



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201307009**
Release Date: 2/15/2013
Date: November 21, 2012
UIL Code: 501.30-02
501.35-01

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.

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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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

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: October 2, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = date

C = state

D = government agency

F = individual

G = individual

H = individual

L = organization

M = web site

N = state

x = dollar amount

UIL:

501.30-02

501.35-00

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.

Issues

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

Do you operate in a substantially commercial manner, which would preclude exemption? Yes, for the reasons set forth below.

Facts

On B, you incorporated in the State of C. Your Articles of Incorporation indicate that you are organized to provide "assistance to clients in obtaining community employment", to

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Catalog Number 47630W

provide "skills/abilities assessments" and to identify "available and appropriate community employment opportunities for clients".

You stated in your application for exemption that F, initially listed as your only governing body member and your president, would be serving as an independent contractor for D, a governmental division of C. F would be an employment consultant for people with developmental disabilities, helping individuals with disabilities "prepare, find and maintain employment". In order to become a contractor with D, F would have to become a 501(c)(3) and operate as such. Throughout your application, F refers to herself as needing 501(c)(3) exempt status. No other activities were described in your application.

Originally, your governing body consisted of one person, F, referring to herself as 'owner'. You have since added G and H. F and H are related. G is currently employed as a group home manager and H is the owner of a for profit home care service, where she manages the medical health, care, welfare and related services to clients.

Upon requesting a better description of your activities, you provided a copy of F's daily itinerary, consisting of checking email, returning calls, checking job postings and various meetings with individuals and local businesses. You also submitted documents from D describing their rehabilitative programs, their mission statement and vision and the supported employment and employment services programs.

The supported employment program is designed to help individuals with psychiatric disabilities obtain and maintain competitive employment. Each participant is paired with an employment consultant. The employment consultant assesses the participant and completes a plan, which includes identifying pre-employment needs/services, housing needs, clothing needs, medical needs or any other ancillary problems that need to be addressed prior to employment. The employment consultant contacts employers in the community who offer the type of employment opportunities identified during the assessment of the participant. The employment consultant works with the employers to place the participant in a job. The employment consultant may also work on the job with the participant to train them and ensure they get to and from work (including bus training if needed) independently. Once the participant is stabilized on the job and is able to perform all the necessary tasks, the employment consultant fades from the job site. The employment consultant maintains contact with the employer and participant and provides support if problems are identified.

Employment services is a program designed to help integrate individuals with disabilities into competitive employment. The employment consultant helps the participant identify appropriate employment goals, acts as a liaison with the employer and provides support to both the participant and the employer. Other services offered through this program are career exploration, transportation training and resume development.

Both programs serve people with the most significant disabilities by helping them become employed in their community. The employment consultant provides continued support to help the disabled individual maintain long-term employment.

After submitting these program documents, you indicated your intention to provide supported employment and employment services through D. You will receive clients through referrals from D, conduct the programs, and receive payment from D at x dollars per client when they are placed at a job. F will be the only employment consultant that you employ. No contracts or documents from D were provided indicating terms of employment, nor were any documents provided from you regarding your decision to employ F, terms of negotiation or compensation.

Your only listed source of income will come from payment by D for placing individuals into employment. You have submitted four different sets of financial data, each showing varying levels of revenue and expenses. However, consistently, given the revenue you project, the majority, if not all, of the income received from D will pay F for her services. Although we requested more detail on your revenues and expenses, you were unable to provide any additional information.

You also submitted the names of two other entities, with their Federal Employer Identification Numbers, indicating they provided like services.

Law

Section 1.501(c)(3)-1(a) of the regulations states that 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) 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.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish 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.

In Revenue Ruling 69-266, 1969-1 CB 151, an organization formed and controlled by a

doctor of medicine, "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code.

In Revenue Ruling 72-369, 1972-2 CB 245 an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3). 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 organizations 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.

Revenue Ruling 81-94, 1981-1 CB 330, held that a "church" operated to serve the private interests of the founder was not operated exclusively for religious or charitable purposes. The "church" was formed by a professional nurse (who was also the "church's" minister, director, and principal officer). It was used primarily as a vehicle for handling the nurse's personal financial transactions. The organization was found not to be exempt from tax under section 501(c)(3) of the Code.

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.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation organized to provide counseling services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on as a commercial venture organized for profit. The corporation's primary purpose was not charitable, educational or scientific, but rather commercial in nature. Further, the court found that the organization's financing did not resemble that of a typical 501(c)(3) organization as it had not solicited, nor had it received voluntary contributions from the public. Its only source of income was from the fees for services that it collected. Those fees were set high enough to recover all projected costs and produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost."

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test under section 501(c)(3). Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. The case noted that among the major factors that courts have considered in assessing commerciality are competition with for-profit

entities, pricing policies, the extent and degree of below cost services provided and the reasonableness of financial reserves. Additional factors include whether the organization uses commercial promotional methods (such as advertising) and the extent to which the organization receives charitable donations.

