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 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 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 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). 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 applicant organization must establish that it serves a public rather than a private interest and specifically 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(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

In Revenue Ruling 72-369, 1972-2 CB 245, states that an organization formed to provide managerial and consulting services at cost to unrelated exempt organization does not qualify for exemption. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organization is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

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 (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 incident 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.

In Living Faith Inc. v Commissioner, 60 T.C.M., 710, 713(1990), aff'd 950 F.2d 365 (& Cir. 1991) the court wrote that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus it did not qualify for exemption under Section 501(c)(3). The appellate court stated the factors that the court relied on to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

- 1) The organization sold goods and services to the public.
- 2) The organization was in direct competition with for profit businesses (Food stores and restaurants).
- 3) The prices set by the organization were based on pricing formulas common in retail food businesses.
- 4) The organization utilized promotional materials and "Commercial catch phrases" to enhance sales.
- 5) The organization advertised its services and food.
- 6) The organization did not receive any charitable contributions.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

### **Application of Law**

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for charitable or educational purposes. Grant writing and notary services are not exempt activities.

Although you meet the organizational test, you do not meet the requirements of section 1.501(c)(3)-1(a)(1) of the regulations because you fail the operational test.

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 not in furtherance of an exempt purpose.

Contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you have not established that you serve public, rather than private interests. T has total control over your operations as evidenced in your by-laws. You operate out of T's home and T will provide professional grant writing services to individuals and organizations that seek such services from you. You have no governance provisions with respect to transactions with or services provided by T. Accordingly, you have not established that your operations will not inure to the benefit of T.

You are not formed exclusively for charitable purposes as defined in section 1.501(c)(3)-1(d)(2) of the Regulations. Although you have stated you will serve low income individuals, you will also make your services available to medium income individuals. No other qualifiers were provided for medium income individuals. Even if you did provide your services only to low-income individuals, the manner in which your services are provided are not charitable.

You are similar to the organization described in Revenue Ruling 72-369. Like the organization in this ruling, you are providing services for a fee. The fees charged cover all costs associated with your operations, including professional fees, salaries, rent, utilities, etc. As in the ruling, furnishing your services at cost lacks the donative element necessary to establish your activity as charitable. Therefore, even though some of your services are provided to charities and low-income individuals, furnishing services at cost lacks the donative element necessary to establish the activity as charitable. As stated in the revenue ruling, providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Your grant writing service is also a trade or business ordinarily carried on for profit.

Similar to the organization described in Easter House v. U.S. your activities are conducted in a commercial manner indistinguishable from your for-profit counter parts. All of your revenue is derived from fees for services either in the form of taking a percentage of the grant or charging an hourly rate. No contributions are received from the public. You are in direct competition with for-profit grant writers and will engage in advertising in order to secure clients.

You are like the organization described in Living Faith Inc. v Commissioner because you are operating as a business and are in direct competition with all other private grant writers. Your prices were based on pricing formulas provided to you from a private grant writer. You will have an ongoing advertising campaign and have no plans to solicit charitable contributions. In fact, every aspect of your business plan is similar to a commercial for-profit grant writer.

The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes as stated in Better Business Bureau of Washington, D.C., Inc. v. United States, supra. Because more than an insubstantial part of your activities are conducted in a commercial manner, you are precluded recognition of tax exemption under section 501(c)(3) Code per section 1.501(c)(3)-1(e) of the regulations.

### **Applicant's Position**

You state that you are different from a commercial enterprise because you operate for the good of the public, not to make a profit. You serve the needs of low-to-medium income residents.

In response to the rates charged for your services you indicated the retainer revenue fee is adjusted to cover costs. You predict that as the grants increase, the retainer revenue will decrease. You stated the hourly rate can easily be readjusted to ensure fees are substantially below cost.

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

As explained above, performing services for a fee is not a charitable activity. The fact that fees charged cover all expenses proves your commercial nature. Your rates are similar to private grant writers, and several other factors indicate you are in direct competition with and indistinguishable from your for-profit counterparts. As explained above, the amounts received by you as a percentage of the grant are also considered fees for services. Therefore, the facts show all of your revenue is received from fees for services. The fact you can easily adjust your rates to change the amount of revenue you receive from each of your three sources further shows you operate in a commercial manner and not to benefit the public. Even though the public may benefit from the services you provide, the facts show a more than insubstantial non-exempt purpose of operating in a commercial manner.

### **Conclusion**

Based on the facts and applicable law, your activities are conducted in a commercial manner causing you to fail the operational test. Furthermore, you have failed to establish your operations will not inure to the benefit of T. 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*.

*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](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,

Holly Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure, Publication 892