Application of Law

You are not operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a) of the Income Tax Regulations and therefore fail to meet the operational test. Specifically, the facts above indicate that you are not operated for 501(c)(3) purposes, but in a commercial manner and for the private benefit of your founder, F. As more than an insubstantial part of your activities are not in furtherance of an exempt purpose, you fail to meet the operational test, and do not qualify for exemption under 501(c)(3).

You are not described in section 1.501(c)(3)-1(c)(1) of the regulations because you are not primarily engaged in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. You are not distinguishable from any commercial operation in that you were formed solely to accept payments directly in correlation to services you are providing.

You are not described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you serve the private interest of F. You are controlled by interested parties, F and H, and were formed and applied for exemption only to create an opportunity for F, which serves to her private benefit. Further, it is noted that the reason you are requesting exemption is so that you can receive compensation from D (as they require nonprofit distinction in order for payments to be made in return for services rendered) in order to pay F.

You are similar to the organization denied exemption in Revenue Ruling 69-266 in that you were formed to serve the private interests of F. Like that organization, you were formed and initially controlled by one individual, F, your only employee is F, and your financial projections indicate nearly all funds received will pay the salary of F.

You are similar to the organization described in Revenue Ruling 72-369 as you are providing a service on a regular basis for a fee. Your operations are not distinguishable from a regular commercial business. You do not base the rate of compensation paid to F on the costs associated to her provision of services, but rather she will be paid a market rate from D. Although the class served is one that can be characterized as charitable, the manner in which you operate is commercial in nature as you lack the donative element to be considered charitable.

You were formed to gain a contractual relationship with a government agency for one individual, your president and founder, F, and to provide F with a salary for those services.

You are also similar to the organization denied exemption in Revenue Ruling 81-94. Like the organization in the ruling, you are operated to serve the private interests of your founder, F. You were formed by F, who acts as a principle officer and sole employee. All income received for securing employment is paid directly to F. Therefore, you are operated primarily as a vehicle for F, to benefit her financially, and thus are not operated exclusively for any exempt purpose defined under section 501(c)(3) of the Code.

As in B.S.W. Group and Airlie Foundation, *supra*, you are providing services in a commercial manner. You have not received any contributions from private or public sources. Your only source of income is fees for services. Further, there is no evidence that you ever intend to provide services for less than the market rate D will pay you. These factors show the commerciality of your services.

Since a more than insubstantial part of your operations are commercial and directly benefit F, you are similar to Better Business Bureau of Washington D.C., *supra*. Although your program of securing employment for disabled persons may serve certain charitable and educational purposes, your overriding purpose is that of providing a service for a fee and a benefit to F through service contracts. This precludes exemption under section 501(c)(3) of the Code.

Applicant's Position

You contend that you are organized and operated exclusively for exempt purposes. You referred us to two other organizations that operate in a manner similar to you that are recognized as exempt under section 501(c)(3) of the Code.

You provided additional information as well. You will recruit volunteers to attend events in order to share information related to obtaining employment. You indicated that the materials and gathered information are effective in educating the public about the risk factors, warning symptoms, diagnosis, early detection and various treatment methods of ovarian cancer.

Your time and resources are allocated for communal outreach (career fairs, support groups, career skills lectures/trainings), media outlet maintenance, support group preparation/community outreach preparation, administration (meeting, correspondence, record keeping and accounting) and your web site.

You maintain articles of interest regarding ovarian cancer on a comprehensive website (M). The website features the latest news regarding ovarian cancer, contact information, announcements about L and events relevant to your mission, guidance for volunteers, donors and sponsors and links to similar organization's websites. By offering educational materials and educating the public about ovarian cancer, L is instructing the public on subjects useful to the individual and beneficial to the community.

You went on to indicate that L's office and meeting space is located in N (and provided a specific address).

You also provided new financial and fundraising information, which appears to relate to L instead of to you. It shows that L expects to obtain income through fundraising efforts by selling merchandise.

When we contacted you regarding the submission of information referencing another unrelated organization, you submitted the same information with your name and information inserted.

Service's Response to Applicant's Position

While providing services to those with disabilities can serve a 501(c)(3) purpose, the manner in which you are structured and operated is serving private and not public interests. You formed to benefit F by enabling her to secure payments for services through D, and will operate in a commercial manner.

Regarding the additional information provided. It is clear that you have submitted information prepared at some point by another entity, inserting your name into the details of their operations, rather than providing your own descriptions. You were unable to substantiate these activities as your own, and you continue to have a more than insubstantial purpose as providing services for a fee with benefits to F. Further, your comparison to two other exempt entities has no bearing on our ruling. The qualification of another entity is not a basis for a similar ruling as each application for exemption is reviewed on its own merits.

Conclusion

Based on the facts and information provided, you do not meet the operational test. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. Further, you have not demonstrated that you are serving public, rather than private purposes. Therefore, you are not described in section 501(c)(3).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code. Contributions to your organization are not deductible under section 170 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, 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.

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Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892

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